



Independent Communications Authority of South Africa

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**APPLICATION FOR THE AMENDMENT OF AN INDIVIDUAL COMMERCIAL
SOUND BROADCASTING SERVICE LICENCE BY VUMA 103 FM (PTY) LTD**

REASONS FOR DECISION

JANUARY 2021

A. INTRODUCTION

This document sets out the reasons for the decision taken by the Independent Communications Authority of South Africa ("the Authority") in respect of the application for the amendment an Individual Commercial Sound Broadcasting Service ("I-CSBS") licence ("the amendment application") by Vuma FM 103FM (Pty) Ltd ("the Applicant").

B. BACKGROUND

1. On 29 July 2020, the Applicant applied for the amendment of its I-CSBS licence. A resolution authorising Ms Nonkanyiso Pearl Nompumelelo Sokhulu to submit the application on behalf of the Applicant accompanied the application. Proof of payment in the amount of R66,420.00 was submitted with the application.
2. 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) ("the ICASA Act") with respect to the information submitted.
3. On 9 October 2020, the Authority gave notice of the amendment application in Government Gazette No. 43793 inviting all interested persons to make written representations in relation to the application within fourteen (14) working days of the date of the publication.
4. Written representations were received from Classic FM 102.7 (Pty) Ltd ("Classic FM"), indicating support for the application, and the Applicant responded to Classic FM's representations within the prescribed period.
5. The Authority did not deem it necessary to hold public hearings with regards to the amendment application as no adverse representations were made against the application.
6. On 23 February 2021, the Authority approved the Applicant's amendment application. The licence reflecting the amendments was issued on 17 March 2021.

C. THE AMENDMENT APPLICATION

7. The Applicant is a private company registered in terms of the Companies Act, 2008 (Act No. 71 of 2008), with the following registration number: 2009/016539/07, and it provides commercial sound broadcasting services in

Durban, Donnybrook, Eshowe, Glencoe, Kokstad and Newcastle in the Kwa-Zulu Natal Province.

8. The Applicant sought approval from the Authority to amend its I-CSBS Licence as follows:

- 8.1. To amend Clause 4 of the Schedule to its I-CSBS Licence which read as follows;

"4. Format

The Licensee shall have a programming format that is exclusively and predominantly gospel music led. The Licensee shall broadcast 60% music and 40% talk. 10% of music will be inspirational and spiritual."

such that it would read as follows:

"4. Format

(a). The Licensee shall have a format that is 60% music and 40% talk.

(b). Of the music broadcast, the single largest genre featured on the music playlist shall be gospel.

(c). Of the talk broadcast, a minimum of 15 hours a week shall be gospel/spiritual-related."

- 8.2. To amend Clause 5 of the Schedule to its I-CSBS Licence which read as follows;

"5. Local Content Obligations

The Licensee shall broadcast 50% of South African music on a weekly basis."

such that it would read as follows:

"5. Local Content Obligations

40% of the music broadcast shall be South African music, measured on a weekly basis."

9. The Applicant provided the following reasons for the proposed amendments:

- 9.1. The Applicant indicated that the reason for the proposed amendment of Clause 4 of its I-CSBS licence was to clarify and resolve existing ambiguities and interpretative difficulties in the wording of Clause 4

insofar as it related to the gospel format, whilst ensuring that gospel remains the predominant format of the Applicant;

- 9.2. The Applicant seeks to include R&B, Afro Pop, and Soul to its predominantly gospel music mix to satisfying a previously ignored section of the KZN population.
- 9.3. The Applicant indicated further that the reason for the amendment of clause 5 of its Licence conditions is that the reduction of its SA music quota from 50% to 40% will enable it to be competitive and financially viable.

D. APPLICABLE LEGISLATIVE AND REGULATORY FRAMEWORK

10. The legislative and regulatory provisions applicable to the amendment application are as follows:
 - 10.1. Section 10 (1) (c) and (h) of the Electronic Communications Act, 2005 (Act No.36 of 2005) ("ECA");
 - 10.2. Regulation 9 (Form C) of the Regulations;
 - 10.3. General Licence Fees Regulations as published in Government Gazette No. 42370 of 01 April 2019 ("Fees Regulations"); and
 - 10.4. Regulation 3(2) of the South African Music Content Regulations, 2016 ("SA Music Regulations").

E. DISCUSSION AND ANALYSIS

SA Music Regulations

11. The Authority took note that the SA Music Regulations, indicate that –

"a holder of a commercial sound broadcasting service licence must ensure that ... a minimum of 35% of the musical works broadcast in the performance period consist of South African music and that such South African music is spread evenly throughout the performance period."

12. The Authority took cognisance of the fact that the applicant had initially undertaken to provide more than the minimum prescription, and with the amendment, would still be over the minimum prescription.

Prescribed Format

13. The prescribed format is contained in Regulation 9 (Form C) of the Regulations, and states that *"an application to amend a licence must be in the format as set out in Form C and it must be accompanied by the applicable fee¹."*
14. The amendment application was submitted in terms of Regulation 9 (Form C) of the Regulations. The Applicant has made the required payment of R66,420.00 for the amendment of its I-CSBS licence and provided proof of payment.
15. Section 10(2) of the ECA provides that:
- "The provisions of section 9(2) to (6) apply, with the necessary changes, to the amendment of an individual licence."*
16. The Authority followed the process outlined in section 9 (2) to (6) of the ECA by complying with the following requirements:
- 16.1. Interested persons to submit written representations in relation to the applications within a period mentioned in the notice². On 9 October 2020, the Authority published Notice 561 of 2020 in Government Gazette No. 43793 inviting all interested persons to make written representations in relation to the application within fourteen (14) working days of the date of the publication.
- 16.2. Interested persons were afforded an opportunity to submit written responses to any representations submitted. Stakeholders and affected persons were afforded an opportunity to make representations and the Applicant was also afforded an opportunity to respond to the representations by Classic FM.

¹ Regulation 9 (1) of the Amended Processes and Procedures Regulations

² Government Gazette No. 42545 of 28 June 2019

- 16.3. The Authority did not deem it necessary to hold public hearings with regards to the amendment application as no adverse representations were made against the application.
- 16.4. The Authority did not require the Applicant or Classic FM to furnish the Authority with any additional information as there was none required to consider the application, as per section 9 (3) of the ECA.
- 16.5. The Authority made the amendment application available on the Authority's website for public inspection.
- 16.6. Having satisfied itself that the Applicant submitted all the required information and that the requirements prescribed in terms of regulation 9 (Form C) of the Regulations read with the ECA were met by the Applicant, the Authority communicated its decision to the Applicant on 23 February 2021, in accordance with section 9(5)(b) of ECA.
- 16.7. The amendment application has been granted on standard terms and conditions applicable to individual service broadcasting service licences, and no additional terms and conditions have been prescribed.

Research conducted in support of the proposed amendments

- 17.Paragraph 3.3 of Form C requires that research be provided where the proposed amendment is in relation to programming. The Applicant provided research as follows:
- 17.1. The Applicant submitted that although at inception when it applied for the 100% gospel genre licence, it was under the impression that this endeavour would be commercially viable; the market has not proven to be so. This has been evidenced by the fact that in its early days, the Applicant failed to gain a critical mass of listeners and thus failed to attract sufficient funding to meet its operational costs.
- 17.2. The Applicant conducted research into its target market to discover ways in which it can optimise advertising revenue whilst still maintaining its gospel genre format.
- 17.3. In this endeavour the Applicant made use of the Broadcast Research Council's ("BRC") Radio Audience Measurement ("RAM") to find a target

audience that was not being catered to by its competitor stations – East Coast Radio, iGagasi FM and Ukhozi FM.

17.4. By examining the RAM data during the year 2017, the Applicant made the following determinations:

17.4.1. The East Coast Radio audience was found to be predominantly Indian/Asian and White, with two thirds of the audience falling into those racial categories, and more than two thirds being first language English speakers.

17.4.2. The iGagasi audience fell predominantly within the category of youth, with 73% of its audience being under the age of 34 and unlikely to be in the upper LSM brackets.

17.4.3. Ukhozi FM's audience ranged across all age groups, without targeting any particular range, and with a huge proportion of listeners being in the middle to lower income levels - 93% of the audience falling into the LSM 7 and under categories.

17.4.4. Based on the information provided above, the Applicant indicated that the Black, urban, upper LSM adults did not appear to have a radio station that had been crafted specifically to meet their needs. The urban, working, isiZulu speaking 35–40-year-old was not accommodated in the commercial/public sound broadcasting landscape as things stood.

17.5. It was therefore important for the Applicant to tailor its content to cater for this newly discovered target audience. To do so, the Applicant conducted research to understand the size of the new target audience and also the content-related needs of the target audience.

17.5.1. Auditorium Music Research (AMR) was conducted in November 2016 via a series of supplementary questions, conducted by BRC Research.

17.5.2. The AMR conducted by BRC Research showed that the Applicant was not seen as a station that delivered on the style of music which this under-served target audience also required, namely: R&B, Soul, Afro Pop, and Oldies.

- 17.5.3. The study also confirmed the importance, for the target audience, of maintaining a flow of gospel and/or religious programming, including in a talk format, where appropriate, as this would not likely be found on any other commercial radio station in the broadcast area and was in line with the identification of the target audience as being driven by values and faith.
- 17.5.4. On the basis of such results and the results of the music test conducted during the same survey, the Applicant adjusted its programming to suit the music and talk preferences of this audience. However, the station continued to ensure that gospel remained the most played and predominant music genre broadcast when compared to R&B, Afro Pop, and Soul music that the target audience also demanded. Further it continued to provide gospel-focused talk radio that resonated with the values and beliefs of the target audience. The Applicant saw an upward climb in its audience figures which also led to improvements in its profitability.
- 17.5.5. A year after the above research was conducted, in October 2017, an Online Survey was conducted by Tiso Blackstar in order to assess the audience response to the programming changes.
- 17.5.6. The survey confirmed the new target audience as previously identified and 44% of the respondents indicated that they started listening to the Applicant following the programme adjustment, the main attraction being that the Applicant now plays the music they prefer.
- 17.6. It is based on the above research that the Applicant sought to amend its licence conditions.
18. The Authority is satisfied that the research conducted substantiates the reasons for the proposed amendments.

The implications of the proposed amendments.

19. The Applicant is required to provide implications of the amendments with specific reference to section 10(1)(a), (b), (c) and (d) of the ECA³.

³ Paragraph 3.3 of Form C

20.Implications of the licence amendments applied for in respect of section 10(1)(a) of the ECA⁴:

20.1. The Applicant indicated that the amendment would assist in bringing its licence conditions in line with its competitors. To this end the Applicant indicated that, to its knowledge, it is the only commercial sound broadcasting licensee among its competitors (East Coast Radio, iGagasi) with the obligation to broadcast a particular genre with a religious format, such as gospel.

20.2. The Applicant indicated further that there is no obligation on its competitors (East Coast Radio, iGagasi) to broadcast over 35% of South African Music as per the SA Music Regulations.

20.3. Consequently, the Applicant submitted that the proposed amendments would “make the terms and conditions of the individual licence consistent with the terms and conditions being imposed generally in respect of all individual licences of the same type”.

21.Implications of the licence amendments applied for in respect of section 10(1)(b) of the ECA⁵.

21.1. The Applicant indicated that it had been finding it difficult to attract advertisers and listeners with its current licensing conditions that require 50% South African Music as well as an exclusively gospel music format. According to the Applicant, competition is fierce because its direct competitors (East Coast Radio and iGagasi) are not as constricted in terms of programming.

21.2. The Applicant is of the view that, the granting by the Authority of the proposed amendments would ensure fair competition between licensees.

22.Implications of the licence amendments applied for in respect of section 10(1)(c) of the ECA⁶.

⁴ The Authority may amend an individual licence to make the terms and conditions of the individual licence consistent with the terms and conditions being imposed generally in respect of all individual licences of the same type.

⁵ The Authority may amend an individual licence for the purpose of ensuring fair competition between licensees.

⁶ The Authority may amend an individual licence to the extent requested by the licensee provided it will not militate against orderly frequency management and will not prejudice the interests of other licensees.

22.1. The Applicant indicated that the amendment application does not have any impact on radio frequency spectrum issues and therefore does not militate against radio frequency spectrum management.

22.2. The Applicant submitted that the proposed amendments will not prejudice other licensees given that the amended provisions will only be slightly less restrictive than the current provisions.

23.Implications of the licence amendments applied for in respect of section 10(1)(d) of the ECA.⁷

23.1. The applicant submitted that the amendment application was not related to technology management or frequency management.

24.Implications of the licence amendments applied for in respect of section 10(1)(f) of the ECA.⁸

24.1. The Authority is of the view that the granting of this amendment application will serve the following objectives of the ECA:

24.1.1. Promote competition in the ICT sector; and

24.1.2. Promote the development of public, commercial and community broadcasting services which are responsive to the needs of the public.

25.The Authority is satisfied with the submissions.

Undertakings and other matters which the Authority may need to consider.

26.Paragraph 5.1 of Form C requires the Applicant to provide any undertakings and other matters which the Authority may need to consider.

27.The Applicant provided the following undertakings:

27.1. To broadcast a minimum of 15 hours a week of gospel/spiritual-related talk programmes;

27.2. To ensure that the single largest genre, the predominant genre, featured on the Applicant's playlist is gospel; and

⁷ The Authority may amend an individual licence to the extent necessitated by technological change or in the interest of orderly frequency management.

⁸ The Authority may amend an individual licence after consultation with the licensee where the Authority is satisfied that the amendment is necessary to ensure the achievement of this Act.

27.3. To play at least 40% local content.

28.The Authority is satisfied with the undertakings stated above as they are in line with the applicable regulatory framework.

Representations and Responses

29.As stated in Part B of this document, written representations in response to the publication of the amendment application were received from Classic FM, on 14 October 2020.

30.Classic FM indicated that it supports the Applicant in its contentions regarding the need for a viable, sustainable format; the need to meet consumer demand as set out, and the challenges faced by niche format stations.

31.It stated further that it is in support of the research provided by the Applicant in support of the amendment application.

32.In response, the Applicant, on 14 October 2020, noted the contents of the representations made by Classic FM and expressed gratitude to Classic FM for taking the time to make the Authority aware that the market-driven need to be responsive to audiences' changing tastes/demands is a challenging one facing all commercial broadcasters, particularly those with niche formats prescribed in licence conditions.

33.The Applicant and Classic FM were therefore in compliance with the requirements of the regulation publishing the amendment which requires the representations to be made within 14 working days of publishing of the gazette, as well as the requirement for the response to be made within 21 working days of receipt.

34.There were no further representations received on the closing date, 29 October 2020.

Precedent of granting on amendment

35.In February 2016, the Authority approved 94.5 KFM's application to amend its news broadcast obligation from "5 minutes every hour per day" to "a minimum of thirty (30) minutes of news per day between 05h00 and 23h00 during weekdays."

36.The reason for granting the amendment was to align the 94.5 KFM's with its fellow competitors.

37.The Applicant currently seeks amendment such that it too is aligned with its competitors, in order to promote competition as well as bringing its licence conditions in line with its competitors.

F. AUTHORITY'S DECISION

In the light of the above, on 23 February 2021, the Authority approved the amendment of control application.



DR. KEABETSWE MODIMOENG

CHAIRPERSON

DATE: 11 / 06 / 2021