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## **National Communications Authority**

*- Press Release*

### **NCA Gives General Amnesty to Defaulting FM Radio Stations**

At the 149<sup>th</sup> Meeting of the Board of Directors of the National Communications Authority (NCA), held on Wednesday, 13<sup>th</sup> December, 2017, approval was granted for an amnesty to defaulting FM Radio Stations following the completion of an audit earlier this year and to bring closure to events following FM Radio Audit.

This supersedes all sanctions given in relation to the FM Spectrum Audit. The only exception is the waiver granted to Community and Campus Radio FM Stations given earlier on in the year which remains unchanged, to wit, reprieve from pecuniary penalty but required to meet all regulatory obligations by 19<sup>th</sup> November, 2017.

#### ***Details of the General Amnesty***

The details of the general amnesty are as follows:

- a. All sanctioned commercial FM Stations (**Revoked and Fined**) are to rectify all outstanding issues by Monday, 15<sup>th</sup> January, 2018, and pay a pecuniary penalty. The penalty shall be based on:
  - o The number of days of violation from 28<sup>th</sup> July, 2016, but shall not exceed one year in any case.
  - o The authorised geographical location class as follows:

<b><i>Commercial FM Location Class</i></b>	<b><i>Pecuniary Penalty Per Day (GHC)</i></b>
Urban Type 1	10,000.00
Urban Type 2	9,000.00
Sub-Urban Type 1	7,000.00
Sub-Urban Type 2	5,000.00
Rural	3,000.00

- b. All affected commercial FM Stations shall pay the applicable reduced pecuniary penalty rates per day in addition to any outstanding regulatory fees and the submission of all outstanding documentation by Monday, 15<sup>th</sup> January, 2018, to be in good standing.
- c. Any station that is unable to meet the requirements to be in good standing by the specified date under this amnesty would have its Authorisation revoked.
- d. Stations whose Authorisations were revoked as announced earlier shall pay the applicable pecuniary penalty rate in addition to any outstanding regulatory fees and the submission of all outstanding documentation or invitation for inspection by Monday, 15<sup>th</sup> January, 2018. They will be required to meet these obligations before they are reinstated and permitted to commence operations.

### ***Why this General Amnesty?***

This general amnesty is granted because there have been substantial benefits from the audit and its aftermath including the following:

- **Increase in Regulatory Compliance** - About 90% of the sanctioned stations have remedied the breach by either submitting renewal applications, outstanding documents, paid outstanding regulatory and spectrum fees or invited the Authority for inspection of their facilities.
- **Voluntary Renewal Applications** - Following the issuance of the sanctions, there has been voluntary submission of renewal applications from stations whose Authorisations were due to expire this year.
- **Payment of Outstanding Regulatory Fees** - There has been a surge in the payment of outstanding regulatory fees by both affected and non-affected FM radio broadcasting stations.
- **Impact on other Regulated Services** - As a result of the FM Spectrum Audit, the regulatory decisions and the general public discussions, there has been a positive impact on other regulated services including Television, ISPs, Value Added Services, Infrastructure and Submarine Cable Companies. Authorisation Holders of these services have also voluntarily begun paying outstanding regulatory fees, applying for renewals and complying with their respective Authorisation Conditions.
- **Clean Up of Records** - The audit processes have assisted the Authority to clean up its records and update its databases.
- **Reinforcement of NCA's Regulatory Role** - The audit and subsequent sanctions have led to a boost of the NCA's regulatory role and authority, with generally positive publicity. A qualitative content analysis of comments and feedback

indicates appreciation for the NCA's functions and the need for the Authority to enforce compliance.

It has also enabled the NCA to wipe the slate clean and ensure that

- All regulatory documentation is up to date.
- Authorisation Holders ensure compliance; this has spilled over to other services that are regulated by the NCA.
- The country, through the NCA, is able to determine value for the use of allocated spectrum.
- These fines imposed on defaulting stations will serve as a reference of non-compliance on record.

### ***Other Services***

Following the FM Audit, the Authority has carried out audits of other services including:

- Television Broadcasting
- Internet/Public Data Service Provision
- VSAT Licences
- Value Added Service Licence
- Public Radio Equipment (PRE) or Land Mobile Services
- Infrastructure Licence (Masts and Towers)
- Maritime Radio Services
- Aeronautical Radio Services

There are eighteen (18) other services which are yet to be audited and this will be done in due course.

### ***Background of the FM Spectrum Audit***

The NCA conducted the audit to:

- a. Assess all FM radio broadcasting authorisations
- b. Identify stations with expired authorisations and those that have not commenced operations within the stipulated period and with a view to;
- c. Ensure regulatory compliance
- d. Recommend appropriate sanctions for the various cases of regulatory infractions
- e. Recommend improvements in the Authority's internal working procedures
- f. Identify availability of FM Radio spectrum.

The objectives of the exercise have not only been achieved, it has also reinforced the regulatory mandate of the NCA.

### ***Caution and Advise***

The opportunity for ensuring compliance and or curing infractions begun in June, 2017, so in effect, defaulting companies have had over five (5) months to comply with their authorisation obligations.

The NCA is determined to ensure that all operators within the industry are fully compliant with their legal and regulatory obligations.

### ***Conclusion***

After this amnesty, the NCA will strictly enforce compliance with all regulated services. This amnesty brings closure to the FM Audit and consolidates the successes achieved from the process thus far.

We wish you a very merry Christmas and a prosperous New year.

Thank you.

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*Date – Tuesday, 19<sup>th</sup> December, 2017*

## Supporting Regulatory Framework

**Section 2 of the Electronic Communications Act, 2008, Act 775** mandates that the National Communications Authority

- “shall regulate the radio spectrum designated or allocated for use by broadcasting organisations and providers of broadcasting services”;
- “... determine technical and other standards and issue guidelines for the operation of broadcasting organisations ...”
- “... may adopt policies to cater for rural communities and for this purpose may waive fees wholly or in part for the grant of a frequency authorisation”.

### **Section 13 of the Electronics Communications Act (2009), Act 775:**

States among others that “the Authority may suspend or revoke a licence or a frequency authorisation where

*(a)* the licence or the authorisation holder has failed to comply materially with any of the provisions of this Act, Regulations or the terms and conditions of its licence or frequency authorisation

*(b)* the licensee or the authorisation holder has failed to comply materially with a lawful direction of the Authority,

*(c)* the licensee or the authorisation holder is in default of payment of a fee or other money, charged or imposed in furtherance of this Act, the National Communications Authority Act, 2008 (Act 769) or Regulations

*(d)* the licensee ceases to (i) operate the public communications network, (ii) provide the public electronic communications service, or (iii) use the frequency band.”

### **Electronic Act, 2009, Act 775, Sections (1)(e), (4):**

(1)(e) The Authority may in furtherance of its functions impose a pecuniary penalty on a licensee for breach of a condition of a licence

(4) The Authority shall specify by periodic notices in the *Gazette* and on its website the circumstances under which a pecuniary penalty and other penalties may be imposed and the basis on which they may be calculated.

### **Electronic Communications Regulations 2011, L.I.1991:**

131.(1) Where there is a breach of a provision of these Regulations, the Authority may impose a pecuniary penalty as The Authority may determine, unless a penalty is otherwise provided for these Regulations.

(2) The Authority shall for the purposes of sub-regulation (1) publish the pecuniary penalties for breaches in a manner as the Authority determines.

### **NCA Act 2008, Act 769, Section 24 (4):**

The Board may, on application or on its own motion, review, rescind or vary a decision made by it or hear a matter again before rendering a decision.

### **National Communications Authority Schedule of Penalties, 2015 (N. 7):**

Failing to submit to the Authority in a manner and at the times as may be reasonably requested, document, accounts, estimates, returns and other information that may be required under the Authorisation and in general give the Authority's inspectors the necessary facilities to carry out inspections or the communications system.

### **GEOGRAPHIC CLASSIFICATION OF FM TYPE**

- a) **Urban Type 1:** - For the major metropolitan assemblies e.g. Accra, Kumasi and Takoradi.
- b) **Urban Type 2:** For the other metropolitan cities that are not as economically viable as the above cities such as Tamale and Cape Coast, as well as the other regional capitals such as Koforidua, Sekondi, Ho, Bolgatanga, Sunyani, and Wa.
- c) **Sub-Urban Type 1:** For the capital of some municipal assemblies and some major towns, e.g. Tarkwa, Oda, Berekum etc.
- d) **Sub-Urban Type 2:** For locations that have moderate economic activity and moderate population, including some district capitals such as Bibiani, Sefwi Bekwai, Somanya etc.
- e) **Rural** - The rest of the country.