



VUMA FM ANNUAL COMPLIANCE REPORT

MARCH 2019

2017/2018 ANNUAL COMPLIANCE REPORT

VUMA FM (PTY) LTD BROADCASTING AS VUMA 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 Constitution¹, the ICASA Act² and 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 monitor compliance by broadcasters with the terms and conditions of their licence, the three Acts and any relevant legislation and regulations.

The purpose of the report is to give an account of Vuma FM's performance for the 2017/2018 financial year. Aspects of compliance that are measured comprise of Geographic Coverage, Language(s), Format, Training and Skills Development Equity, Staff Development and Employment Equity Plan, General Programming Obligations, Ownership by individuals from historically disadvantaged groups, Financial Year, Regulations Regarding Standard Terms And Conditions For Individual Licensees, General Licence Fees Regulations, Regulations In Respect Of Prescribed Annual Contributions of Licensees to the Universal Service Access Fund and South African Music Content Regulations.

2. BACKGROUND

Vuma FM is an Individual Sound Broadcasting Service Licensee broadcasting from Durban in Kwa-Zulu Natal. The Authority issued Vuma FM with its licence on 25 May 2012 and according to the Broadcast Research Council of South Africa, the listenership figures between April 2017 and December 2017 grew from 134000 to 173000⁵.

¹ The Constitution of the Republic of South Africa Act No 108, 1996

² ICASA Act No 13, 2000 as amended

³ Electronic Communications Act No 36, 2005

⁴ Broadcasting Act No 4 of 1999

⁵ Appendix A: <http://www.brcsa.org.za/BRC-RAM-Radio-Listening-Apr17-Sep17vsJul17-Dec17>

3. COMPLIANCE ASSESSMENT

3.1. Ownership and Control

Clause 1.1 of the licence provides that:

*"Name of Entity: Vuma FM (Pty) Ltd"*⁶.

The Licensee confirms that the name of the Entity is Vuma FM (Pty) Ltd.

The Licensee complies with clause 1.1 of its licence.

Clause 1.2 of the licence provides that:

"Shareholders:

Times Media Pty (Ltd) -85%;

Sisulu Family Trust -15%;

According to the Licensee's submission, Vuma FM is 100% owned by Tiso Blackstar Group. However, there is no record that the Licensee submitted a notification to change its shareholding structure to the Authority as required by the Standard Terms and Conditions for Individual Licences.

The Licensee does not comply with schedule 2 of the Standard Terms and Conditions for Individual Licences

3.2 Geographic Coverage Area

Clause 2 of the licence stipulates that the geographic coverage area is:

"Durban, Donnybrook, Eshowe, Glencoe, Kokstad and Newcastle in KwaZulu Natal, as defined in the coverage map attached to the Licensee's radio frequency spectrum licence".

The Licensee states that the geographic coverage area remains Durban, Donnybrook, Eshowe, Glencoe, Kokstad and Newcastle. The Authority did not receive reports suggesting the Licensee broadcasts outside the defined coverage area.

The Licensee complies with clause 2 of the licence.

⁶ Appendix B: Vuma FM's Service Licence

3.3 Broadcast Language(s)

Clause 3 of the schedule to the licence states that:

"The Licensee shall broadcast in 50% isiZulu and 50% English"

The Authority's monitoring exercise confirmed that both English and isiZulu are used interchangeably by the Licensee. For example, a presenter will converse in both languages in programmes such as *"Good to Go Morning Drive"* (06h00 – 09h00) with Makhosi Khoza, Jobe Sithole and Lerato Sokhulu and *"Till Noon"* (09h00 – 12h00) with Vanessa Marawa. The Licensee also broadcasts some news bulletin is followed or preceded by an isiZulu news bulletin an hour later.

The Licensee complies with clause 3 of its licence.

3.4 Format

Clause 4 of the schedule to the licence provides:

"The Licensee shall have a programming format that is exclusively and predominantly gospel music led. The Licensee shall broadcast 60% music and 40% talk. 10% of music will be inspirational and spiritual".

The monitoring exercise confirmed the Licensee broadcasts more music and less talk. The 60% music and 40% talk format is not adhered to. However, the Licensee plays a notable amount of gospel music with artists such as, Yolanda Adams *"Talk to me"*, Mary Mary *"In the Morning"*, The Messiah *"Hallelujah Chorus"*, Ntokozo Mbambo *"Khululeka Moya Wam"*, Joyous Celebration *"Wachitha igazi"*, Kagiso *"Somandla"*, Nomusa Dhlomo, Sbhongseni Msimang and Lindiwe Cele. The Licensee also adheres to the 10% inspirational and spiritual music condition with tracks such as Michael Jackson *"Heal the World"*, Diana Ross *"I'm Coming Out"*, Judith Sephuma *"I Want You"* and Eddie James *"I Need You"*.

The Licensee partially complies with clause 4 of its licence.

3.5 Local Content Obligations

Clause 5 of the schedule to the licence states that:

"The Licensee shall broadcast 50% of South African music on a weekly basis"

The monitoring exercise confirmed that Vuma FM broadcasts less than 50% South African music. The number of international tracks played supersedes local tracks. The non-adherence was further validated by the Licensee's own submission⁷ that they broadcast just under 30% of South African music on a weekly basis.

The Licensee does not comply with clause 5 of its licence.

3.6 General Programming Obligations

Clause 6.2 of the schedule to the licence states that:

"The Licensee will broadcast its news in English and isiZulu".

The monitoring exercise confirmed that the Licensee broadcasts its news bulletins in both English and isiZulu. For example, during the week the Licensee broadcasts thirteen (13) news bulletins, eight (8) in English and five (5) in isiZulu. It should also be noted that some of the audio footage can either be in English or isiZulu during a news bulletin.

The following are among the news stories covered for the period under review:

- *"The ANC's 54th National conference to choose a new leader is underway in Nasrec. Some delegates were unable to get their accreditation to enable them to vote. After delays, voting by delegates began. Cyril Ramaphosa was nominated by 1469 branches and former African Union Chair Nkosazana Dlamini Zuma was nominated by 1094 branches. ANC Treasurer Zweli Mkhize had accepted the nomination for ANC Deputy President but decided to withdraw leaving Lindiwe Sisulu and David Mabuza vying for the position;*
- *ANC Spokesperson Zizi Kodwa tweeted that he voted for Cyril Ramaphosa, Police Minister Fikile Mbalula tweeted that he voted for Dlamini Zuma and Minister for Small Business Lindiwe Zungu says that she voted for unity;*
- *KwaZulu Natal Premier Willies Mchunu encourages students to focus on their studies in order to become great leaders. Mchunu said that when he visited Uthugela district on a three (3) day; and*

⁷ Appendix C: ICASA Report 010118-310318 Part 2

- *The ANC's Women's League says the State capture inquiry should be broadened to include the apartheid era".*

The Licensee complies with clause 6.2 of its licence.

Clause 6.3 of the schedule to the licence states that:

"The Licensee shall broadcast news on a regular basis, a total of fifty-two (52) minutes each weekday and twenty-four (24) minutes on weekends between 05h00 and 23h00".

The Authority's monitoring exercise confirmed that the Licensee's bulletins are four (4) to five (5) minutes long. The Licensee broadcasts thirteen (13) news bulletins during the week and three (3) news bulletins at 07h00, 10h00 and 12h00 on weekends. The Licensee broadcasts an average of sixty-five (65) minutes and fifteen (15) minutes of news on weekdays and weekends respectively.

The Licensee partially complies with clause 6.3 of its licence.

Clause 6.4 of the schedule to the licence provides for:

"The Licensee shall ensure that 55% of its news content is local, 35% national and 10% international news per day".

The Licensee's submission indicates that Vuma FM broadcasts 62% local and regional news, 33% national news and 5% international news⁸.

The Licensee is partially compliant with clause 6.4 of the schedule to its licence.

Clause 6.5 of the schedule to the licence states that:

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

The Licensee submitted its news sources to the Authority. Sources used are IOL, Independent Newspapers, Stringers, News 24, Television News Channels, NGOs, the Community, police and paramedics.

⁸ Appendix D: ICASA Report 010418-300618 Part2

The Licensee complies with clause 6.5 of its licence.

Clause 6.6 of the schedule to the licence provides for:

"The Licensee shall broadcast thirty (30) minutes of current affairs programming per week day. It will further ensure that the ninety per cent (90%) of current affairs be in isiZulu. Eighty per cent (80%) of the current affairs programming is to be generated from the coverage area".

The monitoring exercise confirmed that the Licensee broadcasts a current affairs programme on weekdays called "KZN in 60 minutes" with Thobeka Dhlomo between 19h00 to 20h00. The programme unpacks news stories that have made headlines. The topics that were discussed pertained to the new academic year and what is happening to those school children that were still awaiting placements into schools; the banning of White and Indian funeral parlours operating in Black areas and the KwaZulu Natal Legislature partnering with the KwaZulu Natal Provincial Government to kick off the new school year by visiting schools in the Uthugela district.

The Licensee complies with clause 6.6 of the schedule to its licence.

3.7 Ownership and control structures of the Licensee

Clause 7 of the schedule to the licence stipulates that:

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

The Licensee has not submitted a notification to change its shareholding structure (see clause 1.2 above). The Authority has not independently verified ownership of the radio station by historically disadvantaged persons.

The Licensee's compliance with clause 7 therefore cannot be determined.

3.8 Special Conditions

Clause 8.1 of the schedule to the licence provides for:

"The Licensee must comply with the requirements of the Employment Equity Act 55 of 1998 and the Skills Development Act 97 of 1998".

The Licensee did not submit its workforce demographics to determine equitable representation in all occupational categories and levels in its workforce. Vuma FM submitted their skills and development training initiatives⁹. The Licensee has submitted that training was provided for one (1) marketing intern, five (5) news interns and one (1) Information Technology intern between the months of October 2017 to December 2018.

The Licensee partially complies with clause 8.1 of the schedule to its licence.

Clause 8.2 of the schedule to the licence provides for:

"The Licensee shall employ a local news team specifically for the production of local news"

The Licensee did not provide information on the makeup of its news team.

The Licensee is non-compliant with clause 8.2 of its licence.

Clause 8.3 of the schedule to the licence states that:

"At least 50% of the employees employed by the Licensee shall be historically disadvantaged persons".

The Licensee did not submit information on its workforce (see clause 8.1 above).

The Licensee does not comply with clause 8.3 of its licence.

4. REGULATIONS

4.1 Complaints Received

The Licensee is required, in terms of the Compliance Procedure Manual Regulations, to submit a Form 12A which reports on all complaints received during the financial year under review.

⁹ Appendix E: ICASA Report 010118-310318 Part 1

The Licensee submitted Form 12A and reported that they did not receive complaints for the period under review.

The Licensee complies with the Compliance Procedure Manual Regulations.

4.2 Regulations on the Code for Persons with Disabilities

Regulation 3.1(a) of the Code on People with Disabilities as published in the *Government Gazette, no 30441, 07 November 2007* states that:

"Broadcasting service licensees to ensure that their services are made available and are accessible to people with disabilities".

The Licensee states that its services are made available and accessible to persons with disabilities by creating awareness about the different types of disabilities and which dispels myths. The Licensee also allows active participation of listeners who have a disability in its programmes¹⁰.

The Licensee complies with regulation 3.1(a) of the Regulations on the Code for Persons with Disabilities.

Regulation 3.1(a) of the Code on People with Disabilities provides that:

"Broadcasting service licensees must monitor the effectiveness of their service through surveys as well as contact with organisations of and for people with disability and stakeholders"

The Licensee states that its services are made available and accessible to persons with disabilities by creating awareness about the different types of disabilities which dispels myths. The Licensee also allows active participation of listeners who have a disability in its programmes.

The Licensee complies with Regulations on the Code for Persons with Disabilities.

¹⁰ Appendix F: ICASA Report 010418-300618 Part1

4.3 South African Music Content Regulations

The ICASA South African Music Content Regulations, as published on the 23 of March 2016, stipulates that:

"A holder of a commercial sound broadcasting service licence must ensure that after eighteen (18) months from the date of gazetting these Regulations, a minimum of 35% of the musical works broadcast in the performance period, consists of South African music and that such South African music is spread evenly throughout the performance period".

The Authority's monitoring exercise determined that the Licensee plays just under 30% (see 3.5) of South African music per week.

The Licensee is be non-compliant with the ICASA South African Music Content Regulations.

4.4 Regulations Regarding Standard Terms and Conditions for Individual Licences

The Licensee was informed to file a notification due to changes in their shareholding structure. The Licensee has not forwarded a notification to the Authority since they were advised. The Licensee has been reminded via email to submit a notification to the Authority on Thursday, 14 February 2019. A Form O was attached to the email.

The Licensee does not comply with the Standard Terms and Conditions for Individual Licences Regulations.

4.5 Universal Service and Access Fund Regulations

Regulation 3(1) of the New Universal Service and Access Fund (USAF) Regulations as published in the Government Gazette No. 34010 of February 2011, provides that:

"Every holder of the 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, to the Fund".

Regulation 3(2) further provides that:

"A BS Licensee who has paid an annual contribution to the MDDA must set off that contribution against its USAF contribution, provided that the MDDA contribution and the USAF contribution against which it is set off are of the same financial year"

The Licensee confirmed on 15 February 2019 that the USAF fees have not yet been paid. Proof of payment will be forwarded to the Authority once the fees have been paid.

The Licensee does not comply with the USAF Regulations.

4.6 General Licence Fees Regulations

Schedule 2 of the General Licence Fees Regulations provides for Individual Commercial Broadcasting Service Licensees to pay annually to the Authority a licence fee of between 0.15% to 0.35% of its gross profit.

Schedule 3(1) of the General Licence Fees Regulations provides for the format for submission of financial statements for the purpose of calculating licence fee.

Schedule 3(2) of the General Licence Fees Regulations provides that:

"All licence holders must submit within six (6) months of their financial year end:

- a) audited financial statements, or;*
- b) financial statements signed by the accounting officer of the Licensee where the Licensee is legally obliged to provide audited financial statements".*

Schedule 3(6) of the General Licence Fees Regulations provides that:

"All payments in respect of Annual Licence Fees are due annually".

The Licensee has submitted its calculations, financial statements and proof of payment of licence fees. However, the Licensee's financial year end is 30 June, the financial statements were forwarded to the Authority on 9 January 2019 and the licence fees were paid to the Authority on 29 January 2019 which is more than six (6) months after the end of the Licensee's financial year.

The Licensee did not comply with schedules 2, 3(1) and 3(6) and failed to comply with schedule 3(2) of the General Licence Fees Regulations.

5. CONCLUSION

The Licensee failed to comply with schedule 2 of the Standard Terms and Conditions for Individual Licences, the ICASA South African Music Content Regulations, schedule 3(2) of the General Licence Fees Regulations, Regulation 3(1) of the USAF Regulations and clauses 5, 7, 8.2, 8.3 of the schedule to its licence. The Licensee also partially complied with clauses 4, 6.3, 6.4 and 8.1 of the schedule to its licence.

The Licensee has been non-compliant with multiple licence terms and conditions and Regulations for the past three (3) financial years. Repeated non-compliance by the commercial Licensee shows disregard for the Authority, legislation and regulatory requirements. The Licensee will therefore be advised of the intentions to refer it to the CCC and given an opportunity to make representations.

6. TERMS OF REFERENCE

6.1 Appendix A: Broadcasting Research Council of South Africa

6.2 Appendix B: Vuma FM's service licence

6.3 Appendix C: ICASA Report 010118-310318 Part 2

6.4 Appendix D: ICASA Report 010418-300618 Part 2

6.5 Appendix E: ICASA Report 010118-310318 Part 1

6.6 Appendix F: ICASA Report 010418-300618 Part 1