



# **KAYA FM ANNUAL COMPLIANCE REPORT**

**MARCH 2018**

# **2016/17 ANNUAL COMPLIANCE REPORT**

## **Kaya FM**

**LICENCE PERIOD: 17 December 2008 – 16 December 2018**

### **1. PREFACE**

The Independent Communications Authority of South Africa (the Authority) has a statutory mandate in terms of the Constitution<sup>1</sup>, the ICASA Act<sup>2</sup>, the Electronic Communications Act<sup>3</sup> (ECA) and the Broadcasting Act<sup>4</sup> to regulate broadcasting activities in South Africa in the public interest. One of the main tasks of the Authority, is to ensure compliance by broadcasters with the terms and conditions of their licence, and any relevant legislation and Regulations.

The following report is intended to give account of Kaya 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, Broadcasting Languages, Format, General Programming Obligations, Training and Skills Development, Community-Related Obligations, South African Music Regulations, Regulations Regarding Standard Terms and Conditions, Code on Persons with Disabilities, Universal Service and Access Fund (USAF) Regulations and General Licence Fee Regulations.

### **2. BACKGROUND**

On 17 December 2008, the Authority issued an Individual Commercial Sound Broadcasting Service licence<sup>5</sup> to Kaya FM. The Licensee provides sound broadcasting services in the Gauteng province. The signal distribution service is conducted by Sentech (Pty) Ltd. According to the Broadcast Research Council of South Africa, the listenership figures for the last quarter of the period under review was 848 000<sup>6</sup>.

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<sup>1</sup> The Constitution of the Republic of South Africa, No 108 of 1996

<sup>2</sup> Act No. 13 of 2000, as amended.

<sup>3</sup> Act No. 36 of 2005.

<sup>4</sup> Act No. 4 of 1999.

<sup>5</sup> Kaya FM Broadcasting Service Licence

<sup>6</sup> <http://www.brcsa.org.za/brc-ram-radio-listening-jul-16-dec-16-oct-16-mar-17/>

### **3. COMPLIANCE ASSESSMENT**

#### **3.1. Control Structure**

##### **3.1.1. Ownership and Control**

Clause 1 of Kaya FM's licence provides that:

*"Name of the Company/Entity: Kaya FM (Pty) Ltd".*

During the period under review, there were no changes reported by the Licensee to the licensed entity or company name.

**The Licensee was found to be in compliance with clause 1.1 of its licence.**

Clause 1.2 of the licence stipulates that the shareholders are as follows:

- *"Thebe Convergent, Technologies (Pty) Ltd – 45.2%*
- *New Africa Media Holdings (Pty) Ltd – 24.9%,*
- *Shanike Investments – 24.9%*
- *Kaya Investments (Pty) Ltd – 20.28%*
- *Mokgosi Communications Enterprise Cc – 5%".*

Clause 1.3 of Kaya FM's licence stipulates that:

*"Ownership held by persons from historically disadvantaged groups is as follows:*

- *"Mokgosi Communications Enterprise Cc – 5%*
- *Thebe Convergent Technologies – 45.2%*
- *Shanike Investments – 24.9%*
- *NAIL – 44.5% in ordinary shares".*

During the period under review, there were no changes reported by the Licensee to its shareholding and HDG structure.

**The Licensee was found to be in compliance with clauses 1.2 and 1.3 of its licence.**

#### **3.2 Geographic Coverage Area**

Clause 2 of the schedule to Kaya FM's licence stipulates that:

*"The coverage area is Johannesburg, as defined in the coverage map attached to the Licensee's radio frequency spectrum licence".*

According to the frequency spectrum licence, the Licensee covers the areas as indicated above.

**The Licensee was found to be in compliance with clause 2 of the schedule to its licence.**

### **3.3 Broadcast Language (s)**

Clause 3 of the schedule to Kaya FM's licence stipulates that the language of broadcast shall be:

*"Principal language: English".*

Kaya FM's principal language of broadcast is English.

**The Licensee was found to be in compliance with clause 3 of the schedule to its licence.**

### **3.4 Format**

Clause 4.1 of the schedule to Kaya FM's licence stipulates that:

*"The Licensee shall have programming format as follows:*

*Clause 4.1.1 An African-focused adult contemporary/jazz music;*

*Clause 4.1.2 Sixty percent (60%) music and forty percent (40%) talk".*

The Authority's monitoring exercise confirmed that Kaya FM offers an African-focused adult contemporary/jazz music format with a split of 60% dedicated to music and the remainder to talk as stipulated in the licence. The Licensee's programming profile is dominated by talk in the morning and late-night shows on weekdays, with the weekend being dedicated to music with talk being complimentary to comply with their format.

**The Licensee was found to be in compliance with its format.**

Clause 4.2 of the schedule to Kaya FM's licence stipulates that:

*"The Licensee shall not change more than fifteen percent (15%) of its format between 05h00 and 23h00".*

The Authority can confirm that Kaya FM has not changed their format during the period under review.

**The Licensee was found to be in compliance with clause 4.2 of the schedule to its licence.**

### **3.5 General Programming Obligations**

Clause 5.1 of the schedule to Kaya FM's licence stipulates that:

*"The Licensee shall, during each day, broadcast news on a regular basis for minimum of thirty (30) minutes each day during the South African performance period (05h00 and 23h00)".*

Kaya FM broadcasts hourly news and headlines every half hour from 06h00 until 18h00 on weekdays. The Licensee's weekday news broadcasts are approximately four (4) minutes per bulletin for an average of fifty-two (52) minutes during the South African performance period. On weekends, the Licensee broadcast seven (7) news bulletins for an average total of twenty-eight (28) minutes.

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

- *"As the country prepare to commemorate Youth Month starting from today, one Soweto family says the loss of their twenty-six-year-old son makes it a sombre month filled with pain. Ntando Khumalo was gunned down during a hijacking incident outside his home in Diepkloof, Soweto in March this year.*
- *President Jacob Zuma is urging the communities to get involved and support the police in fighting and preventing crime. He will soon visit the community of Lusikisiki as part of government Imbizos. He says the people of this community are living in fear of a vicious criminal gang. The President was responding to questions on his budget vote debate in Parliament yesterday; and*
- *Net1, the company that distributes social grant payments in South Africa have appointed an ombudsman to look at issues experienced by social grants beneficiaries. This decision comes after reports and concerns relating to deductions and debit order from beneficiaries account".*

**The Licensee failed to comply with clause 5.1 of the schedule to its licence.**

Clause 5.2 of the schedule to Kaya FM's licence stipulates that:

*"Each news bulletin shall contain news related to the African continent".*

The Authority's monitoring exercise revealed that the Licensee's broadcast news related to African continent and identified the following:

- *"Ethiopia has turned off its internet nationwide as students sit down for exams. The country has closed its digital borders to prevent leaks during tests after papers were posted online by activists last year. The government appears to have taken the move to shut down the internet as a preventative measure."*

The clause stipulates that each news bulletin should contain news related to the African content, and the monitoring exercise revealed that the Licensee does not broadcast news related to the African content during each of their news bulletin.

**The Licensee failed to comply with clause 5.2 of the schedule to its licence.**

Clause 5.3 of the schedule to Kaya FM's licence stipulates that:

*"The source(s) of all news material (other than news sourced from the Licensee) shall be disclosed during the news broadcast".*

The Licensee's Form 9 submission does include news sources, but the Authority's monitoring exercise could not find any news source being credited on the news bulletins.

**The Licensee failed to comply with clause 5.3 of the schedule to its licence.**

### **3.6 Training and Skills Development Obligation**

Clause 6 of the schedule to Kaya FM licence stipulates that:

*"The Licensee shall spend at least R 300 000 (three hundred thousand Rand) annually to human resource development".*

In the Licensee's audited financial statements, the figures reflected more than two million Rand spent on training and human resource development<sup>7</sup>.

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<sup>7</sup> Training and Development Report

**The Licensee was found to be in compliance with clause 6 of the schedule to its licence.**

### **3.7 Community - related Obligations**

Clause 7 of the schedule to Kaya FM's licence stipulates that:

*"The Licensee shall spend R500 000 (five hundred thousand Rand) of air-time per annum to promote corporate social responsibility initiatives such as awareness of HIV/AIDS, cancer, poverty alleviation, job creation and any other social objective".*

During the period under review, the Licensee indicated that it allocated in excess of one and a half million Rand of airtime to promote social responsibility programmes. They have partnered with the Sunflower fund, Nelson Mandela Centre of Memory, Child welfare and Westcliff amongst others<sup>8</sup>.

The amount excludes airtime spent on the Broadcasting Complaints Commission of South Africa (BCCSA) announcement, which has been included by the Licensee as a public service announcement and part of its corporate social responsibility initiative.

**The Licensee was found to have complied with clause 7 of the schedule to its licence.**

### **3.8 Control**

Clause 8 of the schedule to Kaya FM's licence stipulates that:

*"Persons from historically disadvantaged groups shall maintain operational control through management, executive, remuneration and audit committees. The Licensee must ensure that staff is involved in a profit-sharing scheme."*

Kaya FM reported that it has a profit incentive scheme which runs concurrently with the financial year and pay-out is equivalent to a thirteenth cheque and is paid out to its employees. The Licensee's management and executive committee is predominantly people from historically disadvantaged groups.

**The Licensee was found to be in compliance with clause 8 of the schedule to its licence.**

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<sup>8</sup> Report on Community related obligations

## **4. REGULATIONS**

### **4.1 Complaints – Compliance Procedure Manual Regulations (CPMR)**

The Licensee submitted their Form 12A submission in accordance with the Compliance Procedure Manual Regulations.<sup>9</sup> The Licensee is a member of the National Association of Broadcasters (NAB) and complaints in relation to the Code of Conduct for Broadcasters are administered by the Broadcasting Complaints Commission of South Africa (BCCSA).

### **4.2 South African Music Content**

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

*"Every holder of a commercial sound broadcasting licence to which these regulations apply must ensure that 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 evenly throughout the said period".*

The Licensee submits that it broadcast an average of thirty five percent (35%) South African Music during the performance period which was confirmed during the monitoring exercise<sup>10</sup>. Furthermore, the Licensee conducted interviews with South African artists on their programming profile which included playlisting of their new music. The South African artists featured included among others, *Simphiwe Dana, Brenda Mtambo, The Soil, Mbongeni Ngema, Thandiswa Mazwai and Lebo Mathosa*.

**The Licensee was found to be in compliance with its South African Music Content Regulation.**

### **4.3 Code for Persons with Disabilities**

Clause 3.1(a) of the Code for Persons with Disability of 2007 stipulates that:

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

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<sup>9</sup> Form 12A Submission

<sup>10</sup> Form 9 submission



Kaya FM's premises and their service was found to cater for and accessible to persons with disabilities.

**The Licensee was found to be in compliance with the above Regulations.**

#### **4.4 Standard Terms and Conditions**

During the year under review, the Authority did not identify instances of non-compliance by the Licensee with the Regulations regarding Standard Terms and Conditions for Individual Licences.

**The Licensee was found to be in compliance with the above Regulations.**

#### **4.5 Regulations in respect of the Prescribed Annual Contributions of Licensees to the Universal Service and Access Fund**

Regulation 3(1) of the Regulations in respect of Prescribed Annual Contributions of Licensees to the Universal Service and Access Fund (USAF), as published in the *Government Gazette* No. 31499 of April 2009, stipulates that:

*"Every holder of a Licence granted in terms of Chapter 3,4 and/or 9 or converted in terms of Chapter 15 of the Act, must pay an annual contribution of 0.2% of the annual turnover, derived from the licensee's licence activity, to the Fund (the Fund)".*

Further, Regulation 3 (3) stipulates that:

*"A broadcasting service licensee who has paid an annual contribution to the Media Development and Diversity Agency (MDDA) must set off that contribution against its prescribed annual contribution to the Fund".*

Kaya FM's financial year ends is June and they paid their contribution to the Universal Service and Access Fund on 24 November 2017 and submitted proof of payment<sup>11</sup> thereof.

**The Licensee was found to be in compliance with the USAF regulations.**

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<sup>11</sup> Proof of USAF Contribution

## **4.6 General Licence Fees Regulations**

Regulation 3(1) of the General Licence Fees Regulations stipulates that:

*"The annual Licence fees prescribed in these regulations and as set out in schedule 2 apply to holders of individual and class ECS Licences, individual and class ECNS Licences and individual commercial BS Licences".*

Schedule 2 of the Annual Licences Fees regulations provides for Licensees to pay an annual licence fee in accordance with their licensed revenue and to be calculated using the set formula, read with the applicable percentages.

Regulation 7(a), 7(b) and 7(c) of Schedule 3 provides that Annual Licence Fees:

- a) "Are due annually based on the licensee's financial year;*
- b) Are due and payable within 6 months from the end of the licensee's financial year;*
- c) May only be paid by way of an electronic transfer or via direct deposit into the Authority's bank account".*

Kaya FM's financial year ends on 30 June and they paid their licence fees on 28 December 2017 and submitted proof of payment<sup>12</sup> thereof.

**The Licensee was found to be in compliance with the above Regulations.**

## **5. CONCLUSION**

The Licensee has complied with the relevant regulations and most of its licence terms and conditions during year under review except for their general programming obligations related to news.

## **6. TERMS OF REFERENCE**

Appendix A: Kaya FM's broadcasting service licence;

Appendix B: Training and Development Report;

Appendix C: Report on Community related obligations;

Appendix D: Form 12A Submission;

Appendix E: Form 9 submission;

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<sup>12</sup> Proof Licence Fees Payment

Appendix F: SA Music Content Regulations;

Appendix F: Regulations Regarding Standard Terms and Conditions for Individual  
Licences;

Appendix G: Universal Service and Access Fund Regulations;

Appendix H: Proof of USAF Contribution;

Appendix I: General Licence Fees Regulations; and

Appendix J: Proof of Licence Fees Payment.