

COMPLAINTS AND COMPLIANCE COMMITTEE¹

Date heard: 23 August 2019

CASE: 337/2019

In the matter between:

LUSINDISO TANTSI

COMPLAINANT

UNITRA COMMUNITY RADIO

RESPONDENT

Tribunal

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

Mr. Lusindiso Tantsi (Complainant) and with him Mr. Xolisa Sikhathele and Ms. Bongiswa Mbuthuma

For the Respondent: Mr. Luvuyo Toni (Secretary), Ms. Nokwanda Hlakweni (Deputy Chairperson) and Mr. Andile Nkathane (Chairperson)

Coordinator of the CCC: Ms Lindisa Mabulu assisted by Mr Siyakha Plaatyi from the Coordinator's Office.

JUDGMENT

JCW VAN ROOYEN

[1]The Complainant in this matter is seriously concerned about the manner in which UNITRA COMMUNITY RADIO (hereinafter "UNITRA") is managed. He is well experienced in broadcasting and, although he is involved in another local radio station as a Board Member, there was no reason to doubt his integrity and good intentions in regard to the

¹ 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 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.

necessity for the rebuild, in his view, of the Respondent Radio Station. The Secretary of the Board, however, responded by conceding that the station had problems but that it was, in any case, broadly, managed effectively. During the hearing before the CCC a number of questions were raised by CCC members and these questions were, once again, sent to UNITRA after the hearing. Most of the questions were not satisfactorily answered. A report by Auditors was also critical. The CCC also requested, as part of its investigation, that the Manager of Compliance at ICASA, file a report. It was not favorable. It should be mentioned that in April 2018 the licence of UNITRA was renewed by ICASA.

[2] We will first set out the Complaint and the Response. Thereafter reference will be made to the reports mentioned in paragraph [1].

COMPLAINT

- (1) UNITRA is the most successful community radio station in the Eastern Cape, having produced the most decorated broadcasters. Talent from UNITRA has had great careers on Metro, YFM, Umhlobo Wenene, Tru FM and SABC Television News.
- (2) UNITRA was the brain child of the then University of Transkei academics led by the late Professor Moliah. The radio station was licensed by the Independent Broadcasting Authority, which is now ICASA.
- (3) Professor Moliah wanted a community radio station that would [not only] be a training platform for all the aspiring broadcasters but also to close the gap that was going to be left by the closure of Capital Radio and the then Radio Transkei.
- (4) The community Mthatha needed a broadcast medium that would cater for all their stories and news needs. Prof Moliah believed the community radio station should not be a university radio station, even though it was going to be based at the university - but should belong to the community.
- (5) This rich history has been hijacked by people who get elected to serve on the Board of the radio station.
- (6) According to the Community Broadcasting Service Regulation 5 Governance and Management provisions as prescribed by ICASA in 5.3(a) ensures compliance with all relevant laws, regulations and codes of good practice. This has not been done by the Board as they registered a PTY company that was designed to divert money from the station for their private use.
- (7) This is against the Constitution as the radio station has to be registered as a Non Profit Company. Due to non-compliance the radio station, under this Board was blacklisted by SARS and is being deregistered by CIPRO, the deregistration status being attached. On the 16th December 2015 the ICASA coordinator came to Mthatha and dissolved this Board and provided terms of reference on how a steering committee should be formed and started a process that would lead to the election of the next Board. The same Board ignored the terms of reference and went ahead into a secret location and elected themselves as the new Board again.

- (8) The Board has not complied with Community Broadcasting Service regulations.
- (9) There are no policies at UNITRA, none. This Board and management operate in the dark. There is no strategic direction to UNITRA. The radio station has 3 companies operating and trading under the same license, namely *UNITRAFM AIRTIME SALES PTY LTD*, *WALTER SISULU FM* and *OR TAMBO BROADCASTING MEDIA*. I have attached the registration documents of these companies.
- (10) Development of a corporate code of conduct. (There is none of this at UNITRA and there has never been an effort to draft one. Identification of risk areas and performance indicators. The Board has completely destroyed all compliance regulations and by being blacklisted by SARS the radio station lost revenue through government as it generally generates 90% of its revenue from government. SARS made numerous attempts to assist the radio station and the Board never followed through with any recommendations and instead avoided SARS completely, came up with half-cooked plans that were only in their best interest. The radio station has opened different bank accounts as the fights among Board members ensued over the resources of the radio station.
- (11) UNITRA owes Sentech over R130 000 for not paying for the signal. I have attached a letter of demand from Sentech as there is no will to take care of its responsibilities as the money goes into their pockets.
- (12) Community Broadcasting Service Regulation 8: The Board must not interfere with the daily operations of the licensee (The Board hires and fires managers who don't tow their line and finances of the radio station are only known by the Board and the Board alone.) There are no monthly financial reports. The Board goes as far as even buying toilet paper and printing paper for themselves. The management only makes money and it ends there; the bank card are with the Board members and they decide when and how to pay the staff.
- (13) Community Broadcasting Service Regulation 7 License Renewal: (This provision, I'm afraid, all of it has been completely ignored by the Board and none of them have a clue how it's done and when it needs to be done. The current renewal of the license was done due to the initiative that was taken by a station manager they hired who also had no clue but knew who I am and approached me for help after receiving the renewal form from ICASA. All the forms that are supposed to be filed by the radio station are not filed. There are no financial statements for the last 5 years provided to ICASA. There are no program committees. There is just no proper paperwork provided to ICASA to comply with the license requirements.
- (14) Community Broadcasting Service Regulation 13.1: A licensee must ensure that ownership of the community broadcasting licensee remains with the community. (This is the opposite with UNITRA Community Radio, on paper the license is a community license but in terms of the revenue and the trading of the radio station is privately owned by the Board. The AGM sitting is always a big secret held in hiding outside Mthatha where the radio station is based. Family, friends and relatives of the Board are loaded into Quantum taxis to take those secret hiding locations. When this current Board completely registered the community radio station as determined to completely distancing the community radio station for being owned by the community.
- (15) Community Broadcasting Service Regulation 13.5: Community Participation: The licensee must submit proof of community participation at every annual general meeting and other forums that require community participation. This does not happen at UNITRA. Besides the hush hush

secret attempted AGM meetings in 2016 where the then dissolved Board by ICASA went to a secret location and re-elected themselves, ignoring the terms of reference set out by ICASA.

(16) In the same AGM this Board illegally amended the founding Constitution of UNITRA and removed the structure that was the supreme authority of the radio station, the Community Forum Committee to facilitate their onslaught in looting the radio station.

(17) According to the old Constitution only the Community Forum could call the AGM and this Board did not want to account to the community and therefore amended the Constitution so as to do as they please as demonstrated by the continuous non-compliance.

(18) The current Board did not hold any AGM in 2017 and 2018 due to their own internal battles over the resources of UNITRA Community Radio. If CCC can ask them if they have been in court battles they will be forced to disclose that as they have never informed the community about these court cases.

(19) According to the old Constitution (the current Board amended on 16.1.1 says) a non-elective AGM shall be held every August and this this did not happen in 2017 and 2018. No attempt to account happened and at that time the Board literally did not exist. Only 2 remaining Board members, Andile Nkathana and Fundile Mazantsana ran the station as they please. The amended Constitution. If this was not amended they still should have held the AGM, even if they followed their Constitution as amended. Constitution in section 15.1.1 still states that a non-elective AGM should be held in August and clearly the current Board did not even follow their own amended Constitution.

(20) According to the Community Broadcasting Service Regulation 16(b) there are no records of assets as the Board controls all of these. Equipment gets bought and stays in houses of the Board. Cars get bought and registered in Board names and are driven by them. When sold no one knows how and where the money went. There are no monthly financial reports.

(21) Community Broadcasting Service Regulation 16(d): There is such confusion over the management of bank accounts. They change all the time and this causes so much stress with admin staff as when fights ensue. Different communication is always sent to the clients and changes over and over.

(22) Community Broadcasting Service Regulation 16(m): There are no records that show that there is consistent communication with ICASA as this is not a priority.

(23) Community Broadcasting Service Regulation 16.5: The reporting of finances by the Board were never held at any credible AGM and even if CCC can look at them they are just copy and paste. If you can print the bank statements of the account UNITRAFM AIRTIME SALES, there will be more cash withdrawals than transfers.

(24) According to the Compliance Procedure Manual, the following forms are supposed to be submitted to ICASA and you can go back more than 5 years, they have never been submitted. *GENERAL FORMS*: Form 1, 2, 3, 4, and 5 have never been submitted and they don't even know what they are and what they are for. *SECTORAL PLANNING INFORMATION*: Form 6A and Form 6B they have never familiarised themselves with any of these requirements. *CODE OF CONDUCT FORM*: Form 7A, 7B and 7C never been submitted. *BROADCASTING*: Form 8, 8A, 8B, 8C, 8D, 8E, 9, 9A, 9B, 9C, 10 and 11, no submissions. *COMPLAINTS*: Form 12A and 12B never been submitted. *STANDARD*: Form 13 and 14 never submitted.

(25) The lack of understanding in the Board that all of these submissions demonstrate that no-one at the radio station understands what needs to be done and who, how, when all this is to be done.

(26) This is a clear indication that processes are not respected by the Board and even when paying staff they insist on withdrawing the money and physically walk from bank to bank to deposit for each staff member.

(27) The Hawks have been sitting with the pile of evidence of wrongdoing and have not done what they are supposed to do. The investigator says she has passed on the file to NDPP who must decide to prosecute but, to date, nothing has happened. The investigator is...² The Board consists of the following persons:

ANDILE NKATHANE – CHAIRPERSON

NOKWAND HLAKWENI – DEPUTY CHAIRPERSON

BABALWA BHELESI – FINANCE HEAD

LUVUYO TONI – SECRETARY

ZONKE TEKULE – DEPUTY SECRETARY

NOBHOTOLO NTLONZE – HR PORTFOLIO

FUNDILE MAZANTSANA – PROGRAMMES

THEMBINKOSI BUTSHINGI – MARKETING

NONTLE GQADUSHE – NEWS PORTFOLIO³

(28) So on the 11th of June 2019 a few community members will be in court to try and interdict this criminal Board and prevent a total collapse and closure of this radio station. The old Constitution that had a CFC structure that held them to account is attached as well requested.

DEFENSE

[3] The Defense reads as follows:

(a) UNITRA is very puzzled and shocked by the interest of Mr Tantsi on the UNITRA FM affairs on the following basis. Mr Tantsi is a full time Board member of Alfred Nzo community radio which is a direct competitor to UNITRA. We therefore do not have doubts that Mr Tantsi would do anything to destroy UNITRA FM for the survival of Alfred Nzo community radio. The extent to which he has taken this matter clearly indicates such. It is very clear that he is using ICASA to settle personal scores he has over UNITRA FM.⁴

(b) Mr Tantsi is not by any way part of UNITRA FM either by employment or by membership. It is really not making any sense why would he have so much interest in an institution he is not part

² Name removed to protect identity in a public document (Chair CCC).

³ Mobile numbers removed - in the interests of privacy (CCC Chair).

⁴ Paragraph two was removed for purposes of this judgment, since it contains *prima facie* defamatory material which was unsupported by evidence before the CCC.

of instead of advocating for the interests of Alfred Nzo Community Radio, where he is a Board member.⁵

(c) Regulation 5(3): The role of the Board: The role and the duties of the Board as quoted by Mr Tantsi are totally correct. UNITRA FM at all time tries to be in line with the UNITRA FM policies and Constitution unless a certain adjustment has to be made before a certain policy is reviewed or any Constitutional amendment. The Board never took control of the station's operations from the management, but a Board meeting resolved that the UNITRA FM Board finance portfolio must always be aware of the UNITRA FM financial operations. This resolution was taken after a UNITRA FM Station Manager robbed the station of R150 000 and took the station's Toyota Verso for himself in 2015. It is only for this reason that the Board got involved in the financial operations, but not in control but playing a very close monitoring and oversight role.

(d) License Renewal-Regulation 7(3)(b)

(3.1) The UNITRA license renewal process has always been dealt with by the station with the highest degree of compliance and the submission of all relevant documents is always adhered to and in areas where we fall short, a reasonable explanation is always provided to ICASA. This is confirmed by the recent renewal of the UNITRA broadcasting license for the next 4 years.

(3.2) Community participation – Regulation 12(1) and (5): UNITRA FM community has always participated in the UNITRA FM affairs including but not limited giving mandate to the station to apply for renewal of the license. This is done through annual general meetings, general meeting and community participation programmes. Attendance register of the recent general meeting is attached where all the station reports were presented and adopted by the community. Attached are also the minutes of the UNITRA FM AGM attendance register and minutes.

(e) Record keeping – Regulation 16(1): UNITRA community radio has always maintained and kept all the station records, previous years' Audited financial statements, on air recordings all other important documents. UNITRA FM had an unfortunate occurrence in 2016 where the place the station was, provided by Walter Sisulu University, burnt down to ashes and we could not save these documents as both the hard and soft copies backups were in that building. Police affidavit is attached. We have been trying to get some of these documents, like the previous year's Audited financial statements from the Auditors but to date we still have not succeeded. But we will keep following up with them.

(f) Article 15.1 UNITRA FM Constitutional amendment: The UNITRA Community radio station Constitution was not amended at the AGM held in Qunu in 2016. Community members were all given copies of the UNITRA Constitution to note any issues that they feel need any amendments and such amendment will be done in the next UNITRA FM General Meeting. The minutes of the AGM and attendance register are attached.

⁵ *Prima facie* defamatory material removed.

REPLY TO THE DEFENSE

[4] The Reply of the Complainant to the Defense reads as follows:

Background

(1) The Secretary of the Board at UNITRA Community Radio, Mr Luvuyo Toni may be puzzled. He is not going to wish away the systemic problems he and his Board members created. However let me entertain his selective memory and quite frankly it is embarrassing that I'm replying to a Secretary of the Board, someone who is supposed to possess a skill to read and reply with understanding to serious matters. Mr Luvuyo Toni lacks the required attributes bestowed in him as the Secretary of the Board. If he was doing his job he should be dealing with all the matters I raised with such precision and great detail, as he should have all the supporting documents in his possession to dispute my complaints if they are unfounded. This is how I'm going to reply to his incoherent rhetoric filled with damaging wild statements.

(1.1) Yes I am a Board member of Alfred Nzo Community Radio and as for the fulltime Board member I am not sure what that means. I was a Board member even when the UNITRA-FM Board approached me to come and assist them to turn around the radio station and generate revenue for them. I have attached a letter signed by the UNITRA-FM Board chairperson to prove that I have never applied for a job at UNITRA-FM as they are well aware of my track record in Marketing and advertising as I am an experienced broadcaster who was responsible for putting all administrative systems at UNITRA when we started the radio station back in 1995. Alfred Nzo Community Radio is not a direct competitor to UNITRA-FM. The Secretary of the UNITRA-FM Board should attach the UNITRA-FM SPECTRUM SHEET and satisfy himself to that fact. Alfred Nzo Community Radio does not compete with UNITRA-FM for listenership as they both broadcast in different district municipalities. Alfred Nzo Community Radio does not compete even for client's market share. Mr Luvuyo Toni is 100% aware of the contribution I have made at UNITRA-FM without any financial gains. As for the foolish assertion that I want to destroy UNITRA-FM according to me is baby talk. The logo being used at UNITRA is my design, I have brought vehicle sponsorship, have brought revenue that went over 2 Million at UNITRA that can be easily proven by Mr Lubuyo Toni if he can print the old UNITRA-FM Standard Bank statements when he was a station Manager in 2012. I challenge you to prove me wrong. Just in the last 9 months I have brought in revenue that is over R700 000.00 again that can be easily disputed by Mr Luvuyo Toni he has access to bank statements of the Nedbank UNITRA-FM AIRTIME SALES account. When Luvuyo Toni was a station Manager at UNITRA-FM I introduced a system with the assistance from Standard Bank to do all transactions electronically as it was shocking to me that the station before I got involved was dealing in cash, money collected from clients in cash and staff paid in cash because it was convenient to steal. When I left that system was done away with and the Board with Mr Luvuyo Toni now serving on the Board cash became the way things are done.

(1.2) [This part of the defence deals with a private and irrelevant matter which was removed by the CCC from the Complaint –Chairperson]

(1.3) The fighting between the Board members resulted in me being a victim finding it difficult to do my job. When Mr Luvuyo Toni, Ms Babalwa Bhelesi and Ms Hlakwini Board members who were fighting it out in the court reached some agreement to work together they called me into a meeting where they wanted me to inform customers that a different bank account will be used that will allow them to have access to the funds. I refused and told them that it is unprofessional to use different bank accounts for the radio station. It was the last meeting I had with the Board and the following thing that happened was a message I received from a security guard when I reported for work preventing me from getting into the radio station. I would also like Mr Luvuyo Toni to make the documents relating to the court case between the Board members to be made available to CCC or put on record if he says it's not true. I have not visited any clients. I have a network of clients who have dealt with me before and have been in touch with me wanting to advertise with UNITRA-FM and I have forwarded those contacts professionally to UNITRA-FM sales team and will forward the emails to prove that. I would like Mr Luvuyo Toni to submit all the clients to prove that. I would like Mr Luvuyo Toni to submit all the clients that I have visited.[This matter is not relevant to the inquiry and will not be dealt with by the CCC – Chairperson]

(2) The Secretary of the UNITRA-FM Board Mr Luvuyo Toni's reasons for getting involved in operations and the finances of the radio station as he is admitting is against the Community Broadcasting regulations and the Constitution of the radio station. I would also like Mr Luvuyo Toni to give the name of the Station Manager that stole R150 000 and the Toyota Verso. I would like Mr Luvuyo Toni to give us the documentation that shows that a case of theft was opened against this station manager. I would like Mr Luvuyo Toni to provide minutes that will prove that such a matter did occur and the steps were taken by the Board to deal with the matter. I would like Mr Luvuyo Toni to attach a printout from the bank account to show that R150 000 was withdrawn or transferred to the account of this station manager. I would also like Mr Luvuyo Toni to attach the registration documents of the Toyota Verso that was stolen by this station manager. Mr Luvuyo Toni is saying this is the reason the Board decided to play a close monitoring role of the finances not to be in control. This is shocking coming from a Board member. It clearly shows that the Board does not understand their role. The oversight role is the number 1 rule of the Board. This happened on their watch and should be held accountable for not acting to recover the monies if he cannot provide tangible proof to his claims. The Board has failed in their fiduciary duties. Did the Board open a case of theft against the station manager?[The alleged theft of money and the vehicle fall outside the ambit of this inquiry-Chairperson]

3.3.1 License Renewal Regulation 7(3)b

(3) My response to this again is that I am baffled by the lack of grasping matters that Mr Luvuyo Toni should be familiar with as the secretary of the Board. Mr Luvuyo Toni is on record in his reply saying that my intentions are to destroy UNITRA-FM. I have forwarded emails that will prove that the license renewed for the next 4 years was done by me from the beginning to the end even after the UNITRA-FM Board barred me from entering the radio station. I used my own money to drive

from Mthatha to Centurion at ICASA offices to submit the required copies to the USB as the deadline had passed and was given grace to deliver them. I personally handed copies of the license renewal to Ms T Malefane and she can be called in to be a witness to that and will forward emails that were sent to her when I started the renewal process. When there were outstanding documents that needed the Board I did all I could to draw the attention of Mr Luvuyo Toni. I will forward the emails that clearly indicate the frustration of Mr Stanley Mufamadi at licensing requesting the outstanding documents and all of the pressure was applied by me because of the love that I have for the radio station. [This matter is noted but not further pursued in this judgment – Chairperson]

3.2 Community Participation Regulation 13(1) and (5)

(4) The UNITRA-FM Board has not given any reason why in 2017 and 2018 it did not have an AGM. I would like CCC to insist on an answer here. It's against the Constitution and against Community Broadcasting regulations. I have attached the terms of reference that were given by ICASA on how the 2016 AGM was supposed to be held and would like Mr Luvuyo Toni to give supporting documents and emails submissions to ICASA after the Qunu AGM. The UNITRA-FM Board should explain why a critical part of accountability to the community the Annual General Meeting every time it has to be held participants are loaded in taxis to secret venues outside Mthatha. I would like the Board to provide proof of payments by the members of the community who participated in the AGM held in Qunu in 2016 and the one held in 2019 against the time stipulated in the Constitution which is August...⁶

Record Keeping Regulation 16(1)

(5) I'm a bit confused by the secretary of the UNITRA-FM Board in his reply. Mr Luvuyo Toni says that there was a fire that destroyed all the records in 2016 and yet the affidavit he has attached is dated 2017. Mr Luvuyo Toni is either lying or he is not paying attention to what he writes so I will leave that to CCC to deal with it. I would like to draw the attention of CCC to the detailed attachment of what was lost in the fire. I would like CCC to insist that Mr Luvuyo Toni provide proof of payments for all the items lost in the fire as there are precise amounts next to each item that was lost in the fire. I for one cannot believe how many laptops were at UNITRA-FM. It's unbelievable that a radio station that battles to pay its volunteers would buy a printer worth R55 000 what for it's a small broadcasting radio station not a printing company. Here is another startling matter in the list what was UNITRA-FM doing with 1000 plates. The amount of money spent on curtains is beyond belief. I would Like Mr Luvuyo Toni to explain why such assets that cost the radio station R235 880.00 are not listed anywhere in the audited financial statements attached of 2016 and 2017. If a radio station had so many computers and laptops it means this is a digital radio station and that means UNITRA-FM had emails of all these records that should have been sent to ICASA as required to comply. The secretary of the Board should forward all the submissions and interactions that should have been a requirement with the Compliance Officer of

⁶ Removed since the CCC did not inquire into this matter of fraud by a Board Member – the matter falling outside the ambit of this inquiry, which alleges mismanagement by the Board.

the radio station, Mr Maanu Dzebu. To make things easy for Mr Luvuyo Toni I would like him to show CCC that they submitted Form 1 for this year 2019 as a sign that he understands record keeping and compliance.

Article 15.1 UNITRA-FM Constitutional Amendments

(6) My reply to this part is that I have faith in the CCC here to draw their conclusions. The make-up of CCC is advocates, magistrates and Judges (with reference to the Chair *plus experts in several subjects relevant to broadcasting and electronic communication and the media*)⁷, so after going through the attachment of minutes of the AGM and what is recorded there and the process followed in amending the Constitution that will be left up to the academics with in-depth knowledge and understanding. I will say this though, according to me the AGM and everything that took place was not constitutional as it did not follow the terms of reference set out by ICASA. I have attached those. I would also put it on record that the Constitution that was amended stipulated that only the CFC can call and AGM. So this AGM should be declared unconstitutional. The Board members went into that meeting holding that Constitution should have been valid until after a draft and approved Constitution. In the minutes everything happened on the same day. I would also like to draw the attention of CCC to the attached so-called audited financial statements. The signatures of the Board members, I assume, when they received the audited statements is always toward the end of the year - almost 9 months after being audited to me that's a bit old.

(7) My conclusion is this the UNITRA-FM Board has failed to reply to a long list of very critical issues that they should know if they have the best interests at heart for the radio station. I therefore fully believe that they are not fit to be Board members at UNITRA-FM and are destroying the radio station.

CCC DIRECTIVE FOR MORE INFORMATION

[5] Subsequent to the hearings held on 23 August 2019, the CCC directed UNITRA to submit the following information:

- (1) Detailed response to all allegations of contravention as outlined in Mr Tantsi's complaint dated 10 June 2019 with attached supporting evidence.
- (2) Submissions of the 2015 to date AGM Minutes and attendance register.
- (3) Submission of financial statements from 2016 to date as confirmed by an accountant.
- (4) Clarify the purchase of property, plant and equipment and attach note 6.3 to the annual financial statements for the year ended 28 February 2017.
- (5) Submit the South African Police Service (SAPS) case number relating to allegation 2 of the Respondent's letter dated 10 June 2019.
- (6) Submit correspondence relating to the appointment confirming that Mr Madlingozi and Manundu were appointed to facilitate the UNITRA AGM.

⁷ Added by Chairperson of the CCC.

- (7) UNITRA to provide an affidavit from Mr Mazantsana, the ex-Chairperson of UNITRA objecting to the appointment of Mr Tantsi's company Delite Media to generate funds for UNITRA.
- (8) Membership list and proof of payment of the R10 ordinary membership and also attach the resolution of the Board of UNITRA wherein it was decided that the R10 and R50 for business will be paid.
- (9) Proof regarding allegations that the Complainant was "dismissed" for...⁸
- (10) Proof that the Board has been requesting "previous years' financial statements" from certain auditors, to no avail.
- (11) Clarity as to the role of the Community Forum Committee (CFC) prior to its removal by the Board during the 2016 amendment of the Constitution and reasons for the removal.
- (12) SARS and CIPC reports indicating the status of UNITRA FM.
- (13) Confirmation of the station's operating name.

[6] **SUBMISSION BY BROADCASTING COMPLIANCE ("CCA") AT ICASA**

The CCC requested an opinion from the CCA and General Manager Amos Hlabioa provided the following response.

1.UNITRA Community Radio ("UNITRA") is an entity that was licensed as a voluntary association using the Constitution as a legal document to manage its affairs. The initial Constitution that was used to apply for the license, was in accordance with the then IBA Act of 1993, outlining the following:

- a) The radio station was a voluntary association as per Article 2.2;*
- b) Article 4.1 referred to a structure called the Community Forum which will be the one to elect the Board of Trustees of UNITRA Community Radio.*

2.UNITRA has been operating with the same Constitution since inception and being renewed in accordance with the applicable legislative framework by the Authority.

3.The voluntary association which was used to license UNITRA, was never registered with the Registrar of Companies, as it then was, and now known as the Copyright and Intellectual Property Commission (CIPC). The Licensee should have registered as a Non-Profit Company (NPC) or Non-Profit Organisation (NPO), operating under a Non-Profit Trust.

4.UNITRA has during the licensed period, submitted different structures to the Authority and a minimum of four Constitutions, to govern its affairs.

5.In 2006, UNITRA registered with the CIPC as an NPC, to manage the affairs of the Licensee. However, the Licensee did not transfer the license to the registered NPC and it remains licenced as a voluntary association.

6.On 3 and 21 June 2010, UNITRA appeared before the Complaints and Compliance Committee ("CCC"), for contravention of their service licence terms and conditions. Two of the main contraventions were the lack of a governance structure and failure to convene an Annual General Meeting.

⁸ Removed, since no evidence was provided by the Respondent.

7. The CCC ruling was among others, to the effect that UNITRA should make amendments to its Constitution, register membership and convene a properly constituted AGM, to elect a governing structure, i.e. Board of Directors.

8. In August 2010, UNITRA held their AGM and elected members of the governing structure and it was resolved that Constitutional amendments and financial statements, will be dealt with at a separate special general meeting.

9. The elected Board members had certain challenges in relation to managing the affairs of UR and most resigned. The remainder of the members would co-opt members in different years without finalising the Constitutional amendments. Yet, as more members were co-opted, they simply resigned at every opportunity.

10. The Licensee later submitted an AGM report that included discussions involving removal of the Community Forum Committee ("CFC") from the Constitution of UNITRA. There was also mention of their ongoing legal challenges with former employees, among others.

11. On 4 December 2015, UNITRA invited ICASA for an intervention meeting with members of the CFC and the remaining members of the Board.

12. From the meeting above there was an agreement that an interim structure would be formed to convene an AGM and a proper Board of Directors would be elected and finalise the Constitutional amendments.

13. There would be terms of references drafted and parties would seek legal counsel and make submission thereof for adoption. The Walter Sisulu University ("WSU") would also assist as a convener with representatives from their Legal Division.

14. After the meeting the remaining Board members sought an interdict against members of the CFC who were co-opted into the interim structure and a court case then ensued.

ONGOING CHALLENGES AT UNITRA

(Below is a litany of endless challenges with the Licensee)

High staff turnover at executive management. The radio station has in the past seven (7) years, had more than four (4) station managers in an acting capacity.

Lack on internal policies to govern the radio station. It has come to the attention of the Broadcasting Compliance that the Board and Management were in the habit of issuing suspensions randomly against certain employees, without following their own policies or at the very least, applying a fair labour process.

Ongoing legal challenges in relation to labour related matters, general non-compliance, management and governance, allegations of misappropriation of funds and fraud.

Registration of multiple entities to manage the affairs of UNITRA. Broadcasting Compliance could not make out which entity to deal with exactly.

UNITRA still operates without full community participation and not as a registered entity, with a duly elected Board of Directors and Management appointed on a fulltime basis.

The absence of a duly recognised and registered entity to date, has led to multiple individuals coming up with several entities registered at CIPC, to run the affairs of UNITRA with no recognised Board of Directors or Management. However, the few registered entities have given rise to endless allegations that those entities were used merely to divert funds from UNITRA to the pockets of certain individuals.

The least Broadcasting Compliance Unit could do lately was to engage the Licensing Division so they may include a specific condition in the renewed licence for UNITRA, to register an entity and submit the founding documents to the Authority. What would have been desirable for Broadcasting Compliance though, was if Licensing did not renew UNITRA's Licence until they complied in full.

UNITRA is not licenced to the Walter Sisulu University (WSU) like other campus radio stations. The university has been funding and housing the radio station in the past under the assumption that they were a licence holder and are responsible for the licence, which they are not. However, the few attempts to get the University to become involved directly and hold the licence itself, have borne no fruit. It is not even clear who to liaise with at the university.

There must be a way to involve directly WSU (formerly University of Transkei), on whose premises UNITRA operates from, to normalise the Licensee's affairs.

The dysfunctional affairs at UNITRA due to the absence of a juristic body to manage the Licensee and comply with its regulatory obligations, makes it almost impossible for Broadcasting Compliance to rein them in satisfactorily and for the long term. UNITRA is yet to comply in full with the 2010 CCC ruling, to regularise its affairs.

The Community Broadcasting Services Regulations, 2019 were published in Government Gazette No. 42323 dated 22 March 2019. The Compliance and Consumer Affairs division would like to believe the Regulations will bring better clarity in the community broadcasting services including at UNITRA, on separation of powers between management and the Board as well as ensure full community participation. The Regulations should better assist to normalise and improve accountability as well ensure full compliance by UNITRA.

In conclusion, perhaps for consideration, should a suspension of the UNITRA Licence with clear timeframes for certain deliverables, a deadline for achieving all those and more serious consequences to follow, upon failure to abide accordingly. Surely a suspension will send a clear message that the Authority will no longer tolerate the untenable situation at UNITRA.

If need be, Broadcasting Compliance remains available to CCC, to further supplement / confirm the submission herein, verbally.

INFORMATION REQUESTED FROM UNITRA

[7] On 28 August 2019 the CCC requested more information from UNITRA, subsequent to hearing the above matter on 23 August 2019. On 6 September 2019, UNITRA responded and provided the CCC Coordinator's Office with the following information:

- 1. The response to all the allegations as contained in Mr Lusindiso Tantsi's complaint.*
- 2. The minutes and attendance register of the 2016 Annual General Meeting (AGM). UNITRA further provided the minutes and adverts for 2019 AGM.[However omitted to furnish the attendance register for 2019 AGM and minutes of AGMs from 2015 to date, as per the CCC directive]*
- 3. UNITRA failed to provide the CCC with financial statements from 2016 to date.*

4. *UNITRA clarified the purchase of property, plant and equipment in paragraph 14 of their response. However it failed to provide the CCC with note 6.3 which was missing in the Annual Financial Statements for the year ended 28 February 2017.*
5. *The CCC requested the South African Police Service (SAPS) case number relating to allegation 2 of the complaint. UNITRA failed to provide the CCC with it.*
6. *The CCC requested correspondence from IEC relating to appointment of Mr. Madlingozi and Manundu to facilitate the AGM. UNITRA gave an explanation in paragraph 13 of their response, but failed to provide the CCC with such correspondence.*
7. *An affidavit from Mr. Mazantsane objecting to any agreement between himself and Lusindiso Tantsi.*
8. *Membership forms indicating payment of R10 by members. However UNITRA failed to submit the resolution of the Board regarding payment of R50 by businesses.*
9. *UNITRA explained the allegations of fraud against Lusindiso Tansti in paragraph 15 of their response and attached Holy Angels invoice as evidence.*
10. *An unsigned letter UNITRA Chairperson from dated 02 March 2017, requesting 2016/17 financial statements from Khazimla Business Auditors.*
11. *UNITRA explained the role of the Community Forum Committee prior to its removal, in paragraph 12 of their response.*
12. *CIPC reports indicating UNITRA FM status. However, UNITRA omitted SARS reports that the CCC requested.*
13. *UNITRA failed to provide confirmation of UNITRA's operating name.*

CONCLUSION BY THE CCC

[8] The Electronic Communications Act as well as the Regulations pertaining to Community Broadcasters require Community Broadcasters to fulfil high standards of reportage to the community which it serves as well as ICASA. Despite efforts of the CCC in 2010 to bring parties within the Community together and their apparent willingness to do so, the radio station has not succeeded in abiding by the Law. The core of a community broadcaster lies in the community which it serves. This is clear from the Electronic Communications Act and

(again) the latest set of ICASA Regulations published in 2019.⁹ A community Radio is not permitted to divide profits which it makes amongst what is, in another context, called shareholders. It must either be a common law society or a registered Non Profit Company, the finances of the latter being inspected by a Director appointed by a Minister of State in terms of the Non Profit Companies Act. In accordance with the Non Profit Companies Act NPC's fall, as to finances, under the jurisdiction of an appointed Director who may cancel the registration on grounds put forward in the NPC Act. Of course, the finances are also of cardinal importance to ICASA, which is also mandated to ensure compliance with high standards of financial control.

[9] The overall impression with which the CCC was left after hearing both sides is one of disorder within the management of UNITRA: *both* of the Licensee (with the Board as top structure) and the Management which resorts with the Station Manager. The Complainant has made out a case of mismanagement against the Board and the Management. The mismanagement is demonstrated by the absence of clear evidence that the Board met regularly, the absence evidence of proper procedure in dealing with alleged disciplinary matters and vague answers, if any, to questions put by the CCC to the Representative of the Respondent during the hearing. Questions put to UNITRA in a letter subsequent to the hearing, which needed answers or more detailed answers during the hearing, were also, mostly, not satisfactorily answered. The Financial report by the auditors was also particularly negative.

[10] The question arose, during the discussions of the CCC, whether the licence of the Respondent should not be suspended and UNITRA be taken off air so that it could re-organise itself and demonstrate to ICASA that it is a trustworthy licensee. The ICASA Act, however, only permits the CCC to advise Council to take a broadcaster off air in limited circumstances. Section 17(E)(2)(d) provides as follows:

The Complaints and Compliance Committee may recommend that one or more of the following orders be issued by the Authority, namely -(d) where the licensee has **repeatedly** been found guilty of **material** violations - prohibit the licensee from providing the licensed service for such period as may be recommended by the Complaints and Compliance committee, subject to the proviso that a **broadcasting** or communications service, as applicable, ***must not be suspended in terms of this subsection for a period in excess of 30 days; or...***

[11] It was common cause that the Respondent had not *repeatedly* been found guilty by the CCC of material violations of the ECA or the relevant Regulations. Section 17(E)(2)(d) is,

⁹ COMMUNITY BROADCASTING SERVICES REGULATIONS 2019, 22 March 2019 Attached as a Supplement to this Judgment

accordingly not applicable. From the Complaint and the Response, plus what was stated during the hearing it was, however, clear to the CCC that from an organisational and financial perspective the radio station was ill-managed. Steps would have to be taken to re-construct the radio station from a management and financial perspective.

FINDING

The UNITRA Board is found to have omitted its duties to run the affairs of the station in a regular law abiding manner: especially in regard to its finances, not holding duly advertised Annual General Meetings as provided for in its Constitution, disbanding the Community Forum and absence of orderly personnel oversight via the Station Manager.

ORDER ADVISED TO COUNCIL OF ICASA

- (a) Upon receipt of this order, the present Board must invite the community to a Special General Meeting to elect an Action Committee comprising of seven (7) members (of which one member must be a Chairperson and another a Secretary) on a weekend before the end of February 2020.
- (b) That the term of the present Board of UNITRA FM would come to an end after the election of the Action Committee.
- (c) A quorum will be three and meetings must be called by the Chairperson with seven days' electronic notice. The Chairperson will have an extra vote where the votes are equally divided.
- (d) The fees paid to Action Committee Members by the licensee per meeting will accord with the fees payable to the Board per meeting in 2019. Where three members request a meeting, such a meeting must be held by the Chairperson within seven calendar days. Where a person mentioned above is not available to serve, the Committee may by majority vote add a person, outside the dissolved Board, in her or his position.
- (e) That a Professor or Senior Lecturer of the Walter Sisulu University be approached to join the Action Committee with permission of the Rector of the University. Since this may take some time, the Action Committee must commence with its duties immediately as indicated above and not await the said appointment.
- (f) **Broadly the task of the Action Committee will be:**
 - (1) To deal with matters placed before the Board in the normal course plus, as special task, to address the financial position of the Station and appoint an accountant to

report on the financial management of the Station and provide the Committee with a Report by latest end March 2020.

- (2) That the powers and duties which the Board would have had in the normal course be addressed by the Action Committee.
- (3) To hold Meetings, on average every two weeks at the time of the meeting is agreed to by all members.
- (4) To call an Annual General Meeting on a weekend on or before 30 April 2020, which must elect a Board to govern the Radio Station. That notice of the said Meeting must be given by the Radio Station by way of three daily broadcasts on the News between 07:00 and 21:30 for two weeks before the Meeting. A record of the broadcasts must be kept with the relevant dates of broadcast: such record being available to ICASA if requested within 60 days from the broadcast.
- (5) The New Board as elected, must appoint a Station Manager alternatively an Acting Station Manager if no such person is in the position after the New Board has been elected.
- (6) That the said Committee prepare draft amendments, where necessary, to the Constitution which amendments must be placed on the website of UNITRA 14 days before the Annual General Meeting. The proposed amendments must be approved at the Annual General Meeting.
- (7) That the Community Forum Committee be re-instated by the Action Committee – and at least two meetings per year be held with the Committee by the Board.
- (8) That email notice be given to Broadcasting Compliance of ICASA as to the date and the time of the Special and Annual General Meeting before the scheduled meetings and that with copies of the Minutes of all meetings of the Action Committee within seven work days after the meeting by the Secretary of the Action Committee be provided.
- (9) The fact that the radio station was registered as a Non Profit Company in 2015 must also be included in the amendment of details on the licence at ICASA. The Action Committee, as determined above, must ensure that the necessary certificate was also issued by the Department of Justice, recognising the licensee's registration as a Non-Profit Company.

J. C. van Rooyen

Chairperson

23 October 2019

The Members of the CCC Agreed

Attachment Regulations

SUPPLEMENT

INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA

NO. 439

22 MARCH 2019

COMMUNITY BROADCASTING SERVICES REGULATIONS 2019 22 March 2019

The Independent Communications Authority of South Africa ("the Authority"), in terms of section 4(3)(b) of the Independent Communications Authority of South Africa Act, 2000 (Act No. 13 of 2000), as amended ("ICASA Act") read with sections 4(1) and 5(7) of the Electronic Communications Act, 2005 (Act No. 36 of 2005), as amended ("ECA") hereby prescribes the Community Broadcasting Services Regulations in the schedule. 22 March Published

SCHEDULE

1. Definitions

In these Regulations, unless the context otherwise indicates, a word or expression to which a meaning has been assigned in the ICASA Act and the underlying statutes, the meaning is so assigned:

"alliance with a political party" means any cooperation and/or agreement between non-political organisations and political parties;

"applicant" means a person applying to the Authority to register for a community broadcasting service licence;

"community" has the same meaning as defined in the Broadcasting Act, No.4 of 1999 as amended and the Electronic Communications Act, No.36 of 2005 as amended;

"community broadcasting services" has the same meaning as defined in the Broadcasting Act, 1991 (Act No.4 of 1999), as amended and the Electronic Communications Act, 2005 (Act No.36 of 2005) as amended;

"ECA" means the Electronic Communications Act, 2005 (Act No. 36 of 2005), as amended;

"licence" has the same meaning as defined in the Broadcasting Act, 1999 (Act No.4 of 1999), as amended;

"licensee" has the same meaning as defined in Electronic Communications Act, 2005 (Act No.36 of 2005) as amended;

"local origination programmes" means local programmes sourced from the coverage area:

(a) produced by a broadcasting service licensee; or

(b) programmes produced by a resident of the coverage area; or

(c) produced by a juristic person, the majority of directors, or members of whom are residents of the coverage area; or

(d) produced in a co-production in which persons referred above have at least fifty percent financial interest.

"non-profit entity" has the same meaning as defined in the Non-Profit Organisations Act, 1997 (Act No. 71 of 1997);

"Processes and Procedures Regulations" means the Class Licensing Processes and Procedures Regulations (as amended), 2010 published in Government Gazette No. 33297, Notice No. 526 of 14 June 2010, as amended by Government Gazette No. 39874, Notice No. 157 of 30 March 2016, including any future amendments;

"political office bearers" means persons listed in regulation 9 of these Regulations;

"political party" has the same meaning as defined in Electronic Communications Act, 2005 (Act No.36 of 2005) as amended;

"programme sharing/networking" means programmes produced by one broadcaster and shared amongst different broadcasting licensees;

"programme syndication" means programmes produced at a central hub, distributed and broadcast simultaneously by broadcasting licensees;

"record" has the same meaning as defined in section 1 of the National Archives and Records Service of South Africa, 1996 (Act No 43 of 1996);

"Standard Terms and Conditions Regulations" means Standard Terms and Conditions Regulations (as amended), 2010 published in Government Gazette No. 9311, Notice No. 525 of 14 June 2010, as amended by Government Gazette No. 39872, Notice No. 609 of 30 March 2016, including any future amendments.

2. Scope

These Regulations apply to persons who are intending to register for or holding a community sound or television broadcasting service licence.

3. Purpose

The purpose of these Regulations is to prescribe:

- (a) the framework under which community broadcasting licensees will operate;
- (b) registration, renewal, transfer and amendment process of community broadcasting licences;
- (c) governance and management structures of a community broadcasting licensee; and
- (d) the basic principles of community participation.

4. Licence Application

- (1) An applicant must be registered as a non-profit entity at least two (2) years prior to lodging an application to register as a community broadcasting service licensee.
- (2) Subject to sub-regulation (1), an applicant must demonstrate community development and empowerment with respect to the community located within the coverage area it would like to render community broadcasting services.
- (3) An applicant must submit a pre-registration notice as per the requirements set out in Form B of the Processes and Procedures Regulations, which must be accompanied by the following documents:

(a)the applicant's founding documents such as the Constitution and Memorandum of Incorporation;

(b)Curriculum vitae of board members and management;

(c)Disclosure of interest of board members and management; (d) Programming plan;

(e)Business plan comprising a 3-5 years' financial plan; (f) Tax clearance certificate;

(g)Demand, need and support including profiled community broadcasters in the coverage area and programming format;

(h)Projects reporting on management, governance and finances; and

(i)Corporate governance and operational policies including, but not limited to:

i.Technical operations;

ii.Human resource;

iii.Financial;

iv.Programming policy;

v.Editorial policy;

vi.Social media policy; and

vii.Political branding at the station and affiliation policy.

(4)The criteria of whether to grant or not to grant a community broadcasting service licence, is based on the following:

(a)The registration does not contain the information set out in Form B of the Processes and Procedures Regulations;

(b)The registration contains false or misleading information or misrepresentation of fact;

- (c) The applicant is in contravention of the Act or the related legislation in relation to other licences that such person may hold;
 - (d) The applicant is fully controlled by a non-profit entity and carried on or is to be carried on for non-profit purposes;
 - (e) The applicant has never been convicted of an offence in terms of this Act or related legislation;
 - (f) The applicant's ability to fulfil the diverse needs of the community within the coverage area;
 - (g) programming to reflect the needs of the community as identified and prioritised by that community in a forum or any other manner to the satisfaction of the Authority;
 - (h) contribution towards the general enrichment of the lives of members of the community within the coverage area;
 - (i) distinction of the applicant from other applicants and/or broadcasters, including individual licensees, serving the same geographical coverage area;
 - G) application is made where a community licensee exists with similar services within the coverage area; and
 - (k) the demonstration of competency to self-provide, where a licensee chooses to self-provide for signal distribution.
- (5) An applicant must submit a pre-registration notice within the time frames to be prescribed by the Authority through the invitation to pre-register.
- (6) The Authority will inform the applicant of the outcome of the pre-registration notice 90 days after the closing date for submission of the pre-registration notice.

(7) Where the Authority is satisfied that the applicant meets the requirements for the granting of a licence, the Authority will communicate such decision to the applicant in writing, following which the applicant may lodge the registration notice within 30 days of the Authority's written communication.

(8) The Authority shall, where frequencies are available, grant a licence.

(9) Where the Authority deems it necessary, the Authority will conduct public hearings prior to making a decision on the application to register a community broadcasting service.

(10) The Authority will not consider an incomplete application form with regard to an application to register a community broadcasting service licence.

5. Governance and Management

(1) The founding documents of an applicant must reflect defined roles of management and the board members.

(2) The composition of the Board must exclude immediate family members such as: parents; siblings; children connected by birth or adoption; spouses through marriage, civil partnership or cohabitation; grandparents; great-grandparents; grandchildren; great-grandchildren; aunts; uncles; siblings-in-law; half-siblings; cousins; adopted children and step-parents/step-children.

(3) The role of the Board includes, but not limited to:

(a) ensuring compliance with all relevant laws, regulations and codes of good practice;

(b) approving policies for the station;

(c) giving strategic direction to the licensee;

(d) development of a corporate code of conduct;

(e) identification of risk areas and performance indicators;

(f) appointing and supervising the Station Manager;

(g) approving the appointment of other senior management of the station;

(h) monitor implementation of the Board's plans; and

(i) supporting the station management in fundraising activities through its networks.

(4) The role of the Station Manager includes, but not limited to:

(a) planning of action such as initiating projects to fulfil the mandate of the licensee;

(b) recruiting staff and volunteers including drafting contracts with detailed job descriptions;

(c) directing as well as training management for sound human relations and operational skills;

(d) managing daily operations and delegating control of other departments such as programming, sales and marketing, news, music, finance, technical and administration;

(e) instilling discipline through written and approved policies that detail corrective actions and procedures;

(f) networking and meeting potential clients, funders and donors; and

(g) ensuring that the licensee affiliates/signs with the relevant forums such as the National Association of Broadcasters and the National Community Radio Forum.

(5) The Station Manager must serve as *ex-officio* member of the board and report to the board.

(6) Managers below the Station Manager must report to the Station Manager in respect of the operations in their respective departments.

(7) Management is responsible for the daily administration duties of a licensee. (8) The Board must not interfere in the daily operations of a licensee.

6. Licence Amendment

(1) The Authority shall deal with each licence amendment application based on its own merits.

(2) In deciding whether to approve or not to approve a licence amendment application, the Authority shall take into account the provisions of regulation 4 of these Regulations.

(3) A licensee intending to amend its licence must fully comply with the amendment requirements in the Processes and Procedures Regulations.

7. Licence Renewal

(1) A licensee intending to renew its licence must submit an application for renewal as per the requirements in the Processes and Procedures Regulations comprising the following information:

(a) feasibility and sustainability report;

(b) Five (5) year financial statement revealing how a licensee has been performing;

(c) community support detailing how community members have been given access to the airwaves;

(d) details of whether the broadcaster has been off air;

(e) legality of office bearers;

(f) the existence of another community broadcasting licensee in the same geographical area; and

(g) compliance report in respect of relevant legislation, the Authority's regulations and licence conditions, including instances of non-compliance if any.

(2) The Authority will not renew a community broadcasting licence if the Authority determines that a licensee has;

(a) fails to meet the criteria in terms of regulation 4 (4) (a) to (g) of these Regulations; and

(b) fails to comply with a decision or ruling of the Authority.

(3) Where necessary, the Authority will publish a notice to conduct public hearings for community broadcasting licence renewal.

(4) Where a licensee meets the licence renewal requirements, the Authority will issue a new licence on the same terms and conditions as the expired licence and update the Community Broadcasting licensees register by renewing the period of a licence.

(5) Where a licensee's licence has not been renewed, the Authority will update the register by removing a licensee from the Community Broadcasting licensees register.

8. Licence transfer

(1) An intention to transfer of a licence from one entity to the other must be tabled and endorsed by the licensee's constituency either at its annual general meeting or special general meeting.

(2) Full disclosure of the intended transfer must be tabled and submitted to the community served.

(3) Subject to sub-regulation 2 above, the licensee must submit the intended transfer to the Authority for consideration.

(4) The licence transfer application must be lodged in terms of the Processes and Procedures Regulations.

(5) The criteria of whether to transfer or not to transfer a community broadcasting service licence, is the same as contained in regulation 4 (4) of these regulations.

(6) Where necessary, the Authority will publish a notice to conduct public hearings for community broadcasting licence transfer.

9. Prohibited Office Bearers

(1) The following political office bearers must not play any role in the Board, Management and Staff of a Community Broadcasting Service:

(a) Members of the Local Executive Committees of political parties, the youth affiliates and women's affiliates of political parties, and any organisation that is in an alliance with a political party;

(b) members of the Regional Executive Committees of political parties, the youth affiliates and women's affiliates of political parties and any organisation that is in an alliance with a political party;

(c) members of the Provincial Executive Committees of political parties, the youth affiliates and women's affiliates of political parties and any organisation that is in an alliance with a political party;

(d) members of the National Executive Committees of political parties, the youth wings and women's wings of political parties and any organisation that is in an alliance with a political party;

(e) Councillors;

(f) Mayors;

(g) Members of Provincial Legislatures; and

(h) Members of Parliament.

10. Programming

(1) Majority of programmes, news bulletins and current affairs broadcast by a community broadcasting service must be local origination programmes.

(2) Programme syndication/network and programme sharing shall not exceed 20% Of the community broadcasting licensee's programming.

(3) A licensee must have policies dealing with programming matters that include, amongst others:

(A) mechanisms for community participation; (b) programming format; and

(c) Language policy.

11. Surplus Funds

(1) A community broadcasting service licensee must, in the event of a surplus, utilise and/or invest the funds in the community served for the purposes of community development.

(2) A community broadcasting service licensee must submit annually, a report with supporting documents, detailing how it has utilised or invested the surplus within the financial year.

12. Management Contract

(1) Management contracts must be lodged with the Authority for approval.

(2) The Authority will consider the following conditions for approval of a management contract:

(a) ownership of the community broadcasting licensee remains with the community being served;

(b) administrative control in the operations of the community broadcasting licensee remains with the board of directors and management;

(c) Method of reimbursement and the duration of the management contract;

(d) A licensee retains editorial and programming control and independence;

(e) Management contract does not render a third-party entity a shareholder/owner of a community broadcasting licensee;

(f) fiduciary duties remain the responsibility of the board;

(g) The board of directors must be from the coverage area; and

(h) The duration of the management contract which must not exceed a period of two (2) years.

(3) Renewal and amendment of a management contract must be lodged with the Authority for approval. The Authority will consider factors set out in regulation 12(2) for approval.

13. Community participation

(1) A licensee must ensure that ownership of the community broadcasting licensee remains with the community served.

(2) A licensee must involve the community members in the management of the community broadcasting licensee.

(3) A licensee must establish programming councils/committees to enable community members to participate in the selection and provision of programmes.

(4) The programming councils/committees must be representative of different interest groups within the community served, such as youth, women, or people with disabilities.

(5) A licensee must submit proof of community participation at every annual general meeting, and other forums that require community participation.

14. Code of Conduct

A licensee must adhere to the Authority's Code of Conduct for Broadcasters, 2009, or to the Broadcasting Complaints Commission of South Africa's Code of Conduct for Broadcasters if the licensee is a member of the National Association of Broadcasters, or any amendment or replacement thereto.

15. Technical Standards and Specifications

A licensee must adhere to the Authority's regulations relating to technical standards and specifications, this will include regulations speaking to:

(a) spectrum management;

(b) licence fees; and

(c) Standard Terms and Conditions Regulations applicable to Class licences.

16. Record keeping

(1) A licensee must in line with the National Archives and Records Service of South Africa Act, 1996 (Act No. 43 of 1996), as amended and any other applicable legislation, keep the following records relating to its broadcasting activities:

- (a) documentation relating to the person or entity who or which is in control of or in a position to exercise control over the licensee concerned including documentation relating to;
- i. Its legal status including all founding documentation pertaining to the licensed entity and any member organizations of the entity;
 - ii. Details of the board members or trustees including gender, race and address of such person or entity, as the case may be; and
 - iii. Disclosure of interest of Board members in programming and finance.
- (b) a list of capital assets, books of account, financial records and financial statements compiled by an accounting officer;
- (c) a list of donors and details of all financial and non-monetary donations;
- (d) documentation pertaining to the opening, maintenance and changes in the status to banking accounts;
- (e) contracts entered into by or on behalf of the licensee in connection with the daily operational activities of the licensee;
- (f) a log of programmes broadcast in the form acceptable to the Authority;
- (g) a public file for keeping written complaints received by the licensee and correspondence between the licensee and complainant;
- (h) a log of telephonic complaints received by the licensee;
- (i) a log of advertisements broadcast;
- (j) a log of the percentage air-time per hour allocated to advertisements;

(k) during an election period, a log of party election broadcasts broadcast by the licensee;

(l) a log of sponsorship for programmes together with details of payment, financial or otherwise, received for such sponsorship;

(m) copies of correspondence with the Authority; and

(n) a log of all direct and indirect on-air fundraising activities for the stations.

(2) A licensee may, by written notice directed to it, be required to produce or furnish to the Authority, at a time and place specified in the notice such records, including documents, accounts, estimates, returns and information as may be specified in such notice and relating to any matter in respect of which a duty or obligation is imposed on the licensee by the Act or these regulations or by the relevant license.

(3) The logs, statistical forms and records contemplated in regulation 16(1) and (2) must be preserved for the duration of the broadcasting licensee's license period.

(4) A licensee must publish its policies on its website or have them available for public scrutiny at its premises or public space like libraries.

(5) A licensee must report on its funding, surplus and the distribution of surplus at its annual general meetings and to the Authority.

17. Contraventions and Penalties

(1) Any person that contravenes Regulations 9, 10, 11, 12, 13 and 16 is liable for a fine not exceeding 10% of its annual turnover.

18. Short Title and Commencement

These regulations are called the Community Broadcasting Services Regulations and will come into force on the date of publication in the Government Gazette.

