

# COMPLAINTS AND COMPLIANCE COMMITTEE<sup>1</sup>

Date heard: 13 November 2019

CASE Number 348/2019

MOTLATSI MAKHASANE

LEJWELEPUTSWA FM (Rock FM)

TRIBUNAL: Prof JCW van Rooyen SC (Chairperson)  
Councillor Nomonde Gongxeka-Seopa  
Mr Peter Hlapolosa  
Mr Mzimkulu Malunga  
Dr Jacob Medupe  
Mr Jack Tlokana

The Complainant : In Person

The Respondent: represented by the Chair of its Board and Colleague Louis Harmse.

Manager Licensing : Mr Ndhlovu

From the Coordinator's Office : Mr T Mtolo assisted by Mr S Plaaty.

Coordinator: Ms Lindisa Mabulu

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## JUDGMENT

JCW Van Rooyen

### Introduction

This judgment was handed down in two phases. After having been informed at the hearing of this matter that the Respondent radio station, known as Rock FM, had been taken off air without notice by an ICASA Inspector about a month earlier, the CCC was taken aback to such an extent that it decided to issue an interim judgment the next morning and that Councillor Gongxeka-Seopa would

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<sup>1</sup> The Complaints and Compliance Committee ("CCC") is an Independent Administrative Tribunal set up in terms of the Independent Communications Authority Act 13 of 2000. Its constitutionality as an independent Administrative Tribunal in terms of section 33 of the Constitution has been confirmed by the Constitutional Court. It, inter alia, decides disputes referred to it in terms of the Electronic Communications Act 2005. Such judgments: are referred to Council for noting and are, on application, subject to review by a Court of Law. The Tribunal also decides whether complaints (or internal references from the Compliance and Consumer Affairs Division at ICASA) which it receives against licensees in terms of the ICASA ACT 2000, Electronic Communications Act 2005 or the Postal Services Act 1998 (where registered postal services are included) are justified. Where a complaint or reference is dismissed the matter is final and only subject to review by a Court of Law. Where a complaint or reference concerning non-compliance is upheld, the matter is referred to the Council of ICASA with a recommendation as to an order against the licensee. Council then considers a sanction in the light of the recommendation by the CCC. Once Council has decided, the final judgment is issued by the Complaints and Compliance Committee's Coordinator.

place this urgent ruling before the Council of ICASA the next day. The said judgment was prepared overnight and indeed placed on the Agenda of the Council the next morning by the Councillor. We were informed that the Council gave immediate effect to the preliminary advice and ordered that Rock FM – as it is known – be placed back on air within seven days. That preliminary judgment is repeated here as an introduction. It reads as follows:

**PRELIMINARY JUDGMENT**

[1] The Complainant alleged a series of matters which he classified as contraventions by the Board of the Radio Station. It was also brought to the attention of the CCC that the radio station had been taken off-air about a month earlier by an official of ICASA: the grounds being that it had not, as from 2016, been in possession of a valid licence, which had originally been issued to it in March 2011 and lasted for five years – thus until 2016. The attempt to renew the licence had failed since a required form had not been filled in and the application was, in any case, filed later than six months before it expired – as required by section 19 of the Electronic Communications Act 2005 as amended. The station, however, continued to broadcast and that is why an ICASA inspector, a month ago, ended its capacity to broadcast by “switching” it off.

[2] It was common cause that the Station had applied for a renewal and that it was informed at a meeting with officials from ICASA in 2016 that they had omitted to fill in a required form. The Station then filled in the form and sent it to ICASA. It did not hear from ICASA again – in any case, not before a month ago (in 2019), when they were taken off air, without notice.

[3] There are three reasons why the CCC is of the unanimous view that the official from ICASA had acted in conflict with the law by switching the Station off:

(a) Firstly, although there are certain acts which an official may take which she or he has by virtue of the very nature of her or his functions or the seriousness of the crime – e.g. a policeman may arrest a person if it is believed that that person has committed or is committing a crime in his presence - there are certain actions which may only be taken after a Court order or an order as advised by the Complaints and Compliance Committee and accepted by Council of ICASA. However, the switching off of a radio station serving the public (in this case with about 120 000 listeners) – even if it is not licensed – is so serious that it may only be done after a Court order or an order advised to the Council of ICASA after a hearing by the Complaints and Compliance Committee and which order is accepted by Council. Of course, there are circumstances where this will

be permitted: for example, when during the Soccer World Cup a foreign broadcaster's signal (used by a foreign reporter) would have disturbed an aeroplane from using its radio for contacting Oliver Tambo Airport.

(b) Secondly, section 19 of the Electronic Communications Act provides as follows:

**19. Renewal of class licence**

- (1) All class licenses must have a term of validity not exceeding 10 (ten) years, unless specified to the contrary by the Authority.<sup>2</sup>
- (2) Class licensees seeking to renew their class licenses must, in writing and not less than six months prior to the expiration of their class licence, notify the Authority of their intention to continue to provide the services.
- (3) The renewal notice contemplated in subsection (2) must be submitted to the Authority in the manner prescribed as contemplated in section 5(7).
- (4) Within sixty (60) days of the receipt of the written notice submitted in accordance with subsection (2), the Authority must update the register of class licences referred to in section 16(3) to reflect the renewed licences.
- (5) Where the Authority fails to update the register referred to in section 16(3) the class licence is considered to have been renewed on the 61 st day following receipt by the Authority of the class licensee's written notice.

Mr Ndhlovu, the Manager in the Licensing Division of ICASA, conceded during the hearing of this matter that he had a meeting with representatives from the licensee in 2016. He had informed them that a particular form had not been filled in by the Station in its application for renewal. This form was duly filled in by Rock FM and emailed to ICASA. On closer inspection it was, however, decided not to renew the licence since it had already expired. This was, however, not notified to the Broadcaster and it accepted that all was in order and kept on broadcasting as in the past. The ECA requires that an application for renewal must be filed at the latest six months before its expiry. The licensee was, however, not informed of this at the meeting. Mr Ndhlovu, who was a reliable witness, conceded that an error had been made – possibly as a result of a fire which broke out in their Division and could have destroyed the basic paper work. Although it is true that Rock FM had not filed its application as required at the latest six months before its expiry, section 19 of the ECA makes it obligatory for

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<sup>2</sup> Now, indeed, specified to be five years in the 2010 Standard Terms and Regulations issued by ICASA in 2010 and made operational in 2011.

ICASA to update the Register and where it fails to do so, section 19(5) provides that the class licence is considered to have been renewed.

(c) Thirdly, the *Turquand* Rule protects Rock FM. Thus CJ Claassen J stated as follows in *Land & Agricultural Dev Bank of SA v Panamo Properties 103 (Pty) Ltd 2014 (2) SA 545 (GJ)*

[28] The *Turquand* rule has been applied in South African law. In law a contract is therefore enforceable and valid if it is a contract of the type which the particular entity 'could' enter into, provided certain internal authorisation had been complied with. In contrast to this proposition, it is also trite that a state of affairs prohibited by law in the public interest cannot be perpetuated by reliance upon the doctrine of estoppel. Estoppel cannot therefore be used to make legal what otherwise would be illegal. Thus it was held in *City of Tshwane Metropolitan Municipality v RPM Bricks (Pty) Ltd* as follows:

'It is important at the outset to distinguish between two separate, often interwoven, yet distinctly different categories of cases. The distinction ought to be clear enough conceptually. And yet, as the present matter amply demonstrates, it is not always truly discerned. I am referring to the distinction between an act beyond or in excess of the legal powers of a public authority (the first category), on the one hand, and the irregular or informal exercise of power granted (the second category), on the other. That broad distinction lies at the heart of the present appeal, for the successful invocation of the doctrine of estoppel may depend upon it. *In the second category, persons contracting in good faith with a statutory body or its agents are not bound, in the absence of knowledge to the contrary, to enquire whether the relevant internal arrangements or formalities have been satisfied, but are entitled to assume that all the necessary arrangements or formalities have indeed been complied with . . . Such persons may then rely on estoppel if the defence raised is that the relevant arrangements or formalities were not complied with. (Emphasis added)*

As to the first category: failure by a statutory body to comply with provisions which the legislature has prescribed for the validity of a specified transaction cannot be remedied by estoppel because it would give validity to a transaction which is unlawful and therefore *ultra vires*.'

[29] It therefore requires a decision in this matter whether the facts fall within the first or second category of cases. I have come to the conclusion that the facts of the present matter cause it to fall within the ambit of the first category. I give my reasons for this conclusion.

(d) That a State authority, such as ICASA, can also be bound by the *Turquand* rule, is supported by judgments of the High Court. For example in *Engineering Solutions (Pty) Ltd & Others* [2004] ALL SA 204(T) the following is stated by the Court:

[37] As is well known, the *Turquand Rule* protects bona fide third parties against the defence by a corporate body that it had not complied with the internal requisites for a valid contract and was, accordingly, not liable. I do not believe that the *Rule* would protect a bona fide third party against an omission to obtain the Minister's approval. The *Rule* applies to cases where there was an omission in complying with a requirement of *internal* management. The Minister's approval is not an internal matter, but a matter external to the running of the Technikon. That some balancing must, in any case, take

place when even internal matters are evaluated for their importance against the application of the *Rule*, emerges from the recent instructive judgment of Cleaver J in *Farren v Sun Service SA Photo Trip Management (Pty) Ltd*, where the learned Judge held that since a company cannot be held liable for a sale of its sole asset by a director, unless the approval of its shareholders is given in terms of section 228 of the Companies Act, the *Turquand Rule* could not save the transaction. This was so since the approval by shareholders was, in the Court's opinion, regarded as of particular importance by the Legislature. I agree with the balancing approach applied in the said judgment and, with respect, with the result thereof. In the light of my approach to the Minister's approval it is, however, not necessary to delve deeper into the application of the *Rule* in this respect.

[38] I might add that if I am wrong in my conclusion as to the ambit of the *Council's* approval as to detail, such as the mode of payment by way of promissory notes, the *Turquand Rule* would protect FPW. Engelbrecht was authorized to sign contracts and, accordingly, the *Rule* could be operative. The *Rule* is also applicable in regard to corporate entities such as Technikons. An omission in the approval of Council as to the mode of payment amounts to an omission in internal management, which would not have the weight of the absence of the shareholders' resolution in *Farren's* case or the absence of the Minister's approval in terms of section 40(3)(b) of the Act. In any case, I am satisfied that the Technikon Council validly resolved, in terms of section 40(3)(a) of the Act, that there could be "embarked" upon this kind of project. The *Turquand Rule*, accordingly, does not need to be resorted to, except possibly in the alternative. [Footnotes to supporting judgments are omitted]

## CONCLUSION

(4) The conclusion reached by the CCC was, accordingly, as follows:

(a) That although the licence was, objectively, not renewed, the Authority had not informed the Respondent Radio Station that the license had not been renewed. The Radio Station thus accepted that a renewal had taken place. Its view, as set out above, is supported by legal principle.

(b) The "switching off" by an employee of the Authority about a month ago was contrary to legal principles.

## ADVICE TO COUNCIL OF ICASA

**That it orders that:**

**(a) The Radio Station be re-connected as soon as possible and, in any case, at least within seven calendar days.**

**(b) Notice be given to the Radio Station that this re-connection will take place and from when it will be effective. The last notice is important, since the radio station will have to prepare for such re-connection.**

*The Council supported the Advised Order and it was immediately issued.*

## **SECOND PART OF THE JUDGMENT THE COMPLAINT**

[1] The Complaint against the station, which was initially lodged, deals with allegations of mismanagement, lack of financial controls, not having for a number of years held an AGM and not keeping contact with the Community by way of Community Meetings, as required by the Regulations. In short that the station was not managed in the interests of the community and that there was evidence of bad faith.

[2] The Coordinator of the CCC required more information from Rock FM and also summarised the complaint as follows:

- 1) We advise that on 5 August 2019, Mr Motlatsi Makhasane lodged a complaint with the Complaints and Compliance Committee of ICASA for investigation.
- 2) We list hereunder allegations of contraventions as set out in the letter of complaint by the Complainant against Rock FM:
  - 3.1 That Rock FM is in violation of Regulation 5(3)(a) to (i) of Community Broadcasting Services Regulations (“the Regulations”) of March 2019, in that the Board of Directors failed to implement resolutions taken at an AGM held on 7 May 2016 as well as a follow-up meeting held on 2 March 2017.
  - 3.2 That the Board of Directors failed to execute their fiduciary duties by not holding an AGM since 2017.
  - 3.3 That the Board failed to hold a general meeting for community participation in the affairs of the Station.
  - 3.4 (this deals with the matter of the licence, which has been dealt with in the initial Ruling)
  - 3.5 That Rock FM is in violation of Regulation 16(1)(a) to (n) of the Regulations in that there is a lack or absence of record keeping.

Considering the allegations in paragraph 3, the Board of Directors of Rock FM was requested to provide the following documents to the CCC Office together with its response to the above allegations:

- (a) Copy of Minutes of the Annual General Meetings and attendance registers of meetings which were held from 2016 to date.
- (b) (falls away in light of initial Ruling)
- (c) Annual Financial Statements of Rock FM for the past three financial years (2015/2016, 2016/2017, and 2017/2018).

## **RESPONSE BY THE RADIO STATION**

This serves as a response to the letter dated 13 August 2019 under the following requests:

- (1) COPY OF THE MINUTES OF THE ANNUAL GENERAL MEETING AND THE ATTENDANCE REGISTER FROM 2016
  - (1.1) Mr Eddie Kobuoe resigned as the secretary to the board of directors before the AGM and the interim board mandated the Complainant to capture the minutes for the day and to date he is still refusing to give it to the board of directors, and the very same Complainant does not work at the station.
  - (1.2) We did not go to the Annual General Meeting as a board because we applied for the renewal of the broadcasting license in 2016 as per 2016 Annual General Meeting resolution. To date we haven't received any response from ICASA regarding our license renewal that would have enabled us to report to the Annual General Meeting.
  - (2.1) Shortly after the AGM we as the board applied (all necessary documents were submitted), for the renewal of the broadcasting licence and to date there has not been a formal response from ICASA in this regard.
  - (2.2) The board of directors' even drove from Welkom to Johannesburg to enquire about the broadcasting license and we were told to wait for the written

response within 14 days. It's been 2 months and we haven't received any response and above all we are still willing to work patiently with ICASA to ensure everything runs smoothly for the benefit of our Community. Please contact us at any time convenient to you.

### **FINANCIAL STATEMENTS**

[3]Although the financial statements were rather cryptic, they were, in the view of the CCC, at least, evidence that some form of financial controls was in place. The following response was received in this regard:

#### **THABONG YOUTH DEVELOPMENT CENTRE T/A THE ROCK FM, 027-172-NPO ANNUAL FINANCIAL STATEMENTS FOR YEAR ENDED 31 MAY 2016**

##### **Members' responsibility and approval**

The member is responsible for the maintenance of adequate accounting records and the preparation and integrity of the financial statements and related information. The accounting officer is responsible to determine that the financial statements are in agreement with the accounting records summarised in the matter required by section 58(2)(d) of the Act.

The member is also responsible for the organisation's system of internal control. These are designed to provide reasonable but not absolute assurance as to the reliability of the financial statements, and to adequately safeguard, verify and maintain accountability of assets and to prevent and detect misstatements and losses. Nothing has come to the attention of the member to indicate that any material breakdown in the functioning of these controls, procedures and systems has occurred during the year under review.

The financial statements have been prepared on the going concern basis since the member has every reason to believe that the organisation has adequate resources in place to continue in operation for the foreseeable future.

The financial statements as set out in pages 2 to 5 were approved by the member and were signed on behalf by Mr KS Maholobela (Secretary).



## Report of the Accounting Officer to Thabong Youth Development Centre

We have performed the duties of accounting officer to Thabong youth Development Centre for the year ended 31 May 2016 as required by [the NPO ACT].<sup>3</sup> The financial statements for Thabong Youth Development Centre as set out on pages 2 to 5 are the responsibility of the member. No audit is required by the Act to be carried out and no audit was therefore conducted. Accordingly we do not imply or express an opinion or any form of assurance on the financial statements.

We have determined that the financial statements are in agreement with the accounting records, summarised in the manner required by Section 58(2)(d) of the Act and have done so by adopting such procedures and the manner and conducting such enquiries in relation to the account records as we considered necessary in the circumstances. We have also reviewed the accounting policies which have been presented to us as having been applied in the preparation of the financial statements and we consider that they are appropriate to the business.

Louis Harmse – Treasurer.

### **Balance sheet as at 31 May 2016**

<b><u>Assets</u></b>	
<b><u>Non-Current Assets</u></b>	
Equipment	720 000
Min Depreciation (20%)	-240 000
	480 000
<b><u>Current Assets</u></b>	
Trade and other receivables	14 500
<b><u>Total Assets</u></b>	<b><u>495 000</u></b>
<b><u>Equity and Liabilities</u></b>	
<b><u>Members' contribution</u></b>	1 000
<b><u>Liabilities</u></b>	
Trade and other payables	494 000

<sup>3</sup> The reference to the Close Corporations Act was erroneous and removed by the CCC. We accept that the reference was to the NPO Act. In any case no audit is required by all the relevant legislation including the 2019 ICASA Regulations. However, the Coordinator of the CCC may, if deemed necessary, require such confirmation by an Auditor or Accountant.

<b>Total Equity and Liabilities</b>	<b>495 000</b>
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### Income statement for the year ended 31 May 2016

Turnover	927 577
Expenditure	950 009
Bank Charges	29 922
Cleaning material	1 380
Commissions paid	185 515
Depreciation	240 000
Licence renewal	1 450
Marketing	3 873
Outside broadcasting	11 237
Legal expenses	36 920
Postage	823
Repairs	5 639
Stationery	500
Stipends	432 750
<b>Nett loss</b>	<b><u>22 432</u></b>

### THABONG YOUTH DEVELOPMENT CENTRE T/A THE ROCK FM, 027-172-NPO ANNUAL FINANCIAL STATEMENTS FOR YEAR ENDED 31 MAY 2017

#### Members' responsibility and approval

The member is responsible for the maintenance of adequate accounting records and the preparation and integrity of the financial statements and related information. The accounting officer is responsible to determine that the financial statements are in agreement with the accounting records summarised in the manner required. The member is also responsible for the organisation's system of internal control. These are designed to provide reasonable but not absolute assurance as to the reliability of the financial statements, and to adequately safeguard, verify and maintain accountability of assets and to prevent and detect mis-statements and losses. Nothing has come to the attention of the member to indicate that any material breakdown in the functioning of these controls, procedures and systems has occurred during the year under review. The financial statements have been prepared on the going concern basis since the member has every reason to believe that the organisation has adequate resources in place to continue in operation for the foreseeable future. The financial statements as set out in pages 2 to 5 were approved by the member and were signed by him or on his behalf by Mr KS Maholobela (Secretary).

## Report of the Accounting officer to Thabong Youth Development Centre

We have performed the duties of accounting officer to Thabong youth Development Centre for the year ended 31 May 2017 as required. The financial statements for Thabong Youth Development Centre as set out on pages 2 to 5 are the responsibility of the member. No audit is required by the Act to be carried out and no audit was therefore conducted. Accordingly we do not imply or express an opinion or any form of assurance on the financial statements. We have determined that the financial statements are in agreement with the accounting records, summarised in the manner required by Section 58(2)(d) of the Act and have done so by adopting such procedures and the manner and conducting such enquiries in relation to the account records as we considered necessary in the circumstances. We have also reviewed the accounting policies which have been presented to us as having been applied in the preparation of the financial statements and we consider that they are appropriate to the business.

Louis Harmse – Treasurer.

### Balance sheet as at 31 May 2017

<b><u>Assets</u></b>	
<b><u>Non-Current Assets</u></b>	
Equipment	480 000
Min Depreciation (20%)	-240 000
	240 000
<b><u>Current Assets</u></b>	
Trade and other receivables	23 318
<b><u>Total Assets</u></b>	<b><u>262 318</u></b>
<b><u>Equity and Liabilities</u></b>	
<b><u>Members' contribution</u></b>	1 000
Retained Income	25 941
<b><u>Liabilities</u></b>	
Trade and other payables	235 377
<b><u>Total Equity and Liabilities</u></b>	<b><u>262 318</u></b>

### Income statement for the year ended 31 May 2017

Turnover	996 562
Expenditure	<u>970 621</u>
Bank Charges	37 983
Cleaning material	5 444

Commissions paid	199 312
Depreciation	240 000
Licence renewal	2 518
Marketing	16 500
Outside broadcasting	13 719
Legal expenses	3 500
Postage	996
Repairs	10 995
Stationery	3 812
Stipends	432 750
<b>Internet services</b>	3 092
<b>Nett Profit</b>	<b><u>25 941</u></b>

**THABONG YOUTH DEVELOPMENT CENTRE T/A THE ROCK FM, 027-172-NPO  
ANNUAL FINANCIAL STATEMENTS FOR YEAR ENDED 31 MAY 2018**

**Members' responsibility and approval**

The member is responsible for the maintenance of adequate accounting records and the preparation and integrity of the financial statements and related information. The accounting officer is responsible to determine that the financial statements are in agreement with the accounting records summarised in the matter required by section 58(2)(d) of the Act. The member is also responsible for the organisation's system of internal control. These are designed to provide reasonable but not absolute assurance as to the reliability of the financial statements, and to adequately safeguard, verify and maintain accountability of assets and to prevent and detect misstatements and losses. Nothing has come to the attention of the member to indicate that any material breakdown in the functioning of these controls, procedures and systems has occurred during the year under review. The financial statements have been prepared on the going concern basis since the member has every reason to believe that the organisation has adequate resources in place to continue in operation for the foreseeable future. The financial statements as set out were approved by the member and were signed on behalf by Mr KS Maholobela (Secretary).

**Report of the Accounting officer to Thabong Youth Development Centre**

We have performed the duties of accounting officer to Thabong youth Development Centre for the year ended 31 May 2018 as required by Section 62 of the Close Corporation Act of 1984. The financial statements for Thabong Youth Development Centre as set out on pages 2 to 5 are the responsibility of the member. No audit is required by the Act to be carried out

and no audit was therefore conducted. Accordingly we do not imply or express an opinion or any form of assurance on the financial statements. We have determined that the financial statements are in agreement with the accounting records, summarised in the manner required by Section 58(2)(d) of the Act and have done so by adopting such procedures and the manner and conducting such enquiries in relation to the account records as we considered necessary in the circumstances. We have also reviewed the accounting policies which have been represented to us as having been applied in the preparation of the financial statements and we consider that they are appropriate to the business.

Louis Harmse – Treasurer.

### **Balance sheet as at 31 May 2018**

<b><u>Assets</u></b>	
<b><u>Non-Current Assets</u></b>	
Equipment	240 000
Min Depreciation (20%)	-240 000
	0
Office equipment	70 000
<b><u>Current Assets</u></b>	
Trade and other receivables	36 954
<b><u>Total Assets</u></b>	<b><u>106 954</u></b>
<b><u>Equity and Liabilities</u></b>	
Members' contribution	1 000
Retained Income	90 073
<b><u>Liabilities</u></b>	
Trade and other payables	15 881
<b><u>Total Equity and Liabilities</u></b>	<b><u>106 954</u></b>

### **Income statement for the year ended 31 May 2018**

Turnover	1 367 946
Expenditure	1 277 873
Bank Charges	50 438
Cleaning material	1 886
Commissions paid	273 589
Depreciation	240 000
Entertainment	2 615
Marketing	153 000
Outside broadcasting	12 880
Legal expenses	20 250

Postage	175
Repairs	15 000
Stationery	1 392
Stipends	432 750
Internet Services	1 587
Admin	311
Accounting fees	2 000
Equipment	70 000
<b>Nett Profit</b>	<b><u>90 073</u></b>

### **RESPONSE BY THE COMPLAINANT**

[4] The Complainant replied to the above statements in some detail. However, he has not adequately substantiated his claims. In any case, given the order which the CCC will advise to Council, these matters should be left for the new Board, which will be elected as per the advice of the CCC later this year.

### **REPORT ON THE MEETING BETWEEN THE ROCK FM AND ICASA DATE 16 APRIL 2016, 11:00 THE ROCK FM OFFICES**

[5]The Rock FM was awarded a class broadcasting licence on 28 March 2011. It has been running its on-air operations from 2012 to date. Throughout its licence period, the station has been plagued by governance and management challenges which has hindered its growth and development as a leading broadcaster in the community radio sector in the country. ICASA's provincial office in Bloemfontein has over the years tried countless times to assist the radio station to get its house in order but due to lack of communication, disunity, lack of staff discipline and other operational factors, the radio station finds itself in a state of non-compliance with most of its licence conditions and furthermore, has failed to renew its licence, which expired on 29 March 2016. The Authority met with the custodians of the licence and accountable body in the form of the board of directors to resolve the current impasse and plot a way forward to ensure sustainability of the radio station.

### **GENERAL OBSERVATIONS**

The Authority observed that there continues to be an apparent rift in and amongst the board, as well as between the board and its management. There are a lot of historical issues that plagued the station with problems. One of the major issues is the CCMA case of the station manager against the radio station wherein an order of the court was awarded in favour of the station manager.

The other major issue is the legal status of the radio station with regards to an agreement the station had with an NOP. The issue there is that there was an agreement with Thabong Youth Development Centre (TYDC) to assist applicants in the application for a broadcasting licence. Once a broadcasting licence had been obtained, the applicants would register its own NPO and the handover from TYDC to the newly registered NPO would take place.

Since being elected into office in February 2014, the current board has failed to executive some of the resolutions passed at the last AGM, amongst others was the handover of the NPO and the issue of the station manager. To date, there has not been a conclusive resolution to those challenges.

Whilst that has been going on, there have been allegations of fraud and corruption against members of management, the board and some staff members. It is alleged that some individuals abuse the station's resources without following policies. This has resulted in mismanagement of funds and a complete failure in adhering to financial policies. The management of finances at this radio station has collapsed in its entirety and it is a dire state.

### **SPECIFIC ISSUES AND ACTIONS**

The following issues were highlighted and specific actions are to be taken by the persons responsible for the tasks.

<b>Issues identified</b>	<b>Actions to be taken</b>
Renewal of the class broadcasting licence	Board of Directors: Start process of applying for a renewal licence.
Date of next AGM	Board of Directors: AGM set to be on 7 May 2016
Board to meet with management and explain a way forward	Board of Directors: Meeting members of management and outline logistics of the AGM (18 April 2016)
Advertising of the AGM (Print and Broadcast/Posters/Flyers)	Program Manager: Ensure that AGM adverts are broadcast regularly throughout the day until day of AGM. A copy of this advert must be sent to ICASA (19 April 2016)
	Marketing Manager: Ensure AGM Advert is printed in local newspapers and a copy is sent to ICASA

Criteria and procedures of nominations for board members with guidance from the Constitution (TYDC)	<p>Board of Directors: Outline a criteria of who can apply for nomination (qualifications, age, experience, etc) who will receive the applications, closing date of nominations.</p> <p>Facilitators of the AGM: IEC? NCRF Free State of Northern Cape?</p> <p>Secretary of the Board: Keep a proper record and log containing all nominees for board seats</p>
Submission of Reports to be presented at AGM	<p>Chairperson: Chairperson's report</p> <p>Treasurer: Financial report</p> <p>Station Manager: Management report</p> <p>All reports sent to ICASA on 29 April 2016, which is a week before the AGM.</p>

### NEXT VISIT

Location: Welkom, Free State Province

Dates: 7 May 2016

Objectives: Elective AGM

### CONCLUSION BY THE CCC

[6 ] The CCC is, as the CCA of ICASA, concerned about the running of the Radio station. The inquiry by the CCC must, however, not turn into an unfair inquisition against which the Constitutional Court has cautioned in 2008.<sup>4</sup> Accusations of bad faith, theft and questionable day-to-day administration cannot, within the ambit of this inquiry, be addressed by the CCC. The CCC, for example, deals with matters which are addressed in the 2019 Community Broadcasting Regulations, the Standard Regulations of 2010, the Code for Broadcasters and the licence conditions of the station.

Furthermore, the CCA should, when it deems it necessary, file its own complaint with the CCC. However, in the light of the proposal to Council, it is believed that the Community will elect an efficient Board and that the Regional Office of ICASA

<sup>4</sup> *Islamic Unity Convention v Minister of Telecommunications* 2008 (3) SA 383 (CC) para [48].



will, soon thereafter, meet with them and give guidance as to what is expected. Follow-up meetings should, of course, also be held.

At the core of the advice to Council will thus be the election of a Board in 2020.

### **ADVICE TO COUNCIL OF ICASA**

**That the Council of ICASA consider the following order for approval:**

- (a) That an Annual General Meeting be called by the Chairperson of the Board, to be held on a Saturday afternoon before end December 2020 ( unless the **COVID** Regulations do not permit such a gathering, in which case the meeting must be held within 30 working days on a Saturday afternoon after the COVID limitation is withdrawn) and that a Board be elected. That the meeting and venue be advertised three times a day for 14 days before the meeting by way of broadcasts between 07:00 and 21:15 and that copies of such broadcasts be filed with the CCA at ICASA, within 10 days of the Meeting, if so required by the CCA.
- (b) That an Annual General Meeting must be held every following year ( before end November on a Saturday afternoon) where matters on the Agenda will be dealt with. That notice on the radio of such meeting and the locality thereof be given three times a day for 21 working days before the meeting between 07:00 and 21:15. **Once again:** unless **COVID** Regulations do not permit such a gathering, in which case the meeting must be held within 30 working days on a Saturday afternoon after the COVID limitation is withdrawn)
- (c) That the Financial Statement be prepared by an Accountant for the previous financial year (2018-2019) and that the Financial Statement of the preceding year, in future, be approved at every Annual General Meeting or a Special General Meeting - if the Statement is not available at the Annual General Meeting.
- (d) That the CCA at ICASA be informed in writing at least 21 calendar days before an Annual or Special General Meeting of the date, time and place of the meeting. Also in 2020, if the COVID Regulations permit such a gathering.

- (e) That at least two formal meetings per year, well-advertised, be held with listeners in the Broadcasting Area by at least two Members of the Board and the Station Manager or his or her representative. **This order is also subject to whether the COVID Regulations permit such a meeting.**
- (f) All meetings must be held at a readily accessible place. Views expressed by the meeting must be placed in a Report by the Station Manager and considered by the Board at its Meetings.

#### **ADVICE TO COUNCIL AS TO ITS FUNCTIONS**

That the commencement of the term of the licence – in this particular matter- be regarded as 1 October 2015. This approach is based on the reasonable assumption of the Broadcaster and is, in the particular circumstances of this case, not regarded as backdating – which is, otherwise, regarded as in conflict with section 33(l) of the Constitution of the Republic of South Africa.



**JCW VAN ROOYEN SC**

**The Members of the CCC agreed.**

**13/2/2020**