Independent Communications Authority of South Africa
350 Witch-Hazel Avenue,
Eco-Point Office Park
Centurion

COUNCIL DECISIONS– 23 July 2020

ITEM NO.	AGENDA ITEM	DECISION
1.	**Non-Compliance by Newcastle Community radio with the Authority's decision.** The purpose of the submission was to advise Council on Newcastle Community Radio 's failure to comply with an order of Council and approve the enforcement recommendations. 1.1 Newcastle Community Radio (NCR) was a community Sound Broadcasting Service licensee that was issued with a renewed licence on 22 July 2019. 1.2 NCR provides broadcasting services in Madadeni, Osisweni, Uitrecht, Donhauser, Ncadu, Lennoxton Fairly, Ballengeich, Mullerplas, Nomadieh and surrounding areas in KwaZulu - Natal. 1.3 On 15 March 2019, following the Authority's decision, NCR was required to submit certain documents to the Authority with specific time frames. 1.4 The licensee has failed to comply with the order of Council by not submitting the required documents. 1.5 On 12 September 2018, ICASA received a complaint lodged by the community members of Newcastle. 1.6 In their complaints, the	**The recommendation was approved.**

	complainants alleged amongst others the following: 1.6.1 The NCR had three teams of board members that were fighting each other. The leaders claiming to be the official leaders were fighting each other which caused the Radio Station not to operate accordingly. 1.6.2 There were instances where the Radio Station played the jukebox and others when it was not functioning and was "Off Air". 1.6.3 All the presenters were not working because of the infighting between the leaders and; 1.6.4 The Community was not satisfied with operations of the Radio Station and allegations of high level 's of corruption. 1.7 On 07 December 2018, the NCR appeared before the CCC, after which the order was ratified by Council on 15 March 2019 and Thami Zondi was recognised as the Chairperson of the Board who was elected in July 2017 and not Luka Sithole who was elected April 2018. 1.8 A full report was to be filled with ICASA by the current Station Manager and signed by the Chairperson, detailing the state of broadcasting by June 2019. 1.9 Programming for March, April and May 2019, with dates and times of broadcasts to be included. A similar report was to be filed by 30 November 2019 and 31 January 2020. 1.10 On 04 July 2019, NCR purported to submit a report on the state of	

	broadcasting at the Radio Station. The licensee provided the Authority with a bundle of the Radio's policies. 1.11 In addition, it submitted Form 1 of the Compliance Procedure Manual Regulations in which it was reported that the Radio Station has employed 32 staff members. The report did not outline whether the employees were permanent, contract or volunteers. 1.12 Further the bundle provided programming schedule between Monday and Friday but did not provide the Authority with the state of broadcasting at the station as required. 1.13 The Compliance division was therefore of the view that the licensee did not submit the report as the Authority's order and therefore failed to comply in that regard. 1.14 The Authority received two letters on the 10 June 2019 and 11 September 2019 from two different attorneys acting for and on behalf of the Community of Newcastle. 1.15 The letters were alleging that the licensee had failed to comply with the decision of the Authority. 1.16 Once Regions has established that an ICASA decision has not been complied with, Council must refer the matter to the relevant law enforcement agency as per the ICASA Act. **Recommendation to Council**. 1.17 It was recommended that Council approve that the Newcastle Community Radio, be referred to the Authority's KwaZulu -Natal Regional Office to institute enforcement action against the licensee for non-compliance with	

	the Authority's decision. 1.18 The referral be on an urgent basis, in line with Regulation 4 of the Inspector Regulations for a licensee that had failed to adhere to the Authority's decision.	
2.	**Suspension on requirement to convene Community meetings during Disaster Period** The purpose of the submission was to recommend that Council suspend the obligation by Community Broadcasting Services licensees to convene any community meeting, including any Annual General meeting with the community they serve, in accordance with their related obligations during the lockdown period that was declared in terms of the Disaster Management Act due to Covid-19. 2.1 The service licensees of Community Broadcasting licenses have community related obligation clause that provide for the participation of community members in the affairs of the station. 2.2 Regulation 37(1)(d) of the Disaster Management Act as amended, under level three allows for conferences and meetings subject to the following: 2.2.1 A limitation of fifty persons, excluding those who participate through electronic platforms. Restricted to business purposes and; 2.2.2 Strict adherence to all health protocols and social distancing measures as provided for in directives that must be issued by the responsible Cabinet	

		Minister, after consultation with the Cabinet Minister of Health.	
	2.2.3	It followed therefore, that the limit of community participation to fifty people as per the regulation will disadvantage certain members of the community, as they will not be able to clearly voice their views in full or be able to engage with pertinent matters of interests thoroughly.	
	2.2.4	Further it would be burdensome for a community broadcaster to satisfy the conditions as per the regulation 37 (1) (d) of the Disaster Management Act.	
	2.2.5	Furthermore, many community broadcasting services were not able to access and use the Electronic online platforms such as Zoom or Microsoft Team Meetings etc participate in community meetings.	
	2.2.6	Importantly though, the use of electronic platforms will likely disadvantage most individuals from certain communities, many of whom do not have access to the requisite internet connectivity, due to lack of coverage and or the cost of data, to enable them to connect using such platforms.	
	2.2.7	On 4 May 2020, the	

		Authority published the ICT Covid-19 National Disaster Amendment Regulations, which sought to exempt all broadcasts services from compliance with certain regulations during the lockdown.	
		2.2.8 From the Regulation, it was clear by extension that community participation in the usual manner will be limited if not entirely impossible due to regulation 37(1) of the Disaster Management Act.	
		2.2.9 It would be the interest of various communities for the Authority to suspend altogether, the licence condition and regulatory requirement on the community broadcasting licensee, to hold any meetings with the communities they serve.	
		2.2.10 Community broadcasting licensee will therefore, not put listeners from communities they serve, at risk of contracting Covid-19 as they seek to comply accordingly.	
		2.2.11 In addition, the licensee should not be concerned with meeting their licence and regulatory obligations if they do not hold any community meetings, they could face associated threat of referral to the Complaints and Compliance Committee for non-compliance. That prospect ought to be removed altogether.	

	Recommendation to Council. It was recommended that: 2.3 The Authority suspend the obligation for Community Broadcasting licences to hold any Community meetings including AGMs or be required to submit proof of holding the meetings for the duration of the lockdown; 2.4 Community broadcasting licences will not be deemed to have failed with their licences and regulating obligations for not convening any community meetings including AGMs or be required to submit proof of holding the meetings for the duration of the lockdown; and 2.5 The Authority will not refer to the CCC any Community Broadcasting Licensees for not convening any community meetings including AGMs or be required to produce proof of holding the meeting for the duration of the lockdown due to Covid -19.	

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ISSUED BY: Secretariat Office
on behalf of Council