



Independent Communications Authority of South Africa

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**APPLICATION FOR THE AMENDMENT OF AN INDIVIDUAL PUBLIC
SOUND BROADCASTING SERVICE LICENCE BY THE SOUTH AFRICAN
BROADCASTING CORPORATION ("SABC") WITH REGARDS TO SA FM IN
TERMS OF SECTION 10 OF THE ELECTRONIC COMMUNICATIONS ACT
NO. 36 OF 2005, AS AMENDED**

REASONS FOR DECISION

NOVEMBER 2021

1. INTRODUCTION

This document sets out the reasons for the decision of the Independent Communications Authority of South Africa ("the Authority") in relation to the application to amend an Individual Public Sound Broadcasting Service ("I-PSBS") Licence submitted by the South African Broadcasting Corporation with regards to SA FM ("the Applicant").

2. BACKGROUND

- 2.1 The Applicant holds both a radio frequency spectrum licence and an individual public sound broadcasting service ("I-PSBS") licence to provide a national public sound broadcasting service in South Africa. The Licences were issued on 18 December 2008.
- 2.2 On 30 June 2017, the Authority received an application from the Applicant for the amendment of its I-PSBS Licence.
- 2.3 On 29 August 2017, the Authority published the Applicant's amendment application in the General Notice 626 under Government Gazette 41074, for written representations, for a period of twenty-one (21) working days.
- 2.4 The closing date for written representations and responses was 27 September 2017.
- 2.5 No written representations were received by either the Applicant or the Authority by the closing date.

3. APPLICABLE LEGISLATIVE FRAMEWORK

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

Section 10 (1) of the Electronic Communications Act, 2005 (Act No. 36 of 2005) ("EC Act") provides that *"the Authority may amend an 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;*
- (b) for the purposes of ensuring fair competition between licensees;*
- (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;*
- (d) to the extent necessitated by technological change or in the interest of orderly frequency management;*
- (e) in accordance with a decision made by the Authority in terms of section 17E of the ICASA Act following a finding and recommendation by the Complaints and Compliance Committee;*
- (f) where the Authority is satisfied that the amendment is necessary to ensure the achievement of the objectives of this Act;*
- (g) if the amendment relates to universal access or universal service and is necessary, in the opinion of the Authority, as a result of—*
 - (i) changed circumstances in the market; or*
 - (ii) lack of electronic communications network services, broadcasting services, or electronic communications services in specifically identified areas of the Republic; and*
- (h) if the amendment is in pursuance of and in accordance with the regulations made under Chapter 10.”*

- 3.2 Regulation 9 (1) of the Regulations¹ 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 fee."

4. ANALYSIS AND DISCUSSION

4.1 REASONS FOR THE APPLICANT'S PROPOSED AMENDMENT

- 4.1.1 The Applicant requested an amendment from the Authority to amend its I-PSBS Licence as follows:

- (a) to delete clause 6.3 of the Applicant's licence which consists of sub-clauses 6.3.1 and 6.3.2 in its entirety. Clause 6.3 prescribes "Programming targeted at Children".

- (b) clause 6.3.1 reads as follows:

"The Licensee shall, in provision of the licensed service, broadcast at least one (1) hour of programming targeted at children (as contemplated in section 10(1)(g) of the Broadcasting Act) per week during the South African performance period."

- (c) Clause 6.3.2 reads as follows:

"In the production and presentation of its children's programming, the Licensee shall ensure that such children's programming is:

- (i) broadcast at times of the day when children are available to listen;
(ii) targeted at and appropriate for children between the ages of nought (0) to six (6) years and seven (7) to twelve (12) years respectively; and
(iii) educational and is made from children's point of view."

- 4.1.2 The Applicant provided the following reasons for requesting its proposed amendment:

¹ Licensing Processes and Procedures Regulations 2010 (as amended) for Applications, Amendments, Renewals, Surrender and Transfer of Individual Licences and matters pertaining thereto, and applications for

- 4.1.2.1 The Applicant stated that the proposed amendment is based on international best practice to exclude children's programming obligations from radio stations whose format is categorized as "News and Talk".
- 4.1.2.2 In terms of clause 6.3.1, the Applicant is required to broadcast one (1) hour of children's programming per week. According to the Applicant, the removal of clause 6.3 from its licence conditions would enable it to remain viable. Further, the current children's programming quota contributes to the "decrease of the station's appeal" and impacts on its intended target market.
- 4.1.2.3 Furthermore, the Applicant stated that it has discovered that there is less listenership during children's programmes and is of the view that the exclusion of children's programmes would also enable it to become financially sustainable as it would focus specifically on adult market programming. The Applicant submitted that it offers credible news coverage which is relevant and an informed analysis of current affairs. In accordance with its public broadcasting mandate, the Applicant says it explores broader themes and subjects relevant to its target market and delivers the information in a manner that benefits all South Africans.
- 4.1.2.4 In addition, and in order to comply with clause 6.3.1 and 6.3.2, the Applicant stated that it currently broadcasts story-telling programmes aimed at children namely: **Nali Bali** which is broadcast three (3) times a week and **Sharp Sharp** which is broadcast twice a week. Both programmes are only broadcast on weekdays. Accordingly, the Applicant indicated that these programmes have been allocated a lot of time it has not found to be beneficial to it because of a decline in listenership during the airing of these two mentioned children's programmes.
- 4.1.2.5 The Applicant also indicated that the decline in its listenership has been caused by the introduction of its story-telling children's programme broadcast between 13:50 – 14:00 as follows:

"SA FM experienced a decline in Radio Audience Measurement Survey (RAMS diaries) between 13:45 quarter hour listenership March 2013 to December 2015, a decline from 41 000 listenership to 25 000 listenership which is equivalent to 39% decline. According to the Applicant, the average daily listenership declined from 266 000 to 221 000 which is equivalent to a 17% listenership decline. The average weekly listenership declined from 603 000 to 473 000 which is equivalent to 21% listenership decline. The Applicant has indicated that the children's programmes caused the decline in listenership drastically and this indicates that there is a lack of appeal for the children's programmes within SA FM².

4.1.2.6 The Applicant proposes broadcasting "**Otherwise**" which is a women's magazine programme during the children's programme slots from Monday to Friday.

4.1.2.7 The Applicant also stated that it continues to fulfil all other licence conditions related to its News and Talk format in relation to the full spectrum of a Public Broadcasting Service, it offers programming in Education, Informal Knowledge Building, News and Current Affairs and can relatively easily accommodate the Drama requirement.

4.1.2.8 The Applicant contended that the proposed amendments will not adversely impact either the above provisions or frequency management as contemplated in section 10 (1) (c) of the EC Act and will therefore not prejudice other licensees.

5. ANALYSIS OF THE REASONS PROVIDED BY THE APPLICANT

5.1 According to the Applicant one of the reasons to remove the children's programmes is because it has been positioned as a news and talk radio station with a target audience of adults 35 – 49 and 50+ of age and as such it is not obliged to broadcast children's programmes. However, it must be noted that the Applicant is licensed to provide a full spectrum service and not an exclusively News and Talk format radio service.

² The Applicant attached the Radio Diary indicating the decline in listenership during the children's

- 5.2 The Applicant's broadcasting service licence was issued by the Authority on 18 December 2008, to provide a full spectrum service. There is no clause in the Applicant's licence which describes it as a news and talk radio station targeting audience of adults of between the ages of 35 – 49 and 50+. The licence stipulates that: "The service authorised by this licence forms part of the public service of the Licensee and that the licensed service shall be full spectrum service"³.
- 5.3 A full spectrum service licence is a broadcasting service with a range of the following elements in its programming: children's programmes, news, current affairs, education, drama, women's programmes, and other various programmes such as magazines. Consequently, the Applicant as a full spectrum service licensee is enjoined in terms of section 10(1)(g) of the Broadcasting Act, 1999 to carry children's programmes.
- 5.4 In terms of Section 10(1)g, the public service provided by the Corporation must- "strive to offer a broad range of services targeting, particularly children, women, the youth and the disabled". The Authority is of the view that offering of the children's programmes including all other programme obligations mentioned in section 10(1)(a) to (i) by the public broadcaster is still relevant.
- 5.5 The Authority is therefore, of the considered view that no compelling reasons were submitted in support of the proposed changes by the Applicant.

6. CONCLUSION

- 6.1 The Authority is of the considered view that the Applicant's proposed licence amendment to remove the clause 6.3 of its licence conditions which imposes obligations on Children's Programming is not reasonable for the following reasons:

6.1.1 The Applicant was issued with a licence to broadcast full spectrum services to its target audience. Full spectrum licensees include children's

programmes.

³ Clause 4 of the broadcasting service licence (Format).

programmes on their services. The Applicant is not licensed as a News and Talk radio station targeting audience adults of 35 – 49 and 50+ ages.

6.1.2 The Applicant's failure to comply with clause 6.3 is not a compelling reason for the Authority to approve the removal of clause 6.3. There is no indication from the Applicant's submission that research was conducted demonstrating that the South African society and children in particular do not need this genre or category to be carried on the Applicant's sound service.

6.1.3 The Authority is of the considered view that granting this amendment would not be in the Public interest and would not be in line with the objects of the EC Act.

6.2 On the basis of the above, the Authority is not satisfied with the reasons provided by the Applicant for this application for amendment.

7. AUTHORITY'S DECISION

In light of the above, the Authority resolved to reject the Applicant's amendment application.



DR. KEABETSWE MODIMOENG

CHAIRPERSON

DATE: 03/11/2021