



POWER FM ANNUAL COMPLIANCE REPORT

MARCH 2018

2016/17 ANNUAL COMPLIANCE REPORT

POWER 98.7FM (Pty) Ltd BROADCASTING AS POWER 98.7FM

LICENCE PERIOD: 25 May 2012 – 24 May 2022

1. PREFACE

The Independent Communications Authority of South Africa (the Authority) has a statutory mandate in terms of the Constitution, the ICASA Act, the Electronic Communications Act (ECA) and the Broadcasting Act 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 as well as the relevant legislation and Regulations.

The following report is intended to give account of Power 98.7 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 and Universal Service and Access Fund (USAF) Regulations.

2. BACKGROUND

In May 2012, the Authority issued Power 98.7 FM (Pty) Ltd (the Licensee) with an Individual Commercial Sound Broadcasting Service licence¹ and a Radio Frequency Spectrum licence² in terms of the ECA.

The Licensee broadcasts as Power 98.7 FM and provides a service in the Gauteng province. The radio station is broadcasting from the studios situated at 79 Central Street, Houghton. The signal distribution service is conducted by Sentech (Pty) Ltd.

¹ Appendix A: Power 98.9 FM Broadcasting Service Licence

² Appendix B: Power 98.9 FM Frequency Spectrum Licence

3. COMPLIANCE ASSESSMENT

3.1. Control Structure

3.1.1. Ownership and Control

Clause 1 of Power 98.9 FM's licence provides that:

"The licence is issued to:

1.1 Name of Company/Entity: Power 98.9 FM (Pty) Ltd

2 "Name of Station: Power 98.9 FM".

The monitoring exercise revealed that the Licensee refers to itself as Power FM (Pty) Ltd. During the period under review, the Licensee did not submit a notification to change its company and station name.

The Licensee was found not to be in compliance with clause 1 of its licence.

1.2 Shareholders: MSG Africa Media (Pty) Ltd– 50.775%

Zungu Investment Company (Pty) Ltd – 20.000%

AIH Media (Pty) Ltd – 5.688%

Friedshelf 1112 (MIB Radio and Media Investments – 7.000%

Friedshelf 1136 (Pty) Ltd ("Ndalo Radio Broadcasting") – 6.600%

Friedshelf 1125 (Pty) Ltd ("Kgalagadi Media") – 3.005%

Friedshelf 1134 (Pty) Ltd ("Thonga Media") – 2.000%

Friedshelf 1135 (Pty) Ltd ("TT Media and stuff") – 2.933%

Friedshelf 1122 (Pty) Ltd ("Jacobs the 4") – 2.000%

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

The Licensee was found to be in compliance with clause 1.2 of its licence.

3.2. Contact Details

Clause 2 of the licence provides that:

2.1 "The contact person for the Licensee shall be:

- 2.1.1 Name: Mr Given Mkhari;
- 2.1.2 Tel: 011 463 7555;
- 2.1.3 Fax: 011 463 9444;
- 2.1.4 Cell: 082 561 1661; and
- 2.1.5 Email: given@msg-group.co.za
queen@msg-group.co.za".

There were no changes reported by the Licensee to its contact details during the period under review.

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

3.3 Notices and Addresses

Clause 3 of the licence provides that:

3.1 "The Licensee chooses the following addresses as its principal addresses:

- 3.1.1 Postal Address: PO Box 5313
Rivonia
Bryanston
2191*
- 3.1.2 Physical Address: 12 Cultross Road
Bryanston
2191"*

There were no changes reported by the Licensee to its principal addresses during the period under review.

However, the monitoring exercise revealed that the Licensee's addresses have changed. During the period under review, the Licensee did not submit a notification to change its broadcast addresses.

The Licensee was found not to be in compliance with clause 3 of its licence.

3.4 Geographic Coverage Area

Clause 2 of the schedule to Power 98.9 FM's licence provides that:

"Geographic coverage:

"Gauteng, as indicated/covered in the attached coverage map, from time to time".

The Authority did not receive reports suggesting the Licensee broadcasts outside the defined coverage area.

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

3.5 Broadcast Language

Clause 3 of the schedule to Power 98.9 FM's licence provides that:

"Principal Language: English, however the other common languages spoken in the area will be flexibly used in accordance with listeners".

Power 98.9 FM broadcasts its programmes in English as its primary language.

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

3.6 Format

Clause 4 of the schedule to Power 98.9 FM's licence provides that:

"The Licensee shall be a full service adult contemporary talk radio station with up to 70% of the airtime devoted to talk and at least 30% to music".

The Authority's monitoring exercise found that the Licensee's broadcast a full service made up of predominantly adult contemporary talk and at least 30% music, as required by the clause above.

The Licensee was found to be in compliance with clause 4 of the schedule to its licence.

3.7 Local Content Obligations

Clause 5 of the schedule to Power 98.9 FM's licence provides that:

"The Licensee shall broadcast 25% of South African music".

For the year under review, the Licensee reported to have broadcast at least 25% South African music.

The monitoring exercise confirmed that, of the total music played by the Licensee, at least 25% was South African music. Zanele by Brian Temba, Back to beach by Shekinah, Saka haba re bone by Mafikizolo, Mahamba yedwa by Khuli Chana, Thatha DJ by Mdu, etc.

The Licensee was found to be in compliance with clause 5 of the schedule to its licence.

3.8 General Programming Obligations

Clause 6.1 of the schedule to Power 98.9 FM's licence provides that:

"The Licensee shall primarily dedicate current affairs programmes in the morning, during its midday and afternoon show. The Licensee will further broadcast programmes beyond current affairs as they will also include entrepreneurship, sports, arts entertainment and lifestyle content".

The Licensee confirmed that it primarily dedicates current affairs programmes in the morning and during its midday and afternoon shows. The Licensee further broadcasts programmes beyond current affairs as they will also include entrepreneurship, sports, arts, entertainment and lifestyle content as required by the above clause.

The monitoring exercise also confirmed that Power 98.9 FM broadcast current affairs programmes in the morning, midday and afternoon, as well as other programmes beyond current affairs which include entrepreneurship, sports, arts, entertainment and lifestyle content. The Licensee broadcasts Power Breakfast between 06h00 and 09h00, Power Update between 12h00 and 13h00 and Power Hour between 17h00 and 18h00 as part of its current affairs programming. The Licensee also broadcasts Power Talk, Power Drive and Power Business as part of its entrepreneurship, sports, arts, entertainment and lifestyle programmes.

The Licensee was found to be in compliance with clause 6.1 of the schedule to its licence.

Clause 6.2 of the schedule to Power 98.9 FM's licence provides that:

"The Licensee shall broadcast reports from correspondent reporters in various African countries on current events in their regions on Sunday mornings".

The monitoring exercise did not find reports by correspondent reporters in various African countries on current events in their regions on Sunday mornings, in the recordings submitted by the Licensee during the period under review.

The Licensee was found not to be in compliance with clause 6.2 of the schedule to its licence.

Clause 6.3 of the schedule to Power 98.9 FM's licence provides that:

"The Licensee shall emphasise local and regional news and employ a news team specifically for the production of local news".

The monitoring exercise confirmed that Power 98.9 FM puts more emphasis on local and regional news and the Licensee confirmed that it has employed a news team specifically for the production of local news.

The Licensee was found to be in compliance with clause 6.3 of the schedule to its licence.

Clause 6.4 of the schedule to Power 98.9 FM's licence provides that:

"The Licensee shall broadcast news on a regular basis for a minimum of forty nine (49) minutes each day between 05h00 and 23h00".

The monitoring exercise revealed that Power 98.9 FM carries news bulletins every hour during the performance period on weekdays. Each bulletin is broadcast for approximately five minutes. The Licensee broadcasts an average of ninety (90) minutes of news per day. News headlines are also broadcast every half hour.

1. *"Orlando Stadium is a sea of red. The nearly capacity crowd of forty thousand EFF supporters have packed out the venue. Julius Malema who has arrived to a*

resounding applause has outlined the party's local government policies ahead of the August 3rd polls";

2. *"The Democratic Alliance has called upon EFF leader, Julius Malema, to apologize during its manifesto launch for various controversial statements he made in the past. The party's spokesperson, Phumzile van Damme, released a statement today listing ten (10) things that the Economic Freedom Fighters' leader should apologize for";*
3. *"The Gauteng Legislature has urged motorists to obey road regulations and ensure that everyone who is behind the wheel is well rested. The legislature is reacting to yesterday's crash involving a minibus taxi and a truck that claimed the lives of fourteen (14) passengers on the R41 road in Randfontein"; and*
4. *Ex COSATU General Secretary, Zwelinzima Vavi, has warned workers against about the shrinking numbers of unionized workers. Vavi was speaking at a workers' summit in Johannesburg attended by 28 unions. Delegates are discussing a number of worker-related issues including the formation of a new labour federation."*

The Licensee was found to be in compliance with clause 6.4 of the schedule to its licence.

Clause 6.5 of the schedule to Power 98.9 FM's licence provides that:

"The Licensee will also broadcast breaking news as they unfold and these are likely to take over a programme being broadcast instead of being contained solely within the news bulletin".

The monitoring exercise confirmed that Power 98.9 FM broadcasts breaking news as they unfold; news items which at times take over programme broadcasts are and not contained solely within the news bulletin.

Clause 6.6 of the schedule to Power 98.9 FM's licence provides that:

"Should the Licensee source news material from a news agency/source other than itself, the source(s) thereof shall be disclosed to the Authority".

The monitoring exercise revealed that most of Power 98.9 FM's news bulletins are self-originated. However, it was confirmed that the Licensee discloses sources of news whenever it reports news obtained from other sources other than itself.

The Licensee was found to be in compliance with clause 6.5 of the schedule to its licence.

3.9 Ownership and Control Structures of the Licensee

Clause 7 of the schedule to Power 98.9 FM's licence provides that:

"The Licensee shall for the duration of this licence maintain at least thirty percent (30%) ownership and control of the station by persons from historically disadvantaged groups".

The Licensee submitted that ownership and control of the radio station held by persons from historically disadvantaged groups is 94.84%. The Licensee submitted its limited assurance engagement on the B-BBEE Status as at 25 August 2016, as set out on the Broad-Based Black Economic Empowerment ("B-BBEE") Verification Certificate³, as evidence.

The Licensee was found to be in compliance with clause 7 of the schedule to its licence.

3.10 Specific Terms and Conditions

Clause 8 of the schedule to Power 98.9 FM's licence provides that:

"The Licensee shall broadcast a minimum of 3% African music (excluding music from South Africa) per month between 05h00 and 23h00".

During the year under review, the monitoring exercise revealed that Power 98.9 FM played approximately 3% (three percent) of African music during the Performance Period. The African artists featured included among others, Khaja Nin, Papa Wemba, Salif Keita, etc.

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

³ Appendix C: B-BBEE Verification Certificate

4. REGULATIONS

4.1 SA Music Content

Regulation 3.2 of the Regulations on South African Music Content⁴, as published on 31 January 2006, stipulates that:

"Every holder of a commercial sound broadcasting service 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".

During the year under review, the monitoring exercise revealed that Power 98.9 FM played approximately 25% (twenty five percent) of South African Music spread reasonably evenly throughout the Performance Period. The South African artists featured included among others, Caiphus Semenya, Zonke, Lira, Ringo, Madlingozi, Jaziel Brothers, Msaki, etc.

The Licensee was found to be in compliance with regulation 3.2 above.

4.2 Standard Terms and Conditions

Regulation 2 of the Regulations on Standard Terms and Condition for Individual Licences⁵, as amended and published on 30 March 2016, stipulates that:

"(1) A Licensee must submit written notice to the Authority within seven (7) days of the occurrence of the following changes:

- (a) the name of the Licensee;*
- (b) contact details including the contact person;*
- (c) shareholding;*
- (d) Physical address; and*
- (e) Financial year end."*

⁴ Appendix D: SA Music Content Regulations

⁵ Appendix E: Regulations on Standard Terms and Conditions for Individual Licences

During the year under review, the Authority identified instances of non-compliance by the Licensee with the above regulation.

The monitoring exercise revealed that the Licensee refers to itself as Power FM. During the period under review, the Licensee did not submit a notification to change its broadcast name.

The Licensee was found not to be in compliance with the above Regulations.

4.3 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)⁶, as published in the *Government Gazette*, No. 31499 of April 2009, stipulates that:

"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.

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"

Power 98.9 FM's financial year ends at the end of February. The Licensee paid its contribution to the Universal Service and Access Fund on 20 September 2017 and submitted proof of payment⁷ thereof, as required by the regulations.

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

⁶ Appendix F: USAF Regulations

⁷ Appendix G: Proof of USAF Contribution

4.4 General Licence Fees Regulations

Regulation 3 (1) of the General Licence Fees Regulations⁸ provides 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 Broadcasting 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:

- "a) Are due annually based on the licensee 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".*

Power 98.9 FM's financial year ends at the end of February. The Licensee paid its licence fees on 19 September 2017 and submitted proof of payment⁹ thereof, as required by the regulations.

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

4.4 Code for Persons with Disabilities

Clause 3.1 (a) of the Code for Persons 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 people with disabilities".¹⁰

⁸ Appendix H: General Licence Fees Regulations

⁹ Appendix I: Proof Licence Fees Payment

¹⁰ Appendix J: Code of People with Disabilities

During the radio station visit, it was confirmed that the Licensee's studios are easily accessible to persons with disabilities.

5. CONCLUSION

Power 98.9 FM has substantially complied with its licence terms and conditions and regulations, for the period under review. However, the Licensee failed to comply with clause 1 and 3 of its licence terms and conditions, clause 6.2 of the schedule to its licence terms and conditions, as well as submission regulation 2 (1) of the Regulations on Standard Terms and Conditions for Individual licences, this needs to be corrected as a matter of urgency.

6. TERMS OF REFERENCE

Appendix A: Power FM's Broadcasting Service Licence;
Appendix B: Power FM Frequency Spectrum Licence;
Appendix C: B-BBEE Verification Certificate;
Appendix D: SA Music Content Regulations;
Appendix E: Regulations on Standard Terms and Conditions for Individual Licences
Appendix F: Universal Service and Access Fund Regulations;
Appendix G: Proof of USAF Contribution;
Appendix H: General Licence Fees Regulations;
Appendix I: Proof of Licence Fees Payment; and
Appendix J: Code for Persons with Disabilities.