



Independent Communications Authority of South Africa

350 Witch-Hazel Avenue, Eco Point Office Park

Eco Park Centurion

Private Bag X10, Highveld Park, 0169

COUNCIL DECISIONS – 25 June 2019

ITEM NO.	AGENDA ITEM	DECISION
1.	<p>Applications for the transfer of control of Cyberdine Secure Internet’s Individual Electronic Communications Service (I-ECS) and Individual Electronic Communications Network Service(I-ECNS) Licences.</p> <p>1.1 The purpose of the submission was to recommend that Council approves the transfer of control of Cyberdine Secure Internet ‘s I-ECS and I-ECNS licences as well as the Reasons Document.</p> <p>1.2 On 24 October 2018, ICASA received applications for the transfer of control of Cyberdine Secure Internet’s I-ECS and I-ECNS licenses from the current members (the Applicant) to the proposed new members (‘the Transferee).</p> <p>1.3 The applicant requested confidentiality in terms of section 4D of the Independent Communications Authority of South Africa Act no 13 of 2000.</p> <p>1.4 The confidentiality request was granted in February 2019.</p> <p>1.5 The application complied with all applicable regulations and the legislative framework.</p>	<p>The application was approved</p>

<p>2.</p>	<p>Analysis of SAPO's 2017/2018 regulatory Financial Statements (RFS) and Operators Manual Procedure (OPM).</p> <p>The purpose of the submission was to make a recommendation to Council to approve the evaluation of SAPO's draft Operator's Procedure Manual for the financial year ending 31 March 2019.</p> <p>2.1 ICASA in terms of section 8 and section 30 of the Postal Service Act No.124 of 1998 approved the Accounting Separation Regulations for Reserved Postal Services for publication and implementation on 10 March 2011.</p> <p>2.2 The purpose of the Regulations was to prescribe a structured accounting and regulatory reporting framework for SAPO's reserved postal services to achieve uniformity and consistent reporting of elements required to determine fees and charges were implemented. The determination of postal fees and charges was done in accordance with the Price Cap Regulations.</p> <p>2.3 The accounting and regulatory framework also guides SAPO in preparing its Operator's Procedure Manual. The OPM is a tool which assists SAPO to communicate its policies, procedures and adopted basis for reporting consistently to its stakeholders.</p>	<p>The recommendation was approved</p>
<p>3.</p>	<p>Submission on Dormant Licenses.</p> <p>The purpose of the submission was to</p>	<p>It was resolved that the Compliance and Consumer Affairs take the above matters to the CCC.</p>

advise Council of the State of the Broadcasting Service Licensees that had not commenced broadcasting and request Council to decide on a way forward.

3.1 The Compliance and Consumer Affairs Division sent out letters to the following Licensees (Television services and Radio services) requesting them to provide reasons for failure to commence operations.

3.2 The following dormant licensees were contacted:

- 3.2.1 Super 5 Media;
- 3.2.2 Walking on Water (WoW);
- 3.2.3 Siyaya TV;
- 3.2.4 Close TV;
- 3.2.5 E.sat TV;
- 3.2.6 Rhythm FM;
- 3.2.7 Beat FM; and
- 3.2.8 Talksports.

Subscription TV Licensees

Super 5 (Pty) Ltd

3.3 Super 5 (Pty) Ltd proffered the following reasons for not commencing operations:

3.3.1 Super 5 Media (Pty) Ltd was liquidated on 24 June 2016 and therefore a company in liquidation cannot commence operations.

3.3.2 Because of liquidation an impediment exists which had resulted in failure of the license to launch.

3.3.3 Further advised that only after the sale/transfer of the license the new owner will be in the position to adhere to the relevant provisions.

3.3.4 The license was an asset of an insolvent estate of Super 5 Media (Pty) Ltd and should be sold by the appointed liquidators for a reasonable value to a willing buyer.

3.3.5 The licensee further stated that it was not in contravention as the appointed liquidators have been attempting to find a suitable buyer for the license since the date of their appointment as liquidators.

Walking on Water (WoW)

The licensee misled CCA by advising that they were operational. Later it was discovered that they were only “broadcasting” on YouTube.

3.4 CCA referred the matter to the CCC and it was heard on the 08th June 2018. On 21 August 2018 the CCC ordered the licensee to (1) submit a plan of action and (2) to provide a date of commencement. On 7 January 2019 the licensee submitted a letter to the Authority but failed to provide details of the plan of action and date to commence.

3.5 CCC was in the process of referring WoW TV back to the CCC for not complying with its order

Siyaya TV

The licensee had advised that its submission was ‘founded in principle on the roll out on the Digital Terrestrial Television (“DTT”) network. The Auction for the DTT MUX3 was scheduled for the 24th of April 2017 and after its cancelation no further

communication had been received from ICASA". The Licensee had further advised that it had decided to launch its service similarly to e.sat, on the Multichoice platform-represented by a channel -Moja Love (Channel 157-DStv) on 14 February 2018.

3.6 CCA wrote a letter to Siyaya Tv requesting the licensee to provide reasons as to why it had failed to commence operations and further advise the licensee of the CCA's intention to refer the matter to the CCA. The licensee responded and advised as follows:

3.6.1 ICASA has consistently failed to acknowledge or explain the delay between the submission and the award of the license.

3.6.2 Further, ICASA failed to acknowledge the impact such a delay would have and had in fact had on the licensee's business plan.

3.6.3 The licensee's application was founded in principle on the roll out of the DTT network.

3.6.4 Further submits that the government and ICASA as well as the Department of Communications in particular, must take accountability for the failure of DTT to be implemented and its consequent deleterious impact on television broadcast (including Siyaya) and the general South Africa ICT sector.

Close TV

The licensee was granted a

Commercial Subscription Television and Sound Broadcasting license by the Authority on 19 March 2015 and granted an extension until March 2018.

3.7 However, the licensee informed the CCA that it will be operational by October 2018. To date, CA has not been able to determine their operational status.

3.8 CCA had requested the licensee to provide reasons as to why it failed to commence operations and further advise the licensee of the CCA's intention to refer the matter to the CCC. The licensee responded and advised as follows:

3.8.1 Close TV had appointed Globecast as a technical service delivery partner for the ingestion and distribution of content.

3.8.2 Close TV had invested approximately R6 million during the 2018 financial year on the clearing of international content and R1.5 million on local production for the creation of various linear and on demand OUTtv SA branded services.

3.8.3 Close TV was now in advanced commercial negotiations for the launch of an OUTtv service across Multichoice as a platform distributor.

5.e.sat TV

3.9 e.sat was of the view that before commencing operations, it needed to take considered view on whether the market conditions will sustain the

	<p>introduction of a new pay TV service.</p> <p>3.10 The licensee awaits the Authority's "Inquiry into Subscription Television Broadcasting Services". The licensee awaits the inquiry's final findings.</p> <p>3.11 The licensee further stated that it would then be in the position to take a view on whether it would be able to sustain the introduction of a new Pay TV service.</p> <p>3.12 From the above, the Authority needed to decide based on the Licensee's submissions, whether to continue the process of revoking the licenses.</p> <p>Commercial Sound Licensees</p> <p>Rhythm and Beat</p> <p>3.13 The two licensees were essentially on the same position. They were granted and issued with Commercial Sound Broadcasting and Frequency Spectrum licenses on 07 December 2015.</p> <p>3.14 The licensees had submitted that the licensed foot prints were not conducive to commercial operation and they subsequently requested additional spectrum and larger operational areas, however these requests were declined.</p> <p>3.15 The licensees had explained that the areas had limited commercial activity and therefore for the Licensees to be viable they would require to</p>	
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reach a larger audience. The licensees aver that without the additional spectrum and wider footprint they cannot be commercially viable. They were operational, though not necessarily in the correct format as per their respective licenses.

3.16 CAA had sent a letter requesting the licensee to provide reasons as to why it had failed to commence operations and further advise the licensee of the CCA's intention to refer the matter to the CCC.

talkSPORT

3.17 The licensee was granted Commercial Sound Broadcasting and Frequency Spectrum Licenses on November 2015 to provide sports and lifestyle content. However, the licensee had not launched on air via AM on 540 KHz due two main reasons.

3.18 There was an ongoing litigation process brought by one of the successful applicants i.e. Simascape in the License process of commercial sound broadcasting services in the primary markets on medium wave.

3.19 The case was heard in the Gauteng High Court in March 2018 and the judgement was in the licensee's favor. However, Seascape had filed an appeal to the judgement and the licensee would want to await the legal process to be finalized before going on air.

3.20 The transmission infrastructure issues remained a critical

	<p>blockage to launching as Sentech had refused to implement the electrical power capacity upgrades needed to launch the talk SPORT service without signed transmission services agreement. Therefore, talkSport was unable to enter into a legally binding transmission contract with Sentech until litigation was resolved.</p> <p>3.21 The Licensee submitted that it required a further 12 Month - extension to 02 November 2019.</p> <p>Conclusion</p> <p>3.22 In addition, licensees had failed to use the allocated radio frequency spectrum within the prescribed time of (2 years) as required by regulation 14(3) of the Radio Frequency Spectrum Regulations 2015. The Authority may therefore invoke sections 31 (8) -(10) of the ECA which talks to the withdrawal of the radio frequency spectrum license by the Authority when the licensee had not used the allocated radio frequency within the prescribed period.</p>	
<p>4.</p>	<p>Application by Jacaranda FM-Change and Update of ICASA Licensee Information -Jacaranda FM (Pty) Ltd.</p> <p>The purpose of the submission was to advise Council of two notices received from Jacaranda FM (Pty) Ltd, requesting the Authority to affect a name change and a shareholding change respectively for the shareholding company, and to request Council to note and approve the change.</p>	<p>The application was approved.</p>

	<p>4.1 On 15 February 2019, the Authority received a notice from Jacaranda FM (Pty) Ltd advising the Authority of changes with respect to its name for the shareholding company.</p> <p>4.2 Notice was in respect to the change to its name for the shareholding company in Jacaranda FM (Pty) Ltd from Kagiso Broadcasting (Pty) Ltd to Kagiso Media (Pty) Ltd with shares remaining unchanged at 80%.</p> <p>The application complied with all legislative frameworks and regulatory guidelines.</p>	
<p>5.</p>	<p>Application by Impact FM-Exemption from Compliance in terms of Regulation 4(1) of the Music Content Regulation, 2016.</p> <p>The purpose of the submission was to advise Council of the application for exemption regarding compliance with the South African music quotas, received by the Authority from Impact Radio in terms of Regulation 4(1) of the South African Music Content Regulations,2016 and to request Council to reject the application for exemption by Impact Radio.</p> <p>5.1 The licensee on its application was requesting exemption from the quotas of local music content. The licensee was requesting that its local content be reduced to 50%. This was lower than the minimum 70% that was contained in the Regulations.</p> <p>5.2 The licensee submitted its evidence that there was limited supply of local Christian music, however the CCA argued that the evidence submitted was not convincing. The licensee requested that the music</p>	<p>The recommendation was approved</p>

	<p>companies provide information regarding releases for a twelve-month period, specifying that the information should only focus on English music even though the licensee was required to broadcast in three languages albeit each having a different percentage of representation.</p> <p>5.3 Further, there was nothing preventing the broadcaster from broadcasting local Christian music that was released in previous years. Christian music in South Africa had a long history and the licensee can add programmes that were dedicated to different decades.</p> <p>5.4 The licensee failed include proposals of how it intends to work with music industry to address the shortage of music supply in its defined format.</p> <p>5.5 It was recommended that Council notes and rejects the application for an exemption by Impact Radio from compliance with the music Content Regulations 2016</p>	
<p>6.</p>	<p>Application by Link FM-Exemption from compliance in terms of Regulation 4(1) of the Music Content Regulation ,2016</p> <p>The purpose of the memorandum was to advise Council of the application for exemption regarding compliance with the South African music quotas received by the Authority from Link FM in terms of Regulation 4(1) of the South African Music Content Regulations ,2016 and to request Council to reject the request for exemption.</p> <p>6.1 The licensee broadcast language</p>	<p>The recommendation was approved</p>

	<p>was 50% English,40% isiXhosa and 10% Afrikaans and provided services to East London (Buffalo) Kamga, Mdantsane and immediate surrounding towns in the Eastern Cape.</p> <p>6.2 The licensee provided services to a Christian community residing on the said geographic coverage area.</p> <p>6.3 On 27 June 2017, the licensee lodged an application for an exemption from compliance with the South African music quotas as identified on the Regulations.</p> <p>6.4 The licensee was requesting a reduced South African music quota of 50%.</p> <p>Conclusion</p> <p>6.5 After careful consideration the CCA was of a considered view that the licensee had failed to convince the Authority that there was limited English Christian music content in its defined format.</p> <p>6.6 Its defined format was Christian music representatives of its three broadcast languages i.e. English, isiXhosa and Afrikaans. The information provided by the licensee represented a fragmented view of the music industry as it only focuses on English music. Further, the licensee states that it will be able to broadcast 50% English music.</p> <p>6.7 The measures undertaken by the licensee do not satisfy the requirements and these measures did not influence its current programming schedule.</p>	
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	<p>Recommendation</p> <p>It was recommended that Council notes and rejects the application for an exemption by Link FM from compliance with the Music Content Regulations 2016.</p>	
<p>7.</p>	<p>Recommendation by CCC to Council in the matter between Compliance and Consumer Affairs division of ICASA v Ohren Telecom CC</p> <p>The purpose of the memorandum was to table the recommendation of the CCC on the matter between the Compliance and Consumer Affairs Division of ICAS and Ohren Telecom CC</p> <p>7.1 On 10 September 2018, the CCC received a complaint from CCA in terms of section 17(b) of Section 17C of the Independent Communications Authority of South Africa no. 13 of 2000.</p> <p>7.2 CCA alleged that Ohren Telecom contravened section 13(1) of the ECA by transferring control of their licences by changing the shareholding structure without prior written permission of the Authority in terms of section 13 (1) and (2) of the Electronic Communications Act of 2005.</p> <p>Recommendation to Council</p> <p>The CCC upheld the complaint and recommended that Oren Telecom CC:</p> <p>7.3 Apply to ICASA for the transfer of the shares to the other CC members if the members resolved to continue with the deal.</p> <p>7.4 Await the resolution of the Council of ICASA on this matter.</p>	<p>The recommendation was approved</p>

<p>8.</p>	<p>Recommendation by CCC to Council in the matter between Compliance and Consumer Affairs (CCA) division of ICASA and Amatole Telecommunications Services (Pty) Ltd</p> <p>The purpose of the submission was to table the recommendation of the CCC in the matter between the Compliance and Consumer Affairs Division of ICASA and Amatole Telecommunications Services.</p> <p>8.1 CCA alleged that Amatole contravened section 13(1) of the Electronic Communications Act 36 of 2005 by failing to obtain prior written permission of the Authority before transferring control of shareholding of its Individual Electronic Communications Service licence to Centelex (Pty) Ltd (51%) and to K2016436718 (South Africa) (Pty) Ltd (49%).</p> <p>Recommendation to Council</p> <p>The CCC made the following recommendation:</p> <p>8.2 Find the transfer of 51% shares to Centelex (Pty) Ltd to be a nullity.</p> <p>8.3 Direct Amatole Telecommunications services (Pty) Ltd to:</p> <p>8.3.1 Within seven working days from the issue of the order cancel the registration with the Companies and Intellectual Property Commission.</p> <p>8.3.2 Copy ICASA with such cancellation and de-registration within seven days of receipt of the order.</p>	<p>The recommendation was approved</p>

	<p>8.3.3 Apply to ICASA for the transfer of control to Centelex if Amatole Telecommunications Services (Pty) Ltd again resolves to do so.</p> <p>8.3.4 Await the resolution of the Council of ICASA in that regard.</p>	
<p>9.</p>	<p>Recommendation by CCC to Council in the matter between Compliance and Consumer Affairs division of ICASA and Databridge Networks CC.</p> <p>The purpose of the submission was to table the recommendation of the CCC in the matter between CCA and Databridge Networks CC.</p> <p>The charge levelled against the licensee was as follows:</p> <p>9.1 Databridge had allegedly contravened section 13 (1) of the Electronic Communications Act.36 of 2005.</p> <p>9.2 Databridge transferred the control of its ECS and ECNS licenses from Vincent Jatho and John Matheson to Darryl Philip Richter without the requisite prior written permission of the Authority to transfer the control of the licenses' change in the shareholding structure translated to Darryl Philip Richter acquiring control of 100% shareholding in Databridge.</p> <p>Recommendation to Council</p> <p>9.3 The CCC made the following recommendations to Council to issue an order in terms of section 17E (2) (c) of the ICASA</p>	<p>The recommendation was approved</p>

	<p>Act:</p> <p>9.3.1 Declare that the contract dated 09 December 2015 between Databridge Networks CC and Mr. Darryl Richter to transfer the two licenses to Mr. Richter amounts to a contravention of section 13 (1) of the Electronic Communications Act of 2005 and;</p> <p>9.3.2 As null and void insofar as it relates to the transfer of these two licenses to Mr. Richter.</p> <p>9.3.3 Direct Databridge Networks CC to do the following:</p> <p>(a)Apply to ICASA for permission to transfer the above-mentioned licenses to Mr. Richter; Await the resolution of the Council of ICASA in this connection</p>	
<p>11.</p>	<p>5G Project for Q1 OF 2019/20 Financial Year</p> <p>The purpose of the memorandum was to request Council to note the Fifth Generation (5G) project report for the first quarter of 2019/20 financial year.</p> <p>In the 2017/18 financial year the Independent Communications Authority of South Africa achieved the goal of formally establishing a South African 5G Forum by hosting the inaugural meeting of the 5G Forum. Good progress was made at that meeting as five working groups were established with conveners for each of the five working groups. Good media coverage was obtained.</p>	<p>The Project was noted</p>

Keabetswe Modimoeng

Acting Chairperson

ISSUED BY: Secretariat Office on behalf of Council