



COMPLAINTS AND COMPLIANCE COMMITTEE

DATE OF HEARING: 26 AUGUST 2024

CASE NO: 482/2024

**LICENSING AND COMPLIANCE
DIVISION**

COMPLAINANT

V

KURARA FM

RESPONDENT

CCC MEMBERS:

Judge Thokozile Masipa – Chairperson
Councillor Catherine Mushi - Member
Mr Monde Mbanga - Member
Mr Thato Mahapa - Member
Mr Paris Mashile – Member
Ms Ngwako Molewa - 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 - B Mashigo

For the Respondent - B Mmusi

JUDGMENT

Judge Thokozile Masipa

INTRODUCTION

- [1] This is an urgent election complaint filed by the Complainant in terms of Regulation 6 of the Regulations Governing the Aspects of the CCC, 2010.

THE PARTIES

- [2] The Complainant is the Licensing and Compliance Division ("LCD") of the Independent Communications Authority of South Africa ("ICASA").
- [3] The Respondent is Kurara FM ("Kurara"/"The Respondent"/"the Licensee"), a community sound broadcasting service licensee.
- [4] On 19 August 2022, the Authority granted and issued an amended CLASS BROADCASTING SERVICE LICENCE No.: Class/Re/Com/R135/November/19 to KURARA FM

"FOR THE PROVISION OF COMMUNITY SOUND BROADCASTING SERVICE TO BE KNOWN AS KURARA FM"

- [5] In terms of the licence, the Licensee *"shall provide services in the John Taolo Gaetsewe District Municipality in the Northern Cape Province as set out in the Licensee's Radio Frequency Spectrum licence."*

THE CHARGE SHEET

The Complaint

- [6] On 5 August 2024, the Complainant lodged a complaint with the CCC against the Respondent alleging that the latter was in breach of the National and Provincial Election Broadcasts and Political Advertisements Amendment Regulations, 2024

("Regulations"). The hearing was on the 26 August 2024, three months after the elections.

- [7] It was alleged that during the election period, Kurara FM contravened Regulation 6(1), Regulation 6(13), Regulation 4(14)(a), Regulation 4(14)(b), Regulation 4(14)(d), Regulation 4(16), and Regulation 6(12) of the Regulations.
- [8] Regulation 6(1) provides that *"a PA must only be broadcast during the election period and no later than forty-eight (48) hours before the polling commences."*
- [9] Regulation 6(13) provides that *"all PAs must be clearly identified through a standard pre-recorded concluding message ("tail disclaimer")."*
- [10] Regulation 4(14)(a), as amended, provides that *"a BSL that broadcasts a Political Election Broadcast (PEB) must avail time slots that are circumscribed to a duration not exceeding 40 seconds (excluding the tail disclaimer)".*
- [11] Regulation 4(14)(b) provides that *"a BSL that broadcast PEB(s) must do so in accordance with the sequence and timing prescribed by the Authority."*
- [12] Regulation 4(14)(d), as amended, provides that *"the respective BSL must also ensure that all PEBs broadcasts are clearly identified through a standard pre-recorded concluding message ("tail disclaimer")."*
- [13] Regulation 4(16) provides that *"content broadcast as a PEB cannot be broadcast as a PA)".*
- [14] Regulation 6(12) provides that *"content broadcast as a PA must not be broadcast as a PEB".*

The Complaint in Detail

Charge 1

- [15] During its compliance monitoring exercise, in respect of the 2024 National and Provincial Elections coverage, the Licensing and Compliance Division noted that

Kurara FM transmitted Political Advertisements (PAs) outside of the election period, as follows in contravention of regulation 6(1) of the Regulations as per **TABLE 1** below.

[16] **Table 1** sets out the date and time of the alleged contravention as well as details of the contravention and the name of the political party involved.

[17] In respect of **Charge 1**, it is alleged that on 27 May 2024, at 07:21:26, 08:21:32, and 9:21:08, Kurara FM broadcast a Congress of the People (Cope) PA, within 48 hours of polling, outside the Elections Period.

Charge 2

[18] In respect of this charge, Kurara FM is alleged to have transmitted Political Advertisements without the requisite tail disclaimers, thereby contravening regulation 6(13) of the Regulations as per **Table 2** below.

[19] **Table 2** reflects the following:

19.1 On 26 April 2024 at 12:12:02, Kurara FM transmitted a Democratic Alliance Political Advertisement without a tail disclaimer.

19.2 On 30 April 2024 at 12:41:13 and again at 15:47:30, Kurara FM transmitted an African National Congress Political Advertisement without a tail disclaimer.

19.3 On 16 May 2024 at 07:39:59, Kurara FM transmitted an African National Congress Political Advertisement without a tail disclaimer.

19.4 On 26 May 2024 at 19:20:00, Kurara FM transmitted a Congress of the People Political Advertisement without a tail disclaimer.

Charge 3

[20] Kurara FM allegedly transmitted Party Elections Broadcasts (PEBs) for more than 40 seconds, in contravention of regulation 4(14)(a) of the Regulations as per **Table 3** below.

[21] In respect of **charge 3** the details are set out hereunder.

- 21.1 On 27 April 2024 at 07:20:25, Kurara FM broadcast a Northern Cape Communities Movement (NCCM) PEB for 1 minute and 11 seconds.
- 21.2 On 01 May 2024 at 07:20:29, Kurara FM broadcast a Northern Cape Communities Movement PEB for 1 minute and 11 seconds.
- 21.3 On 08 May 2024 at 10:10:00, Kurara FM broadcast a #Hope4SA PEB for 43 seconds.
- 21.4 On 11 May 2024 at 07:40:30, Kurara FM broadcast a #Hope4SA PEB for 43 seconds.
- 21.5 On 12 May 2024 at 16:11:10, Kurara FM broadcast a #Hope4SA PEB for 43 seconds.
- 21.6 On 14 May 2024 at 07:20:00, Kurara FM broadcast a Northern Cape Communities Movement (NCCM) PEB for 1 minute and 11 seconds.
- 21.7 On 14 May 2024 at 14:50:00, Kurara FM broadcast Northern Cape Communities Movement (NCCM) PEB for 1 minute 11 seconds.
- 21.8 On 15 May 2024 at 15:40:00, Kurara FM broadcast a #Hope4SA PEB for 43 seconds.
- 21.9 On 16 May 2024 at 15:50:00, Kurara FM broadcast a #Hope4SA. PEB for 43 seconds.
- 21.10 On 17 May 2024 at 17:40:54, Kurara FM broadcast a #Hope4SA PEB for 43 seconds.
- 21.11 On 20 May 2024 at 17:49:59, Kurara FM broadcast a-#Hope4SA PEB for 43 seconds.
- 21.12 On 20 May 2024 at 21:35:06, Kurara FM broadcast a Northern Cape Communities Movement (NCCM) PEB for 1 minute and 11 seconds.
- 21.13 On 21 May 2024 at 19:11:32, Kurara FM broadcast a Northern Cape Communities Movement (NCCM) PEB for 1 minute and 11 seconds.

21.14 On 25 May 2024 at 22:09:27, Kurara FM broadcast a Northern Cape Communities Movement (NCCM) PEB for 1 minute and 11 seconds.

21.15 On 26 May 2024 at 07:10:33, Kurara FM broadcast a Northern Cape Communities Movement (NCCM) PEB for 1 minute and 11 seconds.

Charge 4

[22] Kurara FM is alleged to have transmitted Party Election Broadcast (PEB), in contravention of regulation 4(14)(b) of the Regulations as per **Table 4** below:

[23] **Table 4** sets out the following alleged contraventions:

23.1 On 26 April 2024 at 12:12:02, Kurara FM broadcast a Democratic Alliance PEB in a manner that was inconsistent with the PEB Sequence and Timing as determined by the Authority.

23.2 On 28 April 2024 at 07:50:44, Kurara FM broadcast an African National Congress PEB in a manner that was inconsistent with the PEB Sequence and Timing as determined by the Authority.

23.3 On 09 May 2024 at 16:20:00, Kurara FM broadcast a Democratic Alliance PEB in a manner that was inconsistent with the PEB Sequence and Timing as determined by the Authority.

23.4 On 10 May 2024 at 16:10:34, Kurara FM broadcast a Democratic Alliance PEB in a manner that was inconsistent with the PEB Sequence and Timing as determined by the Authority.

23.5 On 10 May 2024 at 12:09:59, Kurara FM broadcast a Good PEB in a manner that was inconsistent with the PEB Sequence and Timing as determined by the Authority.

23.6 On 10 May 2024 at 15:10:09, Kurara FM broadcast a Good PEB in a manner that was inconsistent with the PEB Sequence as determined by the Authority.

- 23.7 On 10 May 2024 at 18:50:00, Kurara FM broadcast a Democratic Alliance PEB in a manner that was inconsistent with the PEB Sequence and Timing as determined by the Authority.
- 23.8 On 11 May 2024 at 06:10:34, Kurara FM broadcast a Good PEB in manner that was inconsistent with the PEB Sequence and Timing as determined by the Authority.
- 23.9 On 11 May 2024 at 10:20:30, Kurara FM broadcast a Good PEB in a manner that was inconsistent with the BEB Sequence and Timing as determined by the Authority.
- 23.10 On 12 May 2024 at 09:10:02, Kurara FM broadcast an African Christian Democratic Party (ACDP) PEB in a manner that is inconsistent with the PEB Sequence and Timing as determined by the Authority.
- 23.11 On 16 May 2024 at 06:20:08, Kurara FM broadcast an African Christian Democratic Party PEB in a manner that was inconsistent with the PEB Sequence and Timing as determined by its Authority.
- 23.12 On 16 May 2024 at 13:40:01, Kurara FM broadcast a Good PEB in a manner that was inconsistent with the PEB Sequence and Timing as determined by the Authority.
- 23.13 On 16 May 2024 at 16:40:00, Kurara FM broadcast a Good PEB in a manner that was inconsistent with the PEB Sequence and Timing as determined by the Authority.
- 23.14 On 17 May 2024 at 12:49:59, Kurara FM broadcast a Good PEB in a manner that was inconsistent with the PEB Sequence and Timing as determined by the Authority.
- 23.15 On 18 May 2024 at 06:20:00, Kurara FM broadcast a Good PEB in a manner that was inconsistent with the PEB Sequence and Timing as determined by the Authority.

- 23.16 On 18 May 2024 at 10:40:24, Kurara FM broadcast a Good PEB in a manner that was inconsistent with the PEB Sequence and Timing as determined by the Authority.
- 23.17 On 18 May 2024 at 19:40:53, Kurara FM broadcast a Vryheidsfront Plus (VF+) PEB in a manner that was inconsistent with the PEB Sequence and Timing as determined by the Authority.
- 23.18 On 19 May 2024 at 06:50.44, Kurara FM broadcast an African National Congress (ANC) PEB in a manner that was inconsistent with the PEB Sequence and Timing as determined by the Authority.
- 23.19 On 19 May 2024 at 07:10:29, Kurara FM broadcast a Democratic Alliance PEB in a manner that was inconsistent with the PEB Sequence and Timing as determined by the Authority.
- 23.20 On 19 May 2024 at 15:10:00, Kurara FM broadcast an African National Congress PEB in a manner that was inconsistent with the PEB Sequence and Timing as determined by the Authority.
- 23.21 On 19 May 2024 at 20:20:00, Kurara FM broadcast an African National Congress PEB in a manner that was inconsistent with the PEB Sequence and Timing as determined by the Authority.
- 23.22 On 20 May 2024 at 07:40:00, Kurara FM broadcast an African National Congress PEB in a manner that was inconsistent with the PEB Sequence and Timing as determined by the Authority.
- 23.23 On 21 May 2024 at 13:11:34, Kurara FM broadcast a Build One South Africa PEB with Mmusi Maimane (BOSA) in a manner that was inconsistent with the PEB Sequence and Timing as determined by the Authority.
- 23.24 On 21 May 2024 at 16:49:59, Kurara FM broadcast an African National Congress PEB in a manner that was inconsistent with the PEB Sequence and Timing as determined by the Authority.

- 23.25 On 21 May 2024 at 17:10:00, Kurara FM broadcast a Vryheidsfront Plus PEB in a manner that was inconsistent with the PEB Sequence and Timing as determined by the Authority.
- 23.26 On 23 May 2024 at 16:19:59, Kurara FM broadcast an African National Congress PEB in a manner that was inconsistent with the PEB Sequence and Timing as determined by the Authority.
- 23.27 On 25 May 2024 at 10:20:36, Kurara FM broadcast an African Christian Democratic Party PEB in a manner that was inconsistent with the PEB Sequence and Timing as determined by the Authority.
- 23.28 as On 25 May 2024 at 11:50:41, Kurara FM broadcast a Democratic Alliance PEB in a manner that was inconsistent with the PEB Sequence and Timing as determined by the Authority.

Charge 5

[24] Kurara FM is alleged to have transmitted Party Election Broadcasts without the requisite tail disclaimers, in contravention of regulation 4(14)(d) of the Regulations as per **Table 5** below.

- 24.1 On 26 April 2024 at 12:12:02, Kurara FM broadcast a Democratic Alliance PEB without a tail disclaimer.
- 24.2 On 26 April 2024 at 16:21:39, Kurara FM broadcast an African Christian Democratic Party PEB without identifying it as such in the disclaimer.
- 24.3 On 27 April 2024 at 07:20:25, Kurara FM broadcast a Northern Cape Communities Movement PEB, without identifying it as such in the disclaimer.
- 24.4 On 27 April 2024 at 08:40:48, Kurara FM broadcast a Democratic Alliance PEB without identifying it as such in the tail disclaimer.
- 24.5 On 27 April 2024 at 10:20:01, Kurara FM broadcast an African National Congress PEB without a tail disclaimer.

- 24.6 On 27 April 2024 at 17:50:00, Kurara FM broadcast an African Christian Democratic Party PEB without identifying it as such in the disclaimer.
- 24.7 On 28 April 2024 at 07:50:44, Kurara FM broadcast an African National Congress PEB without identifying it as such in the disclaimer.
- 24.8 On 29 April 2024 at 08:40:00, Kurara FM broadcast a Vryheidsfront Plus PEB without identifying it as such in the disclaimer.
- 24.9 On 29 April 2024 at 11:20:53, Kurara FM broadcast a Vryheidsfront Puls PEB without identifying it as such in the disclaimer.
- 24.10 On 30 April 2024 at 08:51:23, Kurara FM broadcast a Democratic Alliance PEB without a tail disclaimer.
- 24.11 On 30 April 2024 at 12:41:13, Kurara FM broadcast an African National Congress PEB without a tail disclaimer.
- 24.12 On 30 April 2024 at 15:47:30, Kurara FM broadcast an African National Congress PEB without a tail disclaimer.
- 24.13 On 01 May 2024 at 07:20:29, Kurara FM broadcast a Northern Cape Communities Movement PEB which was not identified as a PEB in the disclaimer.
- 24:14 On 02 May 2024 at 08:40:00, Kurara FM broadcast an African Christian Democratic Party PEB which was not identified as a PEB in the disclaimer.
- 24:15 On 02 May 2024 at 16:06:08, Kurara FM broadcast a Vryheidsfront Plus PEB which was not identified as a PEB in the disclaimer.
- 24:16 On 08 May 2024 at 09:50:00, Kurara FM broadcast an African National Congress PEB not identified as a PEB in the disclaimer.
- 24:17 On 08 May 2024 at 10:10:00, Kurara FM broadcast a #Hope4SA PEB not identified as a PEB in the disclaimer.
- 24:18 On 08 May 2024 at 11:20:05, Kurara FM broadcast an African National Congress PEB not identified as a PEB in the disclaimer.

- 24:19 On 08 May 2024 at 16:40:01, Kurara FM broadcast a Democratic Alliance PEB not identified as a PEB in the disclaimer.
- 24:20 On 08 May 2024 at 17:10:0, Kurara FM broadcast a Democratic Alliance PEB not identified as a PEB in the disclaimer.
- 24:21 On 08 May 2024 at 19:11:32, Kurara FM broadcast a Democratic Alliance PEB not identified as a PEB in the disclaimer.
- 24:22 On 09 May 2024 at 07:40:52, Kurara FM broadcast an African Christian Democratic Party PEB not identified as a PEB in the disclaimer.
- 24:23 On 09 May 2024 at 16:20:00, Kurara FM broadcast a Democratic Alliance PEB not identified as a PEB in the disclaimer.
- 24:24 On 10 May 2024 at 06:10:34, Kurara FM broadcast a Democratic Alliance PEB not identified as a PEB in the disclaimer.
- 24:25 On 10 May 2024 at 09:49:59, Kurara FM broadcast a Vryheidsfront Plus PEB not identified as a PEB in the disclaimer.
- 24:26 On 10 May 2024 at 12:09:59, Kurara FM broadcast a GOOD PEB without a tail disclaimer.
- 24:27 On 10 May 2024 at 14:50:42, Kurara FM broadcast a #Hope4SA PEB not identified as a PEB in the disclaimer.
- 24:28 On 10 May 2024 at 15:10:09, Kurara FM broadcast a GOOD PEB without a tail disclaimer.
- 24:29 On 10 May 2024 at 18:50:00, Kurara FM broadcast a Democratic Alliance PEB not identified as a PEB in the disclaimer.
- 24:30 On 10 May 2024 at 22:14:46, Kurara FM broadcast a Democratic Alliance PEB not identified as a PEB in the disclaimer.
- 24:31 On 11 May 2024 at 06:10:34, Kurara FM broadcast a GOOD PEB without a tail disclaimer.

- 24:32 On 11 May 2024 at 07:40:30, Kurara FM broadcast a #Hope4SA PEB not identified as a PEB in the disclaimer.
- 24:33 On 11 May 2024 at 10:20:30, Kurara FM broadcast a GOOD PEB without a tail disclaimer.
- 24:34 On 11 May 2025 at 19:20:53, Kurara broadcast a Vryheidsfront Plus PEB not identified as a PEB in the disclaimer.
- 24:35 On 12 May 2024 at 09:10:02, Kurara FM broadcast an African Christian Democratic Party PEB not identified as a PEB in the disclaimer.
- 24:36 On 12 May 2024 at 15:10:00, Kurara FM broadcast an African National Congress PEB not identified as a PEB in the disclaimer.
- 24:37 On 12 May 2024 at 16:11:10, Kurara FM broadcast a #Hope4SA PEB not identified as a PEB in a disclaimer.
- 24:38 On 12 May 2024 at 19:50:01, Kurara FM broadcast an African National Congress PEB not identified as a PEB in the disclaimer.
- 24:39 On 13 May 2024 at 21:44:51, Kurara FM broadcast an African National Congress PEB not identified as a PEB in the disclaimer.
- 24:40 On 14 May 2024 at 07:20:00, Kurara FM broadcast a Northern Cape Communities Movement PEB not identified as a PEB in the disclaimer.
- 24:41 On 14 May 2024 at 11:10:48, Kurara FM broadcast an African Christian Democratic Party PEB not identified as a PEB in the disclaimer.
- 24:42 On 14 May 2024 at 14:50:00, Kurara FM broadcast a Northern Cape Communities Movement PEB not identified as a PEB in the disclaimer.
- 24:43 On 15 May 2024 at 10:21:15, Kurara FM broadcast an African Christian Democratic Party PEB without a tail disclaimer.
- 24:44 On 15 May 2024 at 16:50:23, Kurara FM broadcast a Democratic Alliance PEB not identified as a PEB in the disclaimer.

- 24.45 On 16 May 2024 at 06:20:08, Kurara FM broadcast an African Christian Democratic Party PEB not identified as a PEB in the disclaimer.
- 24.46 On 16 May 2024 at 07:39:59, Kurara FM broadcast an African National Congress PEB without a tail disclaimer.
- 24.47 On 16 May 2024 at 13:40:01, Kurara FM broadcast a GOOD PEB without a tail disclaimer.
- 24.48 On 16 May 2024 at 15:50:00, Kurara FM broadcast a #Hope4SA PEB not identified as a PEB in the disclaimer.
- 24.49 On 16 May 2024 at 16:40:00, Kurara FM broadcast a GOOD PEB without a tail disclaimer.
- 24.50 On 17 May 2024 at 12:49:59, Kurara FM broadcast a GOOD PEB without a tail disclaimer.
- 24.51 On 17 May 2024 at 17:40:54, Kurara FM broadcast a #Hope4SA not identified as a PEB in the disclaimer.
- 24.52 On 18 May 2024 at 06:20:00, Kurara FM broadcast a GOOD PEB without a tail disclaimer.
- 24.53 On 18 May 2024 at 10:40:24, Kurara FM broadcast a GOOD PEB without a tail disclaimer.
- 24.54 On 18 May 2024 at 14:50:00, Kurara FM broadcast a Vryheidsfront Plus PEB not identified as a PEB in the disclaimer.
- 24.55 On 18 May 2024 at 15:07:55, Kurara FM broadcast an African Christian Democratic Party PEB not identified as a PEB in the disclaimer.
- 24.56 On 18 May 2024 at 19:40:53, Kurara FM broadcast a Vryheidsfront Plus PEB without a tail disclaimer.
- 24.57 On 19 May 2024 at 14:50:00, Kurara FM broadcast an African National Congress PEB not identified as a PEB in the disclaimer.
- 24.58 On 19 May 2024 at 06:50:44, Kurara FM broadcast an African National

Congress PEB not identified as a PEB in the disclaimer.

24.59 On 19 May 2024 at 07:10:29, Kurara FM broadcast a Democratic Alliance PEB not identified as a PEB in the disclaimer.

24.60 On 19 May 2024 at 10:51:34, Kurara FM broadcast a Democratic Alliance PEB not identified as a PEB in the disclaimer.

24.61 On 19 May 2024 at 15:10:00, Kurara FM broadcast an African National Congress PEB not identified as a PEB in the disclaimer.

24.62 On 19 May 2024 at 16:50:42, Kurara FM broadcast a Vryheidsfront Plus PEB not identified as a PEB in the disclaimer.

24:63 On 19 May 2024 at 19:50:24, Kurara FM broadcast an African National Congress PEB not identified as a PEB in the disclaimer.

24:64 On 19 May 2024 at 20:20:00, Kurara FM broadcast an African National Congress PEB not identified as a PEB in a disclaimer.

24.65 On 20 May 2024 at 07:40:00, Kurara FM broadcast an African National Congress PEB not identified as a PEB in the disclaimer.

24.66 On 20 May 2024 at 10:50:00, Kurara FM broadcast a #Hope4SA PEB not identified as a PEB in the disclaimer.

24.67 On 20 May 2024 at 13:11:34, Kurara FM broadcast an African National Congress PEB not identified as a PEB in the disclaimer.

24.68 On 20 May 2024 at 17:49:59, Kurara FM broadcast a #Hope4SA PEB not identified as a PEB in the disclaimer.

24.69 On 20 May 2024 at 21:35:06, Kurara FM broadcast a Northern Cape Communities Movement PEB not identified as a PEB in the disclaimer.

24.70 On 21 May 2024 at 07:40:00, Kurara FM broadcast a Democratic Alliance PEB not identified as a PEB in the disclaimer.

24.71 On 21 May 2024 at 09:40:34, Kurara FM broadcast a Democratic Alliance not identified as a PEB in the disclaimer.

- 24.72 On 21 May 2024 at 13:11:34, Kurara FM broadcast a Build One South Africa with Mmusi Maimane PEB not identified as a PEB in the disclaimer.
- 24.73 On 21 May 2024 at 16:49:59, Kurara FM broadcast an African National Congress PEB not identified as a PEB in the disclaimer.
- 24.74 On 21 May 2024 at 17:10:00, Kurara FM broadcast a Vryheidsfront Plus PEB not identified as a PEB in the disclaimer.
- 24.75 On 21 May 2024 at 19:11:32, Kurara FM broadcast a Northern Cape Communities Movement PEB not identified as a PEB in the disclaimer.
- 24.76 On 22 May 2024 at 11:50:48, Kurara FM broadcast a Democratic Alliance PEB not identified as a PEB in the disclaimer.
- 24.77 On 22 May 2024 at 14:50:00, Kurara FM broadcast an African National Congress PEB not identified as a PEB in the disclaimer.
- 24.78 On 22 May 2024 at 15:50:26, Kurara FM broadcast a Democratic Alliance PEB not identified as a PEB in the disclaimer.
- 24.79 On 23 May 2024 at 7:40:53, Kurara FM broadcast a Democratic Alliance PEB not identified as a PEB in the disclaimer.
- 24.80 On 23 May 2024 at 16:19:59, Kurara FM broadcast an African National Congress PEB not identified as a PEB in the disclaimer.
- 24.81 On 23 May 2024 at 21:38:40, Kurara FM broadcast an African Christian Democratic Party PEB not identified as a PEB in the disclaimer.
- 24.82 On 24 May 2024 at 07:50:03, Kurara FM broadcast an African National Congress PEB without a tail disclaimer.
- 24.83 On 24 May 2024 at 10:50:01, Kurara FM broadcast an African National Congress PEB not identified as a PEB in the disclaimer.
- 24.84 On 24 May 2024 at 19:10:00, Kurara FM broadcast an African National Congress PEB not identified as a PEB in the disclaimer.

- 24.85 On 25 May 2024 at 10:20:36, Kurara FM broadcast an African Christian Democratic Party PEB not identified as a PEB in the disclaimer.
- 24.86 On 25 May 2024 at 11:50:41, Kurara FM broadcast a Democratic Alliance PEB not identified as a PEB in the disclaimer.
- 24.87 On 25 May 2024 at 16:08:41, Kurara FM broadcast an African National Congress PEB not identified as a PEB in the disclaimer.
- 24.88 On 25 May 2024 at 22:09:27, Kurara FM broadcast a Northern Cape Communities Movement PEB not identified as a PEB in the disclaimer.
- 24.89 On 26 May 2024 at 07:10:33, Kurara FM broadcast a Northern Cape Communities Movement PEB not identified as a PEB in the disclaimer.
- 24:89 On 26 May 2024 at 10:10:53, Kurara FM broadcast a Democratic Alliance PEB not identified as a PEB in the disclaimer.
- 24.90 On 26 May 2024 at 15:50:00, Kurara FM broadcast an African National Congress PEB not identified as a PEB in the disclaimer.

CHARGE 6

[25] Kurara FM is alleged to have transmitted Party Election Broadcasts (PEBs) as Political Adverts (PAs), in contravention of 4(16) as per Table 6 below.

- 25.1 On 26 April 2024 at 09:11:42, Kurara FM broadcast an African National Congress PEB as a PA.
- 25.2 On 26 April 2024 at 17:20:14, Kurara FM broadcast African National Congress PEB as a PA.
- 25.3 On 12 May 2024 at 17:50:06, Kurara FM broadcast an African National Congress PEB as a PA.
- 25.4 On 13 May 2024 at 07:40:00, Kurara FM broadcast an African National Congress PEB as a PA.

CHARGE 7

[26] Kurara FM is alleged to have transmitted PAs as PEBs, in contravention of Regulation 6(12) of the Regulations as per Table 7 below.

26.1 On 14 May 2024 at 16:50:01, Kurara FM broadcast an African National Congress PA as a PEB.

26.2 On 15 May 2024 at 17:10:29, Kurara FM broadcast an African National Congress PA as a PEB.

26.3 On 16 May 2024 at 13:11:34, Kurara FM broadcast an African National Congress PA as a PEB.

RESPONSE FROM THE RESPONDENT

[27] In an email dated 8 August 2024 and addressed to the Acting CCC Coordinator, Meera Lalla, the Respondent acknowledged that it had failed to comply with various provisions of the Regulations as set out in the Charge Sheet.

[28] In the said email, it stated, *inter alia*, "Kurara FM acknowledges non compliance with the following regulations:

1. Charge 1: Breach of regulation 6(1) for broadcasting the PAs outside the election period.
1. Charge 2: Breach of regulation 6(13) for broadcasting the PAs of the Democratic Alliance without the required tail disclaimers.
1. Charge 3: Breach of regulation 4(14)(a) for broadcasting PEBs for a duration exceeding 40 seconds.
1. Charge 4: Breach of regulation 4(14)(b).
1. Charge 5: Breach of regulation 4(14)(d) for broadcasting PEBs without tail disclaimers.
1. Charge 6: Breach of regulation 4(16) for broadcasting PEBs as PAs.

1. Charge 7: Breach of regulation 6(12) for broadcasting PAs as PEBs.

[29] Kurara FM then proceeded to submit mitigating factors which shall be discussed in due course.

DISCUSSION

[30] It is convenient to first set out facts or circumstances giving rise to the present complaint.

Background

[31] The following is the background as provided by the Respondent.

[32] Kurara FM is a community radio station serving the rural communities of the John Taolo Gaetsewe District since January 2012. It broadcasts in three languages - Setswana, English and Afrikaans and has a weekly cumulative listenership of 100 000. Since its inception, it has successfully covered four elections with full compliance. These were the 2014 General Elections, the 2016 Local Government Elections, the 2019 General Elections and the 2021 Local Government Elections.

[33] Explaining why the coverage of the 2024 Elections was different from the previous ones, and the challenges experienced, the Respondent stated:

"The 2024 General Elections were covered by Kurara FM during a challenging period marked by the loss of key team members."

[34] To fill the vacant positions, the Respondent employed Ms Ogomoditse Elisha, Acting News Editor, Mr Lesedi Mogabeng, Acting Executive Director: Technical and Production, Mr Kagiso Keller, Acting Executive Director: Marketing and Mr Thebeetsile Khonkhobe: Acting Executive Director: Programming. All the positions were filled during February and March 2024. This made it difficult for the new people to fully understand their roles before the elections in May.

Broadcasting the PEBs and Capacity Building

- [35] In 2024, prior the elections, National Community Radio Forum (NCRF) Northern Cape appealed to community radio stations across the province to support democracy education by allocating air time for PEBs.
- [36] The Respondent stated that despite being under-resourced, Kurara FM recognised the importance of fulfilling this role within the rural community of John Taolo Gaetsewe. To build internal capacity, the station sent its Acting Executive Director to an ICASA workshop in Upington.
- [38] The Kurara FM team had transport challenges which made the team late for the workshop.
- [39] It was submitted on behalf of the Respondent that the team probably missed out on important information as a result.
- [40] Following the workshop, a staff meeting was held *"to emphasise the importance of strictly adhering to the regulations and guidelines to ensure maximum compliance."*
- [41] On behalf of the Respondent it was submitted that the areas of non compliance identified during this period confirmed that, despite Kurara FM's significant efforts, the team's understanding of the regulations was not fully developed within the limited timeframe, particularly as the lead implementing departments were still familiarising themselves with their roles.

Complexity of Introducing PEBs

- [42] The Respondent sought to distinguish the PEBs from the PAs, which distinction was relevant in understanding the issues before the CCC.
- [43] According to the Respondent, introducing PEB's during a time when four critical members of the executive team were new to their roles, was an error. This was because PEBs, unlike PAs, must be broadcast at an exact time. In contrast, PAs can be scheduled within a specific hour as agreed upon by the station and the political

party, with the flexibility to adjust the timing, if necessary.

[44] It was conceded, on behalf of Kurara FM, that in its eagerness to provide a platform for community education, while commendable, it failed to appreciate the additional challenges associated with managing PEB's for the first time. It was this underestimation that was its undoing.

[45] In the words of Bradley Mmusi, the CEO, Kurara FM puts it thus:

"Despite our enthusiasm to support democracy education in the rural community of John Taolo Gaetsewe, the station's limited resources contributed to our taking on responsibilities that we were not fully prepared to handle."

Financial Penalty

[46] Though conceding that, the Respondent should be penalised, it sought to persuade the CCC that a heavy financial penalty might cause its demise. It pleaded that a less harsh penalty such as remitting any financial gain for non compliance could be considered.

[I pause to mention that according to Kurara FM, there were 13 paid adverts broadcast at a rate of R594 (five hundred and ninety four rand) each. The total amount was R7 722 (seven thousand seven hundred and twenty two rand). This is the amount that Kurara FM suggested Kurara should be ordered to pay as a fine].

ANALYSIS

The Gravity and Seriousness of the Contraventions

[47] Elections provide voters an opportunity to exercise their Constitutional rights as voters. This is an important opportunity that comes only once every five years that enables voters to shape their destiny and that of their country.

[48] Mass media, in particular the BSLs, have a critical role to play in disseminating information to the public during the election period.

- [49] To properly exercise their rights, most voters rely on BSLs, as sources of information. For that reason it is essential that BSLs should, *inter alia*, be meticulous in disseminating election related information to the public, during the election period.
- [50] Recognising this important role of BSLs, the Legislature saw fit to introduce legislation that would assist BSLs to perform effectively while staying within the law. Hence the promulgation of the National and Provincial Election Regulations.
- [51] The Regulations are much more than a means of ensuring that the rights of the voters are protected, but also assist in maintaining the integrity of the electoral system.
- [52] It follows, therefore, that for citizens to enjoy free and fair elections BSLs must, *inter alia*, conduct themselves with meticulous adherence to Regulations and with absolute integrity.
- [53] Rampant non compliance with Regulations, as can be seen in the present case, makes a mockery of the regulatory measures put in place and is likely to undermine the credibility of the electoral process.

What Steps Were Taken by the Respondent in preparation for the Elections

- [54] Of course the Respondent argued that it did the best it could to prepare for the Elections by training the key people who were going to be working on election matters. According to the Respondent, it took advantage of various training opportunities such as ICASA workshops and other training programs for personnel.
- [55] From the papers, it appeared that Kurara did take part in the training programs available. It submitted that it may have missed out on important information as it arrived late for one program. This information could not be verified. On the contrary, the date provided on behalf of Kurara FM, that its personnel were late for the workshop, turned out to be incorrect.
- [56] It is quite possible that Kurara FM may have been referring to a completely different date. Notably it failed to set the record straight even after it had been given an

opportunity to address a number of unclear issues.

Unprecedented levels of noncompliance

[57] Despite the training, a shocking number of total contraventions of over a hundred was recorded between April and May 2024. This fact made this matter the worst case ever to be referred to the CCC for adjudication.

[58] Of course, Kurara FM sought to explain this regrettable state of affairs thus:

Shortly before the election period, Kurara FM lost four of its key personnel. New personnel took over and underwent the necessary training to equip them for coverage of the 2024 elections in May.

[59] It turned out, however, that the time between the appointment of these key personnel and the commencement of the election period was insufficient for them to properly assimilate what they had learned and successfully put it to use.

[60] Kurara FM conceded that it underestimated the complexity of dealing with PEBs, among other things. Keen to assist its community, by broadcasting PEBs, it unfortunately embarked on a task it was not ready to perform.

The Consequences of the Non Compliance

[61] A contravention such as broadcasting a PEB for 1 minute and 11 seconds, instead of 40 seconds, for one political party, can have serious consequences. If the voting public is misled as a result of this error, it may lose confidence in the electoral process. This ripple effect is likely to increase in a case where the contraventions have been repeated, as most have been in this matter.

[62] In our view, agreeing to broadcast PEBs at the time Kurara knew that it was experiencing challenges, was not only a serious error of judgment on the part of Kurara FM, but gross negligence on the part of those who took the decision. This also might have been a result of over confidence, as the station had previously covered the elections without any incidents. Whatever the cause might have been, the decision to carry PEBs at the time by Kurara FM, had serious implications not

only for the station itself, but also for the listening public. This is an aggravating factor.

[63] What made things worse, more importantly, is that Kurara FM is not new in the business of broadcasting. With experience of having operated for over a decade, it should have been familiar with challenges and pitfalls associated with broadcasting election matters, especially when not fully prepared.

[64] Kurara conceded that it was under resourced at the time. Yet it went ahead with the election coverage while neglecting to take the necessary caution or measures to deal with the challenges it knew it had.

[65] It is so that Kurara FM had to deal with a high number of PEBs, during the relevant election period. However, the complexity of dealing with PEBs does not explain the errors in respect of charge 1 and charge 2 which are a contravention of regulation 6(1) and regulation 6(13) respectively. It must be noted that both regulations have to do with PAs and not PEBs.

[66] The above, in essence, means that Kurara FM has no defence in respect of charges 1 and 2.

Steps Taken by the Respondent to Ensure that a Similar Complaint Does Not Occur in the Future

[67] Kurara FM stated that it was planning to introduce a RCS system. In addition, it would adopt procedures to ensure that similar elections complaints would not re occur in the future.

[68] According to Kurara FM, RCS broadcasting software will be highly beneficial for it in mitigating non compliance issues, especially concerning issues such as scheduling, adhering to the 40 second time limit for advertisements, and cutting off ads 48 hours before election day.

[69] According to Kurara FM, it also recognises the importance of on-going training of its employees. It stated that several of its employees attended various training programs throughout the country. These included IEC Election training in

Bloemfontein and MDDA election training in East London in the Eastern Cape. This should have been adequate but it wasn't because of lack of time to assimilate what had been learnt.

Proactive Measures Taken

[70] The station submitted that it had taken proactive steps to address non compliance. This included implementing automated compliance tools and establishing clear procedures for content approval and monitoring.

[71] Kurara FM also made an undertaking to put in place compliance tools and establishing clear procedures for content approval and monitoring. In addition, Kurara FM would introduce software, staff training programs and internal audits aimed at improving regulatory adherence. [I pause to state that the problem with the undertaking above is that there are no details outlined. For example, neither the "*compliance tools*" nor the "*clear procedures for content approval*" are identified. There are also no detail regarding the nature of the training programs, the duration, who would need or qualify for the training, the trainers etc. This makes it difficult to gauge the feasibility and/or the effectiveness of such programs if put into place.

Aggravating Factors

[71] The unprecedented number of contraventions by Kurara FM is undoubtedly a serious concern. There were over 100 contraventions committed in two months. This is a good example of flagrant disregard of the law. Although Kurara FM tried to explain that it had real challenges when it covered the National and Provincial Elections this year, its explanation as a defence was woefully inadequate.

[72] For a number of contraventions, Kurara FM cannot hide behind the fact that the personnel in charge were still new in their roles and unfamiliar with their duties. A contravention such as broadcasting a PA outside the election period, or letting a PEB run on for 1 minute 11 seconds, when it should have been flighted for only 40 seconds, has nothing to do with lack of experience or level of intelligence. It can, therefore, only be described as gross negligence.

Mitigating Factors

- [73] The nature, the number and the frequency of the non compliances as well as their likely consequences are all aggravating.
- [74] This must be balanced against the fact that Kurara FM has a clean record. Since its inception in 2012 to date, it has never been hauled before the CCC or found to be non compliant in election matters. A careful balancing of all the mitigating factors and aggravating factors will enable the CCC to recommend a fair and just sanction.
- [75] The number of errors, and their frequency as well as the fact such errors went unnoticed is a serious concern for the CCC. On the 19 May 2024, for example, one contravention occurred 28 times. This is worrisome as it is a strong indication that Kurara FM does not really know what it is doing. It may have been in operation for a number of years but still needs to go back to the drawing board to enable it to function efficiently. It might also benefit from some kind of supervision by ICASA's monitoring division.
- [76] In mitigation, Kurara FM submitted the following additional information: It relies on advertisements for its revenue, while also operating in an environment with high unemployment rates. In support of this submission, Kurara FM submitted detailed management accounts showing the station's reliance on advertising revenue.
- [77] The above, according to Kurara FM, limits its financial resources. It is these financial constraints that affects the station's ability to invest in advanced compliance tools and staff training, it was submitted.
- [78] Financial constraints as set out by Kurara FM appear to be only a small part of the problem. The main problem seems to be lack of proper planning, in my view.
- [79] I say this because Kurara FM is not new on the scene and has been around for over a decade. With proper planning, it would have gradually, over the years, invested on basic equipment such as monitoring systems etc. With monitoring systems in place, a BSL is able to see immediately when and where it is going wrong and correct the error.

[80] In the present case, Kurara FM repeatedly contravened the same regulation almost daily, sometimes more than once during the election period. In two instances the contravention occurred eight times in one day. The repeated contraventions went unnoticed precisely because there were no monitoring procedures in place.

Commitment to Compliance Despite Challenges

[81] In addition to its plea that it had financial constraints, Kurara FM submitted that it was committed to improving compliance and to addressing issues of non compliance, despite financial and resource constraints. It stated that this was a demonstration of its dedication to adhering to regulatory standards.

[82] It must be noted that Kurara FM once more failed to take the CCC into its confidence by stating where it would get the money from to address the issue of non compliance. Stating that Kurara FM is "*committed to improving compliance and to addressing issues of non compliance, despite financial and resource constraints,*" without stating where the money would come from is not enough.

Steps taken by Kurara FM to ensure that similar complaints will not be lodged in the future.

[83] On behalf of the Respondent it was submitted that Kurara FM was planning to implement RCS broadcasting software.

[84] In addition, Kurara FM would create policies and other procedures including checklist and regularly check with ICASA for any noncompliance.

Community Support and Partnerships

[85] According to Kurara, it has formed partnerships with local organisations and stakeholders to support its operational needs and enhance its compliance capabilities.

Infrastructure Improvements

[86] Kurara FM has initiated the construction of three transmission masts. In this

initiative it is supported by Kumba Iron and Eskom, to ensure stable transmission and enhance signal quality.

CONCLUSION

- [87] Radio remains the most accessible, effective and appropriate medium of communication especially in rural communities.
- [88] While as a community radio station, Kurara FM plays a critical role in community development that fact alone is insufficient to act as a mitigating factor.
- [89] Notably, Kurara FM has made undertakings and suggestions on how to avoid non compliance in the future. As much as these are commendable, it seems to me that, to succeed, Kurara FM will need supervision and assistance especially from ICASA. This will ensure that its intentions to comply are backed by concrete actions and that such performance is properly monitored.
- [90] The CCC always strives to achieve equitable decisions where justice and fairness is the norm. In the present case the CCC has considered the nature, and the number of contraventions, their seriousness and frequency as well as the circumstances in which they were committed.
- [91] Furthermore, the CCC has noted the fact that Kurara FM has a clean record. A clean record, of more than a decade, must count for something, especially for a small community radio station serving a rural community such as the Respondent. In addition, there is evidence that the Respondent did ensure that its staff went for training before the 2024 elections. Although the training appears to have had no impact, the attempt by the Respondent to prepare its personnel must count in its favour.
- [92] Sadly, such preparations were insufficient in the circumstances faced by Kurara FM at the time.
- [93] In its own version, Kurara FM had a serious challenge as it was under resourced and was not fully prepared for the rigours of covering National and Provincial elections.

THE PUBLIC INTEREST

- [94] Arrival at a just and fair sanction involves more than just weighing the aggravating factors against mitigating factors. It requires the CCC to look at a bigger picture which includes the public interest.
- [95] If we only considered the number of contraventions, over a hundred, in total, and the frequency of the contraventions, against the clean record of Kurara, the temptation might be to throw the book at the Respondent.
- [96] However, a prudent approach would be to consider all the facts and circumstances. This would include considering whether it would be in the public interest to send Kurara FM to its premature demise for gross negligence without giving it a second chance.
- [97] Having considered all the facts and circumstances in this matter, including the seriousness and frequency of the contraventions, the community in which Kurara operates as well as the role it plays, the CCC is of the view that this is a matter where an innovative approach is warranted.

FINDING

- [98] Accordingly, Kurara FM is found to have been grossly negligent in that it contravened the following:

Charge 1:

Regulation 6(1) in that it broadcast PAs outside the election period.

Charge 2:

Regulation 6(13) in that it failed to ensure that all PA broadcasts were clearly identified through a standard pre-recorded concluding message (tail) disclaimer.

Charge 3:

Regulation 4(14)(a) in that it failed to make (12) time slots of forty (40) seconds each for the broadcast of PEB, excluding the tail disclaimer, available throughout the election broadcast period.

Charge 4:

Regulation 4(14)(b) in that it failed to broadcast PEBs in accordance with the sequence and timing that would be determined by the Authority upon allocation of time slots after the publication of the Regulations.

Charge 5:

Regulation 4(14)(d) in that it failed to ensure that all PEB broadcasts were clearly identified through a standard pre-recorded concluding message (tail) disclaimer.

Charge 6:

Regulation 4(16) in that it broadcast PEBs as PAs.

Charge 7:

Regulation 6(12) in that it broadcast PA content as PEB content.

RECOMMENDATIONS

[99] In terms of section 17E(2) of the ICASA Act, the CCC recommends the following orders to be issued by the Authority, namely:—

99.1 Direct the Licensee to desist from any further contravention of the said regulation;

99.2 Direct the Licensee to take the following remedial actions;

99.2.1 Within 90 Calendar days from the date of the issue of this order, Kurara FM is to submit to the LCD of ICASA a report, setting out, among

others, a brief technology readiness report, articulating the technology operations plans, systems preventative maintenance and how they would be implemented during the next election period.

99.2.2 That the radio station upgrade its hardware and software. This must be followed by a dry run on the system's operation well before the commencement of the next election period to ensure that it is foolproof.

99.2.3 Direct the Licensee to deploy a team of five (5) people who would individually check the PAs & PEBs before they are flighted.

(d) Furthermore, the Licensee shall maintain continuous record keeping and implement a sustainable backup plan to ensure the integrity and accessibility of the recordings.

99.3 In addition the CCC recommends to the Authority to direct that Kurara FM broadcasts a public apology during the first week after this order is issued.

99.3.1 The apology is to be broadcast in Setswana, English and Afrikaans (in the same news bulletin) once per day for five consecutive days as its first item on its news service between 7h00 and 20:10. On the first two days the broadcast must take place in the first newscast after 7h00. The times of the broadcast must be notified by email to the LCD of ICASA at the latest 48 hours before the broadcast.

99.3.2 The broadcast may not be accompanied by any background music or sounds and the item must be read formally by the Station Manager or his/her representative, who must declare that he/she is the Station Manager or acting on behalf of the Station Manager.

99.3.3 The apology must be phrased thus:

"The Independent Communications Authority of South Africa has found that this station was grossly negligent in not having abided by the National and Provincial Elections Regulations 2024. This station

contravened the following Regulations, namely:—

Charge 1

Regulation 6(1) in that it broadcast PAs outside the broadcasting period.

Charge 2

Regulation 6(13) in that it failed to ensure that all PA broadcasts were clearly identified through a standard pre-recorded concluding message (tail) disclaimer.

Charge 3:

Regulation 4(14)(a) in that it failed to make (12) time slots of forty (40) seconds each for the broadcast of PEB, excluding the tail disclaimer, available throughout the election broadcast period.

Charge 4:

Regulation 4(14)(b) in that it failed to broadcast PEBs in accordance with the sequence and timing that was determined by the Authority upon allocation of time slots after the publication of the Regulations.

Charge 5:

Regulation 4(14)(d) in that it failed to ensure that all PEB broadcasts were clearly identified through a standard pre-recorded concluding message (tail) disclaimer.

Charge 6:

Regulation 4(16) in that it broadcast PEBs as PAs.

Charge 7:

Regulation 6(12) in that it broadcast PA content as PEB content.


This is in conflict with the ICASA Election Regulations which require that BSLs must comply with the Regulations. This station further extends its apology to ICASA and to its listeners for having committed the contraventions”.

[100] An electronic copy of each broadcast stating the date and the time of the broadcast, must be sent to the LCD at ICASA by email within 48 hours from the last broadcast in the said five days.

[101] A fine of R100 000 of which R20000 is suspended until after the next National and Provincial Elections must be paid to ICASA within 90 calendar days from when this judgment is issued.

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

[103] For the next 12 months, from the issuing of this judgment, Kurara FM is to submit monthly written reports to ICASA, through its Compliance Officer, setting details of its compliance in terms of this order.



Judge Thokozile Masipa
Chairperson of the CCC

10 March 2025

Date

