

Good day Chair er al,

My submission (tied in with the submissions made by all the members and the CCC office) is as follows:

1. CCC retains the discretion to consider any proposed settlement agreements. It shall be at the absolute discretion of the CCC to consider any proposed settlement, irrespective of which party makes the proposal.
2. The CCC will consider settlements in accordance with the following guidelines:
 - a. the settlement agreement must address the jurisdiction of the CCC
 - b. where allegations of non-compliance are made, the allegations must be dealt with extensively. The nature, extent and reasons for the non-compliance must be set out in extensive detail. To wit, the parties must be ad idem in respect of the applicable facts and any admissions or denials. The settlement agreement must canvass the facts, admissions and findings on the facts extensively.
 - c. where admissions in respect of non-compliance are made, the extent of the non-compliance must set out in details including which statute, regulations, licence conditions or applicable instrument has not been complied with, including the relevant date and time where the non-compliance arose, the reason for the non-compliance and evidence considered in support of the admissions.
 - d. in respect of the representatives entering into the settlement agreement on behalf of the parties (where the parties are not appearing in person), there must be sufficient proof of the authority of the parties to enter into the settlement agreement including authorization of the respective representatives to sign the settlement agreement. To the extent necessary, a written resolution confirming the authority of the representative must be annexed to the settlement agreement.
 - e. in respect of sanctions or recommendations for sanction to be made by the CCC to ICASA in accordance with section 17(E)(2), the settlement agreement can only make substantiated recommendations. The issue of a sanction lies solely in the purview of the CCC in accordance with the ICASA ACT. The proposed settlement agreement must set out the mitigating and militating factors for consideration by the CCC in making its recommendation to ICASA.
3. EXPIRED LICENCES – At the time of submission of a complaint, a licensee’s licence must be valid. If it has expired, then there ought to be a preliminary assessment which results in one of two possible outcomes:
 - a. RENEWAL APPLICATION SUBMITTED AND PENDING – based on the regulations, there are set timeframes within which a licence renewal must be submitted.
 - i. The licensee must show that a renewal application was submitted timeously and there has been compliance with the regulations. Where the delay in finalization of the renewal process is occasioned by the evaluation of the application by ICASA, then the CCC can proceed as if the licence is valid or has been extended.
 - b. NO RENEWAL APPLICATION SUBMITTED – Where a licensee has not complied with the regulations in respect of a submission of a renewal application, OR where ICASA has declined the renewal application as a result of the licensee’s failure to comply with any requirements prescribed by ICASA, then the licensee is considered as an unlicensed person/entity and operating unlawfully. Under the circumstances, the licensee has no locus

standi to appear before the CCC. It must be borne in mind that an application to condone non-compliance with the regulations in respect of a renewal application not submitted timeously can only be considered and decided upon by ICASA. IT IS NOT WITHIN THE CCC's jurisdiction to consider such applications.

- i. In both circumstances, where an entity with an expired licence is the complainant, the consideration of the complaint by the CCC will be deferred until resolution of the renewal matter.
- c. UNLAWFUL CONDUCT – Where the entity with the expired licensee is a respondent, the CCC shall be empowered to mero motu proffer a complaint for unlawful provision of a licenced service and must refer such a complaint to ICASA for the Authority to consider the complaint and refer the matter to the appropriate law enforcement agency in accordance with section 17C(1)(b)(ii).

4. WITHDRAWN COMPLAINTS

- a. Once a complaint in respect of non-compliance has been received by the Authority or referred to the CCC, a complaint shall not be entitled to unilaterally withdraw same. The rationale is that the withdrawal of the complaint does not cure the alleged non-compliance. The CCC shall be empowered to assess the complaint and establish whether, on the evidence already submitted, a prima facie case for non-compliance has been made.
- b. Where the CCC concludes that a prima facie case has been made, the CCC shall refer the matter to the CCA for the CCA to consider pursuit of the Complaint in respect of the alleged non-compliance.
- c. Where the CCC concludes that there is no prima facie case, the CCC shall be empowered to approve the withdrawal of the complaint.
- d. Where the CCC concludes that, on the evidence adduced, it is unable to make a determination in respect of a prima facie case of non-compliance, the CCC shall refer the matter to the CCA for further investigation and provisionally withdraw the complaint, pending the receipt of a decision by the CCA. It shall be within the discretion of the CCA whether to conduct an investigation, proceed with the complaint as is or to abandon the complaint. The CCC's decision shall be informed by the CCA's decision therein.

I hope I have captured the bulk of the concerns raised in the meeting yesterday (and that liberties taken in supplementing the recommendations are not extensive and undue).

Regards

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