Independent Communications Authority of South Africa

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APPLICATION FOR EXEMPTION BY KAGISO MEDIA PTY (LTD) IN RESPECT OF KAYA FM PTY (LTD) T/A KAYA FM IN TERMS OF SECTION 65(6) OF THE ELECTRONIC COMMUNICATIONS ACT 36 OF 2005

REASONS FOR DECISION

OCTOBER 2026

1. INTRODUCTION

This document sets out the reasons for the decision of the Independent Communications Authority of South Africa ("the Authority") in relation to the application for exemption submitted by Kagiso Media (Pty) Ltd ("the Applicant"), concerning its shareholding interest in Kaya FM (Pty) Ltd t/a Kaya FM ("the Licensee")

2. BACKGROUND

2.1. On 21 November 2024, the Authority received an application for exemption from the Applicant in terms of section 65(6) of the Electronic Communications Act, 2005 (Act 36 of 2005) as amended ("the ECA"). The exemption application is related to the Applicant's existing and proposed indirect shareholding and voting interests in the Licensee.

2.2. A resolution of authority authorising Mr. Nick Grubb to lodge this application on behalf of the Applicant was duly submitted.

2.3. The Applicant did not request confidentiality in terms of section 4D of the Independent Communications Authority of South Africa Act, 2000 (Act No. 13 of 2000) ("ICASA Act").

2.4. On 09 January 2025, the Authority published a notice[1] in the *Government Gazette*, inviting interested persons to submit written representations in respect of the exemption application, within fourteen (14) working days from the date of publication.

2.5. The closing date for the submission of written representations was on 31 January 2025.

[1] Government Gazette No. 51885 published on 09 January 2025.

2.6. By the closing date, no written representations were received by the Authority or the Applicant.

2.7. The Authority elected not to hold public hearings as it was of the view that the application was clear, and the Authority did not receive any written representations from the public with respect to the application.

2.8. On 20 October2026, the Authority reject the applicant's exemption application.

3. PARTICULARS OF THE APPLICANT

3.1. The Applicant is Kagiso Media (Pty) Ltd with registration number 2013/055452/07 based at Block B, First Floor, 100 West Street, Wierda Valley, Sandton, Gauteng, 2196.

4. APPLICABLE LEGISLATIVE FRAMEWORK

4.1. This application was lodged in terms of section 65(6) of the ECA which states that:

*"*The *Authority may, on application by any person,* ***on good cause shown*** *and without departing from the* ***objects and principles enunciated in section 2****, exempt such person from the provisions of subsections (1) to (5)."*

4.2. Section 65(2)(a) of the ECA states that:

"No person may–
(a) be in a position to exercise ***control*** *over more than two commercial broadcasting service licences in the FM sound broadcasting service."*

4.3. Section 66(5) of the ECA states that:

"A twenty (20) % percent shareholding in a commercial broadcasting service licence, in either the television broadcasting service or sound broadcasting service, is considered as constituting control."

5. DISCUSSION AND ANALYSIS

5.1. APPLICATION DETAILS

5.1.1 The Applicant submits that its subsidiary, Kagiso Media Investments (Pty) Ltd ("KMI"), executed a share purchase agreement dated 5 June 2024 ("the Sale Agreement"), in terms of which the Proposed Transaction is to be implemented.

5.1.2 The Proposed Transaction envisages that KMI will acquire 50% of the shares held by Thebe SPV 012 (RF) (Pty) Ltd ("Thebe") in Thebe Convergent Technology Holdings (RF) Proprietary Limited ("TCTH"), a shareholder in the Licensee.

5.1.3 The Licensee holds a commercial sound broadcasting licence granted by the Authority under the ECA. The Licence was renewed on 04 June 2019 and is set to expire on 16 December 2028.

5.1.4 The Licensee provides commercial broadcasting services in Gauteng Province. Its principal language of broadcast is English, and its programming format is that of African-focused adult contemporary jazz music. The format has a split of 60% dedicated for music and 40% for talk.

5.1.5 Further, based on the Applicant's submission, the Applicant and KMI (which is 100% owned by the Applicant) currently (and prior to the completion of the Proposed Transaction) hold an aggregate of 45.231% indirect economic interest in the Licensee and are able to exercise 19.731% of the voting rights in the Licensee.

5.1.6 The Applicant indicated its shareholding and KMI's shareholding in the Licensee is as follows:

Shareholding in Licensee	**Economic rights**	**Voting rights**

Kagiso Media (through Shanike Investments)	24.900%	12.201%
KMI (through TCTH)	20.331%	7.530%
Total:	**45.231%**	**19.731%**

5.1.7 The current shareholding in the Licensee is as follows:

Shareholders	Total shareholding in Kaya FM
New Africa Investments Ltd	29.920%
TCTH	24.900%
Kaya Investments (Pty) Ltd	20.280%
Shanike Investments	24.900%

5.1.8 The Applicant submits that the exemption application seeks to increase its aggregate shareholding in the Licensee as follows**:**

Shareholding in Licensee	Economic Rights	Voting Rights
Kagiso Media (through Shanike Investments)	24.900%	12.201%
KMI (through TCTH)	22.590%	22.590%
Total	**47.490%**	**34.791%**

5.1.9 In its application for exemption, the Applicant submitted that as a result, and in the light of Kagiso's shareholding in other commercial broadcasting licensees, the Proposed Transaction triggers the need for an application in terms of section 65(6) read with Section 65(2)(a) of the ECA ("Exemption Application").

5.1.10 Furthermore, the Applicant indicated that the Sale Agreement is conditional upon the Authority approving this Exemption Application in terms of section 65(6). The Sale Agreement provides that the conditions precedent (including this Exemption Application) be fulfilled before 12 December 2025, failing which the Proposed Transaction shall be null and void from inception, save for the immediately effective provisions which shall continue to be binding, and the parties shall restore to one another any performance or benefit which they may have rendered

or received from the other party under the Sale Agreement (save in respect of any performance rendered or benefit received under the immediately effective provisions). The Applicant subsequently negotiated for the extension of the conditions precedent to August 2027, therefore the Proposed Transaction remained extant when the Authority determined the exemption application.

5.1.11 The Applicant submitted that the Proposed Transaction triggers the need for an application in terms of section 65(6) of the ECA and suggests, the following must be noted when considering the extent of the Applicant's "control" over Kaya FM:

5.1.11.1 While an exemption under section 65(6) is necessary, the Applicant will remain a minority shareholder at 34.791% aggregate voting rights in the Licensee. In this regard, there has been substantial uncertainty regarding the meaning of "control" as the term is not defined in the ECA. The Applicant submits some of the different approaches to the interpretation of "control" in brief below:

5.1.11.2 "Control" was previously defined with reference to section 1 of Schedule 2 of the now repealed Independent Broadcasting Authority Act 153 of 1993 ("IBA"). Notwithstanding this definition being abandoned with the promulgation of the ECA in 2006 (and the ECA's lack of a definition for "control"), past practice in the broadcasting industry established a convention that a person is deemed in "control" or deemed to be in a position to exercise "control" over an entity (for purposes of section 65(2) of the ECA), if he or she has a shareholding exceeding 25%.

5.1.11.3 The 25% threshold for determining "control" was supported by ICASA in its 2011 Findings Document on the Review of Ownership and Control of Electronic Services and Limitations on Broadcasting, Electronic Communications Services and Electronic Communications Network Services. The 25% threshold was again confirmed by ICASA in the final report on the Review of Broadcasting Regulatory Framework towards a Digitally Converged Environment in South Africa published in 2013.

5.1.11.4 However, it is noted that, in KZN Talk Radio (Pty) Ltd ("KZN TALK") v ICASA (41672/12), the view was taken that the 20% deemed control definition which appears in section 66(5) of the ECA is also applicable to section 65(2).

5.1.11.5 Further, and contrary to the above, in ICASA's 2015 Processes and Procedures Regulations for Individual Licences and the Processes and Procedures Regulations for Class Licences, ICASA indicated that the definition of control as contemplated in the Companies Act 71 of 2008 ("**Companies Act**") in terms of Section 2(2)(a)(ii) may also be applicable in the context of section 65(2). In other words, ICASA indicated that the "ordinary" meaning of control may be applicable – control being either *de iure* control (legal) or *de facto (factual)* control as captured in the relevant provisions of the Companies Act.

5.1.11.6 Notwithstanding the above, the Applicant submits that an understanding has developed and has taken root in the industry that "control" is to be defined with reference to section 1 of Schedule 2 of the now repealed IBA (i.e., 25%) and the Applicant notes that ICASA has not taken any regulatory steps to challenge this understanding historically held by many stakeholders in the industry, including those who have acquired interests in licensed entities of less than 25% shareholding so as to avoid a contravention of section 65(2) of the ECA.

5.2. THE APPLICANT'S SUBMISSION ON GOOD CAUSE

5.2.1. In accordance with section 65(6) of the ECA, ICASA may exempt the Applicant from the section 65(2) limitations where the Applicant shows good cause and shows that such exemption would not be a departure from the objects of the ECA. In this regard, the Applicant makes the below submissions:

5.2.1.1. THE LICENSEE'S CURRENT OPERATIONAL AND LEADERSHIP CHALLENGES

5.2.1.1.1. According to the Applicant, as is the case for many radio stations, the Licensee itself has been recently beset with many operational and leadership challenges which have created existential risk for the entity.

5.2.1.1.2. In late 2020 - as the Licensee was reeling from the loss of revenues that characterised COVID lockdown, there was an unplanned and necessary senior leadership change, the circumstances of which unearthed vulnerabilities and issues within the business, both operationally and culturally;

5.2.1.1.3. The Licensee's audience reach has declined significantly as of 2018 when it peaked at 942 000 listeners, and there has been a general downward trend ever since. The Licensee's current audience rate is at 684 000 listeners indicating a 27.39% decrease in audiences in the past 6 years. Revenues have followed a similar decline, reflecting a common trend in the media industry where earnings depend on reaching audiences.

5.2.1.1.4. In the recent past, the Licensee has also experienced leadership challenges, including the abrupt departure of its Managing Director in November 2023 after only a short period of time in the position.

5.2.1.1.5. The aggregated effect of the above is that the station is struggling operationally and financially.

5.2.1.2. **THE CONTRIBUTION BY THE APPLICANT TO THE COMMUNITY**

5.2.1.2.1. The Beyers Naude Schools Development Programme ("**BNSDP**"), introduced in the Vhembe district of Limpopo in 2004, has expanded across several provinces. The program now covers nearly 1,000 schools across the Free State, Limpopo's Sekhukhune East District, Mpumalanga, and the Eastern Cape. Since 2013, through the KST Programme a collaboration with the Cyril Ramaphosa Foundation has included an additional 410 schools in the Motheo and Fezile Dabi districts in the Free State. The BNSDP a Whole Schools Programme not only boosts matric results but also focuses on

sustainable benefits like infrastructure development, curriculum support, and leadership.

5.2.1.2.2. According to the Applicant, this program has positively impacted over 1.5 million learners and employs more than 2,000 educators, primarily benefiting black rural youth, predominantly women. Schools demonstrating significant improvements in matric pass rates receive infrastructure awards, such as computer and science labs, libraries, media centres, and administrative blocks. Notably, the matric pass rates in the Free State have consistently surpassed the national average, achieving highs of 88.5% in 2022;

5.2.1.2.3. The Eric Molobi Scholarship Programme ("EMSP"), a comprehensive bursary Programme that includes psychosocial support, assists disadvantaged learners with a focus on science and maths to pursue tertiary education in commerce or engineering. The EMSP covers tuition fees, books, educational supplies, accommodation, transport and personal expenses;

5.2.1.2.4. The Socio-Economic Development Programme has been pivotal in funding small black-owned businesses, especially in agriculture and property, through the Tyala Impact Fund, the Programme of Agriculture, supports initiatives like the Baphuduhucwana Production Incubator, helping communal farmers scale to commercial levels by providing technical support and market access. This initiative is part of a broader focus on empowering black farmers with sustainable farming practices. This has spurred economic growth and job Creation.

5.2.1.3. **POTENTIAL FOR THE PROPOSED TRANSACTION TO FACILITATE STABILITY & EFFICIENCY**

5.2.1.3.1. Kagiso(alongside other media owners) has been a long-time investor in Kaya FM and consequently has a vested interest in Kaya FM's success. While the Proposed Transaction will not result in Kagiso becoming the operator of Kaya FM, an increased shareholding expands the opportunity for Kagiso to provide support to Kaya FM in critical areas.

5.2.1.3.2. Upon completion of the Proposed Transaction, Kagiso will have greater positioning on the Board. Kagiso submits that greater shareholder participation by radio industry players will likely increase potential dividend yields. Consequently, it will be more commercially justifiable for such shareholders (such as Kagiso) to make some of their resources available to Kaya FM and to lend operational support where it is critically needed.

5.2.1.3.3. In its view the Applicant submits that it will not be beneficial to Kaya FM for the existing shareholders (Kagiso included) - who are skilled and well-resourced in the radio industry, and who have invested substantially in Kaya FM over a long period of time - to remain sidelined whilst Kaya FM continues its battle to remain viable.

5.2.1.3.4. It is also unlikely that the selling of a controlling interest in Kaya FM to an external investor with no such expertise or resources will result in increased efficiency or stability for KayaFM. The opposite is, in fact, more likely to be true, as it is unlikely that an external investor will be able to contribute to the specialist environment that is a radio station. An external investor will also not have the same long-standing relationship with, and vested interest in Kaya FM, that Kagiso has. Consequently, such an external investor will likely be less well positioned to effectively address and support Kaya FM through its turnaround.

5.2.1.3.5. It is thus the Applicant's contention that the Proposed Transaction has the potential to result in increased efficiency and stability in Kaya FM due to Kagiso's increase in interest and influence (albeit still only as a minority shareholder).

5.2.1.4. **MARKET IMPACT**

5.2.1.4.1. The Applicant submits that its increased shareholding in Kaya FM will have minimal market impact.

5.2.1.4.2. The combination of Jacaranda FM and Kaya FM's share of the Gauteng market or audience is 11.6%, with a combined or gross audience figure of 1 427 000.9 In comparison (by way of example), Primedia Broadcasting Pty Ltd ("Primedia") has a controlling interest in two radio stations in Gauteng – namely 947 and 702 – the combined share of which in that same market is 2% more than that held by Jacaranda FM and Kaya FM. 947 and 702 have a combined share of 13% in the Gauteng market and a gross audience figure of 1 601 000.

5.2.1.4.3. Similarly, the Kaya FM and Jacaranda FM audience bases have little to no overlap. As mentioned, Kaya FM's principal language is English, and its programming format is split between African-focused adult contemporary jazz music (60%) and talk (40%). On the other hand, Jacaranda FM's broadcast languages are equal parts English and Afrikaans, and the programming format is community-based music (mainly adult contemporary).

5.2.1.5. **RESTRICTIVE NATURE OF CONTROL AND OWNERSHIP LIMITATIONS**

5.2.1.5.1. The Applicant submitted that the restrictive nature of ownership regulations has been the focus of debate in many fora, notably by ICASA as far back as the early 2000s, and most recently in its Draft White Paper on Audio Visual and Content Services published in 2023.

5.2.1.5.2. The Applicant has in the past expressed the view that the prevailing legal and regulatory framework has not kept pace with developments in the marketplace. In summary, its arguments were as follows:

5.2.1.5.2.1. As was already anticipated by ICASA in its 2004 Position Paper titled The Review of Ownership and Control of Broadcasting Services and Existing Commercial Sound Broadcasting Licences ("**2004 Position Paper**"), various technological advancements (especially the advent of streaming services, and the rise of global social media platforms and digital publishers) have resulted in traditional radio stations facing intense competition for listeners and advertising revenue.5 ICASA noted that

technology trends and market pressures necessitate further capital investment, potentially requiring changes in regulatory regimes concerning ownership and control.

5.2.1.5.2.2. As a result, the suggestion was made by ICASA that limitations on the number of radio services controlled by a single entity might need to be relaxed to boost investment opportunities, particularly benefiting historically disadvantaged individuals.

5.2.2. The Applicant submits that the granting of the Exemption Application:

5.2.2.1. Will not militate against orderly frequency management;

5.2.2.2. Will not prejudice any other broadcasting Licensee; and

5.2.2.3. Will not be inconsistent with the provisions of the ECA.

5.3. THE AUTHORITY'S ANALYSIS

5.3.1. SOUND BROADCASTING SERVICE UNDER THE APPLICANT AND ITS RELATED SHAREHOLDING AND OTHER RELATED LICENCE ELEMENTS

5.3.1.1. The table below sets out the Applicant's direct and indirect interests in other commercial sound broadcasting licensees relevant to the section 65(6) analysis.

LICENSEE FM	APPLICANT'S SHAREHOLDING	Exemption status	LICENCE AREA	CONTROL (YES/NO)
Jacaranda FM	*100%* owned by the Applicant. Jacaranda FM's footprint is in	The Applicant 's ownership equity stake in Jacaranda FM has increased to 100% as a result of it	Gauteng, Limpopo, North West, and Mpumalanga provinces.	YES

LICENSEE FM	APPLICANT'S SHAREHOLDING	Exemption status	LICENCE AREA	CONTROL (YES/NO)
		acquiring the 20% shareholding from its foreign partner at the time. No exemption is required.		
Heart FM	20.02% owned by the Applicant.	The licensee has not applied for an exemption. Therefore, no exemption has been granted by the Authority in respect of these interests.	Cape Town, Cape Town Fringe, Overberg, and West Coast areas.	YES
iGagasi 99.5 FM	20.02% owned by the Applicant.	The licensee has not applied for an exemption. Therefore, no exemption	Durban Metro, Port Shepstone, Ulundi, Glencoe, Greytown and surrounding	YES

LICENSEE FM	APPLICANT'S SHAREHOLDING	Exemption status	LICENCE AREA	CONTROL (YES/NO)
		has been granted by the Authority in respect of these interests.	areas in Kwa-Zulu Natal.	
East Coast Radio	100% owned by the Applicant.	The Applicant 's ownership equity stake in East Coast Radio was initially issued with a 100% shareholding and there is no need to apply for an exemption.	KwaZulu-Natal in towns like Newcastle, Vryheid, Empangeni, Amanzimtoti, Port Shepstone, Pinetown, Dundee, Glencoe and surrounding areas.	YES
OFM	26.23% owned by the Applicant.	Exemption granted by the Authority on 29 July 2022.	Free State, Northern Cape and parts of Northwest province.	YES

5.3.1.2. Although the Applicant has endeavoured to demonstrate the diversification of its format, coverage areas, management which differ from each station as depicted above, these distinctions do not detract from the application of the

deemed-control threshold contemplated in section 66(5), read with section 65(2) of the ECA. The Applicant holds interests at or above the required 20% equity threshold in more than two licensees.

5.3.1.3. Section 65(2)(a) states that *"no person may be in a position to exercise control over more than two commercial broadcasting service licences in the FM sound broadcasting service;".*

5.3.1.4. Section 65(3) of the ECA states that *"a person referred to in subsection (2) must not be in a position to control two commercial broadcasting service licences in the FM sound broadcasting service, which either have the same licence areas or substantially overlapping licence area".*

5.3.1.5. Both iGagasi FM and East Coast Radio are licenced for the KZN Province. iGagasi FM is being broadcast from 8 transmitters in the KZN Province. East Cost Radio is being broadcast from 17 transmitters, 16 of which are in the KZN province and 1 in the Eastern Cape Province.

5.3.1.6. All 8 of iGagasi FM transmitter sites share a site with an East Coast Radio transmitter, using the same technical parameters (except for Pietermaritzburg operating at 0.1 kW and 0.3 kW ERP respectively) resulting in a 100% overlap in geographical coverage area.

5.3.1.7. Considering the above, the Applicant's control interests in iGagasi FM and East Coast Radio appear to be inconsistent with f section 65(3) of the ECA. See attached coverage maps indicating the overlaps.

5.3.2. **PROCESS OF REGULARISING THE APPLICANT**

5.3.2.1. On 14 August 2019, the Authority held a meeting with the Applicant in order to establish a common ground regarding the need to regularise Kagiso Media's licensees to be in line with section 65(2) of the ECA.

5.3.2.2. At the above-stated meeting, the Authority informed the Applicant that it intends to regularise or align Kagiso Media's shareholding to be in line with the limitations on control in terms of section 65(5) of the ECA through a section 10 process, which is an amendment process. On 26 August 2019, a formal letter was sent to the Applicant confirming the above-mentioned anticipated process.

5.3.2.3. However, to date the regularisation of the Applicant has not been facilitated.

5.3.2.4. The Authority has an obligation in terms of section 2(k) of the ECA to "ensure that broadcasting services and electronic communications services viewed collectively are provided by persons or groups of persons from a diverse range of communities in the Republic."

5.3.3. DEFINITION OF CONTROL AND PRECEDENTS IN DEALING WITH SIMILAR MATTERS

5.3.3.1. The definition of "control" was tested in *KZN Talk radio (Pty) Limited v Independent Communications Authority of South Africa and Another*[2]'s by the South Gauteng High Court (Gauteng Local Division Johannesburg). In this case, KZN TALK brought an application to review and set aside two decisions by the Authority. KZN TALK was deemed to be controlled by PRIMEDIA. According to ICASA, should the licence have been granted to KZN TALK, it would not have contributed to diversity of ownership and PRIMEDIA's stake in KZN TALK was at 20% which would give them control of another licensee in the FM frequency, already it controls four broadcasting service licences.[3]

5.3.3.2. The court held that "*If KZN TALK were to be awarded the Durban radio licence, it would by virtue of its PRIMEDIA's shareholding, be in breach of s 65(2)(a) of the ECA.*"

[2] *KZN Talk radio (Pty) Limited v Independent Communications Authority of South Africa and Another* (41672/12) [2014] ZAGPJHC 396 (5 August 2014).
[3] KZN TALK, ONE GOSPEL AND ICASA Ruling Case No: 41672/12, paragraph 9, page 4

5.3.3.3. The court further held that "*It is common cause that ICASA's rejection of KZN Talk's application rests squarely in its interpretation of the ECA that a 20% shareholding in a licence (whether direct and indirect) is deemed to be control of that licensee for the purpose of section 64, 65 and 66 of the ECA*"[4].

5.3.3.4. During the Primary Markets process ICASA had three different interpretations to consider regarding the meaning of control in section 65(2) of the ECA. ICASA held a considered view that "*where a party holds a 20% shareholding in a given licensee that amounts to deemed control*".[5]The court in *KZN Talk radio* also upheld ICASA's finding that a shareholding of more than 20% in a company is to be recognised as control[6].

5.3.3.5. Alternatively, ICASA contended that a shareholding of 50% or a special provision in a shareholder's agreement are not the only basis on which control may be established as contended by KZN TALK.

5.3.3.6. The court held that control may take other forms, and the court could not "narrow the meaning of control in section 65 and elsewhere on the basis suggested by KZN Talk, including indirect shareholding or the right to appoint much of the board of directors.

5.3.3.7. The court held that "*Control can mean any number of things, depending on the circumstances and context in which it is being assessed. What amounts to control is very much context specific. The meaning of the word control must be ascertained in the context of the section and the statute, bearing in mind the objects of the statute. In the light of this interpretative framework, ICASA's interpretation of control in section 65 of the ECA best accords with*

[4] KZN TALK, ONE GOSPEL AND ICASA Ruling Case No: 41672/12, paragraph 13, page 6.
[5] KZN TALK, ONE GOSPEL AND ICASA Ruling Case No: 41672/12, paragraph 13, page 6.
[6] KZN TALK, ONE GOSPEL AND ICASA Ruling Case No: 41672/12, paragraph 44, page 21.

the objects of the ECA, whilst KZN's interpretation is furthest removed from the objects of the ECA."[7]

5.3.3.8. Therefore, the court concluded that "the deeming provision in section 66(5) of the ECA applies to section 65(2) and control as used in section 65(2) should be interpreted to include 20% shareholding".[8] In the absence of any judgment to the contrary, the Authority must continue to be guided by the judgment in the *KZN Talk radio (Pty) Limited* case. Also, in the Legal opinion dated 21 January 2019, item 20 states that "*there was no other reported decision, and that the Francis judgement appears to be where the law currently is in relation to the threshold for control when applying section 65.*[9]

5.3.3.9. It is the Authority's view that its interpretation of control in section 65 of the ECA best accords with the objects of the ECA, e.g., section 2(f) which reads *"to promote competition within the ICT sector"* and section 2(v) which reads to *"ensure that commercial and community broadcasting licences, viewed collectively, are controlled by persons or groups of persons from a diverse range of communities in the Republic"*.

5.3.3.10. The Authority therefore disagrees with the Applicant's interpretation of control and confirms its vuew that control includes 20% shareholding.

6. THE AUTHORITY'S DECISION

6.1 The Authority, having considered the Applicants exemption application has decision to refuse the exemption application. The reasons are set out below:

6.1.1 The regularisation process as outlined in paragraph 5.3.2 has not been initated and as such the Licensing and Compliance Division is of the view that the conclusion of that process has a direct impact on the current application.

[7] KZN TALK, ONE GOSPEL AND ICASA Ruling Case No: 41672/12, paragraph 15.
[8] KZN TALK, ONE GOSPEL AND ICASA Ruling Case No: 41672/12, paragraph 32, page 16
[9] Opinion on Renewal of Individual Licences containing Legacy Licence conditions by Fasken Martineau (Incorporated as Bell Dewar Inc.), 21 January 2019, page 11 – 12.

6.1.2 The KZN TALK court decision has clarified the meaning of control in the ECA. As per the court decision, the 20% shareholding is deemed as control for purposes of sections 65 and 66(5) of the ECA. Therefore, the Applicant is deemed to be in control of more than two FM broadcasting services, namely Jacaranda FM, East Coast Radio, iGagasi FM, Heart FM and OFM.

6.1.3 The Applicant's ownership equity stake in Heart FM and iGagasi FM is 20.02% respectively. In as much as the Applicant is not a majority controlling entity in the above Licensees as the majority shareholding lies with Tsiya Radio (Pty) Ltd, the Authority is of the considered view that 20.02% in both Licensee's should be diluted to comply with section 65(2) or the Applicant needs to apply for exemption, seeing that the Applicant's shareholding in these Licensee's exceeds the 20% threshold.

6.1.4 When the Applicant entered into the proposed transaction, it was aware of the ECA's limitations on control; however, the Applicant proceeded with the transaction to increase its shareholding in the Licensee with the knowledge that it is already in a position to exercise control over Heart FM and iGagasi FM, for which it has not yet diluted its shareholding to comply with section 65(2) or applied for exemption.

6.1.5 The Applicant's current voting rights in the Licensee is 19.731%, as outlined in paragraph 4.6. While this is currently below the 20% control threshold, should the exemption application be approved, the voting rights will increase and be over the 20% legislated threshold and sit at 34.791% as outlined in paragraph 4.8). Resulting in the Applicant deemed to be in control of another FM broadcasting services, over and above the five (5) services listed in paragraph 6.1.2 above .

6.1.6 Further, the Authority is of the view that the reasons put forth by the Applicant, as outlined in section 5 above, have not sufficiently demonstrated good cause shown for granting of the exemption. The Authority summarises its assessment of the reasons below:

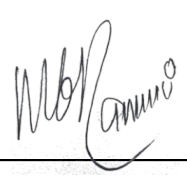
6.1.6.1 The Applicant states that it has recently been beset with many operational and leadership challenges which have created existential risk for the entity. The Authority agrees with the Applicant that these challenges affect many radio stations, and, on that basis, such a reason cannot constitute sufficient good cause for the exemption as the challenge is not unique to the applicant.

6.1.6.2 The Authority is of the view that the reasons put forth by the Applicant regarding its contribution to the community constitute fulfilment of a broader corporate responsibility and does not, in itself, establish good cause shown for exemption.

6.1.6.3 Further, the Applicant's reference to ongoing control and ownership limitations debates alone is not adequate reasoning for the exemption application to be granted as such debates does not amend or suspend the effectiveness of the Regulations.

6.1.6.4 The Applicant's reliance on audience figures and audience overlap to illustrate that there will be minimal market impact is not sufficiently articulated for the Authority to make a determination.

6.1.7 The Authority concludes by lamenting that non-compliance with the regulations and legislative requirements cannot be condoned or used as a remedy to resolve corporate related issued of individual licensees.



MOTHIBI G. RAMUSI
CHAIRPERSON
DATE: 26 / 10 /2026