



Independent Communications Authority of South Africa

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**APPLICATION FOR THE AMENDMENT OF INDIVIDUAL COMMERCIAL
SOUND BROADCASTING SERVICE AND RADIO FREQUENCY
SPECTRUM LICENCES BY CAPE TOWN RADIO (PTY) LTD T/A SMILE
90.4 FM IN TERMS OF SECTION 10 AND SECTION 31(4) OF THE
ELECTRONIC COMMUNICATIONS ACT NO. 36 OF 2005**

REASONS FOR DECISION

AUGUST 2022

1. INTRODUCTION

This document sets out the reasons for the decision taken by the Independent Communications Authority of South Africa ("the Authority") to grant in part the amendment of the Individual Commercial Sound Broadcasting Service ("I-CSBS") and to refuse/reject the Radio Frequency Spectrum ("RFS") Licence application lodged by Cape Town Radio (Pty) Ltd t/a Smile 90.4 FM ("the Applicant").

2. BACKGROUND

- 2.1. On 26 March 2021, the Authority received an application from the Applicant to amend its I-CSBS and RFS Licences.
- 2.2. The applications were lodged in terms of sections 10 (1)(a), (c), (f) and 31(4) of the Electronic Communications Act, 2005 (Act No. 36 of 2005) ("the ECA"), read with regulation 9 (Form C) of the Processes and Procedures Regulations¹, as amended, ("the Processes and Procedure Regulations").
- 2.3. The Applicant requested confidentiality in terms of Section 4D of the Independent Communications Authority of South Africa Act, 2000 (Act No. 13 of 2000) ("the ICASA Act"). The confidential information relates to a report conducted by an international consultant and the Applicant's financial performance comparison report. The Authority granted the Applicant confidentiality on both reports.
- 2.4. On 10 June 2021, the Authority published the Applicant's amendment application under General Notice No. 345 in *Government Gazette*: 44685, inviting interested persons to submit written representations and responses, within fourteen (14) working days. The closing date for written representations was 01 July 2021.

¹ Regulation 9 of the Processes and Procedures Regulations for Individual Licences, 2010.

- 2.5. On 30 June 2021, the South African Broadcasting Corporation ("SABC") and Primedia (Pty) Ltd in respect of KFM submitted written representation to the Applicant and the Authority, objecting to the proposed amendments and requesting that the Authority should not approve the application.
- 2.6. On 07 July 2021, the Applicant requested an extension for submitting the written responses to 16 July 2021. On 14 July 2021 a further request for an extension citing the challenges caused by the Novel Coronavirus("Covid-19") and the unrest which took place in Gauteng and KwaZulu-Natal was received. After careful consideration, the Authority granted the extension to 23 July 2021.
- 2.7. On 23 July 2021, the Applicant submitted its written responses to the Authority and the SABC for consideration.
- 2.8. In terms of section 9 (2)(e) of the ECA, the Authority has the discretion to conduct a public hearing concerning an application.
- 2.9. The Authority was of the view that it was not necessary to hold public hearings because the received representations were outlined and adequately addressed.

3. APPLICABLE LEGISLATIVE FRAMEWORK

This application was lodged in terms of the following legislative and regulatory provisions:

- 3.1. Section 10 (1) (a), (c), and (f) of the ECA states as follows:

"The Authority may amend and individual licence after consultation with the licensee-

(a) 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; ...

(c) 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; ...

(f) where the Authority is satisfied that the amendment is necessary to ensure the achievement of the objectives of this Act".

- 3.2. Regulation 9 (Form C) of the Processes and Procedures Regulations which states the following:

"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 fee²."

The Applicant completed Form C and submitted proof of payment totalling an amount of sixty-six thousand four hundred and twenty rands (R66,420.00).

- 3.3. Section 31(4) (d) of the ECA states as follows:

"The Authority may amend a radio frequency spectrum licence – if requested by the licensee concerned to the extent that the request is fair and does not prejudice other licensees."

- 3.4. Regulation 9 (1) (Form A) of the Radio Frequency Spectrum Regulations, 2015³ ("RFS Regulations"), as amended states as follows:

"An application for an amendment to a radio frequency spectrum licence must be in terms of Form A of Annexure A and must include the following:

(a) A copy of the radio frequency spectrum licence and information regarding

² Regulation 9 of the Processes and Procedures Regulations for Individual Licences, 2010.

³ Notice No. 38641, *Government Gazette*: 38641 published on 30 March 2015.

- conditions imposed on the licence;*
- (b) The proposed dates after which the proposed amendment shall become valid;*
- (c) Details of all proposed amendments and the reasons for the proposed amendments;*
- (d) Proof of payment of the prescribed application fee; and*
- (e) Any other information the Authority may require.”*

The Applicant applied in line with Regulation 9(1) (Form A) of the RFS Regulations.

- 3.5. Schedule 1 of the General Licence Fees Regulations as published in Government Gazette No 44392 of 01 April 2021 (“Fees Regulations”).

4. PROPOSED AMENDMENTS TO THE LICENCE

4.1. Proposed I-CSBS licence amendments

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

4.1.1. Programming Format

- 4.1.1.1. Clause 4.1.1 of its I-CSBS Licence currently reads as follows:

“Format: The Licensee shall have a programming format of 60% music and 40% talk, providing entertainment, informative and educational programmes by means of features on lifestyle issues and talk in the form of phone-in's and other forms of programming. The music to be broadcast will include, amongst other genres, South African pop, South African Afrikaans music, international pop and international Gold.”

4.1.1.2. The Applicant seeks approval for Clause 4.1.1 of its I-CSBS to read as follows:

"Format: The Licensee shall have a programming format of music and talk, providing entertainment, informative and educational programmes by means of features on lifestyle issues and talk in the form of phone-in's and other forms of programming. The music to be broadcast will include, amongst other genres, South African Pop, South African Afrikaans music, International Pop and International Gold."

4.1.2. **Local Content Obligations**

4.1.2.1. Clause 4.1.2.1.1 of its I-CSBS licence currently reads as follows:

"The Licensee shall adhere to the following, namely:

4.1.2.1.1 Broadcast 50% South African music during its daily programming, the percentage will be sustained by the play listing of between seven (7) to nine (9) tracks and hour."

4.1.2.2. The Applicant seeks approval for Clause 4.1.2.1.1 of its I-CSBS licence to read as follows:

"The Licensee shall adhere to the following, namely:

4.1.2.1.1 The Licensee shall adhere to the following, namely Broadcast 40% South African content during its daily programming."

5. REASONS FOR THE PROPOSED AMENDMENTS

5.1. The Applicant provided the following reasons for its proposed amendment:

5.1.1. In respect of Clause 4.1.1, albeit the Applicant has been operating for roughly seven (7) years, it is under extensive financial strain and needs financial support from investors. The Applicant advises that to date its investors have injected a significant amount of capital to keep it afloat.

- 5.1.2. The most recent financial contribution was injected in the year 2020. The Applicant advises that with the current depressed economy it will likely require extra financial support during 2021 and has attached Annexure E to exhibit that since its inception it has been in financial difficulty.
- 5.1.3. The Applicant believes that its endeavours to improve the financial standing of the station will be considerably subverted if it continues to be obliged to adhere strictly to the format required under clause 4.1.1 of its I-CSBS licence, which has proved to be unattractive to its target audience. Music is a key-driver of audience numbers and not talk content.
- 5.1.4. Playing less South African music and more international music will allow it to reach a larger audience.
- 5.1.5. In further support of the amendment, the Applicant cited its financial difficulties as attributed to the following several factors, amongst others:
- 5.1.5.1. The South African economy has been stagnant for several years which has led to diminished advertising revenues which is its predominant source of income;
- 5.1.5.2. The Applicant is unattractive to advertisers due its modest listenership which is attributed to its current prescribed format; and
- 5.1.5.3. Technological developments which have increased the audio services offered to consumers as well as the unregulated internet-based audio services are exerting competitive pressure on traditional radio broadcasters such as the Applicant for audience share and consequently advertising revenue.
- 5.1.6. It is worth noting that the Applicant's licensing terms and conditions are informed by its application submitted in response to the Invitation to

Apply for Individual Broadcasting Service Licences published on 27 March 2009 ("The ITA").

- 5.1.7. The Applicant advanced that because of the technological developments outlined in paragraphs 3.5.3 of its application⁴, the following was observed:

"Podcasts in the form of "classic" podcasts as well as catch-up shows of radio broadcast shows have gained traction in South Africa, having grown rapidly off a small base of 1.4 million monthly listeners in 2013 to 5.1 million by the end of 2017. According to a report by Price Water House Corporation of South Africa ("Pwc"):

South Africa's radio market is on the decline, losing some of its market share to online streaming services. South Africans are also spending less time on average listening to the radio daily. Streaming services create competition for broadcasters as they attract music fans away from the radio listening base. But contrary to music streaming services, radio offers the 'human touch' through curated entertainment, news, talk shows, and popular radio personalities. SA's radio market saw another year of slower growth in 2015 but this is expected to recover over the period 2016 to 2020. The market is expected to pick up and grow by a CAGR of 4.0% over the forecast period and is estimated to be worth R5.3 billion by 2020"⁵.

6. RESEARCH CONDUCTED IN SUPPORT OF THE PROPOSED AMENDMENTS

- 6.1. In addition, the Applicant submitted an independent research study as Annexure F⁶, published by the Broadcast Research Council of South Africa ("BRC") consisting of the results of the research conducted to determine the preference of radio listeners in South Africa, 32% of participants indicated that they most often prefer to listen to music.

⁴ Paragraph 3.5.3 of the Application pg. 21.

⁵ Title of the article: Radio Loses market share to online streaming services, author: Sanchia Temkin, accessed at <https://www.pwc.co.za/en/press-room/radio-loses-market-share-to-online-streaming-services.html>.

⁶ Annexure F of the Application.

Nevertheless, this research study did not provide results for talk content.

- 6.2. In 2019, the Applicant conducted its own listener preference survey⁷, with a response size of 758 people in which listeners were asked (amongst other questions) the following questions: *"Would you like Smile 90.4 FM to play more music"* and *"Would you like Smile 90.4 FM to play more South African Artists (up to 50%) like AKA, The Rockets, Brenda Fassie, Jae, Adam, Casper Nyovest, Ladysmith Black Mambazo, Majosi and Judith Sephuma"*.
- 6.3. In response to the first question in the Survey as indicated in paragraph 6.2 above, 96% of participants responded 'Yes'.
- 6.4. The Applicant has noted that the format of its competitor KFM, does not specify the amount (or percentage) of talk content to be offered. Furthermore, the formats of other competitors in the same market such as Good Hope FM and Heart 104.9 do not require talk content at all. The Applicant reflected on the formats of its competitors KFM, Good Hope FM, and Heart FM as follows:
- 6.5. At clause 4, the KFM licence stipulates as follows: *"The Licensee shall have a programming format of talk and music in adult contemporary format providing a programming mix of music and information (including coverage of community affairs)"*;
- 6.6. At clause 4, the Good Hope FM licence stipulates as follows: *"The Licensed service shall be a sound broadcasting service in contemporary Hit Radio Rhythmic format"*; and
- 6.7. At clause 4, the Heart 104.9 FM licence stipulates as follows: *"The format of the station is an adult contemporary jazz format."*

⁷ Annexure G of the Application.

- 6.8. The Applicant submits that the requirement of clause 4.1.2.1.1 of its Licence has led to compliance challenges. According to the Applicant, in order for it to play 50% South African music within an hour, it requires playing 13.05 minutes (50% X 26.1 minutes) per hour and the average length of the South African music which it has in its database is three (3) minutes and forty (40) seconds per song. The maximum number of songs of that length that can be played in an hour is 3.54 songs (effectively four (4) songs per hour)⁸.
- 6.9. In response to the second question in the Survey as indicated in paragraph 6.2 above, 63% of the participants responded 'No' and 37% responded 'Yes'. It is however worth noting that the Applicant's selection of musicians (genre) in this question might not appeal to its target audience, because the Licensee is licensed to offer amongst other genres South African pop, South African Afrikaans, and South African rock music.
- 6.10. The Applicant further submitted that its competitors have less onerous local content obligations as compared to the Licensee:
- 6.11. The KFM Licence provides as follows: *"The Licensee shall ensure at least thirty percent (30%) local content in its music output"*;
- 6.12. The Good Hope FM Licence provides as follows: *"In each year, the Licensee shall, within thirty (30) days of end of the quarter, submit to the Authority written records indicating the extent of:*
- the different genres; and*
- the South African music content, in programming material broadcast on the service during that quarter, in each instance, distinguishing between the genres, providing the relevant details in relation to prime time and the period between 05h00 and 23h00 daily ("the South African broadcast period"), and expressing the relevant details of both as an*

⁸ Appendix H of the Application

aggregate in minutes and as a percentage of the total of all such programming material.”; and

- 6.13. Heart FM has no additional local content obligations other than to comply with the legislated 35% local content.
- 6.14. The Applicant submitted Annexure H to demonstrate that in an hour, it is required to make provision for other content which is required in terms of its Licence conditions, such as talk (approximately 17,4 minutes), news (approximately 3 minutes), and advertisements (approximately 11 minutes). In other words, only a portion of the hour is available to playlist the seven (7) to nine (9) South African songs in circumstances where a song is of a duration of approximately 3 minutes and 40 seconds.
- 6.15. The Applicant states further that based on the facts of paragraph 6.14 above it is required to almost exclusively play South African music and its inability to broadcast the remaining genres included in the Licence format is impacting its efforts to grow the station’s audience share. It is the Licensee's view that to improve market competitiveness and sustainability, it should include more international music in its on-air offering.

7. IMPLICATIONS OF THE PROPOSED AMENDMENTS

- 7.1. The Applicant believes that the proposed amendments would not impinge upon the objects enunciated in section 2 of the ECA and that same is likely to improve its financial standing and improve its offering to listeners. The Applicant submits that proposed amendments will advance the following objects of the ECA by:
- 7.1.1. encouraging investments in the communications sector;
 - 7.1.2. promoting competition within the ICT sector;
 - 7.1.3. developing and promoting SMMEs;

- 7.1.4. promoting the development of broadcasting services which are responsive to the needs of the public;
- 7.1.5. the stability of the ICT sector.
- 7.2. Further, the Applicant submits that proposed amendments would not negatively impact the public interest as its competitors namely KFM, Good Hope FM, and Heart 104.9 FM have distinct on-air content. Therefore, diversity of content contemplated by sections 2s(i) and 8(2)(l) of the ECA will not be undermined.
- 7.3. Furthermore, the Applicant has indicated that numerous other Licensees in the Cape Town Metropolitan footprint offer the "talk content" format in an array of South African languages, including the following: Radio Sonder Grense (RSG); SAFM, Cape Talk, Umhlobo Wenene, Radio CCFM, Voice of the Cape, Radio Koinonia Community, Radio Kaapse Punt, Radio 786, Bush Radio and Radio Tygerberg. Accordingly, consumers will not be worse off should the amendments be granted.
- 7.4. The Authority has considered the Applicant's views regarding the implications on the proposed amendments and reasoned as follows:
- 7.5. The Applicant's endeavour to offer a format similar to its competitors will contravene section 2(s)(i) of the ECA. For example, KFM and Heart FM have non-descriptive formats. They are, just like the Applicant, in the Cape Town Metropolitan area and target the same audience. The Applicant will accordingly undermine the availability of a diverse range of content from a format point of view within the City of Cape Town Metropolitan area; and
- 7.6. The Applicant's proposal to delete the descriptive percentages of Talk vs Music format will go against the essence and uniqueness of the Applicant's format which was a promise of performance proposed by the Applicant.

8. WRITTEN REPRESENTATIONS AND RESPONSES

8.1. On 30 June 2021, written representations in response to the publication of the amendment application were received from the SABC and KFM.

8.2. SABC Representations

The SABC stated that prior to approving the amendment application the Authority should consider the following factors:

8.2.1. The expansion of the Applicant's coverage area should not disrupt the orderly radio frequency management, prescribed in the Radio Frequency Plan and the provisions of section 10(1)(c) of the ECA, which states that the amendment should not militate against orderly frequency management and should not prejudice the interests of the Licensees.

8.2.2. In respect of the radio format, the Authority's decision to grant the Applicant a licence was influenced by the market research of the Applicant which supported the broadcast format and the programming provided by it. The Authority acknowledged that the Applicant does not offer markedly different programming from other commercial stations in the coverage area⁹. In the same vein, the Authority acknowledged that the Applicant's talk/music format and 60% Afrikaans/40% English language mix is different from other services that are available in their coverage area¹⁰. Based on the Authority's assertions in Reasons Document¹¹, the distinctiveness of the Applicant should not be diluted as having similar services is not desirable for the Public.

8.2.3. In response, on 23 July 2021, the Applicant noted the contents of the representations made by the SABC with regards to its Licence which

⁹ ICASA Reasons Document, Licensing Process for Individual Commercial Free-to-air Sound Broadcasting Services Licenses, May 2012, Clause 5.17.1.1 at Page 16.

¹⁰ *Ibid.*

¹¹ *Ibid.*

was awarded in 2012, and that the SABC has certainly seen the changes in online technology platforms, listener preference, and a change in content on several radio stations. The environment has significantly changed with radio stations now competing against international streaming services like Deezer, Apple Music, and Spotify.

8.3. **KFM Representations**

KFM indicated that it is opposed to the amendment application for the following reasons:

- 8.3.1. the deletion of the specified percentages of music versus talk content gives *carte blanche* to Smile FM to determine what these should be. Effectively allowing it to change its existing format to, theoretically, 99% music and 1% talk;
- 8.3.2. currently the Applicant is the only commercial FM broadcaster in Cape Town which has a format containing significant talk-related obligations; this is a key differentiator between the Applicant and its commercial and public/commercial competitors on FM in Cape Town, all of whom are music-operated stations; and
- 8.3.3. this format mix of talk and music was, clearly, the main reason why the Licensee was awarded the Licence in the first place, out of a competitive raft of applications.
- 8.3.4. In the Authority's Reasons Document ("the Licensing Reasons Document") in respect of the applications for I-CSBS licences in Gauteng, Kwa-Zulu Natal, and Western Cape Provinces¹², it was clear there were thirteen (13) applications for the single licence available in Cape Town¹³.

¹² *Ibid.*

¹³ At Paragraph 11.

8.3.5. In Part II (Western Cape) of the Licensing Reasons Document, the Authority notes that the Applicant proposed a programming split of 50% talk and 50% music¹⁴.

8.3.6. KFM indicates that however, it does not object, in principle to an amendment to the format if it is to apply to Saturdays, Sundays, and public holidays only, leaving the 60% music and 40% talk format in place for Mondays till Fridays excluding public holidays”.

8.4. **Response by Smile FM**

8.4.1. In response, on 23 July 2021, the Applicant indicated that for years Kagiso Media and Primedia have enjoyed the ‘top dog’ spot in terms of advertising revenue and therefore there should be no comparison drawn between them in this regard.

8.4.2. Primedia is at liberty to object to an amendment application by another commercial sound broadcaster, but it is noteworthy that in this application, the Applicant seeks to become financially sustainable, this is not an application which the Applicant seeks to entrench an already dominant position, which certainly appears to be the approach taken by Primedia.

8.4.3. The amendment application is informed by the financial strain that it has been in over the years and that granting this amendment will not only support its operations, but it will promote competition and diversity, investment in the sector and the economy and stability in the broadcasting sector.

8.4.4. In 2018, Primedia submitted an amendment application to the Authority in respect of the 947 Licence where Primedia sought to remove a clause that promotes local concerts in favour of a “gig guide”. The Applicant is of the view that Primedia demonstrated that they can provide an

¹⁴ At Paragraph 5.9.1.

alternative in support of local music which in their view, was better than what they were obliged to offer in terms of their licence.

9. The Authority's Analysis of written representations:

- 9.1. The Authority has considered the written representations made by KFM SABC, and the Applicant's response. In the first instance, with regards to KFM's submission, the Authority finds KFM's submission contradictory. On the one hand, KFM opposes the amendment on the ground that the deletion of the specified percentages of music versus talk content gives carte blanche to the Applicant to determine what these should be. KFM further states that this will effectively allow it to change its existing format to, theoretically, 99% music and 1% talk. On the other hand, KFM submits that in principle it is not opposed to an amendment to format if it is to apply to Saturdays, Sundays, and public holidays only, which will contribute to the diversity of the format. KFM fails however to provide reasons as to the rationale behind the latter, considering that this is not an alternative that has been provided or applied for by the Applicant. KFM's submission in this regard fails to clarify how this will contribute to format diversity during Saturdays, Sundays, and public holidays and stability to the Applicant.
- 9.2. Notwithstanding the Applicant's submission that the financial strain and exponential decline in revenue is the key driver behind the amendment application. The approval of the amendment will not only support its operations, but it will promote competition and diversity as well as investment in the sector, the Authority is of the considered view that the Applicant was licensed to cater to a niche market based on programming format which sets it apart from its competitors in Cape Town. It was this format containing talk-related obligations which was a critical differentiator between it and its commercial competitors that persuaded the Authority to award the licence. Accordingly, the Authority is of the view that diluting this distinctiveness of the Applicant will not contribute to a diverse range of commercial services in the Cape Town area. In fact, the format amendment will distort Smile FM's prescriptive unique format.

The proposed non-prescriptive mirroring of the other licensees and in particular KFM will lead to a lack of diversity in the Cape Town area.

10. RADIO FREQUENCY SPECTRUM

10.1. The Applicant seeks to amend its RFS licence by adding twelve (12) transmitter sites in the Western Cape province.

10.2. The Applicant seeks to increase its coverage area from Cape Town metropolis to Western Cape province.

10.3. The Authority considered the proposed technical parameters and conducted interference analysis on the proposed frequencies. The results are as follows for the twelve (12) proposed transmitters:

10.3.1. Grabouw 95.9 MHz

Rejected - The proposed frequency of 95.9 MHz at Grabouw is licensed to Radio Disa, a community radio station, therefore is not available for commercial broadcasting service.

10.3.2. Hermanus 87.7 MHz

Rejected - The proposed frequency of 87.7 MHz at Hermanus is coordinated and categorized for community broadcasting service. This frequency is already licensed to Hermanus Community Radio.

10.3.3. Cape Town 104.5 MHz

Rejected - The proposed frequency 104.5 MHz at Cape Town is coordinated and categorized for community broadcasting services and is therefore not available for commercial broadcasting service.

10.3.4. Stellenbosch 90 MHz

Rejected - The proposed frequency 90 MHz at Stellenbosch is not coordinated and categorized for commercial broadcasting service and will cause interference with Voice of Cape at Fish Hoek transmitter on 89.8 MHz and 5 FM at Table Mountain of 89.9 MHz.

10.3.5. Fish Hoek 99 MHz

Rejected - The proposed frequency 99 MHz at Fish Hoek was coordinated and categorized for community broadcasting service and is therefore not available for commercial broadcasting services.

10.3.6. Franschhoek 87.6 MHz and 89.8 MHz

Rejected - The proposed frequency 87.6 MHz at Franschhoek is coordinated and categorized for community broadcasting services and is therefore not available for commercial broadcasting service.

Rejected - The proposed frequency 89.8 MHz at Franschhoek is not coordinated and categorized for commercial broadcasting service and will interfere with Voice of Cape at Fish Hoek transmitter on 89.8 MHz and 5 FM at Table Mountain of 89.9 MHz.

10.3.7. Paarl 106 MHz

Rejected - The proposed frequency of 106 MHz at Paarl is not coordinated and categorized for commercial broadcasting services and will interfere with Witzenberg Community Radio at Ceres Dam transmitter on 105.9 MHz and spare frequency of 106 MHz at Simonstown categorized for public broadcasting service.

10.3.8. Hout Bay 105.3 MHz

Rejected - The proposed frequency of 105.3 MHz at Hout Bay is not coordinated and categorized for commercial broadcasting services and it will interfere with SAFM at Paarl transmitter on 105.2 MHz and SAFM at Grabouw transmitter on 105.3 MHz.

10.3.9. Khayelitsha 98.2 MHz

Rejected - The proposed frequency 98.2 MHz at Khayelitsha is coordinated and categorized for community broadcasting service and is not available for commercial broadcasting services.

10.3.10. Villiersdorp 106.5 MHz

Rejected - The proposed frequency of 106.5 MHz at Villiersdorp is not coordinated and categorized for commercial broadcasting service and will interfere with SAFM at Tygerberg transmitter on 106.6 MHz and SAFM at Matjiesfontein on 106.4 MHz.

10.3.11. Worcester 92.6 MHz

Rejected - The proposed frequency of 92.6 MHz at Worcester is coordinated and categorized for community broadcasting service and is therefore not available for commercial broadcasting service.

10.3.12. Talana Farm / Malmesbury 97.3 MHz

Rejected - The proposed frequency of 97.3 MHz at Malmesbury is coordinated and categorized for community broadcasting services and is therefore not available for commercial broadcasting service.

11. CONCLUSION

11.1. The Authority considered the proposed amendments and reasons provided by the Applicant and has noted the following:

11.1.1. The Applicant's proposal to decrease its South African music content from 50% to 40% is still above the minimum requirement of 35% for commercial sound broadcasting service licensees as provided for in regulation 3(2) of the ICASA South African Music Content Regulations, 2016¹⁵. Additionally, the wording 40% daily programming is in line with the current wording of clause 4.1.2.1.1 of the licence.

¹⁵ Government Notice No. 344, Government Gazette: 39844 published on 23 March 2016.

- 11.1.2. The Authority has taken into consideration the Applicant's 2019 Annual Compliance Report. The Applicant was in compliance with clause 4.1.1 and not in compliance with clause 4.1.2.1.1 of its Licence term and conditions.
- 11.1.3. The Authority is satisfied with the reasons advanced by the Applicant with regards to the challenges experienced in playlisting seven (7) to nine (9) South African songs in one (1) hour. It must be noted that performance is measured weekly, therefore removing this play listing obligation will alleviate the challenges experienced by the Applicant.
- 11.2. The Authority is satisfied that the amendment of Clause 4.1.2.1.1 is in line with Section 10(1)(a) of the ECA as it aims to make the terms and conditions of the individual licence consistent with those being imposed generally in respect of all individual licences of the same type.
- 11.3. The Applicant's proposal to delete the descriptive percentages of talk vs music format will go against the essence of the uniqueness of the Applicant's format which was a promise of performance proposed by the Applicant. It was this undertaking that set the Applicant apart from other Applicants who had lodged their applications during the licensing process in the Western Cape at the time. The Authority is of the considered view that the proposed format will distort this unique format and will consequently resemble those of other commercial Licensees such as Good Hope FM, KFM and Heart FM who do not have descriptive percentages in terms of talk and music. Other than citing each of these licensees' formats as provided for in their respective licences inter alia: "...programming format of talk and music in an adult contemporary format providing a programming mix of music and information (including coverage of community affairs)" (KFM); "...adult contemporary jazz format."(Heart FM) and "...Urban Contemporary Music format" Good Hope FM.
- 11.4. The Applicant has failed to demonstrate how these licensees provide distinct on-air content. The only distinguishable factor from the above-

listed licensees is the type of music format – adult contemporary, adult contemporary jazz and Urban contemporary music. On this basis, the Authority is not persuaded that diversity of content as alluded to by the Applicant will be achieved.

11.5. It is on the aforesaid basis that the consequently, the Authority is not satisfied that the amendment application meets the necessary requirements of an amendment of an individual licence as prescribed in section 10 of the ECA read with the applicable regulations and therefore the amendment must be refused as it will not promote the provisions of Section 2(s)(i) of the ECA.

11.6. Lastly, the Authority considered the proposed technical parameters and conducted interference analysis on the proposed frequencies. None of the proposed technical parameters were successful. Most of the frequencies applied for by the Applicant are earmarked for new community radio stations as published in the ITP-R, as amended.

12. AUTHORITY'S DECISIONS

In consideration of the above analysis, the Council of the Authority has resolved as follows:

Existing clause 4.1.1	Proposed amendment to clause 4.1.1
<p><u>"4.1.1. Format:</u></p> <p><i>"The Licensee shall have a programming format of 60% music and 40% talk, providing entertainment, informative and educational programmes by means of features on lifestyle issues and talk in the form of phone-in's and other forms of programming. The music to be broadcast will include, amongst other genres, South African pop, South African Afrikaans</i></p>	<p><u>"4.1.1. Format:</u></p> <p><i>"The Licensee shall have a programming format of music and talk, providing entertainment, informative and educational programmes by means of features on lifestyle issues and talk in the form of phone-in's and other forms of programming. The music to be broadcast will include, amongst other genres, South African Pop, South African Afrikaans music, International Pop and International Gold."</i></p>

<i>music, international pop and international Gold.”</i>	
<p>Authority's Decision:</p> <p>Reject amendment</p>	
Existing clause 4.1.2.1.1	Proposed amendment to clause 4.1.2.1.1
<p><u>"4.1.2: Local Content Obligations"</u></p> <p>"4.1.2.1.1 The Licensee shall adhere to the following; namely: Broadcast 50% South African music during its daily programming, the percentage will be sustained by the play listing of between seven (7) to nine (9) tracks and hour."</p>	<p><u>"4.1.2: Local Content Obligations"</u></p> <p>"4.1.2.1.1 The Licensee shall adhere to the following, namely Broadcast 40% South African <u>content</u> during its daily programming."</p>
<p>Authority's Decision:</p> <p>"4.1.2.1.1 The Licensee shall adhere to the following, namely Broadcast 40% South African <u>music</u> during its daily programming."</p>	
RFS Licence	
<p>Proposed amendment to RFS Licence: addition of twelve (12) transmitter sites in the Western Cape province.</p> <p>Authority's Decision:</p> <p>Reject amendment</p>	



DR. CHARLEY LEWIS
ACTING CHAIRPERSON

DATE: 01 / 08 /2022