



# **SMILE 90.4 FM ANNUAL COMPLIANCE REPORT**

**MARCH 2019**

# **2017/2018 ANNUAL COMPLIANCE REPORT**

## **CAPE TOWN RADIO (PTY) LTD BROADCASTING AS SMILE 90.4 FM**

**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<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 Cape Town Radio's compliance for the 2017/2018 financial year. Aspects of compliance that are measured comprise of Geographic Coverage, languages, Format, Local Content Obligations, General programming Obligations, Regulations Regarding Standard Terms and Conditions, Universal Service and Access Fund Regulations, General Licence Fees regulations and the Code on People with Disabilities.

### **2. BACKGROUND**

Cape Town Radio, broadcasting as Smile 90.4 FM (Smile 90.4 FM) is an Individual Commercial Sound Broadcasting Service Licensee providing a programming mix of music and information to the City of Cape Town Metropolitan in the Western Cape Province<sup>5</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> Appendix A: Smile 90.4 FM's Broadcasting Service License.

### **3. COMPLIANCE ASSESSMENT**

#### **3.1 Licensee**

Clause 1 of the licence provides that:

*"1.1 Name of Company/Entity: Cape Town Radio (Pty) Ltd.*

*1.2 Name of the Station: Smile 90.4 FM*

*1.3 Shareholders:*

*Videovision Entertainment (Pty) Ltd – 70.5%*

*All Part Cape (Pty) Ltd – 5%*

*Radio 021 FM (Pty) Ltd (formerly Firefly Investments 150 (Pty) Ltd  
– 17%*

*African people Investment Company (Pty) Ltd ("APIC") – 2.5%*

*Smile 90.4 FM Share Incentive Scheme trust – 5%."*

No changes regarding the clause above have been submitted to the Authority. The Licensee confirms that no changes regarding the information above have taken place.

**The Licensee complies with clause 2 of its licence.**

#### **3.2 Licence Period**

Clause 2 of the licence provides:

*"2.1 The effective date of the licence: 25 May 2012*

*2.2 The licence shall expire on: 24 May 2022"*

**The Licence is up to date and therefore the Licensee complies with clause 2 of its licence.**

#### **3.3 Geographic Coverage Area**

Clause 3 of the licence provides that:

*"City of Cape Town metropolitan area as indicated in the coverage map attached to the Licensee's radio frequency spectrum licence."*

The Licensee confirms that it offers its services to the geographic coverage area as specified by the Licensee's radio frequency spectrum licence. Further, the Authority received no complaints that the Licensee is operating outside of its geographic coverage area.

### **The Licensee complies with clause 3 of its licence.**

#### **3.4 Programming**

Clause 4.1.1 of the licence provides that:

*"Format: The Licensee shall have a programming format of 60% music and 40% talk, providing entertainment, informative and educational programming by means of features on lifestyle issues and talk in the form of phone-in's and other forms of programming. The music to be broadcast will include amongst other genres, South African Pop, South African Afrikaans music, International Pop and International Gold."*

The monitoring exercise found that during weekdays, the Licensee broadcasts forty percent (40%) talk and sixty percent (60%) music. However, during weekends the broadcast of the Licensee is dominated by music. The programming covers a variety of topics that are informative and entertaining for the audience. The Licensee broadcast *"Comedy Break"* that features excerpts from various stand-up comedy shows, a general knowledge quiz, *"Smile Breakfast show"*, *"Early Bird Info Hour"*.

Further, the music as broadcast by the Licensee includes music tracks from the genres as identified in its licence.

### **The Licensee complies with clause 4.1.1 of its licence.**

Clause 4.1.2 of the licence states that:

*"Local Content Obligations:*

*4.1.2.1 The Licensee shall adhere to the following, namely:*

*4.1.2.1.1 Broadcast 50% South African music during its daily programming.*

*The percentage will be sustained by the play listing of between seven (7) to nine (9) tracks in an hour.*

*4.1.2.1.2 South African music on its service will include amongst other genres, South African Pop music, South African Afrikaans and South African rock."*

The monitoring exercise found that the Licensee does not broadcast a minimum of seven (7) songs in an hour and thus fails to sustain the fifty percent (50%) South African music during its daily programming, as required by its licence. The music that is broadcast by the Licensee does include tracks from the South African pop, South African Afrikaans and South African rock genres.

**The Licensee does not comply with clause 4.1.2.1.1 and however complies with clause 4.1.2.1.2 of its licence.**

Clause 4.1.3 of the licence provides that:

*"General Programming Obligations:*

*4.1.3.1 The Licensee shall broadcast its news in the following manner, 65% local/regional, 20% South African national and 15% international news."*

News as broadcast by the Licensee is mainly of local/regional interest. The rest of the news is made up of national and international stories.

**The Licensee complies with clause 4.1.3.1 of its licence.**

Clause 4.1.3.2 of the licence require that:

*"The Licensee shall broadcast news on a regular basis for a minimum of thirty (30) minutes per day between 05h00 and 23h00."*

During the monitoring exercise it was found that the daily news broadcast by the Licensee exceeds the thirty (30) minutes requirement. News is broadcast throughout the performance period. The Licensee broadcast full news bulletins with an average duration of two (2) minutes and thirty (30) seconds, news

headlines with an average duration of one (1) minute as well as trending news with an average duration of one (1) minute. The total news broadcast for the day average sixty (60) minutes.

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

- *"Die Nasionale Instituut van Oordragbare Siektes sê daar is verskillende simptome van Listeriose waarna mense moet op let. 'n Honderd en tagtig (180) Suid-Afrikaners het reeds weens die siekte gesterf. Die bron van die dodelike virus is in tussen opgespoor by 'n Enterprise fabriek in Polokwane. Verwerkte vleisprodukte is in tussen herroep."*
- *"Advocacy groups have called on Government to prioritise the rights of sex workers ahead of the morals of those against the industry. That was the message of various legal, civil society and human rights organisations who yesterday presented their arguments in favour of the decriminalisation of sex work to Parliament's multi-party women's caucus."*
- *"Agri-Weskaap sê hy werk saam met provinsiale owerhede om te verseker dat plaaswerkers en hul families tydens die huidige droogte ondersteuning ontvang. Navorsing oor die ekonomiese impak van die droogte op landbou is onlangs vrygestel met 'n geraamde verlies van 5,9 miljard rand op die provinsie se bruto toegevoegde waarde. Die aantal werksverliese in die sektor word op dertig duisend beraam."*
- *"The Centre for Rural Legal Studies says access to water and sanitation for rural communities must be made a priority, especially for women. The centre currently provides legal aid and rights training for rural residents and farm workers in the Western, Northern and Eastern Cape. Its currently focusing on the right to access water and ablution facilities in the drought-stricken central Karoo."*

**The Licensee complies with clause 4.1.3.2 of its licence.**

Clause 4.1.3.3 of the licence reads:

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

The monitoring exercise confirms that the Licensee discloses the source of news when the news is not sourced by itself.

**The Licensee complies with clause 4.1.3.3 of its licence.**

Clause 4.1.3.4 of the licence states that:

*"All programming will originate locally with the exception of outsourced news and content."*

The monitoring exercise found that the Licensee's programming originates locally except for outsourced news and content.

**The Licensee complies with clause 4.1.3.4 of its licence.**

Clause 4.4.1 of the licence states that:

*"The Licensee shall broadcast 55% English and 45% Afrikaans."*

The monitoring exercise found that English is the dominant language of broadcast and that Afrikaans is secondary. The content, news and music as broadcast is representative of both languages.

**The Licensee complies with clause 4.4.1 of its licence.**

**3.5 Ownership and Control**

Clause 5 of the licence reads:

*"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 provided the necessary documentation to support the compliance with clause 5.

**The Licensee complies with clause 5 of its licence.**

### **3.6 Specific Terms and Conditions**

Clause 6 of the licence provides that:

*"Besides sourcing of news from secondary source(s), the Licensee shall employ a news team specifically for the production of its local news."*

The Licensee confirms that it employs a news team to produce its local news. As per the Licensee's organogram<sup>6</sup>, the Licensee employs six (6) members to produce local news including a news manager, a news and content producer, a senior reporter and three (3) news reporters. The news team makes up twelve percent (12%) of the Licensee's total staff complement.

**The Licensee complies with clause 6 of the Schedule to its service licence.**

## **4. REGULATIONS**

### **4.1 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 submitted the required Form 12A<sup>7</sup>. As per the submission, the Licensee received no complaints during the period under review.

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<sup>6</sup> Appendix B: Smile FM Report.

<sup>7</sup> Ibid.



**The Licensee complies with the Compliance Procedure Manual, as stated above.**

#### **4.2 Regulations regarding Standard Terms and Conditions for Individual 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 Individual Licensees<sup>8</sup>.

**The Licensee complies with the Standard Terms and Conditions for Individual Licensees.**

#### **4.3 Regulations on South African Music**

Regulation 2 of the Regulations on South African Music as published on 23 March 2016 provides that:

*"A holder of a commercial sound broadcasting service licence must ensure that after eighteen (18) months of the 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 evenly throughout the performance period"<sup>9</sup>.*

The monitoring exercise found that the Licensee complies with the thirty five percent (35%) South African Music Content as stipulated in the above Regulations. The Licensee further regularly promotes new music as well as conducts interviews with artists, these format factors thus takes the Licensee's compliance with the Regulations on South African music to over forty percent (40%).

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<sup>8</sup> Appendix C: Regulations regarding Standard Terms and Conditions for Individual Licensees.

<sup>9</sup> Appendix D: Regulations on South African Music.

Some of the artists that were featured during the period under review include *Jamali, Kurt Darren, Dewald Wasservall, Brendan October, Mi Casa, NKD, Danny K, Khaya, Jimmy Nevis, Garth Taylor* amongst others.

Some of the interviews that were held during the period include *Elvis Blue talking about his Stories-concert, The Rockets, Gareth Nelson and Jesse Jordan* amongst others.

### **The Licensee complies with the Regulations on South African Music.**

#### **4.4 Universal Service and Access Fund**

Regulation 3(1) of the Regulations in respect of the Prescribed Annual Contributions of Licensees to the Universal Service and Access Fund, 2011<sup>10</sup> state 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 its Annual Turnover to the fund (USAF)."*<sup>11</sup>

Further, Regulation 3 (3) states 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."*

The Licensee made payment to the MDDA and submitted the proof thereof to the Authority.

### **The Licensee complies with the USAF Regulations.**

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<sup>10</sup> As published in Government Gazette no. 31499.

<sup>11</sup> Appendix E: USAF Regulations

## 4.5 General Licence Fees Regulations

Regulation 3(1) of the General Licence Fees Regulations state 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 Service licences."*<sup>12</sup>

Schedule 2 of the Annual Licences Fees regulations provide for Individual Commercial Broadcasting Services Licensees to pay an annual licence fee of 1.5% of gross profit to the Authority.

Regulation 4(b) and (c) of Schedule 3 state that:

*"(b) In respect of payment, such are due and payable within 6 months from 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."*<sup>13</sup>

The Licensee made its general licence fees payment and submitted the proof thereof to the Authority.

**The Licensee is compliant with the General Licence Fees Regulations.**

## 4.6 Code for People with Disabilities

The Licensee confirms that it collaborates with various organisations for People living with Disabilities. These collaborations often lead to interviews being held with representatives from these organisations to bring awareness as well as fund raising initiatives. During the period under review, the monitoring exercise found that the Licensee through its programming sheds light on issues affecting people living with disabilities. Amongst the issues that were highlighted included how people with disabilities can build resilience in the workplace, Eye Care Awareness month where listeners were educated on issues of blindness. The Licensee further

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<sup>12</sup> Appendix F: General Licence Fees Regulations.

<sup>13</sup> Appendix F: General Licence Fees Regulations

promoted events such as the *ArtsAbility Festival* during the International Week for Persons Living with Disabilities.

**The Licensee complies with the Code for People with Disabilities.**

## **5. CONCLUSION**

The monitoring exercise found that Smile was compliant with the majority of its obligations as per its licence and the relevant Regulations. The areas of concern will be brought to the attention of the Licensee and the Authority will continue to monitor the steps taken by the Licensee to remedy the areas of non-compliance.

## **6. TERMS OF REFERENCE:**

- 6.1 Appendix A: Smile 90.4's Licence
- 6.2 Appendix B: Smile 90.4's Report
- 6.3 Appendix C: Regulations Regarding Standard Terms and Conditions for Individual Licensees
- 6.4 Appendix D: South African Music Regulations
- 6.5 Appendix E: USAF Regulations
- 6.6 Appendix F: General Licence Fees Regulations
- 6.7 Appendix G: Code on People with Disabilities