



KAYA FM ANNUAL COMPLIANCE REPORT

MARCH 2019

2017/18 ANNUAL COMPLIANCE REPORT

KAYA FM (PTY) LTD BROADCASTING AS 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 Constitution¹, the ICASA Act², the Electronic Communications Act³ (ECA) and the Broadcasting Act⁴ 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 2017/2018 financial year. Aspects of compliance that are measured comprise of licence conditions pertaining to Geographic Coverage, Language(s) of broadcast, Format, General Programming Obligations, Training and Skills Development, Community-Related Obligations. Furthermore, the Licensee will be measured in relation to the following regulations, the ICASA South African Music Regulations, Regulations Regarding Standard Terms and Conditions, Universal Service and Access Fund (USAF) Regulations, General Licence Fee Regulations and Code of Conduct for Broadcasters.

2. BACKGROUND

On 17 December 2008, the Authority issued an Individual Commercial Sound Broadcasting Service licence⁵ 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 (BRC), the listenership figures for period ending March 2018 was 899 000⁶.

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 Appendix A

⁶ <https://brcsa.org.za/brc-ram-radio-listening-oct17-mar18-jan18-jun18/>

3. COMPLIANCE ASSESSMENT

3.1. Control Structure

3.1.1. Ownership and Control

Clause 1 of Kaya FM's service 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 complies with clause 1.1 of its service licence.

Clause 1.2 of the service 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, Kaya FM submitted a notification for change of shareholding in December 2017, in terms of the Process and Procedure Regulations for Individual Licences 2010 and 2016, this was dealt with during the licence renewal process.

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

3.2 Geographic Coverage Area

Clause 2 of the 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 complies with clause 2 of the schedule to its service licence.

3.3 Broadcast Language(s)

Clause 3 of the licence stipulates that the language of broadcast shall be:

"Principal language: English".

Kaya FM's principal language of broadcast is English.

The Licensee complies with its language(s) of broadcast.

3.4 Format

Clause 4.1 of the 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 Licensee's programming profile is predominantly talk based in the morning and late night shows during weekdays. The mid-mornings and afternoon shows as well as weekend programming is dominated by music complemented by talk with a particular focus on adult contemporary music, in order to comply with their format.

The Licensee complies with its format.

Clause 4.2 of the 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 complies with clause 4.2 of the licence.

3.5 General Programming Obligations

Clause 5.1 of the 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 news from 06h00 until 18h00 on weekdays with news headlines on the half hour. The Licensee's weekday news broadcasts are approximately four (4) minutes per bulletin and an average of forty minutes (45) per day. The Licensee broadcast news updates from 7am until 1pm for four (4) on weekends for thirty-one (31) minutes.

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

- *"Police Minister Bheki Cele says an emergency meeting will be held today with stakeholders in the cash and transit sector to discuss safety and security matters. The Minister says he is concerned about the high number of heists taking place and the safety of civilians.*
- *A fifty-year old father will appear before the Protea Magistrate Court today on a charge of murder after he shot and killed his son. The incident took place at Fred Norman Secondary school in Ennerdale south of Johannesburg.*
- *Wendy Luhabe has been appointed as an independent non-executive director at Steinhoff Africa Retail. The businesswoman who started her career in marketing has served at various boards is due to begin working at the company from January next year".*

The Licensee complies with its news obligation.

Clause 5.2 of the licence stipulates that:

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

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

- *"A missing Kenya aircraft has been found. The missing aircraft from Kitale to Nairobi with ten people on board went off radar last night. It took rescue teams more than sixteen hours to search for the plane."*

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 bulletins.

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

Clause 5.3 of the licence stipulates that:

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

The Licensee's Form 9 submission shows that news are sourced from press releases, emails and self-originated. The Licensee invites listeners to send their news stories to the news desk in order for them to follow up and cover them in their bulletins⁷.

The Licensee complies with clause 5.3 of its licence.

3.6 Training and Skills Development Obligation

Clause 6 of the licence stipulates that:

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

The Licensee's audited financial statement reflects that an amount of more than two million rands was spent on training and human resource development which includes bursaries and training⁸.

⁷ Appendix B

⁸ Appendix C:

The Licensee complies with its training and skills development.

3.7 Community - related Obligations

Clause 7 of the 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 million Rand of airtime to promote social responsibility programmes for organisation such as CANSA, Reach for a Dream Foundation, Lethukukhanya Care Centre, amongst others⁹.

The Licensee complies with its community related obligations.

3.8 Control

Clause 8 of the 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 submitted proof of their incentive scheme payable as a thirteenth cheque after the end of their financial year, payable to qualifying employees. The Licensee's management, remuneration committee and audit committees are maintained and occupied by person from historically disadvantaged groups¹⁰.

The Licensee complies with clause 8 of the licence.

4. REGULATIONS

4.1 Code of Conduct for Broadcasters

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).

⁹ Appendix D

¹⁰ Appendix E

4.2 South African Music Content Regulations

The Authority has on 23 March 2016 published the ICASA South African Music Contents Regulations which repealed the ICASA South African Music Content regulations published on 31 January 2006. The regulations were to be effective eighteen (18) months after publication i.e. 23 September 2017 which falls within the period under review. The quotas were revised from 25% to the 35% for commercial sound broadcasting services.

Regulation 3 (2) of the ICASA South African Music Contents Regulations stipulates that: *"Every holder of a commercial sound broadcasting licence must ensure that after eighteen (18) months from the date of gazetting of these Regulations, a minimum of 35% 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's local music content submission for the first six months was a percentage over the required twenty-five (25%) percent. The last six months with the revised quotas, the Licensee broadcasts an average of thirty-six (36%) of local music content. Some of the South African artists featured included among others, *Steve Kekana, Zone, Simphiwe Dana and Msaki*.

The Licensee complies with the South African Music Content Regulation.

4.3 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 complies with the above regulations.

4.4 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 31 December 2018 and submitted proof of payment¹¹ thereof.

The Licensee complies with the USAF regulations.

4.5 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) (b) and (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 31 December 2018 and submitted proof of payment¹² thereof.

The Licensee complies with the General Licence Fees Regulations.

¹¹ Appendix F

¹² Appendix G

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 African stories in their news bulletins. The Compliance Unit has subsequently met with the News Editor and Content Head for the radio station in July 2018 to address the non-compliance in respect of the obligation to have an African news item in each news bulletin. The Licensee undertook to review their news gathering or would alternatively apply for an amendment.

6. TERMS OF REFERENCE

Appendix A: Kaya FM's broadcasting service licence;

Appendix B: Form 9 submission;

Appendix C: Training and Development Report;

Appendix D: Report on Community related obligations;

Appendix E: Staff Incentives;

Appendix F: Proof of USAF Contribution; and

Appendix G: Proof of Licence Fees Payment.