

Mr Pascalis Adams

ICASA

Email: padams@icasa.org.za

16 May 2022

Dear Mr Adams,

PRIMEDIA'S WRITTEN SUBMISSIONS ON THE DRAFT AMENDMENTS TO THE PROCESSES AND PROCEDURES FOR INDIVIDUAL LICENCES REGULATIONS

1. In Notice 901 published in Government Gazette No 46084 dated 24 March 2022 (the Notice), ICASA published draft amendments to the Process and Procedures Regulations for Individual Licences, 2010 (the 2010 Regulations), as previously amended, for public notice and comment by 15 May 2022 (the Draft Amendments). We note that the due date fell on a Sunday and our understanding is that the due date would therefore be the next working day, that being 16 May 2022.
2. Primedia (Pty) Ltd (Primedia) is the licensee in respect of four commercial sound broadcasting services. Primedia thanks ICASA for the opportunity to make these written submissions. Primedia wishes to make oral submissions too if it is ICASA's intention to hold public hearings in respect of the Draft Amendments.
3. *Ad section 4.3 of the Notice*
 - 3.1 The section proposes the substitution of section 5A of the 2010 Regulations.
 - 3.2 Primedia notes the proposed substitution but submits it is critical to stipulate that this must be contingent upon a finding of non-compliance with other applicable regulations or the Electronic Communications Act, 2005 (Act) by ICASA's Complaints and Compliance Committee and not merely upon the say so of a licensing officer of ICASA.
 - 3.3 Primedia therefore suggests that proposed section 5A is amended to read as follows:

5A. The Authority will not consider any application if the Applicant is in arrears with respect to any fees and/or the Complaints and Compliance Committee has



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PRIMEDIA PROPRIETARY LIMITED (Reg. No. 2005/044403/07) EXECUTIVE DIRECTORS: C.J. Patricios
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ALTERNATE DIRECTORS: C.N. Pangweni (Zimbabwean) DIVISIONAL EXECUTIVE: Tezne Saunders (CFO)

found the Applicant to be [is] not compliant with any other applicable regulations or the Act.

4. *Ad Section 5 of the Notice*

4.1 The section proposes the deletion of paragraphs (a) and (b) of Regulation 10(3) of the 2010 Regulations.

4.2 Primedia notes the proposed deletion but thinks it is critical to point out that in fact it is the whole of Regulation 10(3) that ought to be deleted otherwise regulation 10(3) will read as follows:

(3) An application for the renewal of a licence must further set out full particulars of:

(a) deleted; and

(b) deleted.,

leaving licensees in doubt as to what full particulars are required.

4.3 Primedia suggests that section 5 of the Notice is amended to reads as follows:

Regulation 10 of the regulations is hereby amended by the deletion of [paragraphs (a) and (b) of] sub- regulation (3).

5. *Ad section 6.2 of the Notice*

5.1 The section proposes the substitution of section 11(3) of the 2010 Regulations.

5.2 Primedia notes the proposed substitution but thinks it is critical to stipulate that this must be contingent upon a finding of non-compliance with other applicable regulations or the Act by ICASA's Complaints and Compliance Committee and not merely upon the say so of a licensing officer of ICASA.

5.3 Primedia suggests that proposed section 11(3) is amended to reads as follows:

(3) The Authority will not consider any application if the Applicant is in arrears with respect to any fees and/or the Complaints and Compliance Committee has found the Applicant to be [is] not compliant with any other applicable regulations or the Act.



6. *Ad section 7.1 of the Notice*

6.1 The section proposes the substitution of, inter alia, section 12(b) of the 2010 Regulations.

6.2 Primedia notes the proposed substitution but thinks it is critical to stipulate that this must be contingent upon a finding of non-compliance with other applicable regulations or the Act by ICASA's Complaints and Compliance Committee and not merely upon the say so of a licensing officer of ICASA and is in any event unnecessary given the existing provisions of 12(a) of the 2010 Regulations.

6.3 Primedia suggests that proposed section 7 is amended to read as follows:

The following regulation is hereby substituted for regulation 12(c) of the Regulations:

(c) where the ownership and control of the Transferee (in a transfer application) or Applicant (in the renewal application), by historically disadvantaged persons is less than the percentage prescribed by the Act and the Regulations in respect of the Limitations of Control and Equity Ownership by Historically Disadvantaged Groups (HDGs) and the application of the ICT sector code, 2001.

7. *Ad section 9.2 of the Notice*

7.1 The section proposes the addition of a new section 14A(4) to the 2010 Regulations.

7.2 Primedia notes that the proposed change in section 14A(4) but thinks it is important to clarify that the name and/or so-called trading name of a Licensee has nothing to do with the name of the broadcasting service which is operated by the Licensee.

7.3 As ICASA's Complaints and Compliance Committee (CCC) recently held in Kagiso and Primedia vs Classic FM (Cases 427 and 423/2021) the change of name of a station requires a licence amendment application (at paragraph [31]) and so we think it imperative that the Draft Amendments specify that section 14A(4) does not relate to the change of name of a station but only to the change of name of the Licensee.

- 7.4 This is particularly so as Classic FM in the above case sought to argue that the trading name of a Licensee is effectively the station name.
- 7.5 Primedia suggests that proposed section 14A(4) is amended to read as follows:
- (4) The name and/or trading name of the Licensee (note that this is not the name of the broadcasting service/station name, a change to which requires a licence amendment application), may not be changed to the extent that it may conflict or be confused with the name and/or trading name of another licensee.
8. In conclusion, we thank ICASA for the opportunity of making these submissions. Please do not hesitate to let me know if you have any questions or require any further information.

Yours Sincerely.



Tholoana Ncheke

Head of Legal