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CONTENTS

Page

GENERAL NOTICE

- No. 435 Communications Regulatory Authority of Namibia: Notice in terms of Sections 85 and 101 of the Communications Act, 2009 (Act No. 8 of 2009) and Regulation 19(1) Regarding Licensing Procedures for Telecommunications and Broadcasting Service Licences and Spectrum Use Licences 1
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General Notice

COMMUNICATIONS REGULATORY AUTHORITY OF NAMIBIA

No. 435

2014

NOTICE IN TERMS OF SECTIONS 85 AND 101 OF THE COMMUNICATIONS ACT, 2009 (ACT NO. 8 OF 2009) AND REGULATION 19(1) REGARDING LICENSING PROCEDURES FOR TELECOMMUNICATIONS AND BROADCASTING SERVICE LICENCES AND SPECTRUM USE LICENCES

The Communications Regulatory Authority of Namibia, in terms of section 85 and 101 of the Communications Act, 2009 (Act No. 8 of 2009) read with regulation 19(1) of the “Regulations Regarding Licensing Procedures for Telecommunications and Broadcasting Service Licences and Spectrum Use Licences”, in Government Gazette No. 4785, Notice No. 272, dated 29 August 2011 (as amended), herewith gives notice that the application for a Commercial Broadcasting Service Licence and Spectrum Use Licence for Nafish Trading CC t/a Amesho FM CC (hereinafter referred to as “Amesho FM CC”) has been declined.

THE FOLLOWING ARE THE REASONS FOR THE DECISION:

Application for Commercial Broadcasting Service Licence

Amesho FM CC submitted applications for a commercial broadcasting service licence and a spectrum use licence on 5 February 2014 for consideration by the Authority, in accordance with sections 85

and 101 of the Communications Act, 2009 (Act No. 8 of 2009) hereinafter referred to as the “Act”) and regulations 5 and 6 of the Regulations regarding Licensing Procedures for Telecommunications and Broadcasting Service Licences and Spectrum Use Licences as published in Government Gazette No. 4785, General Notice No. 272 dated 29 August 2011 (as amended). All licence application fees in respect of the applications were paid.

Amesho FM CC is a 100% Namibian owned close corporation with Registration No. CC/2014/02770. There are no foreign ownership interests in Amesho FM CC. Mr. Hans John Shaanika Ipinge is the sole member (100%) of the close corporation and therefore, complies with the provisions of section 85(2) of the Act, which indicates that Authority may issue a broadcasting licence only to a Namibian citizen; and a juristic person of which at least 51 percent of the share holding is beneficially owned by Namibian citizens and which is not controlled directly or indirectly by persons who are not Namibian citizens and which has its principal place of business or registered office in Namibia.

Following due process in terms of the Regulations Regarding Licensing Procedures for Telecommunications and Broadcasting Service Licenses and Spectrum Use Licenses, the Authority published a notice in the Government Gazette 5442, General Notice No. 82, dated 7 April 2014, allowing fourteen (14) days for public comments from the date of publication of the Notice in the *Gazette*. Due to technical difficulties experienced by the printers, the notices were only circulated to the public on 17 April 2014 and therefore, the commenting period only lapsed on 6 May 2014. No public comments were received and consequently no reply comments were required from Amesho FM CC.

When considering the award of a broadcasting service licence, the Authority is obliged to consider the provisions of section 85(8) of the Communications Act, which provides as follows:

“When considering an application for the issue of a broadcasting service license the Authority must have regard to the following -

- (a) the character of the applicant or, if the applicant is a body corporate, the character of its directors;*
- (b) the adequacy of the expertise, experience and financial resources available to the applicant;*
- (c) the desirability or otherwise allowing any person or association of persons, to have control or a substantial interest in –*
 - i) more than one broadcasting service;*
 - ii) more than one radio station and one television station and one registered newspaper with a common coverage and distribution area or significantly overlapping coverage and distribution areas;*
- (d) whether the applicant is likely to comply with such technical broadcasting standards as the Authority may prescribe;*
- (e) whether the conditions of a broadcasting licence will unjustly benefit one licensee above another;*
- (f) the allocation of spectrum in such a manner as to ensure the widest possible diversity of programming and the optimal utilization of such resources. Provided that priority may be given to broadcasters transmitting the maximum number of hours per day;*
- (g) the reservation of radio wave spectrum resources for future use; and the desirability of giving priority to community based broadcasters.”*

The Authority is of the view that Amesho FM CC will not be able to substantially meet the requirements of a commercial broadcasting service licence as set out in section 85(8) for the following reasons:

- a) The Oshakati area is well serviced by seven (7) commercial broadcasting service licensees (Omulunga Radio, Radio Energy, Radio Kudu, Fresh FM, Radio 99, Radiowave, Cosmos Digital Namibia, one community broadcaster (Media for Christ) and the Namibian Broadcasting Corporation (“NBC”). It should be noted that the NBC is broadcasting services in nine (9) languages and a national radio channel in the same area. All existing broadcasters have a national footprint that presents an attractive marketing platform for businesses to advertise their products;
- b) The Authority is of the opinion that a power output of 250 W from Oshakati will not provide broadcasting services to areas further afield than Oshakati as envisaged in the business plan submitted by Amesho FM CC. Amesho FM CC will be required to apply for additional frequencies to construct more broadcasting transmitters, in order to meet its business objectives resulting in higher capital investment. However, Amesho FM CC has made no provision in the five (5) year business plan that it submitted, for leasing of infrastructure and spectrum use licences in Oshakati or any other area mentioned in the business plan during the oral submission. These expenses have a significant impact on business operations and the exclusion thereof in the business plan raised serious concerns with the Authority on the sustainability of the business going forward;
- c) Amesho FM CC’s market plan is unrealistic in that it envisages a turnover of more than N\$ 10 million in the first year of operation. The Authority is of the opinion that no proper market research was conducted to support the turnover forecast as Amesho FM CC was unable to provide any numbers relating to the small and medium enterprise market, that it envisaged providing services to. In addition thereto, the business case is not comprehensive because an analysis of expenses indicates that major expenses such as leasing of infrastructure and licensing fees are excluded from the business case;
- d) The sole shareholder (Mr. Iiping) of Amesho FM CC has no experience in the media or broadcasting industry; and
- e) Mr. Iiping intends to fund Amesho FM CC from his other businesses and has submitted management accounts for Nafish Trading CC only. It is noted that the financial resources from Nafish Trading CC are insufficient to sustain Amesho FM CC over a long period of time. Amesho FM CC stated that it has not secured a loan from any financial institution to date.

In light of the foregoing considerations of fact and law and evaluation thereof in terms of the criteria as set out in Section 85(8) (b) of the Act, the Authority resolved to decline the application for Commercial Broadcasting Service Licence as submitted by Amesho FM CC.

Application for spectrum use licence

Section 101 (7) of the Act provides that “*where a person applies for a licence to operate a network or provide...broadcasting services, that person must also apply for such spectrum use licences as are necessary to render the service concerned.*” On 5 February 2014, Amesho FM CC submitted an application for spectrum use licence.

Pursuant to the provisions of section 101(6) of the Act, an applicant may only be issued with a spectrum use licence, where the operation of a network or the provision of broadcasting service or the use thereof entails the use of radio waves. Section 101(8) places a duty on the Authority to consider the application for spectrum in conjunction with the application for a service licence and to ensure that such spectrum use licence as may be required is issued to enable the applicant to render the services for which the service licence is issued.

Read jointly, these sections suggest that if an Applicant has applied for a broadcasting service licence, it must also have such spectrum use Licence as is necessary to render the service concerned and further that a spectrum use licence is required in addition to a broadcasting service licence. It also indicates that a spectrum use licence cannot be issued for the provision of broadcasting services in the absence of a broadcasting service licence.

Therefore, in view of the fact that the commercial broadcasting service licence application has been declined, the Authority has similarly resolved to decline the application for a spectrum use licence submitted by Amesho FM CC.

In light of the consideration of the information submitted with the application and evaluation thereof based on the criteria as set out in Section 85(8)(b) and (f) of the Communications Act, the Authority therefore resolved not to award the licences. Kindly take note that section 31 of the Communications Act provides that the Authority may, on its own motion or on a petition filed by an aggrieved party to any proceedings, reconsider any order or decision that it has made, within 90 days from the date of making that decision or issuing that order.

L.N. JACOBS
CHAIRPERSON OF THE BOARD
COMMUNICATIONS REGULATORY AUTHORITY
