



COMPLAINTS AND COMPLIANCE COMMITTEE

DATE OF HEARING: 28 MAY 2025

CASE NO: 480/2024

KWAZULU-NATAL ICASA REGIONAL OFFICE

COMPLAINANT

V

SUNRISE FM

RESPONDENT

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CCC MEMBERS:

Judge Thokozile Masipa – Chairperson
Councillor Ntombiza PN Sithole - Member
Mr Monde Mbanga - Member
Mr Thato Mahapa - Member
Mr Paris Mashile – Member

FROM THE OFFICE OF THE CCC:

Meera Lalla – Acting CCC Coordinator
Thamsanqa Mtolo - CCC Assessor
Amukelani Vukeya – CCC Administrator

LEGAL REPRESENTATION FOR PARTIES

For the Complainant – Mr Maharaj

For the Respondent - Mr B Pillay

JUDGMENT

Judge Thokozile Masipa

INTRODUCTION

[1] On 2 September 2024, Kwazulu-Natal ICASA regional office (the Complainant), referred the above complaint to the CCC for investigation in terms of section 17(B)(a) of the ICASA Act.

THE PARTIES

[2] The Complainant is the KwaZulu-Natal ICASA Regional office. It shall be referred to as the Complainant.

[3] The Respondent is Sunrise FM, a community sound broadcasting service licensee. It shall be referred to as Sunrise FM or the Respondent.

ALLEGED CONTRAVENTIONS

[4] The Complainant alleged that the Respondent contravened the Regulations as set out hereunder:

4.1 Regulation 38(1) of the Radio Frequency Spectrum Regulations of 2015 which states that:

"Subject to section 32(1) and 35 of the Act, no person may possess any radio apparatus except under and in accordance with a radio frequency spectrum licence granted by the Authority, or subject to the required type approval of

the apparatus.”

[5] The Complainant alleged that the Respondent operated its radio broadcasting transmitter at 103.25MHz instead of 103.4MHz which is a different frequency to what is stated in its Radio Frequency licence terms and conditions.

[6] The second alleged contravention is Section 4(3)(g) of the ICASA Act No 13 of 2000, as amended, which states:

"Without derogating from the generality of subsections 1 and 2, the Authority - (g) may, by notice in writing, direct the holder of the licence, in terms of underlying statutes to produce or furnish to the Authority, at a time and place specified in such notice, any documents and information specified in such notice and relating to any matter in respect of which a duty or obligation is imposed on such licensee by this Act or underlying statutes."

[7] The Complainant alleged that the Respondent failed to comply with a written notice which was issued to it on 11 December 2023.

THE RESPONDENT'S RESPONSE

[8] The Respondent denied any wrongdoing. In a letter dated 17 October 2024, and addressed to the Authority, the Respondent's representative sought to explain its position thus:

"We act on behalf of Sunrise FM and respectfully submit the response of the station to the concerns raised by ICASA in relation to their compliance with section 4(3)(g) of the ICASA Act and Regulation 38(1) of the Radio Frequency Spectrum Regulation."

[9] In dealing with the alleged contravention of section 4(3)(g), the Respondent stated the following:

"The station takes those allegations seriously and wishes to address them in a comprehensive manner, bearing in mind that the station is only two years old."

"We might add that the licence for the station is held by Mr Dhilosen Pillay, and at the outset he did not receive any notification at the registered office of Sunrise FM, which is 17 Oak Kharwastan, Durban nor any notice in his name."

[10] Alleged noncompliance with regulation 38(1) drew a response that the frequency deviation arose out of necessity and was technically justified.

[11] According to Sunrise it operates within an allocated bandwidth of 200kHz ranging from 103.3MHz as outlined in their Licence Agreement. The deviation to 103.25MHz falls within their allocated bandwidth and does not interfere with adjacent frequency allocation. This operational adjustment was made due to ongoing technical interference and signal disruption issues with Radio Sonder Grense (RSG) which currently operates on 103.30 MHz.

DISCUSSION AND ANALYSIS

[12] In the discussion and analysis of the matter, the CCC took into account the nature and seriousness of the contraventions, the circumstances under which the contraventions occurred, the consequences of the contraventions, steps taken by the Respondent to remedy the non-compliance and steps taken by the Respondent to ensure that a similar situation would not occur in future.

The Nature and Seriousness of the Contravention

[13] The Regulations were promulgated for a very good reason. Among other things, it was to ensure that there was orderly allocation of spectrum, a scarce resource, and to prevent interference between different users and clashes over limited resources.

[14] The contraventions in this case are very serious as they have to do with the powers and responsibilities of the Authority and the usurpation thereof. Decision making on the allocation, the amendment, suspension and/or the cancellation of a Radio Frequency Spectrum licence is the sole prerogative of the Authority.

[15] Anyone, therefore, who attempts to amend or interfere in any way with the

responsibilities of the Authority, is taking the law into their own hands. And that cannot be encouraged.

[16] The Respondent sought to justify its conduct by stating that it was compelled to act the way it did because of necessity, that is, ongoing interference and signal distribution issues with Radio Sonder Grense, forced it to make the adjustment. More worrisome, however, was the fact that the Respondent sought to trivialise the non-compliance by referring to the contravention in charge 1 as "*a minor adjustment*." That attitude, in our view, is aggravating, as it indicates lack of remorse.

[17] If the version of the Respondent is to be believed, it knew for quite a while that it needed help, and that an adjustment was necessary. I say this because, in the Respondent's own version, the interference and signal distribution issues were ongoing. This means that the Respondent had more than enough opportunity to consult with ICASA on the matter but chose not to. Instead, it sought the advice of someone else. What is puzzling is that the Respondent did not give an explanation for this strange conduct. Had the Respondent approached ICASA for assistance, it would, most probably, not be in the position it finds itself in today.

Circumstances Under Which The Contraventions Occurred

[18] According to the Respondent, interference from Radio Sonder Grense whose frequency spectrum is 103.30MHz, triggered the adjustment. In other words, the adjustment was unavoidable. According to the Respondent, these were the circumstances which triggered its decision to act in the manner that it did.

Consequences of the Non Compliances

[19] The CCC cannot say with certainty what the consequences of the contraventions are as it has neither the resources nor the expertise to identify, measure or assess the consequences, if any.

[20] However, a general observation may be made. If not nipped in the bud, usurping the powers of the Authority might easily create a dangerous precedent as other

Licensees might follow suit. Disorder and chaos may reign, which might cause Licensees and consumers to lose confidence in the Regulatory system.

[21] Although the Respondent, in its mind, was trying to remedy a problem, the consequences of its action could easily have been the opposite of what it was trying to achieve. The consequences might have been dire. With no guidance or supervision from ICASA, the unauthorised adjustment might have led to more interferences with a larger impact affecting more Licensees.

[22] There is another likely consequence. If not dealt with promptly and effectively, the non-compliances are likely to encourage other Licensees to disregard the law with impunity as they take the law into their own hands.

Steps Taken By The Respondent to Remedy The Problem

[23] No steps were taken by the Respondent to remedy the non-compliance. Even after the notice in terms of section 4(3)(g) of the ICASA Act had been issued to the Respondent, the latter failed to take the notice seriously by correcting its misconduct. Instead, it exacerbated the problem by refusing an ICASA official access to its premises, when the official was there to investigate the allegations.

Steps Taken By The Respondent to Ensure That Similar Contraventions Did Not Occur in The Future

[24] Once more, the Respondent failed to take any steps to prevent similar violations in the future. This is cause for concern as it may be an indication that the Respondent lacks insight into the seriousness of its actions. Should that be the case, there is a likelihood that the same non-compliance might be repeated in future.

CONCLUSION

[25] It is difficult to imagine a case more serious than the present one, where the Respondent shows no remorse but insists that its conduct was warranted by circumstances. Sunrise FM repeatedly stated that "*in the interest of maintaining high quality transmission, and avoiding cross channel interference,*" it made a

minor adjustment to 103.25MHz.

[26] It was further stated that Sunrise FM believes that *"this adjustment was within the regulatory tolerance of spectrum allocation and did not infringe on the bandwidth of any neighbouring stations."*

[27] In addition, the Respondent made a request for the amendment of its licence to reflect a frequency allocation of 103.25MHz.

[28] According to Sunrise FM this amendment would provide a more stable transmission environment for Sunrise FM and ensure continued compliance with ICASA regulations.

[29] Sunrise FM repeated that it acknowledged the importance of adhering to ICASA regulations and upholding the standards expected of a community broadcaster. It emphasised that it values its relationship with ICASA and is committed to working together with ICASA to resolve any compliance concerns.

[30] At the outset it is necessary to respond to the Respondent's statement that it acknowledges the importance of adhering to ICASA regulations and upholding the standards expected of a community radio station.

[31] In our view, as the CCC, the above statement by the Respondent cannot be taken seriously as it sounds like a hollow recitation. I say this because it is not supported by any action on the part of Sunrise FM.

[32] On the contrary there is evidence which suggests that the Respondent does not take the regulations with the seriousness that they deserve.

[33] The issue about the amendment of the licence, for instance, confirms the CCC's conclusion that the Respondent lacks insight into the illegality of its conduct. Seeking to amend the licence at this stage, is like committing a crime and then asking the law maker to declare that what you have done is no longer a crime.

[34] In my view, it is time the Respondent genuinely acknowledged the wrongdoing on

its part and showed some remorse.

[35] The law is clear on this issue in the present case. Regulation 38(1) of the Radio Frequency Spectrum Regulations of 2015 states:

"Subject to section 32(1) and 35 of the Act, no person may possess any radio apparatus except under and in accordance with a radio frequency spectrum licence granted by the Authority, or subject to the required type of approval of the apparatus."

[36] No Licensee may operate a radio apparatus "except under and in accordance with a radio frequency spectrum licence granted by the Authority ..."(my emphasis).

[37] The provision specifically sets out under which circumstances a Licensee may operate a radio apparatus, that is, in accordance with a radio frequency spectrum licence granted by the Authority.

[38] In the present case, the Authority granted a specific radio frequency spectrum licence to Sunrise FM that it would use to operate.

[39] The facts show that the Licensee adjusted the radio frequency spectrum without consulting the Authority. This blatant disregard of the law is shocking, to say the least.

[40] I say this because the allocation, adjusting and suspension or cancellation of the frequency spectrum is the prerogative of the Authority. There is only one Regulator, and that is ICASA. Anyone else who adjusts or deliberately interferes with the frequency spectrum, is usurping the powers of ICASA. As stated earlier, such conduct might also cause disorder in the industry, or harm to other Licensees in the form of more serious interferences.

[41] A sensible approach, when Sunrise FM experienced the challenges that it allegedly faced, would have been to discuss the issue with ICASA. For reasons unknown and not disclosed to the CCC, the Respondent chose not to engage ICASA.

[42] By bypassing the Authority, the Respondent, not only showed a disregard for the law, but also usurped the powers of the Authority and that is unacceptable.

***Short Duration in the Business:
Can This Be a Valid Defence?***

[43] The Respondent pointed out that it has been in business for two years. If this was meant to be a defence, it failed dismally. A new Licensee in the business of broadcasting, cannot hide behind the fact that it is new on the scene. The fact can never act as a defence or even a mitigating factor, at best, it is simply neutral.

[44] In the present case, it is so, that at the time of the contravention, the Respondent had been on the scene for only two years. However, that does not exonerate it from failure to comply with the regulations. In fact, it is precisely because the Respondent was new in the industry that it had to tread cautiously and seek help from the Authority. It failed to do so at its own peril.

[45] In addition, it is the responsibility of every Licensee to familiarise itself with the relevant legislation and policies, if any, that govern the industry in which the Licensee operates.

[46] Any licensee, who fails to equip himself with the necessary skills and knowledge, to ensure that he operates his business, not only efficiently and effectively, but also within the law, runs the risk of getting into trouble with the law, as happened in the present case.

The Suitability of The Assigned Frequency for This Broadcasting Service Licensee

[47] A question arose whether the frequency allocated to the Respondent, was adequate. It was noted, however, that was not the issue the CCC had to determine.

[48] If the Respondent believes that the frequency assigned to it, is not suitable, for

whatever reason, all it has to do is to discuss the issue with ICASA.

[49] The CCC has a specific mandate, that is, to investigate, hear, if appropriate and make a finding. The mandate of the CCC does not include making enquiries into whether any assignment given to a specific Respondent is appropriate.

[50] The question to be asked, always, is whether there was a contravention as alleged. If there is evidence to support the allegation, then, following an enquiry into the credibility of the defence raised, the CCC makes its finding.

[51] In the present case, the question whether the allegation of non-compliance with regulation 38(1) of the regulations was answered in the affirmative. The Respondent admitted that it adjusted its frequency spectrum without any discussion with the Authority.

[52] On charge 2, the Respondent denied that it received any notice from the Authority. But apart from a bald denial and a carefully phrased statement that Mr. Pillay did not receive the notice in his name, the Respondent gave no further details. Added to this, the Respondent conceded that it denied ICASA official access to its premises. The Respondent may not have been specifically charged with this, but the fact serves to illustrate the Respondent's lack of remorse. This is an aggravating factor that cannot be ignored.

FINDING

[53] Having regard to all the above facts, the CCC's finding is

53.1 that the Respondent failed to comply with regulation 38(1) of the regulations in that it operated its radio broadcasting transmitter at 103.25MHz instead of 103.4MHz which is a different frequency to what is stated in its Radio Frequency licence terms and conditions.

53.2 that the Respondent failed to comply with section 4(3)(g) of the ICASA Act No 13 of 2000, as amended in that it failed to comply with a written notice which was issued to it on 11 December 2023.

[54] Having regard to the seriousness of the contraventions, and lack of remorse from the Respondent, a heavy sanction is warranted. Since the two contraventions are inextricably linked, they shall be treated as one for purposes of a penalty.

[55] Regulation 42(6) specifically provides for a fine of no less than R250000 for this kind of non-compliance. This means that the CCC is obliged to recommend the imposition of the stated amount.

[56] The heavy fine shall serve as a deterrence not only to the Respondent, but also to other Licensees who may be tempted to take the law into their own hands. However, to avoid sending the Respondent to an early demise, the CCC is of the view that a partly suspended fine and payment of the balance by instalments, will be just and fair.

RECOMMENDATIONS IN TERMS OF SECTION 17E (2) OF THE ICASA ACT NO 13 of 2000

[57] In terms of section 17E (2) of the ICASA Act, the CCC recommends that an Order be issued by the Authority namely:

- a) that it directs the Licensee to desist from further contravention of the Act and the regulations specified in the charge sheet.
- b) direct the Licensee to pay a fine in the amount of R250000,00 (Two Hundred and Fifty Thousand Rand) in respect of the non-compliances above.
 - (i) The amount of R125000,00 (One Hundred and Twenty-Five Thousand Rand), is to be suspended for three (3) years on condition that the Licensee is not found to have contravened the regulations and the section of the Act referred to in the Charge Sheet during the period of suspension.
 - (ii) the remaining R125000,00 (One Hundred and Twenty-Five Thousand Rand) is payable within a period of 12 months.

[58] The CEO of ICASA or his nominee must be copied with proof of payment within 24 hours from when payment was made.

[59] direct the Licensee to take steps to remedy the non-compliance by operating its radio broadcasting transmitter at 103.4MHz as reflected in its Licence, within 14 days of the issuing of this Order.



Judge Thokozile Masipa
Chairperson of the CCC

Date: 4 September 2025