



# **WHALE COAST FM ANNUAL COMPLIANCE REPORT**

**MARCH 2018**

## **2016/2017 ANNUAL COMPLIANCE REPORT: WHALE COAST FM**

**Licence Period: 03 July 2014 to 02 July 2019**

### **1. PREFACE**

The Independent Communications Authority of South Africa (the Authority) has a statutory mandate in terms of the Constitution<sup>1</sup>, the Independent Communications Authority of South Africa Act<sup>2</sup> (ICASA Act), 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. 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.

This report is intended to give account of Whale Coast 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, Code on People with Disabilities and Regulations Regarding Standard Terms and Conditions.

### **2. BACKGROUND**

In July 2014, a broadcasting licence was issued to Breakthrough Adventures Limited, which is broadcasting as Whale Coast FM. The licensed service is to provide services to Hermanus in the Western Cape Province, as set out in the Licensee's radio frequency spectrum licence. According to the Broadcast Research Council of South Africa, the listenership figures for the last quarter of the period under review was less than 1000.<sup>5</sup>

---

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

### **3. COMPLIANCE ASSESSMENT**

#### **3.1 Licensee**

Clause 1 of the schedule to Whale Coast FM's licence provides that:

*"The Licence<sup>6</sup> is issued to:*

*1.1. Name of entity: Breakthrough Adventures Limited (Association incorporated under section 21)*

*1.2. Name of the Station: Whale Coast FM*

*1.3. Control of the Licensee: Control shall vest in the Board of Directors of Breakthrough Adventures Limited"*

**The Licensee is compliant with clause 1 of its service licence.**

#### **3.2 Licence Period**

Clause 2 of the schedule to Whale Coast FM's licence provides that:

*"1.4 The effective date of the Licence is 03 July 2014.*

*1.5 The Licence shall expire on 02 July 2019."*

The Licensee will be notified of the pending renewal and be advised of the process thereof and the applicable forms to be submitted.

#### **3.3 Licence Area**

Clause 3 of the schedule to Whale Coast FM's licence provides that:

*"The Licensee shall provide services to Hermanus in the Western Cape Province as set out in the Licensee's radio frequency spectrum licence."*

Whale Coast FM's coverage area remains as prescribed in the licence terms and conditions. In the year under review, the Authority received no reports or complaints indicating that the radio station has gone beyond its licence area.

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

---

<sup>6</sup> Annexure A: Whale Coast FM's Broadcasting Service Licence

### **3.4 Community**

Clause 4.1 of the schedule to Whale Coast FM's licence provides that:

*"The Licensee shall provide services to a geographic community residing within the geographic coverage area specified herein."*

**The Licensee was found to be compliant with clause 4.1 of the schedule to its licence.**

Clause 4.2 of the schedule to Whale Coast FM's licence provides that the Licensee shall provide for the participation of community members in the affairs of the station in the following ways.

Clause 4.2.1 of the Licensee's service licence states that:

*"The Licensee shall hold at least two (2) meetings annually with its community on programming and programme-related matters for the selection and provision of programmes"*

During the period under review the Licensee did not hold any meetings with its community on programming and programme related matters. The Licensee reported to have held meetings with presenters on programming related matters, this however does not constitute community participation as prescribed in clause 4.2.1 above.

**The Licensee is non-compliant with clause 4.2.1 of its service licence.**

Clause 4.2.2 of the Licensee's service licence states that:

*"The Licensee shall furnish the Authority with proof of such meetings as well the attendance thereof by members of the community; and"*

During the period under review the Licensee did not submit any proof of meetings held as contemplated in 4.2.2.

**The Licensee is non-compliant with clause 4.2.2 of its service licence.**

Clause 4.2.3 of the Licensee's service licence states that:

*"The Licensee shall hold Annual General Meetings (AGM) for the following purposes:*

*4.2.3.1 To provide feedback on the Licensee's compliance with licence conditions,*

*4.2.3.2 To provide feedback on the Licensee's operational and financial performance, and*

*4.2.3.3 To elect members of the controlling structure, e.g. Board of Directors, Trustees etc. subject to the licensee's founding documents."*

Issues arose regarding the election of members to the board at the AGM that was held on the 19 June 2017. According to information provided to the Authority, an illegal take-over of the Licensee was planned and as such members were illegally elected to the board to serve this purpose. Numerous challenges emerged from this AGM because the AGM did not comply with the provisions of the Licensee's founding documents.

However, these issues were later addressed at the AGM held on 03 August 2017, with the assistance of a professional mediator. The outcomes of this AGM was the resignation of the illegally elected Chairperson of the board. The board is now in control of the Licensee and is in the process of electing additional members to the board.

The Licensee is aiming to address the challenges that emerged from the illegal AGM and correcting the non-compliance by establishing a second membership body that will support the management of the Licensee, consisting of people who contribute to the radio station. Further, a new station manager has taken over as of 30 October 2017.<sup>7</sup>

**The Licensee has partially complied with clause 4.2.3 of the schedule to its licence.**

---

<sup>7</sup> Letter received from the Licensee, dated 20 October 2017, hereto attached as Annexure F.

### 3.5 Programming

Clause 5.1.1 of the schedule to Whale Coast FM's licence provides that:

*"News and information: The Licensee shall broadcast a total of thirty (30) minutes of news per day of which 60% will be local, 20% regional, 10% national and 10% international news."*

News segments on weekdays are broadcasted on the hour every hour from 07h00 until 17h00. An average news broadcast is six (6) minutes. The total broadcast time of news broadcasts average sixty (60) minutes. The Licensee thus exceeds its thirty (30) minutes daily news broadcast per day on weekdays.

The Authority's monitoring exercise confirms that on Saturdays the Licensee does not meet the requirement of thirty (30) minutes and information of news per day. The monitoring exercise found that only one news segment was broadcasted on Saturdays, from 11h00 with a total broadcast time of two (2) minutes and ten (10) seconds.

On Sundays, the monitoring exercise as conducted by the Authority, did not identify any news broadcasts.

Some of the news that was broadcasted during the period under review include:

- *"The last two ragged edged sharks have been successfully removed from the Two Oceans aquarium ahead of being released back into the wild. A team of four divers costed the two sharks into a hood yesterday. From there, they were whisked into a holding tank and onto a climate controlled unit on a flatback truck. They will be released into the Indian Ocean by hand from the East London shore today."*
- *"Limpopo police have arrested 3 suspects after they were arrested trying to sell lion body parts. The arrest was made in Kuyanje yesterday during a joint operation by members of the provincial stock theft unit attached to the Rhino task team and members of the South African National Parks. The operation was launched after they received information about two suspects"*

*attempting to sell lion heads and paws. During the arrests the heads of two lions and eight paws were recovered."*

- *"Pendelaars wat daaglik net al hoe langer in die moederstad in verkeersknoppe vasgevang sit, moet maar vrede maak daarmee dat dit jare gaan duur voor die MyCity busdiens by al die woon buurte gaan uitkom, berig Netwerk 24 vandag. Bonop is daar dele van die stad soos Kuilsrivier waar nuwe uitbreidings en groei net nog meer verkeer beteken."*
- *"Die Universiteit van die Witwatersrand het veiligheid by sy Braamfontein kampus opgeskerp na pogings die afgelope naweek om 'n gebou aan die brand te steek. Twee verdagtes met klapmusse is op kring-televisie opgemerk. Die polisie ondersoek die saak. 'n Woordvoerder van Wits, Sharona Patel, sê die veiligheid van studente en werkers bly hul hoofdoel."*

**The Licensee is partially compliant with clause 5.1.1 of the schedule to its licence.**

Clause 5.1.2 of the service licence states that:

*"South African Music Content: 40%."*

The Licensee submits its programme log sheets in accordance with the format in the Compliance Procedure Manual Regulations. The log sheets set out the breakdown of the number of local and foreign tracks and the percentage split thereof. As per these log sheets, the Licensee submits that they broadcast an average of sixty (60) percent local music in comparison to the forty percent (40%) foreign music.

The monitoring exercise as conducted by the Authority, found some of the local artists that we featured under the period under review:

*Kurt Darren – "Kaptein span die seile", Theuns Jordaan "Jasmyn Katryn", Laurika Rauch – "Kinders van die wind", Corlea Botha "Swart Koffie", Die Cambells "Kom Dans Saam", Snotkop en Ander "Al lê die berge nog so blou", Elvis Blue "Die*



*Strome van die Drakenberge”, Anneke Hanekom - “36 woorde”, Steve Hofmyer – “Pampoen”.*

**The Licensee is complaint with clause 5.1.2 of the schedule to its licence.**

Clause 5.1.3 of the service licence states that:

*“Talk vs Music: 50% Talk and 50% Music.”*

Every Monday and Wednesday just after 11h00, the Licensee broadcasts the program “Garments of Praise” which is broadcasted for an average of fifteen (15) minutes and thirty-seven (37) seconds. “Thinking Matters” a spiritual programme that covers topics such as *purpose*, is broadcasted on Mondays from 13h00 with a total broadcast of fourteen (14) minutes and thirteen (13) seconds. “Onderwys Op die Lug” is broadcasted on Wednesdays from 15h00 until 16h00 for a total broadcast time of twenty-seven (27) minutes. This programme is repeated on Sundays between 12h00 and 13h00. Thinking matters is repeated for the second time on Thursdays at 05h00.

The Licensee broadcast regular interviews with persons of interest, for example on 30 May 2016 an interview was held with Lanie Nel from the Hermanus Dance Club. The interview was conducted in Afrikaans with a total broadcast time of twenty-four (24) minutes. On 05 June 2016, another interview was held with the organiser of the Hermanus “FynArts” festival. “On Point Cricket Show” is broadcasted on Wednesdays from 14h11 for a total broadcast time of twenty-five (25) minutes.

The Authority’s monitoring exercise found that the talk to music ratio on Saturdays did not meet the 50% requirement. Music content outweigh talk content. With programmes such as “Law and More” from 8h00 with a total broadcast time of twenty-three (23) minutes and fifty-eight (58) seconds, which is a repeat of the initial broadcast on Wednesdays. “Thinking matters”, a repeat of the broadcast on Monday, from 09h00 with a total broadcast time of fourteen (14) minutes and thirteen (13) seconds. And “Honey and Dark chocolate”, which is a repeat of the broadcast of Tuesday that plays from 16h00 until 17h00. Total talk on Saturdays,



including news comes to one (1) hour, forty-one (41) minutes and twenty-one (21) seconds. The rest of the performance period is music.

The monitoring exercise confirms that the Licensee broadcasts talk programmes during its Sunday broadcasts. A talk segment was identified at 12h00 where the topic of child abuse was discussed, as stated above. At 17h00, more talk was identified by means of an interview.

**The Licensee is partially compliant with clause 5.1.3 of the schedule to its licence.**

Clause 5.1.4 of the service licence states that:

*"Language(s) of broadcast:*

*5.1.4.1 Afrikaans – 40%*

*5.1.4.2 English – 40%*

*5.1.4.3 isiXhosa – 20%"*

The Licensee has a weekday isiXhosa segment from 18h00 until 19h00 on Mondays and Tuesdays the segment is broadcasted from 22h00 until 23h00. During these segments the presenter communicates in isiXhosa and Xhosa artists are interviewed and music is played.

The Authority's monitoring exercise found that on Saturdays, news was broadcasted in either English or Afrikaans and the only use of isiXhosa was for the introduction of the radio station as well as one isiXhosa song that was played just before the end of the performance period. It is to be noted that the Licensee, although not meeting its obligation as per its licence, broadcasts music in a foreign language throughout the period from 05h00 to 07h00.

On Sundays, the monitoring exercise confirms that the Licensee meets its language obligations with an Afrikaans sermon from 07h00 till 08h00, an English sermon from 09h00 till 10h00. Further, isiXhosa content is broadcasted at 05h00 till 06h00 and then from 19h00 till 23h00.

**The Licensee is partially compliant with clause 5.1.4 of the schedule to its licence.**

### **3.6 Promise of Performance**

Clause 8.1 of the Licensee's service licence states that the Licensee shall provide for the participation of community members in the affairs of the station in the following ways.

Clause 8.1.1 of the Licensee's service licence states that:

*"Special phone-in programmes by members of the community."*

The monitoring exercise as conducted by the Authority concluded that there is no phone-in programmes that allow members of the community to actively participate in the radio station.

**The Licensee is not compliant with clause 8.1.1 of the schedule to its licence.**

Clause 8.1.2 of the Licensee's service licence states that:

*"Schools services to be accommodated in terms of programming and their input."*

The Licensee broadcast a programme called *"Onderwys en Opvoeding op die lug"* on Wednesdays from 15h00 until 16h00 and the programme is repeated on Sundays from 12h00 until 13h00. The programme covers topics such as effective parenting, teaching and learning skills and school news. Students, parents, teachers, psychologists and social workers are involved in this program.

**The Licensee is compliant with clause 8.1.2 of the schedule to its licence.**

Clause 8.1.3 of the Licensee's service licence states that:

*"Spiritual support and programmes aimed at the elderly and senior members of the community including the youth."*

The Licensee broadcasts "*Thinking Matters*", a spiritual program. This programme bares reference to people of all age groups as it deals with topics that can be applied throughout all life cycles. Topics such as *finding your purpose*.

**The Licensee is compliant with clause 8.1.3 of the schedule to its licence.**

Clause 8.1.4 of the Licensee's service licence states that:

*"Participation in the development and education of the Afrikaans Christian culture."*

The Licensee broadcasts the programme *Garments of Praise*, a Christian based content broadcast. This programme explores different aspects of the Christian religion.

**The Licensee is compliant with clause 8.1.4 of the schedule to its licence.**

## **4. REGULATIONS**

### **4.1 South African Music Content Regulations**

Regulation 3.3 of the Regulations on South African Music Content as published on 31 January 2006 provides that:

*"Every holder of a community sound broadcasting licence to which these regulations apply must ensure that after eighteen months of the gazetting of these regulations, a minimum of 40% 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"*<sup>8</sup>.

The Authority's findings showed Whale Coast FM complies with the obligation to play a minimum of 40% South African music.

**The Licensee was found to be compliant the Regulations on South African Music Content.**

---

<sup>8</sup> South African Music Content Regulations

## **4.2 Code for Persons with Disabilities**

Clause 3.1 (a) of the Code on People with Disability of 2007 stipulates that:

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

During the period under review, the Licensee did not submit any information regarding their compliance with the Code on People with Disabilities.

**The Licensee is non-compliant with the Code on People with Disabilities.**

## **4.3 Compliance Procedure Manual – Form 12A**

The Licensee is required, in terms of the Compliance Procedure Manual Regulations, to submit a Form 12A which reports on all complaints received during each financial year. In the year under review, the Licensee did not submit its Form 12A.

**The Licensee was found to be non-compliant the Compliance Procedure Manual.**

## **4.4 Regulations regarding Standard Terms and Conditions for Class Licensees**

The Authority is satisfied that during the period under review the Licensee did not contravene the regulation in respect of the Standard Terms and Conditions for Class Licences.

**The Licensee was found to be compliant with the Standard Terms and Conditions for Class Broadcasting Service Licence.**

## **5. CONCLUSION**

Whale Coast FM is compliant with most of its obligations. The matters of non-compliance, such as community participation, holding an AGM, news broadcast obligations and Code for Persons with Disabilities, form 12A submissions will be

addressed when the Broadcasting Compliance Unit meets with the Licensee in the next financial year. The Authority will continue to monitor the compliance of the Licensee.

## **6. Terms of Reference**

Annexure A: Whale Coast FM's Broadcasting Service Licence;

Annexure B: South African Music Content Regulations;

Annexure C: Code on People with Disabilities;

Annexure D: Compliance Procedure Manual Regulations;

Annexure E: AGM attendance register dated 3 August 2017; and

Annexure F: Letter received from Licence dated 20 October 2017.