

COMPLAINTS AND COMPLIANCE COMMITTEE¹

Date of hearing: 28 June 2007

Case number: 6/2007

**Monitoring and Complaints Unit of
the Independent Communications
Authority of South Africa**

Complainant

Vs

Chinese Community Radio

Respondent

The Complaint

Chinese Community Radio has failed to comply with section 19(2) of the Electronic Communications Act (ECA) no.36 of 2005 to the satisfaction of the MCU as it failed to submit an application for renewal twelve (12) months after its expiration and eighteen (18) months in accordance with the above mentioned clause of the ECA.

Section 19(2) of the Electronic Communications Act states that; “*class licenses seeking to renew their licenses must, in writing and not less than six months prior to the expiration of their class license, notify the Authority of their intention to continue to provide the services*”. Section 15 (1)(c) of the Electronic Communications Act (ECA) further asserts that, “*in dealing with an expiry and failure to submit a renewal license, this section states that, “once an individual*

¹ Established in terms of s 17C of the ICASA Act 13 of 2000 as amended

license has expired the licensee must immediately cease to provide any service in respect of which the license was granted unless such suspension or cancellation is stayed or an equivalent order of a court of competent jurisdiction is granted”.

SUMMARY

The Monitoring and Compliance of ICASA filed a complaint with the Complaints and Compliance Committee against the Respondent for not having applied timeously for the renewal of its licence to broadcast as a Community Broadcasting station.

Held:

That the mere fact that a licensee does not apply for a renewal does not amount to a contravention. The licence condition grants it the choice whether to apply or not. If it does not comply, the opportunity to apply for a *renewal* is lost. An application would have to be lodged *de novo* within the time allocated for such applications by the Authority.

JUDGMENT

JCW VAN ROOYEN

[1] Chinese Radio (Respondent) is a community broadcasting station, the licence of which expired on the 30th May 2006. According to its licence conditions, it had to apply for a renewal of its licence at the earliest, six months and at the latest three months before the expiry of its licence. The Respondent, however, kept on broadcasting and only ceased its operations when a letter from the Authority was received to advise that its licence had expired. The Monitoring and Compliance of ICASA has filed a complaint with the Complaints and Compliance Committee against the Respondent for not having applied timeously for the renewal.

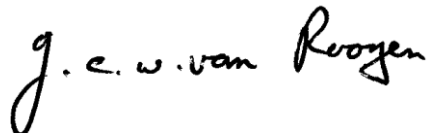
[2] Mr. *Michael Sun*, who appeared for the Respondent, conceded that such an application had not been lodged. His instructions were, however, that management was under the *bona fide* impression that such an application had been lodged by one

of its employees. It was, however, quite clear at this stage that this had not happened. The contravention was, accordingly, conceded.

[3] The CCC is of the view, however, that the mere fact of a licensee failing to apply for a renewal, does not amount to a contravention. The licence condition grants it the choice whether to apply or not. If it does not apply, the opportunity to apply for a renewal is lost. An application would have to be lodged *de novo* within the time allocated for such applications by the Authority.

The complaint is, accordingly, dismissed.

The Chairperson, Ms Moloto-Stofile and Committee Members R. Mokwena-Msiza, N.Ntanjana, D.Moalosi, and S.Thakur concurred.



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JCW van Rooyen

For: CHAIRPERSON OF THE CCC

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Since Chinese Community Radio—Case 6/2007 was dismissed, no recommendation is made to Council in so far as sanction is concerned.

The above Judgment was submitted to Council for notification only on 25th July 2007.

