
GENERAL NOTICES • ALGEMENE KENNISGEWINGS

INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA**NOTICE 1226 OF 2022****ELECTRONIC COMMUNICATIONS ACT, 2005 (ACT NO. 36 OF 2005)****APPLICATION FOR THE AMENDMENT OF AN INDIVIDUAL COMMERCIAL
SOUND BROADCASTING SERVICE ("I-CSBS") LICENCE BY PRIMEDIA
HOLDINGS (PTY) LTD T/A 94.7 HIGHVELD STEREO IN TERMS OF SECTION
10 OF THE ELECTRONIC COMMUNICATIONS ACT NO. 36 OF 2005**

1. The Independent Communications Authority of South Africa ("the Authority") hereby gives notice in terms of section 9(5) of the Electronic Communications Act, 2005 (Act No. 36 of 2005), as amended, that after considering the application for the amendment of the I-CSBS licence of 94.7 Highveld Stereo ("the Applicant"), the amendment application was approved, and the amended licence issued to the Applicant.
2. The reasons for the Authority's decision on the application are available on the Authority's website, and in its library in Centurion, Block B, Eco Point Office Park, 350 Witch-Hazel Avenue, during office hours.

DR CHARLEY LEWIS**ACTING CHAIRPERSON****DATE:** 8 / 8 / 2022



**APPLICATION FOR AMENDMENT OF AN INDIVIDUAL COMMERCIAL
SOUND BROADCASTING SERVICE LICENCE BY PRIMEDIA HOLDINGS
(PTY) LTD T/A 94.7 HIGHVELD STEREO IN TERMS OF SECTION 10 OF THE
ELECTRONIC COMMUNICATIONS ACT NO. 36 OF 2005**

REASONS FOR DECISION

AUGUST 2022

1. INTRODUCTION

This document sets out the reasons for the decision of the Independent Communications Authority of South Africa ("the Authority") in relation to the application for the amendment of the Individual Commercial Sound Broadcasting Service ("I-CSBS") licence by Primedia (Pty) Ltd, t/a 94.7 Highveld Stereo ("the Applicant").

2. BACKGROUND

- 2.1 On 20 April 2018, the Authority received an application from the Applicant to amend its I-CSBS licence. A resolution of authority authorising Ms Nomvuyiso Batyi to bring this application on behalf of the Applicant was duly submitted. The Applicant attached proof of payment of the application fee, totalling an amount of R60 940
- 2.2 The application was lodged in terms of section 10 (1)(a) of the Electronic Communications Act, 2005 (Act No. 36 of 2005) ("the ECA"), as amended, read with regulation 9 (Form C) of the Processes and Procedures Regulations for Individual Licences, 2010, as amended ("the Regulations").
- 2.3 The Applicant did not request confidentiality in terms of section 4D of the Independent Communications Authority of South Africa, Act 2000 (Act No. 3 of 2000) as amended ("the ICASA Act").
- 2.4 On 19 March 2021, the Licensing and Compliance Division held a meeting with the Applicant to discuss the application in view of the time that had lapsed since lodging the application with the Authority.
- 2.5 On 04 May 2021, the Applicant submitted supplementary information in respect of its application.
- 2.6 On 10 June 2021, the Authority published General Notice No. 344 in the Government Gazette (No. 44684), inviting interested parties to submit

written representations in relation to the application within fourteen (14) working days from the date of publication of the notice.

- 2.7 No written representations were received by the closing date of 8 July 2021.
- 2.8 The Authority elected not to hold public hearings, as it was of the view that the applications were clear, and it did not receive any written representations from the public with respect to the applications.
- 2.9 On 28 October 2021, the Authority approved the Applicant's amendment application, with conditions that the Applicant demonstrate how local artists will participate in the Gig Guide.

3. APPLICABLE LEGISLATIVE FRAMEWORK

- 3.1 The following legislative and regulatory provisions are applicable when processing an application to amend an I-CSBS licence:
 - 3.1.1 Section 10 (1)(a) of the ECA, as amended provides that-

"10. Amendment of individual licence

(1) The Authority may amend an individual licence after consultation with the licensee -

(a) to make the terms and conditions of the individual licence consistent with the terms and conditions being imposed generally in respect of all individual licences of the same type."

- 3.1.2 Regulation 9 of the Regulations provides that *"an application to amend a Licence must be in the format as set out in Form C and it must be accompanied by the application fee."*

4. ANALYSIS AND DISCUSSION

4.1. REASONS FOR THE APPLICANT'S PROPOSED AMENDMENTS

4.1.1. The Applicant requested to amend clause 5 (Local Content Obligations) of its I-CSBS licence.

4.1.2. Clause 5 of the Applicant's I-CSBS licence reads as follows:

"The Licensee shall promote at least eight (8) local music concerts per annum and allocate airtime for the broadcasting thereof."

4.1.3. When submitting the amendment application, the Applicant sought approval for the insertion of a new Clause 5 to read as follows:

Existing Clause 5	Proposed Amendment to Clause 5
"5. Local Content Obligations <i>"The Licensee shall promote at least eight (8) local music concerts per annum and allocate airtime for the broadcasting thereof."</i>	"5. Local Content Obligations <i>The station shall operate a Gig Guide that provides South African music (SA music) artists with a free platform to advertise local concerts and other live music events provided these are not events sponsored by competitors.</i> <i>The Gig Guide shall comprise several aspects, namely:</i> <i>5.1 A free web-based notification platform for SA music artists to provide the station with notifications of upcoming events for inclusion in the Gig Guide.</i> <i>5.2 A dedicated email address that is for the exclusive use of SA music</i>

	<i>artists to provide the station with notifications of upcoming events for inclusion in the Gig Guide.</i> <i>5.3 A 45-second live-read promotion of upcoming South African music events taking place within the coverage area to be broadcast twice daily during the performance period from Thursdays to Sundays.</i> <i>5.4 A 90-second live-read of the Gig Guide to be broadcast on a regular slot and during the performance period on the weekend.</i> <i>5.5 The Gig Guide will be hosted and updated free of charge on the station's website/App to publicise upcoming live SA music events taking place in the coverage area."</i>
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4.2. ANALYSIS OF THE REASONS PROVIDED BY THE APPLICANT

- 4.2.1. According to the Applicant, the proposed amendment ensures that the Applicant's obligations relate to activities that are wholly within its control to ensure that it is able to fully comply with them.
- 4.2.2. The Authority considered the Applicant's views regarding the implications on the proposed amendments and submits as follows:
- 4.2.2.1. There is no commercial sound broadcasting service licensee in the coverage area of the Applicant, which, if this proposed amendment is granted by the Authority, will cause potential prejudice or harm to other broadcasters in the coverage area.

- 4.2.2.2. The Applicant's coverage area is limited to the southern parts of Gauteng, wherein there is no commercial radio station that broadcasts a similar format to that of the Applicant.
- 4.2.2.3. The Applicant's licence terms and conditions require it to promote at least eight music concerts annually and to allocate airtime for the broadcasting thereof. According to the Applicant, it has over the years endeavoured to comply with this clause in its entirety; however, compliance has been difficult. Consequently, the Applicant has on several occasions been found to be non-compliant with clause 5 of its I-CSBS licence, in the main the second aspect requiring allocation of airtime for broadcasting.¹
- 4.2.2.4. The Applicant has raised the challenges it has faced in relation to obtaining recording rights from the record companies, which were unable to guarantee the sound quality to the required specifications.² According to the Applicant, the record companies would only allow broadcast of music if the recording were up to their standards. As a broadcaster, and not a recording company, it was impossible for the Applicant to obtain the requisite permissions due to the intellectual property rights attached to the musical works.
- 4.2.3. Having considered the Applicant's proposed amendments, the Authority is of the considered view that they are: (i) reasonable and justifiable; (ii) in keeping with the spirit and intention of the original clause (i.e., the promotion of local talent); and (iii) in line with the provisions of section 10 of the ECA.
- 4.3 Therefore, on 28 October 2021, the Authority approved the amendment application, with conditions that the Authority representatives meet with the Applicant to address the following concerns:³

¹ Annual Compliance Report 2015.

² Letter from Primedia date 19 April 2018 par 3.

³ The proposed clauses must ensure that local artists participate in the Gig Guide. The Authority representatives met with the Applicant's representatives and the Applicant agreed to revise its proposed

- 4.3.1 providing a workable alternative to Clause 5 of the I-CSBS licence (and ensuring that local artists participate in the Gig Guide); and
- 4.3.2 ensuring that the proposed new clause maintains the spirit of the original clause, which is to promote new and upcoming South African music artists.

The revised proposed amendment to clause 5 reads as follows:

Clause 5	Proposed Updated Amendment to Clause 5
"5. Local Content Obligations <i>"The Licensee shall promote at least eight (8) local music concerts per annum and allocate airtime for the broadcasting thereof."</i>	"5. Local Content Obligations <i>The station shall operate a Gig Guide that provides South African music (SA music) artists with a free platform to advertise local concerts and other live music events provided these are not events sponsored by competitors.</i> <i>The Gig Guide shall comprise several aspects, namely:</i> <i>5.1 A free web-based notification platform for SA music artists to provide the station with notifications of upcoming events for inclusion in the Gig Guide.</i> <i>5.2 A dedicated email list serve that is, subject to the requirements of the Protection of Personal Information Act, to be operated by the station and</i>

clause. Subsequently, on 2 December 2020 and 12 January 2022, the Applicant submitted the revised clause 5, and inserted clause 5.2 to cater for Council's concerns.

	<i>which is to send out monthly reminders to make use of the web-based notification platform to ensure the inclusion of live events in the Gig Guide, which notification is to be sent to a database to be developed by the station of, inter alia:</i> <i>- Local artists;</i> <i>- Local Record Companies;</i> <i>- SAMRO;</i> <i>- SAMPRA;</i> <i>- RISA;</i> <i>- CAPASSO.</i> <i>and which is to include a dedicated 947 email address that the industry can use to communicate with the station."</i> <i>5.3 A 45-second live-read promotion of upcoming South African music events taking place within the coverage area to be broadcast twice daily during the performance period from Thursdays to Sundays.</i> <i>5.4 A 90-second live-read of the Gig Guide to be broadcast on a regular slot and during the performance period on the weekend.</i> <i>5.5 The Gig Guide will be hosted and updated free of charge on the station's website/App to publicise upcoming live SA music events taking place in the coverage area."</i>
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- 5.1 The Authority considered the proposed clause 5.2 above and is satisfied that it caters for local artists to participate in the Gig Guide.

5 CONCLUSION

The Authority is therefore satisfied that the Applicant has complied with the provisions of section 10(1)(a) of the ECA to amend its I-CSBS licence.

6 AUTHORITY'S DECISION

In light of the above, the Authority resolved to approve the amendment.



DR CHARLES LEWIS
ACTING CHAIRPERSON

DATE: 8 / 8 / **2022**