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GENERAL NOTICE

NOTICE 75 OF 2012



ELECTRONIC COMMUNICATIONS ACT, 2005 (ACT NO. 36 OF 2005)

APPLICATION FOR A TRANSFER OF AN INDIVIDUAL COMMERCIAL SOUND BROADCASTING SERVICE LICENCE FROM EAST COAST RADIO (PTY) LTD TO KAGISO BROADCASTING (PTY) LTD

1. The Independent Communications Authority of South Africa ("the Authority") hereby gives notice that the reasons for decision in respect of the application for the transfer of an individual commercial sound broadcasting licence from East Coast Radio (Pty) Ltd to Kagiso Broadcasting (Pty) Ltd are available.
2. The reasons for decision are available during the Authority's normal office hours at the ICASA library, Block D, Pinmill Farm, 164 Katherine Street, Sandton OR at the ICASA website: www.icasa.org.za

A handwritten signature in black ink, appearing to be 'S. Mncube', written over a horizontal line.

DR STEPHEN MNCUBE
CHAIRPERSON

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Independent Communications Authority of South Africa
Pinmill Farm, 164 Katherine Street, Sandton
Private Bag X10002, Sandton, 2146

**APPLICATION FOR TRANSFER OF AN INDIVIDUAL COMMERCIAL SOUND
BROADCASTING SERVICE LICENCE FROM EAST COAST RADIO (PTY) LTD TO
KAGISO BROADCASTING (PTY) LTD**

REASONS FOR DECISION

A. BACKGROUND

1. On 17 March 2011, East Coast Radio (Pty) Ltd (“the applicant”) submitted the application dated 11 March 2011 to the Authority, for transfer of its individual commercial sound commercial broadcasting service licence¹ to Kagiso Broadcasting (Pty) Ltd (“the transferee”).
2. The applicant requested confidentiality with regard to the transferee’s business plan for the applicant and the “shareholding interest of Kagiso Media Limited”.
3. The Authority decided to grant confidentiality on the transferee business plan for “East Coast Radio”. However, the Authority decided to refuse confidentiality on the “shareholding interest of Kagiso Media Limited” in terms of section 4D of the Independent Communications Authority of South Africa Act, 2000 (“ICASA Act”).
4. On 29 June 2011, the Authority published a Notice in the Government Gazette² inviting interested persons to submit written representations in relations to the application within twenty-one (21) days. No written representations were received.

2. ANALYSIS

Applicable Legislative Framework

5. The applicable legislative and regulatory provisions on the application are the following:
 - (a) Electronic Communications Act, Act No.36 of 2005 (EC Act); and
 - (b) Processes and Procedures Regulations (the Regulations) for Individual Licences published on 14 June 2010 in Government Gazette No. 33293.

¹ 004/COMMERCIAL//R/SEPT/08

² Published under General Notice 426 in Gazette No. 34403 of 29 June 2011.

6. Section 13(1) of the EC Act states that:

“An individual licence may not be assigned, ceded or transferred to any other person without the prior written permission of the Authority.”

7. Section 13(2) of the EC Act further states that:

“An application for permission to assign, cede or transfer an individual licence may be made to the Authority in the prescribed manner.”

8. The applicant has submitted the application in terms of Form G³ of the Regulations, which details has been analysed below.

Regulation 11 (Form G) of Processes and Procedures Regulations for Individual Licences

11. Regulation 11 of the Processes and Procedures Regulations for Individual Licences, provides that an application to transfer a licence must be-

- a) in the format as set out in Form G;
- b) accompanied by the applicable fee; and
- c) submitted by the prospective transferor.

12. As indicated above, the application has been submitted in terms of Form G. The applicant has made the required payment of R50 000, 00 for the transfer of the individual commercial sound broadcasting service licence.

Particulars of the Applicant

13.1 The applicant's principal place of business is 315 Umhlanga Rocks Drive, Durban, 400. The full name of the applicant is East Coast Radio (Pty) Ltd with contact numbers: (031) 570 9495.

³ Application to transfer an individual licence

Legal form of Applicant

13.2 The applicant is East Coast Radio (Pty) Ltd a Private Company with the registration numbers: 96/08147/07.

Details of all ownership interest in the applicant

13.3 The ownership interest in the applicant is as follows:

- Kagiso Media Ltd 100%

The extent to which applicant's ownership is held by historically disadvantaged individuals

16.4 The applicant indicated that Kagiso Media Ltd is a listed company in the Johannesburg Stock Exchange and it is therefore not possible to indicate with any precision what percentage of shares are held by the historically disadvantaged individuals.

Details of all ownership interest in the transferee

13.5 The applicant has indicated that the ownership interest in the transferee is as follows:

- Kagiso Media Ltd 100%

Whether the holder of any ownership interest in the transferee is a foreign citizen

13.6 The transferee is a private company incorporated in terms of the Companies Act of 1973 with the registration numbers: 96/014875/08. The transferee is wholly owned by Kagiso Media Ltd, which is listed as public company on the Johannesburg Stock Exchange.

Whether any person holding an ownership interest in the transferee holds a licence issued in terms of the Act or holds an ownership interest in any other licensee licensed to provide a service similar to that to which this application relates.

- 13.7 The Applicants indicates that Kagiso Media Ltd holds ownership interests in the following broadcast licensees: iGagasi 99.5 (33%), Heart FM (33%), Jacaranda FM (80%), Kaya FM (25%) and O FM (24.9%).
- 13.8 The Authority noted that Kagiso Media Ltd's ownership percentage interests in other broadcasting services (namely, iGagasi 99.5, Heart FM and Kaya FM) are different from the records of the Authority, which raises the extent of compliance with the provisions of the EC Act. However, the Authority decided to grant the transfer application since Kagiso Media Ltd already indirectly own 100% of East Coast Radio (Pty) Ltd and whether or not the transfer application is granted does not make any difference in the current ownership and control of East Coast Radio (Pty) Ltd. The Authority reasoned that Kagiso Media Ltd's ownership interests in other broadcasting services are not as a consequence of this transfer application. Whether or not the transfer application is granted, from East Coast Radio (Pty) Ltd to Kagiso Broadcasting (Pty) Ltd, Kagiso Media Ltd will still have 100% indirect ownership interest in the licence in question.
- 13.9 The Authority is however of the view that the inconsistencies of records in Kagiso Media Ltd's ownership interests in other broadcasting services will be dealt with in a separate process as a compliance matter.

Details of transferee's directors and senior management

- 16.10 The applicant has provided the Curriculum Vitae of the transferee's Board of Directors. The Board is made of eleven (11) members (i.e. three (3) females and eight (8) males).

16.11 The applicant has also provided the Curriculum Vitae of the transferee's Senior Management. The Senior Management is made up of five (5) people (i.e. four (4) males and one (1) female).

16.12. The Authority is satisfied with the information submitted.

The details of the transferee's business plan in respect of a licensed service

13.13 The transferee has provided the business plan.⁴ The Authority was satisfied with the transferee's business plan.

Transferee's audited annual financial statements for the previous years

13.14 The transferee has submitted its annual audited financial statements for previous three years (i.e. for the financial years ended June 2008 – June 2010, respectively), making the applicant to be compliant in terms of submission to monitor compliance and sustainability of the licensee.

Ability to satisfy obligations under the licence and comply with the Act and the regulations

13.15 The applicant indicates that upon approval of this application, the transferee shall assume and discharge all requisite obligations set out in the licence and applicable Regulations. The applicant has provided a signed written undertaking by the transferee (Appendix 11.2) to the effect that it will comply with the applicant's licence obligations in the event of the transfer application being approved by the Authority.

Grounds to refuse the transfer application

14. In terms of regulation 12 of Processes and Procedures Regulations for Individual Licences, the Authority may refuse to transfer a licence if the Licensee has not complied with one or more of the following:

⁴ The Authority has granted confidentiality on the transferee's business plan.

- a) Where the Licensee has been found guilty of a contravention by the Complaints and Compliance Committee ("the CCC") of the Authority and has not complied with the order by the Authority in terms of section 17 of ICASA Act; or
 - b) Where the Licensee has not paid the licence fees due and payable at the date of the application; or
 - c) Where the transferee's ownership and control by historically disadvantaged persons is less than 30%.
15. The Authority took into account the fact that the transferee is wholly owned by Kagiso Media Ltd, which is listed as public company on the Johannesburg Stock Exchange. The Authority has decided not to impose HDI obligations on transferees until prescription ownership and control Regulations. The Authority will consider issues related to HDIs in relation to listed companies and make an informed determination in the near future, accordingly.
16. The Authority was satisfied that the applicant has not been found guilty of any contravention by the CCC and has paid all licence fees and submits its audited financial statements and attached them for the year ending 2008 – 2010.

Procedural Matters

17. In terms of regulation 11 (2) of Processes and Procedures Regulations for Individual Licences, the Authority, has the discretion to –
- a) publish a notice in the Gazette of the application to transfer the licence;
 - b) invite interested persons to submit written representations in relation to the application within the period specified in the notice;
 - c) allow the applicant an opportunity to submit written responses to representations received in relation to the application within the period specified by the Authority; and

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- d) conduct a public hearing in relation to the application.
18. As indicated above, the Authority published the application in the Government Gazette for public comments. However, no representations were received.
19. The Authority considered that there were no material issues on the application which warranted a public hearing.
20. The Authority was satisfied that the applicant has submitted all requested information and fulfilled the requirements prescribed in terms of regulation 11 (Form G) of Processes and Procedures Regulations for Individual Licences read with EC Act.

C. AUTHORITY'S DECISION

21. After considering the above analysis, the Authority has decided to grant the application for transfer of an individual commercial sound broadcast licence from East Coast Radio (Pty) Ltd to Kagiso Broadcasting (Pty) Ltd.



DR STEPHEN MNCUBE
CHAIRPERSON

DATE: 12/01/2012