



5FM ANNUAL COMPLIANCE REPORT

MARCH 2018

2016/2017 ANNUAL COMPLIANCE REPORT

5 FM

LICENCE PERIOD : 18 DECEMBER 2008 - 17 DECEMBER 2018

1. PREFACE

The Independent Communications Authority of South Africa (the Authority) has a statutory mandate in terms of the Constitution¹, the ICASA Act², the Electronic Communications Act³ (ECA) and the Broadcasting Act⁴ to regulate broadcasting activities in South Africa in the public interest. Among the responsibilities of the Authority is the task to ensure compliance by broadcasting service Licensees with the terms and conditions of their licence and any relevant legislation and/or regulations.

The purpose of the report is to give an account of 5 FM's compliance with the terms and conditions as set out in its licence for the 2016/2017 financial year. Aspects of compliance that are measured comprise of Geographic Coverage, Community Participation, Programming, Format, News and Information, Local Content Obligations, Language(s), South African Music Regulations, Standard Terms and Conditions Regulations, Universal Service and Access Fund (USAF), the Code on People with Disabilities and Complaints.

2. BACKGROUND

5 FM is an Individual Commercial Sound Broadcasting Service Licensee of the South African Broadcasting Corporation (SABC). The radio station's mandate is to provide a Contemporary Hit Radio service to the geographic areas of Gauteng, Free State, Western Cape, Northern Cape, Eastern Cape, North West, Kwazulu-Natal, Mpumalanga and Limpopo. According to the Broadcast Research Council of South Africa (BRC), the listenership figures for the last quarter of the period under review was 757 000⁵.

¹ The Constitution of the Republic of South Africa, No 108 of 1996

² Act No. 13 of 2000, as amended

³ Act No. 36 of 2005

⁴ Act No. 4 of 1999

⁵ <http://www.brcsa.org.za/brc-ram-radio-listening-jul-16-dec-16-oct-16-mar-17/>

3. COMPLIANCE ASSESSMENT

3.1 Ownership and Control

Clause 1 of the licence stipulates that:

- 1.1 *Name of company/entity: The South African Broadcasting Corporation.*
- 1.2 *Shareholders: The State shall hold one hundred (100%) percent of the shares of the Corporation.*
- 1.3 *Ownership by persons from historically disadvantaged groups: N/A.*

There were no changes on the name and shareholding of the Licensee. 5 FM forms part of the commercial service division of the SABC and is 100% owned by the State.

The Licensee complies with clauses 1.1, 1.2 and 1.3 of its licence.

3.2 Geographic Coverage

Clause 2 of the schedule to the licence states that:

"The coverage area is as defined in the map attached to the radio frequency spectrum licence".
According to its frequency spectrum licence, the coverage area is a national footprint in major urban areas, with transmitter sites across major cities in all nine provinces.

The Licensee complies with clause 2 of the schedule of its licence.

3.3 Language(s)

Clause 3 of the schedule to the licence states that the language of broadcast is as follows:

"Principal Language: English".

The radio station's principal language of broadcast was found to be English during the Authority's monitoring exercise.

The Licensee complies with clause 3 above.

3.4 Format

Clause 4.1 of the schedule to the licence states that:

"The licensed service shall be a sound broadcasting service in a Contemporary Hit Radio format".

The Licensee submits that it provides a Contemporary Hit Radio format, with programmes such as *The Shakedown* broadcast on weekdays between 19:00 – 22:00; *The Thando Thabooty Show* also on weekdays between 10:00 – 13:00 and the *Weekend Breakfast* between 07:00 – 10:00 on weekends.

The Licensee complies with clause 4.2 of the schedule to its service licence.

Clause 4.2 of the schedule to the licence states that:

"The format may not deviate by more than fifteen percent (15%) from the above format".

The Authority's monitoring exercise confirmed that there was no deviation from 5 FM's Contemporary Hit Radio format. The Licensee's programming line-up is consistent with its hit radio format.

The Licensee complies with clause 4.2 of the schedule to its licence.

Clause 4.3 states that:

"The service authorised by this licence forms part of the commercial service division of the Licensee".

5 FM is categorised as the commercial radio station of the SABC as outlined in the licence. This was also confirmed in the Licensee's completion of Form 9A of the Compliance Procedure Manual Regulations.

The Licensee complies with clause 4.3 of the schedule to its licence.

3.5 General programming obligations

3.5.1 General

Clause 6.1.1 of the schedule to its licence states that:

"To the extent that the Licensee provides programming of a religious nature, the Licensee shall ensure that its programming adequately reflects the diversity of South Africa's Religion".

The Licensee's editorial policy in terms of religious diversity states that:

'Religious programmes should take account of regional factors, target audiences, language and cultural preferences, and the devotional needs of specific groups'.

The monitoring exercise did not find content of a religious nature. This is explained by the fact that the radio station falls under the Commercial Radio category along with Metro FM and Good Hope FM, thus these stations do not hold the same obligations as the rest of the public radio stations from the SABC.

The Licensee complies with clause 6.1.1 above.

Clause 6.1.2 of the schedule to the licence further provides that:

"The Licensee shall during the South African performance period provide material that caters and has due regard for the interests of all sectors of South African society and shall provide programming on health related issues, gender issues relevant to all age groups".

The Authority's monitoring exercise confirmed that 5 FM caters for all sectors of South African society in terms of the different types of topics often discussed. For example, in one of the weekdays shows, *The Thando Thabooty Show*, a topic on childhood allergies was discussed at length and listeners were engaged through phone-ins and social media through Twitter. The discussion was based on a study that was done which found that adults who've had childhood habits such as thumb-sucking were found to have less allergies in adulthood. This confirms that the station provides content for the various interests of all sectors of South African society.

The Licensee complies with clause 6.1 of the schedule to its licence.

3.5.2 News and Current Affairs

Clause 6.2.1 of the schedule to the licence states that:

"The Licensee shall broadcast at least 30 minutes of News per day during the South African Performance Period".

The monitoring exercise for the period under review, found that 5 FM broadcasts news bulletins every hour between 06h00 to 18h00 and headlines every half hour. The duration of a typical news bulletin is approximately three (3) minutes. This amounts to an average of around thirty-six (36) minutes per day of news, during the South African performance period.

The following were among the news items covered during the period under review:

- *"The National Freedom Party today appeals to the Constitutional Court in its attempt to participate in the municipal elections on 3 August. The NPA was disqualified by the*

Electoral Commission because he did not pay his deposit in time. The Election Court also rejected the NFP's appeal. The NFP has since given a third party and blamed other parties for not being able to participate. An executive committee member, Imam Sheik Mansour said the party's treasury general, Xolani Ndlovu, has disappeared after being suspended. Mansour says they have gained new information and will fight until the end to participate. He said there was apparently a connection between their treasurer general and another political party."

- *"Suspended national police commissioner Riah Phiyega has applied to the high court in Pretoria to review and set aside the findings and recommendations of the Farlam Commission of Inquiry into Marikana. The commission was set up by President Jacob Zuma to investigate the events at Lonmin mine in Marikana which led to the deaths of a total of 44 people. Phiyega listed Judge Ian Farlam, advocate Pingla Devi Hemraj and advocate Bantubonke Tokota as respondents. Retired Judge Farlam was the chairman of the commission and Hemraj and Tokota additional members. The notice of motion stated that Phiyega wants the findings and respondents' recommendations during the commission reviewed and set aside. She and her team are now waiting for a court date to be set. Currently the high court is in recess"*
- *"A disgruntled former ENCA employee has quit the organization citing issues of racism, exploitation and anti-unionism. Phakamile Hlubi says problems at etv include a lack of transformation, racism and salary discrepancies among people who do the same work. The former ENCA journalist says that she believes workers are not free and that there's an atmosphere of fear and bullying at the free to-air-broadcaster"*
- *"The UN Security Council condemns fighting in Juba and demands South Sudan's leaders prevent spread of violence. The United Nations, African regional bloc IGAD and African countries have called on South Sudan's warring parties to stop the escalating fighting in capital Juba that has claimed hundreds of lives. Civilians, police, government and former rebel soldiers, and at least three UN peacekeepers were among the casualties whose exact number could not be confirmed at the moment. After an emergency meeting on Sunday, the 15-nation UN Security Council issued a statement to condemn the attacks and express condolences to the families of the peacekeepers. It warned that attacks against civilians and UN premises and personnel may constitute "war crimes" and assailants must be held accountable and could be subject to sanctions. The council urged*

an immediate end to the fighting in South Sudan, demanding President Salva Kiir and First Vice President Riek Machar do their utmost to control their respective forces and genuinely implement their peace agreement, "including the permanent cease-fire and redeployment of military forces from Juba."

The Licensee complies with clause 6.2.1 of the schedule to its licence.

Clause 6.2.2 of the schedule to the licence states that:

"The Licensee shall in the production of its news and current affairs programming:

- i. Exercise full editorial control in respect of contents of such programming;*
- ii. Include matters of international, national, regional and where appropriate, local significance;*
- iii. Meet the highest standards of journalistic professionalism;*
- iv. Provide fair, unbiased, impartial and balanced coverage independent from governmental, commercial or other interference; and*
- v. Provide a reasonable opportunity for the public to receive a variety of points of view on matters of public concern.*

The Licensee's editorial policies indicate that the Licensee exercises full editorial control in respect of contents of its programming. The editorial policies further indicate that the Licensee endeavours to meet the highest standards of journalistic professionalism. Furthermore, it provides fair, unbiased and impartial coverage independent from government, commercial or other interference.

The Authority's monitoring exercise confirmed that the radio station broadcasts matters of international, national regional and local significance. This is evident in the news clips stated above, where there's a mixture of national, regional and international news covered.

The Licensee complies with clause 6.2.2 of the schedule to its licence.

3.6 Training and Skills developments Obligations

Clause 7 of the schedule to the licence states the following:

"7.1 The Licensee must adopt and implement equal opportunity employment practices;

7.2 The Licensee must ensure that its management and staff are representative of South African society and that its human resource policies take into account the development of

managerial, production, technical and other skills and expertise, particularly with regard to the historically disadvantaged persons;

7.3 The Licensee shall endeavour to achieve fair and reasonable participation by historically disadvantaged persons with respect to:

- (a) its management and control structures;*
- (b) skills development;*
- (c) enterprise development; and*
- (d) procurement.*

7.4 The Licensee must, within thirty (30) days of the end of each financial year, provide the Authority the written information regarding its compliance with the above requirements”.

The SABC submitted a training and skills development report indicating that its management and staff is representative of South African society. Furthermore, during the period under review there was reasonable participation by historically disadvantaged people with respect to its management and skills development.

The SABC ensured that the learning and development needs are strategically aligned to business needs so as to bring about positive business impact and increase in the productivity level at large.

According to the Licensee’s report on its Annual Employment Equity and Skills Development plan, the Licensee strives for the creation of an “equitable working environment, in which the dignity of all individuals is respected and the diversity of all employees are valued.” In this report, the SABC further advances that at least 86% of their overall staff complement are Black people; while 78% of its management are people from historically disadvantaged backgrounds.

The Licensee submits that it has exceeded most of the quotas prescribed by licence conditions. However, the Licensee submits that it is unable to reach their 50% target of females in the organisation. The Licensee fell short by less than 1% from reaching this target as it is currently sitting on 49.14%. Although 78% of females in management are black.

The Licensee further submits that it intends to adhere to its BBBEE obligations and remains committed to contributing to the growth of the South African Economy through the empowerment of previously disadvantaged individuals.

The Licensee submitted its Training and Skills Development Report to the Authority for the period under review. (See Skills and Development Report attached as Attachment 4).

The Licensee complies with clause 7 of its licence.

3.7 Provision of Audited Financial statements (AFS) to the Authority

Clause 8 of the licence stipulates that:

"The Licensee shall provide the Authority with the audited annual financial statements of the licensed service within four (4) months of the end of the Licensee's financial year, if the Licensee may on good cause apply to the Authority for extension".

The Licensee submitted its Audited Financial Statements for the 2016/2017 financial year within the stipulated timeframe.

The Licensee complies with clause 8 of its licence.

4. REGULATIONS

4.1. ICASA South African Music Content Regulations

Regulation 3.2 of the South African Music Content Regulations⁶ as published on 31 January 2006 stipulates that:

"Every holder of a commercial sound broadcasting licence to which these regulations apply must ensure that after eighteen months of the gazetting of these regulations, a minimum of 25% of the musical works broadcast in the performance period consist of South African music and that such South African music is spread reasonably throughout the said period."

During the period under review, 5 FM's music content averaged at around 84% of South African Music, which includes interviews, promoting new tracks and live shows. Among South African artists that enjoyed air play on 5 FM were artists such as Jack Parrow; JR; MiCassa; Cassper Nyovest; Gangs of Ballet; Desmond and the Tutus; Zyon; Gemini Major; Locnville and Civil Twilight.

⁶ South African Music Content Regulations

The Licensee complies with regulation 3.2 of the South African Music Content Regulations.

4.2 Regulations regarding Standard Terms and Conditions for Individual Licences

Regulation 11 (3) of the Standard Terms and Conditions for Individual Licences Regulations⁷ stipulates that:

"A station must clearly identify itself at intervals of not more than thirty (30) minutes."

5 FM's promos were identified during the period under review and these were broadcast at regular intervals. The promos carried the name of the station and frequency details. Furthermore, there was no incident of non-compliance with the Standard Terms and Conditions for Individual Licences found.

The Licensee complied with the regulations on standard terms and conditions for individual Licensees.

4.3 Universal Service and Access Fund Regulations

Regulation 3 of the USAF Regulations⁸ stipulates that:

- (1) *"Every holder of a licence granted in terms of Chapters 3, 4 and/or 9 or converted in terms of Chapter 15 of the Act, must pay an annual contribution of 0.2% of its Annual Turnover to the Fund".*
- (2) *"A BS Licensee who has paid an annual contribution to the MDDA must set off that contribution against its USAF Contribution, provided that the MDDA contribution and the USAF contribution against which it is set off are for the same financial year".*

The Authority received confirmation of payment in a form of a Section 18A certificate from the MDDA and the Licensee submitted proof of payment⁹ to the Authority.

⁷ Regulations regarding the Standard Terms and Conditions for Individual Licensee's

⁸ Universal Service and Access Fund Regulations

⁹ Proof of SABC's contribution to the USAF

The Licensee complied with the regulations in respect of Universal Service and Access Fund.

4.4 Regulations on the Code For Persons With Disabilities

Form 7C: Code For Persons With Disabilities contained in the Compliance Procedure Manual Regulations requires broadcasting Licensees to annually complete the form in accordance with the Licensee's financial year end.

The SABC submitted these forms consistently throughout the year in review.

Further, Regulation 3.1(a) of the Code on People with Disabilities as published in the *Government Gazette* no 30441, 7 November 2007, states that:

"Broadcasting service Licensees must ensure that their services are made available and are accessible to persons with disabilities".

Regulation 3.1 (b) stipulates that:

"Options for making broadcasting services more accessible may include the following:

- i. Improve and/or increase subtitles and sign language;*
- ii. Expand knowledge on various adjustments such as induction loops, Minicom/text phones and alternatives computer software;*
- iii. Access to programme support such as fact sheet;*
- iv. Website to offer a range of formats (such as electronic versions, Braille and audiotape);*
- v. Use of spoken languages where economic indicators, weather details, telephone numbers and addresses or details of goods and services are shown on-screen; and*
- vi. Use of non-scheduled services such as access via Personal Video Digital Recorders (PVR's) and TV anytime".*

Regulation 3.1(c) states that:

"Broadcasting service Licensees must monitor the effectiveness of their service through surveys as well as contact with organisations of and for people with disability and stakeholders".

During the period under review, the Licensee conducted the SABC National Disability Committee quarterly meetings to monitor and evaluate progress against its Disability mainstreaming objectives. The Licensee also conducted disability audits that provides an indication of the

physical changes necessary to ensure an accessible workplace. From 03 November 2016 to 03 December 2016, the Licensee hosted the National Disability Rights Awareness Month campaign, at which awareness was created internally around issues related to disabilities. The campaign included disability awareness clips, a disability declaration campaign as well as a Breakfast in the Dark session for the SABC KZN management teams.

The following are the other disability awareness campaigns hosted by the Licensee:

- National Blind Buddy Day;
- Autism Awareness;
- Albinism Awareness;
- Deaf Awareness; and
- Casual day

The Licensee further conducted verifications of all declared disabilities and identification of reasonable accommodation needs, as well as participation in career exposure initiatives for scholars with disabilities. The SABC also reported that Employees with disabilities represent 2.13% of the entire workforce. During the reporting period, the Licensee met its target of 2% of employees with disabilities and intends to focus on this aspect where the aim is to reach 4% of employees with disabilities by 2019. Furthermore, the Licensee reports that at least 77% of its employees with disabilities are black and of those, 60% are women. Gauteng has the highest number of employees with disabilities with the Auckland Park office housing 62% of them.

Producers are encouraged to establish relationships with organisations for people with disabilities to use for content when the need arises.

The Licensee has demonstrated compliance with the Code For Persons With Disabilities.

4.5 COMPLAINTS

Form 12A: Complaints Report of the Compliance Procedure Manual Regulations read with the Code of Conduct for Broadcasters requires that broadcasters complete the form bi-annually in accordance with the Licensees' Financial Year.

There were five (5) complaints submitted to ICASA on the SABC's compliance with its licence terms and conditions for the year under review. Only one (1) was pending and four (4) were resolved.

5. CONCLUSION

During the period under review, the Licensee has complied with its Standard Terms and Conditions and Regulations that govern public broadcasters.

6. TERMS OF REFERENCE

Attachment 1	: 5 FM's Broadcasting Service Licence;
Attachment 2	: 5 FM's Frequency Spectrum Licence;
Attachment 3	: Extract from the Licensee's Editorial Policy;
Attachment 4	: The Licensee's training report;
Attachment 5	: Regulations regarding the Standard Terms and Conditions;
Attachment 6	: Universal Service and Access Fund Regulations;
Attachment 7	: Regulations on Code For Persons With Disabilities; and
Attachment 8	: Proof of SABC's Contribution to USAF