



Independent Communications Authority of South Africa

350 Witch-Hazel Avenue, Eco Point Office Park

Eco Park Centurion

Private Bag X10, Highveld Park, 0169

COUNCIL DECISIONS – 16 April 2019

ITEM NO.	AGENDA ITEM	DECISION
1.	<p>Recommendation by Complaints and Compliance Committee to Council in the matter between Newcastle Community Members (NCM) and Newcastle Community Radio (NCR)</p> <p>The purpose of the submission was to table the recommendation of the CCC in the matter between NCM and NCR.</p> <p>1.1 On 12 September 2018, the NCM lodged a complaint that Mr. Bheki Nondala, Mr. Luka Sithole Nzima Zodi, Mr. Nhlanhla Mtshali and Andile Masondo (the parties) contravened the Standard Terms and Conditions of a licence as amended in 2016, and regulation 10A read with regulation 4 which states that a licensee must use profit and other income for the promotion of its broadcasting activities and in the service of its community.</p> <p>1.2 It was alleged that the parties used the station's revenue for their own personal interests and not for the promotion of its broadcasting activities.</p> <p>1.3 It was further alleged that there was no proper Board of Directors governing the Radio Station, and that there were</p>	<p>The recommendation by the CCC was approved</p>

	<p>three (3) factions within the governing structure of the station.</p> <p>1.4 The Board of Directors were requested by the Authority to file the audited financial statements for 2014/2015, 2015/2016, 2016/2017 and 2017/2018 financial periods, the station manager's signed contract of employment, detailing his full name and date of appointment, and a detailed programming of the station, time slots and the name of presenters and their signed contracts with the radio station.</p> <p>Recommendation to Council</p> <p>1.5 The CCC indicated that there was a problem in identifying the Chairperson of the Board.</p> <p>1.6 The July 2018 meeting at which Mr. Zondi was elected as Chairperson of the Board was regarded as the most recent expression of the will of the Community represented at the meeting.</p> <p>1.7 The CCC recommends to Council to confirm that the Board and Chairperson elected on elected in July 2018, be recognised as the legitimate board, and Council to make an order as follows:</p> <p>1.7.1 A full report must be filed with ICASA by the Station Manager (also signed by the Chairperson of the Board) as to the state of the broadcasting by the respondent at the end of June 2019.</p>	
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	<p>1.7.2 A detailed report must be included as to the programmes provided in March, April and May, with dates and times of the broadcasts.</p> <p>1.7.3 Similar reports to be filed by 30 October 2019 and 31 January 2020.</p> <p>1.7.4 At the end of August 2019, a report must be filed by the Chairperson and the station manager concerning the bank account or accounts of the radio station, including the identity of the person(s) mandated to transact on the accounts, including bank statements for May, June and July 2019.</p> <p>1.7.5 The Station Manager must by the end of November 2019 file a report with ICASA on how the community was consulted from June to end November 2019 as to broadcast content and what the result thereof was.</p> <p>1.7.6 The Chairperson of the Board must call an Annual General Meeting before the end of November 2019.</p> <p>1.7.7 The Meeting must be held at a readily accessible location,</p>	
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	<p>approved by the Board. The minutes of that meeting must be filed with ICASA before 16 December 2019.</p> <p>1.7.8 The Annual Financial Statement of the Radio Station, as approved at the Annual General Meeting 2019, must be filed with ICASA before 16 December 2019.</p>	
<p>2.</p>	<p>Response to MTN's Written Submissions in Respect of Section 17H of the ICASA Act.</p> <p>The purpose of the submission was to request Council to consider MTN's written representation to the Authority.</p> <p>2.2 On 3 May 2018, the Council issued an order to MTN to port the identified numbers to Vodacom within seven days from the date of the order.</p> <p>2.3 On 1 June 2018, the Authority received a review application from MTN in terms of which MTN sought an order reviewing and setting aside an order granted by ICASA on 3 May 2018.</p> <p>2.4 ICASA opposed the review application and proceeded to direct MTN to comply with its order and requested MTN to provide representations why ICASA should not invoke the penalties provided for in terms of section 17H of the ICASA Act regarding its failure to comply with the timelines indicated in ICA'A's order.</p> <p>2.5 MTN filed a written representation outlining why ICASA should not invoke the</p>	<p>It was resolved that the recommendation be approved.</p>

	<p>penalties provided for in terms of section 17H of the ICASA Act.</p> <p>2.6 For MTN to prevent the Authority from invoking the above sections, MTN will have to obtain an interdict to allow it to maintain the status quo. In the absence of such an interdict, the order of the Authority remained lawful, enforceable and must be adhered to.</p> <p>2.7 The Authority was a creature of statute and must exercise all its powers as provided by the relevant statutes, and the Authority must further ensure that its orders were respected and complied with to exercise its regulatory powers.</p> <p>2.8 Considering the above submission, it was recommended that Council approves that the Authority invokes the provisions of section 17H (1) (f) regarding MTN's failure to comply with the timelines indicated in ICASA's order of 3 May 2018(i.e. lay a criminal charge against MTN).</p>	
<p>3.</p>	<p>ICASA Response to Wave Broadcasting and Entertainment (Pty) Ltd (MC90.3 FM Plett and Knysna 97.0 FM)</p> <p>The purpose of the submission was to request Council to approve the response to the Wave Broadcasting and Entertainment (Pty) Ltd submission.</p> <p>3.1 Wave Broadcasting wrote to the Authority on 08 January 2019, raising concerns regarding the</p>	<p>The response by the Authority to Wave Broadcasting and Entertainment (Pty) Ltd was approved.</p>

outdated regulations on Lower Power Sound Broadcasting and the rejection by the Authority to extend its broadcasting coverage.

ICASA's Response to Wave Broadcasting and Entertainment Ltd

3.2 The Authority would like to highlight that every amendment to a license was considered on its merits and in terms of the relevant legislation and regulations.

3.3 The delay by the Authority to review Low Power sound broadcasting regulations which were last reviewed in 2003. Further, Wave Broadcasting cites a submission by African Media Entertainment which stated that the 1-watt limit for lower power broadcasting seems to be arbitrary and does not reflect international practice.

3.4 It is unlikely that needs would generally be satisfied with a 1-watt power level limit. Wave Broadcasting states that a power level of 1 watt should not be described for all forms of lower power sound broadcasting. The prescribed power limit should be determined by the coverage equipment.

3.5 The Authority published the Final Report on the review of Broadcasting Regulatory Framework towards a Digitally Converged Environment in South Africa.

3.6 The report indicated that Low Power Sound broadcasting

	<p>regulations will be reviewed in 2020 and beyond.</p> <p>3.7 Apart from the power level of 1 watt, there were no major issues that warranted the review of the regulations in the short term. The Authority did not have the mandate to vary the power level above 1 watt. Section 1 of the Broadcasting Act no, 4 of 1999 defines a low power sound broadcasting service as “a community, private or public sound broadcasting service which radiates power not exceeding one watt”.</p> <p>3.8 The Authority derives its powers from the legislation. Therefore, every decision that the Authority takes and every process it undertakes was informed by legislation.</p> <p>3.9 Consequently, the Authority had not been able to address the request from Wave Broadcasting of expanding its coverage area beyond 1 watt.</p> <p>3.10 Further, the Authority would like to inform Wave Broadcasting that the opportunity to make submissions will be provided to all interested stakeholders in future once a decision to review the Low Power Sound Broadcasting regulations has been taken by the Authority.</p> <p>3.11 Wave Broadcasting requested the Authority to provide the documentation as to when was it decided in terms of which amendment to Commercial Sound Broadcasting Regulations and the frequency spectrum, to</p>	
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introduce a Coastal Regional Broadcaster extending from East London/Port Elizabeth to Mossel Bay, and to kindly provide any gazetted details of an Invitation to Apply (ITA) for such service. Further, the submission states that Algoa FM now broadcast to 4 metropolitan areas namely Port Elizabeth, East London, Grahamstown and George. Wave Broadcasting suggest that the Authority 's extension of Algoa FM's coverage area was a mistake.

3.12 On the 29th June 2019, Algoa FM applied for the amendment of its broadcasting license to extend its coverage to include Knysna, George and Mossel Bay.

3.13 The amendment application was published for public comment in the Government Gazette No.29 June 2011.No representation/comments were received in respect of the application. After public consultation regarding the re-categorization of frequencies applied for, the Authority was satisfied that there was no material issue that arose to warrant a hearing. Consequently, the Authority decided not to hold a public hearing in respect of the application. Upon the consideration of the application by the Authority resolved to grant Algoa FM's application to extend coverage to include Knysna, George and Mossel Bay.

3.14 Wave Broadcasting referred to the correspondence that accompanied its application to amend the frequency license dated February 2018.In that

	<p>correspondence the Authority was requested to explain the reason behind licensing two similar Community Sound Broadcasters in the same area that serve the same coloured Community namely (Eden FM and Kouga FM) and have an overlapping signal distribution into Plattenberg Bay and Knysna.</p> <p>3.15 Eden FM licensed to provide a community broadcasting service in the Eden District Municipality in the Western Cape Province and Kouga FM was licensed to provide a community broadcasting service in Kouga Municipality which falls under Sarah Baartman District Municipality in the Eastern Cape Province.</p> <p>3.16 Wave Broadcasting raised an issue regarding the reason the Authority, having unilaterally decided to link power broadcasting (previously a separate tier of broadcasting) to Community Radio, and having been in the process of producing a Discussion Document on the Regulatory Framework for Community Broadcasting Services for a few years, had not included anything in the Discussion document referring to low power Sound Broadcasting.</p> <p>Low Power Sound broadcasting regulation will be reviewed separately from Community Broadcasting regulation to ensure that the sets of regulations were not confused and that both receive the required attention.</p>	
<p>4.</p>	<p>Lifting of the Moratorium on Community Sound Broadcasting Licence Applications</p>	<p>The recommendation was approved subject to:</p>

	<p>The purpose of the submission was to recommend that Council lift the moratorium respect of applications for both class community sound broadcasting service licences and radio frequency spectrum licences for purposes of providing community sound broadcasting services.</p> <p>4.1 On 22 September 2015, the Authority issued a moratorium in respect of applications for both class community sound broadcasting services licences and Radio Frequency Spectrum licenses for purposes of providing a community sound broadcasting service.</p> <p>4.2 In the notice the Authority indicated that the moratorium was necessitated by:</p> <p>4.2.1 A scarcity of analogue radio frequencies;</p> <p>4.2.2 The Authority was currently reviewing the Licensing Processes and Procedures Regulations wherein it intends to process registrations for class community broadcasting licences in two intervals per year; and</p> <p>4.2.3 The Authority intends developing a new regulatory framework for community broadcasting during 2016/2017 financial year.</p> <p>4.2.4 The Authority finalised its review of the Licensing Processes and Procedures Regulations to include a provision for the Authority to process</p>	<p>4.3 An audit being conducted to assess spectrum availability.</p> <p>4.4 There was also a need for a clear implementation plan as to when applications can be received / processed by the Authority considering the new regulatory framework.</p> <p>4.5 The decision to lift the moratorium must be published in the government gazette.</p> <p>4.6 There should be a media statement issued - at time of publication of the decision - as well as communication to key stakeholders (DTPS, DoC /Parliament/ MDDA etc.).</p> <p>4.7 The above should be tabled within the next 30 days</p>
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	<p>registrations for class community broadcasting licences in two intervals per year.</p> <p>4.2.5 On 22 March 2019, the Authority published a framework for community broadcasting in the form of Community Broadcasting Service Regulations.</p> <p>4.2.6 The following new requirements brought about by the 2019 Community Broadcasting Services Regulations must be noted:</p> <p>4.2.6.1 An applicant must be registered as a no profit entity two years prior to lodging an application for registration as a community broadcasting service licence;</p> <p>4.2.6.2 The applicant must demonstrate community development and empowerment with respect to the community located within the coverage area it would like to render broadcasting services;</p> <p>4.2.6.3 The Authority must first publish an invitation for prospective</p>	
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	<p>applicants to submit pre-registration notice.</p> <p>4.2.6.4 Where the Authority was satisfied that the applicant met the requirements for the granting of a licence, the Authority will communicate such decision to the applicant for community broadcasting service licence within thirty days of the Authority's written communication.</p> <p>It must be noted that the lifting of the moratorium does not mean that applications for community broadcasting licences can be submitted immediately.</p> <p>It was recommended that Council approves the lifting of the moratorium in respect of applications for both class community sound broadcasting service licences and radio frequency spectrum licences.</p>	
<p>5.</p>	<p>Submission of the report on Regional Project on Digital Transformation and Diversification of Postal Services in Africa</p> <p>The purpose of the submission was to table to Council the Report on Regional Project on Digital Transformation and Diversification of Postal Services in Africa.</p> <ul style="list-style-type: none"> • The workshop took place in Cairo, Egypt from 18 to February 2019, was attended by nineteen English speaking African countries representatives and 	<p>The report was noted</p>

	<p>experts from the Pan African Postal Union and Universal Postal Union.</p> <p>The objective of the workshop was to launch the UPU Regional Project on Digital Transformation and Diversification of Postal Services in Africa</p>	
6.	<p>The Draft Sport Broadcasting Services Amendment Regulations,2018 Public Hearings Schedule</p> <p>The purpose of the memo was to request Council to approve the Public hearings schedule for the Draft Sports Broadcasting Services Amendment Regulations.</p> <p>The Public Hearings were scheduled for the 27 -31 May 2019 and will be held at the Park Inn, Hotel in Sandton.</p>	The request was approved

ISSUED BY: Secretariat Office on behalf of Council