

STATEMENT BY HONOURABLE URSULA OWUSU-EKUFUL ON THE SPECTRUM AUDIT CARRIED OUT AND ACTIONS TAKEN BY THE NATIONAL COMMUNICATIONS AUTHORITY

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Mr. Speaker, thank you for this opportunity to make a statement on the Spectrum Audit and subsequent actions taken by the National Communications Authority (NCA), an agency under the Ministry of Communications.

The NCA's mandate is drawn from the National Communications Authority Act, 2008 (Act 769), clause 2 of which states that "The object of the Authority is to regulate the provision of communications services in the country" It further states among others in Clause 3 that the Authority shall:

- (a) establish and monitor the implementation of national communications standards and ensure compliance accordingly; and
- (e) ensure fair competition amongst licencees, operators of communications networks and service providers of public communications.

Mr. Speaker, Clause 2(1) of the Electronic Communications Act, 2008 (Act 775) further mandates the NCA to regulate the radio spectrum designated or allocated for use by broadcasting organisations and providers of broadcasting services in accordance with the standards and requirements of the International Telecommunications Union and its Radio Regulations as agreed to or adopted by the Republic.

These provisions give the NCA the clear mandate to manage spectrum and issue, suspend or revoke frequency authorisations and that is simply what they seek to do.

Mr. Speaker, permit me to emphasise that the NCA does NOT grant licences to radio stations. It does NOT regulate the media or exercise editorial control of FM stations either. The NCA is the legal custodian of Ghana's spectrum resources and grants AUTHORISATIONS to entities to use the spectrum under stated conditions. To illustrate this point, the NCA does not determine which car you buy or drive, where you go or what you do in that car. It does have a toll road though so to drive on that toll road, you have to pay the toll to use the road.

The Supreme Court ruled, in the Radio Eye case, that the requirement of obtaining written consent before using a radio frequency in Ghana was a restriction that is reasonably required within the meaning of Article 164 of the constitution for the protection of "national security, public order and public morality," and the "reputation, rights and freedom of others." further asserted that all over the world, the use of radio frequency is regulated by both domestic and international regulations. As a member of the ITU, Ghana is bound by article 124(1) of the ITU Convention, which states: "No transmitting station may be established or operated by a private person or by any enterprise without licence issued in an appropriate form and in conformity with the provisions of these Regulations by the government of the country to which the station in question is subject." This decision has been applied in several other cases before the courts and is now settled law.

This NPP government of Nana Akufo-Addo, President of the Republic, is determined to apply our law and ensure sanity prevails in all sectors. All MDAs have been empowered to do their work in accordance with their rules and regulations, without fear or favour. I have informed all agencies under my Ministry to do so. To rephrase the biblical injunction, ... as for me and my house, we will serve the (law) Lord. Acting in compliance with this directive, the NCA, in March this year announced that it was conducting a spectrum audit and an advertisement in this regard was published in the Daily Graphic edition of Thursday, 9th March, 2017, clearly stating the objectives of the audit. After the advertisement, and after the conclusion of the audit, letters were sent to all defaulting FM stations however, they failed in both instances to rectify the identified defaults.

131 radio stations have failed, refused or neglected to abide by the conditions for the grant of frequency authorisations by the NCA and have been sanctioned in accordance with the same laws which gave them the right to operate in the first place. They were identified as defaulters after the audit and sanctioned. Over 400 stations are currently operating legally and have not been touched. The published list contained authorisation holders who had flouted various conditions of their authorisation. The law prescribes the requisite punishment and actions for these infractions. . It is absurd to even suggest that the 131 offending stations have been

targeted for political reasons. If any of them feel they have not gone contrary to their authorisation, they can raise that with the NCA and it will be dealt with.

Actions taken to enforce statute and judicial decisions cannot, by any stretch of the imagination, no matter how fertile, be termed political persecution, acts in violation of free expression or threats to press freedom. There is a clear need for proper regulations and management of this scarce and finite resource to ensure an orderly broadcasting environment and the NCA's prudent management of this valuable resource over the years, has supported media pluralism, as by reducing coverage areas for Commercial FM stations, it made more frequencies available for the ever increasing requests. Indeed whatever authorizations have been revoked will certainly be re issued to new applicants after due process in view of the long list of applications for frequencies currently pending.

Mr. Speaker, it is preposterous for anyone to suggest that the implementation of a law this august house has passed is a threat to media plurality. No media house has been hand-picked to face sanctions. All those sanctioned have flouted regulations they were bound by and the NCA is merely exercising its legitimate mandate. If the media who are touted as the 4<sup>th</sup> estate of the realm do not adhere to the same regulations that give them the right to use a scarce state resource like spectrum, how can they in good conscience insist that others abide by the rules? How will they hold any other sector accountable? After the recent tragic gas explosion, there has been a clarion call for the enforcement of regulatory provisions in that sector in many media outlets. It is a good call but does the media notice the irony of that? Physician, heal thyself! It is unfortunate, and indeed sad to suggest that adherence to the law is a threat to media plurality or that implementing regulatory provisions to manage spectrum can be equated to Nazism??? That might make for a good soundbite but is certainly deficient in logic and good sense.

The NCA's action in no way suppresses free speech. Its inactions, on the other hand will be irresponsible and can lead to chaos, confusion and disorder caused by the absence of regulation that will impede the exercise of free expression. In the exercise of its frequency regulatory and compliance mandates, the NCA is not subject to the National Media Commission which also has a separate mandate. These two bodies however have a cordial relationship.

Furthermore, the fact that previous Boards and Directors General of the NCA (with or without the blessing of Ministers of Communications) did not enforce their rules does not mean that a new regime with a belief in the rule of law should not apply the laws of the land. There is no timetable to enforcing regulations and ensuring compliance and it is better late than never.

While there have been complaints about the scale of fines, I believe they are commensurate with the infractions committed. How can a station operate for years without bothering to pay the renewal and other fees? Mr. Speaker, these fines were mandated by law and are designed to be punitive and a deterrent. The NCA did not arbitrarily set these fines nor make these decisions. We did, and they apply to telecommunications operators as well. No one complains when Mobile Network Operators are fined millions of dollars for not complying with their quality of service or roll out obligations etc.? Should the media be treated differently? What's good for the goose....

Mr. Speaker, the fines are in the Schedule of Penalties. It is pertinent to note that before the gazetted Schedule of Penalties in 2015, the NCA had the power to impose discretionary pecuniary fines as indicated in Section 72(1) (e) of Act 775 and Regulation 137 of L.I. 1991. The 2015 Schedule of Penalties merely imposed a ceiling on the fines. We should be grateful for that. The fines could have been higher without that cap. The April 20th, 2015 Schedule of Penalties has been published on the NCA's website since it was gazetted.

When the NCA appeared before the Public Accounts Committee earlier this year, they had to explain why they had failed to sanction defaulting stations in 2010. The Auditor General has also followed up on the PAC visit to ensure compliance with its recommendations. The NCA took a cue from that encounter and thanks the committee for its expressed interest in state agencies implementing the laws passed by this august house. PAC is chaired by the minority so it is indeed strange that members of the Minority are now questioning why the NCA will obey the expressed wishes of PAC! Very strange indeed.

The same law that gives the NCA the power to sanction, gives the minister, me, the power to review the sanctions when petitioned. I have received some petitions on this matter and they will be reviewed on a case by case basis. I am inclined to deal a little leniently with the community radio stations but even they will pay a significant fine. All these stations must demonstrate the willingness to respect and obey the rules going forward.

We must acknowledge and applaud the NCA for having the guts to take this decision and encourage other agencies to do same. We cannot continue to flout our laws and vilify those who attempt to apply their regulations. The evidence of our lawlessness is everywhere in the choked gutters, buildings in waterways, indiscriminate open defecation, siting of kiosks everywhere, filthy beaches, dying forests, groaning environment, dangerous streets, noise, squalor, stench... the list is endless. STOP!!

May we as a nation start being compliant with our laws to ensure order, safety and security and also ensure that the good people of Ghana benefit collectively from the resources the good Lord has blessed us with. Ghana will work again if we all play our part and abide by the rules. We must do the right thing or die trying! Long live Ghana!

Mr. Speaker, I thank you for your attention.



