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GENERAL NOTICE

NOTICE 22 OF 2000

INDEPENDENT BROADCASTING AUTHORITY

NOTICE OF THE INDEPENDENT BROADCASTING AUTHORITY'S DECISIONS REGARDING THE APPLICATION BY MIDI TV (PTY) LTD FOR AMENDMENT OF CERTAIN OF ITS LICENCE CONDITIONS

The Independent Broadcasting Authority hereby gives notice in accordance with section 52 (4) of the Independent Broadcasting Authority Act, no 153 of 1993, as amended, that it has decided as follows in respect of the application by Midi TV (Pty) Ltd for the amendment of certain of its licence conditions. Midi filed its application on 03 August 1999. It was published in the *Government Gazette* No. 20408 of 23 August 1999. A hearing was held on 9 and 10 November 1999:

1. Clause 1: Definition of information programming

Midi sought to have Clause 1 of the licence conditions amended by the insertion of the following definition of "information programming":

“Information programming means current affairs, documentary, informal knowledge-building, magazine programmes and talk-shows and any other programme which, directly or indirectly, has as its purpose the communication of facts and events of interest to viewers.”

The Authority has agreed to Midi’s application for the amendment of its licence conditions by the insertion, in clause 1, of a definition of “information programming” but the definition is only to be formulated and inserted subsequent to an enquiry to be conducted by the Authority in terms of section 28 of the Act. However, in the interim, the understanding of “information programming” which is used by the Authority will be applied in monitoring Midi’s compliance with its licence conditions. According to this understanding, current affairs, documentary and informal knowledge-building programmes are regarded as information programming, but talk-shows and magazine programmes are generally not regarded as information programming.

2. Clause 9: Provincial diversity

Midi withdrew its application for the amendment of Clause 9 of the licence conditions. Accordingly, the Authority did not consider this aspect of the amendment application.

3. Clauses 11.2 and 11.3: Language obligations in respect of news and information programming during the start-up period

Midi withdrew its application for the amendment of Clauses 11.2 and 11.3 of the licence conditions. Accordingly, the Authority did not consider this aspect of the amendment application.

4. Clause 11.4: Language obligations in respect of news and information programming

Clause 11.4 of the licence conditions reads as follows:

“With effect from 1 February 1999 and for the remainder of the licence period, the licensee shall broadcast a minimum of two hours of news and information programming during the performance period in Zulu, Xhosa, SeSotho and SeTswana and shall make provision for sign language translation on screen during the prime time news bulletin.”

In the amendment application, Midi sought to have Clause 11.4 amended to read as follows:

“With effect from 1 February 1999 and for the remainder of the licence period, the licensee shall broadcast a minimum of two hours of news and information programming per week during the performance period in [Zulu, Xhosa, SeSotho, and SeTswana] official languages other than English and shall make provision for sign language translation on screen during the prime time news bulletin.”¹

The Authority decided to grant Midi’s amendment application in this regard but to reformulate it in terms slightly different from the amended formulation sought by Midi. Clause 11.4 is amended to read as follows:

“With effect from 1 February 1999 and for the remainder of the licence period, the licensee shall broadcast a minimum of two hours of news and information programming per week during the performance period in [Zulu, Xhosa, SeSotho and SeTswana] a broad range of official languages other than English and shall make provision for sign language translation on screen during the prime time news bulletin. In complying with its obligations in respect of the use of official languages other than English, the licensee shall not make excessive use of a single language, other than English, to the exclusion of the other official languages.”

5. Clause 11.5 : Language obligations in respect of programming other than news and information programming during the start-up period

Clause 11.5 of the licence conditions provides as follows:

“With effect from the effective date until 31 January 1999 the licensee shall broadcast, during the performance period, a pro rata weekly minimum hours of programming other than news and information programming in Zulu, Xhosa, SeSotho and SeTswana, calculation whereof shall be based on the hours stated in 11.6 (infra). These hours shall increase in proportion with the increase in hours of broadcast as provided in Clause 8.”

Midi sought to have Clause 11.5 deleted in its entirety. The Authority has decided to reject Midi’s application in this regard. However, for the sake of consistency and clarity, Clause 11.5 is amended to read as follows:

“With effect from the effective date until 31 January 1999 the licensee shall broadcast, during the performance period, a pro rata weekly

¹ Underlined words and phrases indicate insertions and words and phrases in square brackets indicate deletions.

minimum hours of programming other than news and information programming in [Zulu, Xhosa, SeSotho and SeTswana] a broad range of official languages other than English, calculation whereof shall be based on the hours stated in 11.6 (infra). These hours shall increase in proportion with the increase in hours of broadcast as provided in Clause 8. In complying with its obligations in respect of the use of official languages other than English, the licensee shall not make excessive use of a single language, other than English, to the exclusion of the other official languages.”

6. Clause 11.6 : Language obligations in respect of programming other than news and information programming

Clause 11.6 of the licence conditions reads as follows:

“With effect from 1 February 1999 the licensee shall broadcast, during the performance period, a weekly minimum of four hours of programming other than news and information programming in Zulu, Xhosa, SeSotho and SeTswana.”

Midi applied for Clause 11.6 to be amended to read as follows:

“With effect from 1 February 1999 the licensee shall broadcast, during the performance period, [a weekly minimum of] four hours per week of programming other than news and information in [Zulu, Xhosa, SeSotho and SeTswana] official languages other than English. Compliance with this clause shall be measured as a weekly average over the period 1 February to 30 September in the first licence year and thereafter as a weekly average over the full licence year.”

The Authority has decided to agree to the amendment application in this regard but to reformulate it in terms slightly different from the amended formulation sought by Midi. Clause 11.6 of the licence conditions is amended to read as follows:

“With effect from 1 February 1999 the licensee shall broadcast, during the performance period, [a weekly minimum of] four hours per week of programming other than news and information in [Zulu, Xhosa, SeSotho and SeTswana] a broad range of official languages other than English. Compliance with this clause shall be measured as a weekly average over the period 1 February to 30 September in the first licence year and thereafter as a weekly average over the full licence period. In complying with its obligations in respect of the use of official languages other than English, the licensee shall not make excessive

use of a single language, other than English, to the exclusion of the other official languages.”

7. Clause 11.7.1 : Drama productions in official languages other than English

Clause 11.7.1 of the licence conditions reads as follows:

“During the entire licence period, the licensee shall ensure that at least 10% of the broadcasting time allocated to drama productions shall be devoted to Zulu, Xhosa, SeSotho and SeTswana.”

In its amendment application, Midi sought the following reformulation of Clause 11.7.1:

“During the entire licence period, the licensee shall broadcast [ensure that at least 10% of the broadcasting time allocated to] South African drama productions at least 10% of which shall [be devoted to] include [Zulu, Xhosa, SeSotho and SeTswana] official languages other than English, provided that, in meeting this requirement, the licensee shall not be required to broadcast entire programmes in official languages other than English. Programming satisfying this requirement shall also be included in calculating compliance with the language quota set out in Clause 11.6.”

The Authority has decided to amend Clause 11.7.1 of the licence conditions but to reformulate it in terms slightly different from the amended formulation sought by Midi to read as follows:

“During the entire licence period, the licensee shall ensure that at least 10% of the aggregate broadcasting time [allocated to] of South African drama productions transmitted by the licensee during each licence year shall be devoted to [Zulu, Xhosa, SeSotho and SeTswana] a broad range of official languages other than English, provided that, in meeting this requirement:

11.7.1.1 the licensee shall not be required to broadcast entire programmes in official languages other than English;

11.7.1.2 the licensee shall not make excessive use of a single language, other than English, to the exclusion of the other official languages; and

11.7.1.3 the programming in question shall be taken into account in assessing the licensee’s compliance or otherwise with the requirements in respect of language use set out in Clause 11.6.”

8. Clause 11.7.2: Children's programming in official languages other than English

Clause 11.7.2 of the licence conditions reads as follows:

"During the entire licence period, the licensee shall ensure that at least 20% of the broadcasting time allocated to children's programming shall be devoted to Zulu, Xhosa, SeSotho and SeTswana."

In its amendment application, Midi sought to have Clause 11.7.2 reformulated as follows:

"During the entire licence period, the licensee shall broadcast [ensure that at least 20% of the broadcasting time allocated to] South African children's programming at least 20% of which shall [be devoted to] include [Zulu, Xhosa, SeSotho and SeTswana] official languages other than English, provided that, in meeting this requirement, the licensee shall not be required to broadcast entire programmes in official languages other than English. Programming satisfying this requirement shall also be included in calculating compliance with the language quota set out in Clause 11.6."

The Authority has decided to amend Clause 11.7.2 but to reformulate it in terms slightly different from the amended formulation sought by Midi to read as follows:

"During the entire licence period, the licensee shall ensure that at least 20% of the aggregate broadcasting time [allocated to] of South African children's programming transmitted by the licensee during each licence year shall be devoted to [Zulu, Xhosa, SeSotho and SeTswana] a broad range of official languages other than English, provided that, in meeting this requirement:

11.7.2.1 the licensee shall not be required to broadcast entire programmes in official languages other than English;

11.7.2.2 the licensee shall not make excessive use of a single language, other than English, to the exclusion of the other official languages; and

11.7.2.3 the programming in question shall be taken into account in assessing the licensee's compliance or otherwise with the requirements relating to language use set out in Clause 11.6."

9. Clause 11.7.3 : Dubbing of children's programming acquired from abroad

Clause 11.7.3 of the licence conditions provides as follows:

"During the entire licence period, the licensee shall ensure that 20% of children's programming acquired from abroad and broadcast by the licensee shall be dubbed into Zulu, Xhosa, SeSotho and SeTswana."

In its amendment application, Midi requested that Clause 11.7.3 be amended to read as follows:

"During the entire licence period, the licensee shall endeavour to dub [ensure that 20% of] some of the children's programming acquired from abroad and broadcast by the licensee [shall be dubbed] into official languages other than English [Zulu, Xhosa, seSotho and SeTswana]. Programming satisfying this requirement shall also be included in calculating compliance with the language quota set out in Clause 11.6."

Clause 11.7.3 is amended to read as follows:

"During the entire licence period, the licensee shall endeavour to dub [ensure that 20% of] some of the children's programming acquired from abroad and broadcast by the licensee [shall be dubbed] into official languages other than English [Zulu, Xhosa, seSotho and SeTswana]."

However, Children's programmes dubbed into official languages other than English should not be used to enable Midi to comply with its obligations in respect of official languages other than English.

10. Clause 12.1 : Local content during start-up period

Clause 12.1 of the licence conditions provides as follows:

"With effect from the effective date to 31 January 1999, 10% of the broadcast time shall consist of local television content measured over a period of a week."

Midi sought to have its licence conditions amended by the deletion of Clause 12.1 in its entirety. The Authority has decided to reject Midi's application in this regard. However, in order to clarify the measurement standard to be applied in assessing Midi's compliance with Clause 12.1, the Authority has decided to amend Clause 12.1 to read as follows:

"With effect from the effective date to 31 January 1999, 10% of the broadcast time shall consist of local television content to be measured as a weekly average over [a] that period [of a week]."

11. Clauses 12.2. and 12.3 : Local content

Midi applied to have Clauses 12.2 and 12.3 of the licence conditions amended in certain respects. However, at the hearing held on 9 November 1999, Midi informed the Authority that it was withdrawing this part of the amendment application. Accordingly, the Authority did not consider Midi's amendment application in this regard.

12. Clause 13.2 : News during the start-up period

Midi applied to have Clause 13.2 of its licence conditions amended in certain respects. However, at the hearing held on 9 November 1999, Midi informed the Authority that it was withdrawing this part of the amendment application. Accordingly, the Authority did not consider Midi's application for the amendment of Clause 13.2.

13. Clause 14.1 : Information programming during the start-up period

Clause 14.1 of Midi's licence conditions reads as follows:

"With effect from the effective date to 31 January 1999 the licensee shall broadcast information programming on a pro rata basis calculations whereof shall be based on the hours of information programming stated in sub-clause 14.2 (infra). These hours will increase in accordance with the provisions of Clause 8."

Midi applied for Clause 14.1 to be amended to read as follows:

"With effect from the effective date to 31 January 1999 the licensee shall broadcast two hours of information programming [on a pro rata basis calculations whereof shall be based on the hours of information programming stated in sub-clause 14.2 (infra)] per week. [These hours will increase in accordance with the provisions of Clause 8.]"

The Authority has decided to reject Midi's amendment application in this regard. However, in order to clarify the measurement standard to be applied in assessing Midi's compliance with its obligations in this regard, Clause 14.1 is amended to read as follows:

"With effect from the effective date to 31 January 1999, the licensee shall broadcast information programming on a *pro rata* basis, calculation [whereof] of which shall be based on the hours of information programming stated in sub-clause 14.2 (*infra*). These hours will increase in accordance with the provisions of Clause 8. Compliance with this requirement shall be measured as a weekly average over the period from the effective date to 31 January 1999."

14. Clause 15.2 : Children's programming during the first licence year

Clause 15.2 of the licence conditions provides as follows:

"At the effective date, and for the remainder of the first licence year, the licensee shall broadcast a minimum of 14 hours 30 minutes of children's programming per week, a maximum of one hour 30 minutes whereof may consist of re-broadcast children's programmes. At least 20% thereof must comply with local television content, which is the minimum requirement as per the regulations on local television content."

Midi applied to have Clause 15.2 amended to read as follows:

"[At the effective date] From 1 February 1999 and for the remainder of the first licence year, the licensee shall broadcast [a minimum of] 14 hours 30 minutes of children's programming per week, a maximum of one hour 30 minutes whereof may consist of re-broadcast children's programmes. At least 20% thereof must comply with local television content, which is the minimum requirement as per the regulations on local television content. Compliance with this obligation shall be measured as a weekly average over the period 1 February 1999 to 30 September 1999."

The Authority has decided to grant Midi's application in this regard, but to reformulate Clause 15.2 in terms slightly different from the amended formulation sought by Midi. Accordingly, Clause 15.2 is amended to read as follows:

“[At the effective date] From 1 February 1999 and for the remainder of the first licence year, the licensee shall broadcast 14 hours 30 minutes of children’s programming per week, a maximum of one hour 30 minutes [whereof] of which may consist of re-broadcast children’s programmes. At least 20% [thereof] of the 14 hours 30 minutes of children’s programming referred to above must [comply with] constitute local content, [which is the minimum requirement as per] as required by the [regulations on] local [television] content regulations. Compliance with this obligation shall be measured as a weekly average over the period 1 February 1999 to 30 September 1999.”

15. Clause 15.3 : Children’s programming during the second licence year

Clause 15.3 provides as follows:

“With effect from the commencement of the second licence year, the licensee shall broadcast a minimum of 17 hours 30 minutes of children’s programming per week, a maximum of four hours whereof shall consist of re-broadcast children’s programmes. At least 20% thereof shall consist of local television content.”

Midi applied to have Clause 15.3 amended to read as follows:

“With effect from the commencement of the second licence year, the licensee shall broadcast [a minimum of] 17 hours 30 minutes of programming per week, a maximum of four hours whereof shall consist of re-broadcast children’s programmes. At least 20% thereof shall consist of local television content. Compliance with this obligation shall be measured as a weekly average over the period of the licence year.”

The Authority has decided to grant Midi’s application in this regard, but to amend Clause 15.3 by means of reformulation which is slightly different from that proposed by Midi.

Accordingly, Clause 15.3 is amended to read as follows:

“With effect from the commencement of the second licence year, the licensee shall broadcast [a minimum of] 17 hours 30 minutes of children’s programming per week, a maximum of four hours [whereof] of which [shall] may consist of re-broadcast children’s programmes. At least 20% [thereof] of the children’s programming to be broadcast by the licensee in terms of this clause shall [consist of] comply with the local content requirements set

out in the local content regulations. Compliance with this obligation shall be measured as a weekly average over the period of the licence year."

16. Clause 15.4 : Children's programming during the third licence year

Clause 15.4 of the licence conditions reads as follows:

"With effect from the commencement of the third licence year, and for the remainder of the licence period, the licensee shall broadcast a minimum of 16 hours of children's programming per week, of which at least 20% shall consist of local television content."

Midi applied to have Clause 15.4 amended to read as follows:

"With effect from the commencement of the third licence year, and for the remainder of the licence period, the licensee shall broadcast [a minimum of] 16 hours of children's programming per week, of which at least 20% shall consist of local television content. Compliance with this obligation shall be measured as a weekly average over the period of each licence year."

The Authority has decided to grant Midi's amendment application in this regard, but has decided to amend Clause 15.4 by means of a reformulated version which is slightly different from that proposed by Midi. Accordingly, Clause 15.4 is amended to read as follows:

"With effect from the commencement of the third licence year, and for the remainder of the licence period, the licensee shall broadcast [a minimum of] 16 hours of children's programming per week, of which at least 20% shall [consist of] comply with the local content requirements set out in the local content regulations. Compliance with this obligation shall be measured as a weekly average over the period of each successive licence year."

17. Clause 15.5 : Hours of broadcast of children's programming

Clause 15.5 of Midi's licence conditions reads as follows:

"With effect from 1 February 1999 the licensee shall broadcast the children's programming referred to above between the hours of 15h00 and 17h00 on weekdays and between the hours of 08h00 to 10h00 over weekends."

In its amendment application, Midi applied for the amendment of Clause 15.5 to read as follows:

“With effect from 1 February 1999 the licensee shall broadcast [the] children’s programming [referred to above] between the hours of 15h00 and 17h00 or within the period 13h00 to 18h00 on weekdays and between the hours of 08h00 to 10h00 or within the period 07h00 to 13h00 on weekends. The licensee may, on occasion, broadcast other programming during the children’s programming time-slots if a particular broadcast event necessitates that the children’s programming is interrupted.”

The Authority has decided to grant Midi’s amendment application in this regard. Clause 15.5 is amended to read as follows:

“With effect from 1 February 1999, the licensee shall broadcast the children’s programming referred to [above] in Clauses 15.2, 15.3 and 15.4 between the hours of [15h00 and 17h00] 13h00 and 18h00 on weekdays and between the hours of [08h00 to 10h00] 07h00 and 13h00 on weekends, provided that:

15.5.1 the licensee shall endeavour to ensure, that children’s programming is broadcast at times when large numbers of children are likely to be watching television;

15.5.2 in exceptional circumstances, and then only to the extent reasonably necessary, the licensee may broadcast other programming during the abovementioned time periods ordinarily allocated to children’s programming if a particular broadcast event of considerable importance necessitates that the children’s programming be interrupted;

15.5.3 the total amount of children’s programming to be broadcast by the licensee, to be calculated as a weekly average over the period of the relevant licence year, shall not be reduced.”

18. Clause 15.6 : Language requirements in respect of children’s programming

Clause 15.6 of the licence conditions reads as follows:

“At least 20% of children’s programming broadcast by the licensee shall be in Zulu, Xhosa, SeSotho and SeTswana.”

Midi sought to have Clause 15.6 deleted in its entirety. The Authority has decided to agree to Midi’s amendment application in this regard, because Clause 15.6 is a duplication of Clause 11.7.2.

19. Clause 15.7: Youth drama during the first licence year

Clause 15.7 of the licence conditions provides as follows:

“At the effective date and for the remainder of the first licence year the licensee shall broadcast at least one hour 30 minutes of youth drama during prime time.”

Midi sought to have Clause 15.7 amended to read as follows:

“[At the effective date] From 1 February 1999 and for the remainder of the first licence year the licensee shall broadcast at least one hour 30 minutes of youth drama [during prime time]. This one hour 30 minutes of youth drama is included in the children’s programming quota referred to in Clause 15.2 (above) and shall be measured as a weekly average over the period 1 February 1999 to 30 September 1999.”

The Authority has decided to agree to Midi’s amendment application in this regard and Clause 15.7 is amended accordingly. Accordingly, Clause 15.7 is amended to read as follows:

“[At the effective date] From 1 February 1999 and for the remainder of the first licence year the licensee shall broadcast at least one hour 30 minutes of youth drama [during prime time] per week. This one hour 30 minutes of youth drama is included in the children’s programming quota referred to in Clause 15.2 (above) and shall be measured as a weekly average over the period 1 February 1999 to 30 September 1999.”

20. Clause 15.8 : Youth drama during the second licence year

Clause 15.8 provides as follows:

“With effect from the commencement of the second licence year and for the duration of the licence period the one hour 30 minutes of youth drama broadcast during prime time shall comprise of South African youth drama.”

Midi sought to have Clause 15.8 amended to read as follows:

“With effect from the commencement of the second licence year and for the duration of the licence period [the] one hour 30 minutes of youth drama shall be broadcast during prime time and shall comprise of South African youth drama. This one hour 30 minutes of youth drama is included in the children’s programming quota referred to in Clause 15.3 (above) and shall be measured as a weekly average over the period of each licence year.”

The Authority agrees to Midi’s amendment application in this regard and, consequently, Clause 15.8 of the licence conditions is amended accordingly.

21. Clause 16.1 : South African drama

Clause 16.1 of the licence conditions provides as follows:

“By the end of the second licence year, the licensee shall broadcast a weekly minimum of three hours 30 minutes of South African drama, at least two hours 30 minutes thereof the above shall be broadcast during prime time.”

Midi sought to have Clause 16.1 amended to read as follows:

“By the end of the second licence year, the licensee shall broadcast [a weekly minimum of three] two hours 30 minutes of South African drama per week, of which at least two hours [30] 20 minutes [thereof the above] shall be broadcast during prime time. Compliance with this obligation shall be measured on a weekly average over each licence year.”

The Authority agrees to Midi’s amendment application in this regard and, consequently, Clause 16.1 of the licence conditions is amended accordingly.

22. Clause 16.2 : South African drama from the commencement of the third licence year

Clause 16.2 of the licence conditions provides as follows:

“With effect from the commencement of the third licence year, one hour of the South African drama referred to in Clause 16.1 shall consist of a maximum of 50% of re-broadcasts.”

Midi sought to have Clause 16.2 amended to read as follows:

“With effect from the commencement of the third licence year, the licensee shall ensure that [one hour of the South African drama referred to in Clause 16.1] no more than 50% [shall consist of a maximum of 50%] of the South African drama broadcast requirement in Clause 16.1 [of rebroadcasts] consists of re-broadcasts.”

The Authority has decided to agree to Midi’s amendment application in this regard and, consequently, Clause 16.2 is amended accordingly.

23. Clause 16.3 : Language requirements in respect of South African drama

Clause 16.3 provides as follows:

“The licensee shall ensure that at least 20% of South African drama broadcast by it shall be in Zulu, Xhosa, SeSotho and SeTswana.”

In its amendment application, Midi sought to have Clause 16.3 amended to read as follows:

“The licensee shall ensure that at least [20%] 10% of South African drama productions broadcast by it during the performance period shall [be in] comprise [Zulu, Xhosa, SeSotho and SeTswana] official languages other than English.”

The Authority has decided to agree to Midi’s amendment application in this regard, but to reformulate Clause 16.3 in terms slightly different from that proposed by Midi. Accordingly, Clause 16.3 is amended to read as follows:

“The licensee shall ensure that at least [20%] 10% of South African drama productions broadcast by it shall [be in] comprise [Zulu, Xhosa, SeSotho and SeTswana] a broad range of official languages other than English. In complying with its obligations in this regard, the licensee shall not make excessive use of a single language, other than English, to the exclusion of the other official languages.”

24. Clause 17.1 : Shareholding structure

Clause 17.1 of the licence conditions provides as follows:

"The shareholding structure of the licensee is as follows:

Hoskens Consolidated Investment Ltd	: 26.092%
Vula Communications Holdings	: 25.228%
Warner Bros	: 20.0%
Disabled Employment Concerns Trust	: 5.032%
Medumo Media (Pty) Ltd	: 5.032%
Mopani Media CC	: 4.024%
Mineworkers Investment Company	: 4.024%
SACTWU Investment Group	: 4.024%
Youth Development Trust	: 3.02%
African Pioneers Investment Trust	: 3.02%
R M Productions CC	: 0.504%."

In terms of the amendment application, Midi sought to have Clause 17.1 amended to read as follows:

"The shareholding structure of the licensee is as follows:

Sabido Investments (Pty) Ltd	: 80%
South African Television Holdings LLC	: 20%."

Subject to the amendment of Clause 17.2, as set out below, the Authority has agreed to Midi's amendment application in this regard and, consequently, Clause 17.1 is amended accordingly.

Although the Authority was concerned about the implications of the restructuring of the shareholding in Midi, it accepted Midi's submission that these changes were necessitated by the inability of minority shareholders to provide their portion of funding to Midi and that these changes were envisaged by, and were implemented in terms of, the Midi shareholders agreement.

25. Clause 17.2 : Alteration to shareholding and control structures

Clause 17.2 of the licence conditions provides as follows:

“The shareholding and control structures of the licensee may not be altered, control of the licensee or of the broadcasting service to be provided by the licensee in terms of the licence and the licence conditions may not be transferred, and the licensee may not issue any bearer share warrants or bearer debentures, or convert into a public company or any other entity, unless:

17.2.1 the Authority has consented thereto after an application by the licensee for an amendment to the relevant provision(s) in this licence; or

17.2.2 the Authority waives the holding of a licence amendment hearing and grants the licensee an amendment, in writing, on such terms and conditions as it deems necessary in the circumstances.”

Midi sought to have Clause 17.2 amended by the deletion of the words “shareholding and” in the first line of that clause.

The Authority has decided to grant Midi’s amendment application in this regard, but to amend Clause 17.2. Clause 17.2 is amended to read as follows:

“Unless the Authority has consented thereto after an application by the licensee for an amendment to the relevant provision(s) in this licence or the Authority waives the holding of a licence amendment hearing and grants the licensee an amendment, in writing, on such terms and conditions as it deems necessary in the circumstances:

17.2.1 the control structures of the licensee or its South African shareholder may not be altered;

17.2.2 the empowerment component of the licensee or its South African shareholder may not be reduced;

17.2.3 control of the licensee or of the broadcasting service to be provided by the licensee in terms of the licence and the licence conditions may not be transferred; and

17.2.4 the licensee may not issue any bearer share warrants or bearer debentures, or convert into a public company or any other entity.”

The Authority decided to grant the amendment to Clause 17.2 in a form that takes into account the Authority's original concern, when granting the licence to Midi, to preserve the control of Midi by persons from historically disadvantaged groups. The Authority also sought to give effect to Midi's request that every change in shareholding should not require a formal amendment in accordance with the requirements of Section 52 of the Act. In terms of the Authority's statutory mandate and policy positions, it was difficult to give effect to Midi's concerns without also inserting a mechanism that would preserve the Authority's regulatory oversight of the ownership and control of broadcasting services by persons from historically disadvantaged groups.

26. Clause 18.1 : Employment equity

Clause 18.1 of the licence conditions reads as follows:

"With effect from the effective date, and for the duration of the licence period, at least 40% of the licensee's staff complement, at all levels, shall be Africans and African shall refer to Blacks excluding Coloureds and Indians."

Midi sought to have Clause 18.1 amended to read as follows:

"With effect from the effective date and for the duration of the licence period, at least 40% of the licensee's staff complement shall consist of employees who are Black as defined in the Employment Equity Act [at all levels, shall be Africans and African shall refer to Blacks excluding Coloureds and Indians]."

The Authority has decided to agree with certain parts of Midi's amendment application in this regard. Clause 18.1 is amended to read as follows:

"With effect from the effective date, and for the duration of the licence period, at least 40% of the licensee's [staff complement] employees (being staff and management) shall be Africans, and 'Africans' shall refer to Blacks excluding Coloureds and Indians."

27. Clause 18.2 : Women

Clause 18.2 of the licence conditions provides as follows:

"With effect from the effective date and for the duration of the

licence period, at least 35% of the licensee's staff complement, at all levels, shall be women."

Midi applied for the amendment of Clause 18.2 by the deletion of the words "at all levels". For the sake of clarity, the Authority agrees that Clause 18.2 be amended to read as follows:

"With effect from the effective date, and for the duration of the licence period, at least 35% of the licensee's [staff complement] employees (being staff and management) shall be women".

28. Clause 18.3: Disabled people

Clause 18.3 of Midi's licence conditions provides as follows:

"With effect from the commencement of the fifth licence year, and for the remainder of the licence period at least 5% of the licensee's staff complement, at all levels, shall be disabled people."

Midi sought to have Clause 18.3 amended by the deletion of the words "at all levels". For the sake of clarity, the Authority agrees that Clause 18.3 be amended to read as follows:

"With effect from the commencement of the fifth licence year, and for the remainder of the licence period, at least 5% of the licensee's [staff complement] employees (being staff and management) shall be disabled people."

29. Clause 18.5: Human resources practices

Clause 18.5 of the licence conditions reads as follows:

"The licensee shall ensure the following in its human resource practice:

- 18.5.1 an efficient human resources function supported by a competent human resource development function;
- 18.5.2 consultation between management and employees in decision-making processes;
- 18.5.3 fair labour practices;
- 18.5.4 a safe, healthy and accommodating working environment;
- 18.5.5 a well resourced training arm with responsibility for the

development of the licensee's core staff and major independent contractors."

Midi sought to have Clause 18.5 deleted in its entirety. The Authority has decided to reject Midi's amendment application in this regard.

29. Clause 18.7: Commissioning of local programming

Midi sought to have Clause 18.7 amended in certain respects. However, at the hearing in respect of the amendment application, Midi informed the Authority that it was withdrawing its application in this regard. Accordingly, the Authority did not consider Midi's amendment application in this regard.

30. Clause 18.9: Training commitment

Clause 18.9 of the licence conditions provides as follows:

"The licensee's training commitment is to be in excess of 10% of the licensee's payroll."

Midi sought to have Clause 18.9 deleted in its entirety. Clause 18.10 of the licence conditions provides as follows:

"The licensee has committed its training to be the equivalent of R15,000.00 per employee per year or 11% of total salary costs, whichever is the greater, from the effective date, escalating at the rate of inflation."

The Authority accepts that, to a certain extent, Clause 18.10 duplicates Clause 18.9. Accordingly, the Authority has decided to agree to Midi's amendment application in this regard. Consequently, Clause 18.9 is deleted in its entirety.

31. Clause 22.1: Advertising during the start-up period

Clause 22 of the licence conditions provides as follows:

"With effect from the effective date until 31 January 1999, the licensee may broadcast a maximum of four minutes of advertising in any one hour of its six hour broadcast. For as long as the licensee broadcasts for six hours per day, it may broadcast an average of 3.3 minutes of advertising per day. This will increase in

accordance with the provisions of Clause 8 and in proportion to the increased broadcast hours.”

Midi sought to have Clause 22.1 deleted in its entirety. The Authority has decided to reject Midi’s application in this regard

32. Clause 22.2 : Measurement period in respect of advertising

Clause 22.2 provides as follows:

“Subject to Clause 22.3 and with effect from 1 February 1999, the licensee shall not, during any licence year, broadcast more than an average of 10 minutes of advertisements per hour.”

Midi sought to have Clause 22.2 amended to read as follows:

“Subject to Clause 22.3 and with effect from the effective date, the licensee shall not, during any licence year, broadcast more than an average of 10 minutes of advertisements per hour. This average shall be measured over the period of each licence year.”

The Authority agrees to the amendment sought by Midi in relation to the measurement period and, consequently, Clause 22.2 is amended by means of the insertion of the following sentence at the end of that clause:

“This average shall be measured over the period of each successive licence year.”

33. Schedule B2 : New transmitters

Midi applied to have Schedule B2 (the technical specifications) of its licence conditions amended to include six new transmitters in Amanda Glen, Aurora, Clifton, Linmeyer, Mulbarton and Verulam. According to Midi, viewers in these areas have complained of poor reception.

The Authority has decided to grant the application in respect of Linmeyer, Mulbarton and Verulam. The Authority has also decided to agree, in principle, to the application in respect of Amanda Glen, Aurora and Clifton subject to the availability of frequencies in these areas. The Authority will confirm with Midi the availability of frequencies in the areas mentioned in paragraph 51.4 once the Authority has verified compatibility with other users.

Copies of the full text of the amendments and of the Authority's reasons for its decisions are available at its library at Block D, Pinmill Farm, 164 Katherine Street, Sandown, Sandton, from Monday to Friday from 10h00 to 16h30 and on its website on www.iba.org.za.

The effective date of the amendments would be the date of this publication.

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