



KAYA FM ANNUAL COMPLIANCE REPORT

MARCH 2020

2018/19 ANNUAL COMPLIANCE REPORT

KAYA FM (PTY) LTD BROADCASTING AS KAYA FM

LICENCE PERIOD: 17 December 2018 – 16 December 2028

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 2018/2019 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 and General Licence Fee Regulations and the Code of Conduct for Broadcasters.

2. BACKGROUND

The Authority issued a renewed commercial broadcasting licence to Capricorn FM (Pty) Ltd valid for ten (10) years. 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 June 2019 was 766 000⁵.

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 <https://brcsa.org.za/brc-ram-august-listenership-report-jan19-jun19/>

3. COMPLIANCE ASSESSMENT

3.1 Geographic Coverage Area

Clause 3 of the schedule to Kaya FM's service 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.

3.2 Broadcast Language (s)

Clause 4 of the schedule to Kaya FM's service 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.

3.3 Format

Clause 5.1 of the schedule to Kaya FM's service licence stipulates that:

"The Licensee shall have programming format as follows:

Clause 5.1.1 An African-focused adult contemporary/jazz music;

Clause 5.1.2 Sixty percent (60%) music and forty percent (40%) talk".

The Licensee's programming content is dominated by talk content in their morning and afternoon drive time shows with the mid-morning and lunch time shows being predominantly music driven. The Licensee then broadcast strictly talk content from 17H00 until 21H00 on hourly segments with a focus on information knowledge building content such as business and financial matter, current affairs programme and other focus such as health, legal matters amongst others for their target audience. The weekend programming is dominated by adult contemporary and jazz music with a supplement of talk.

The Licensee complies with its format.

Clause 5.2 of the schedule to Kaya FM's service licence stipulates that:

"The Licensee shall not change more than fifteen percent (15%) of its format between 05h00 and 23h00".

Kaya FM has not changed their format during the period under review.

The Licensee with clause 5.2 of the schedule to its service licence.

3.4 General Programming Obligations

Clause 6.1 of the schedule to Kaya FM's service 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 and news bulletins from 07H00 until 13H00 over the weekend. The news broadcasts are an average of four and half minutes for an average of forty-four minutes weekdays and thirty-one minutes over the weekends.

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

- *"South Africans who wish to raise objections on the list of candidates nominated by political parties have until close of business tomorrow to do so. The lists are available on the IEC's website. According to the Constitution, any citizen who is qualified to vote maybe a candidate. The only exceptions are, unrehabilitated insolvency, anyone declared unsound of mind by a court or anyone convicted of an offence and sentence to more than a year in prison without the option of a fine.*
- *Johannesburg Mayor Herman Mashaba has apologized to residents of Alexandra township following illegal demolitions. Mashaba says the demolitions were carried out without proper procedures being followed by the City of Johannesburg. He told residents that he is committed to rebuilding the structures, and*
- *Police Minister Bheki Cele is expected to engage community members of Yeoville at an Imbizo today. Cele along with Premier David Makhura will be hosting a*

crime imbizo in the area following rising tension between locals and foreign nationals”.

The Licensee complies with its news obligation.

Clause 6.2 of the schedule to Kaya FM’s service licence stipulates that:

“Each news bulletin shall contain news related to the African continent”.

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

- *“The movement of goods and services across Africa will become more cheaper and easier. The Africa Free Trade Agreement which has become effective will facilitate this long-awaited trading agreement amongst African countries. Twenty-four of Africa’s Parliament has ratified the agreement which is estimated to eventually combine the market share of 54 countries.”*

The clause stipulates that each news bulletin should contain news related to the African content and the radio station does broadcast news from all parts of Africa with a single story on each of their bulletins.

The Licensee complies with clause 6.2 of the schedule to its service licence.

Clause 6.3 of the schedule to Kaya FM’s service licence stipulates that:

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

The Licensee’s Form 9 submission show news are sourced from the Licensee’s debates and interviews, communities, all spheres of government amongst others⁶.

The Licensee complies with clause 6.3 of the schedule to its service licence.

3.5 Training and Skills Development Obligation

Clause 7 of the schedule to Kaya FM service licence stipulates that:

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

⁶ Appendix B

The Licensee's submits quarterly reports which includes training and development submits that it has spent R 372 893.75 on training and human resource development which includes developmental training and study bursaries which is more than the required amount.

The Licensee complies with its training and skills development.

3.6 Community - related Obligations

Clause 8 of the schedule to Kaya FM's service 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 airtime to promote social responsibility programmes for organisation such Nelson Mandela Foundation, Kidz 2 Kidz, for Casual Day amongst others to the value of more than two million Rands⁷.

The Licensee complies with its community related obligations.

3.7 Control

Clause 9 of the schedule to Kaya FM's service 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."

The Licensee's human resource development report reflects a management committee which is made up of seventy percent (70%) of persons from historically disadvantaged groups. Most of the members of the executive management are members of other committee which then makes those committees to be predominantly occupied by person from historically disadvantaged groups. Kaya FM submitted proof of their incentive scheme payable as a thirteenth cheque after the end of their financial year end payable to qualifying employees.

The Licensee complies with clause 8 of the schedule to its service licence.

⁷ Appendix C

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).

4.2 South African Music Content Regulations

The Authority has on 23 March 2016 published ICASA South African Music Contents Regulations which repealed 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 reflects an average of thirty seven percent (37%) for music played. Some of the South African artists featured included among others, *Thebe, Da Capo, Spikiri, Sjava, HHP and Zola*.

The Licensee complies with its 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 Standard Terms and Conditions for Individual Licences 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 end is June and they paid their contribution to the Universal Service and Access Fund on 05 November 2019 and submitted proof of payment 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)(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 end is 30 June and they paid their licence fees on 30 December 2019 which is within the six months and submitted proof of payment thereof.

The Licensee complies with the General Licence Fees Regulations.

5. CONCLUSION

The Licensee has complied with the relevant regulations and its service license terms and conditions for the year under review. The assessment in the previous financial year found non-compliance with their news obligation in relation to news bulletins from the African content. Subsequent to the compliance findings in the report, a meeting between the licensee's programming team and Compliance Department was held, at the radio station, in July 2018. The radio station has since reviewed its news production and they were found to have complied with all their news obligation, which is to be commended.

6. TERMS OF REFERENCE

- 6.1** Appendix A: Kaya FM's broadcasting service licence;
- 6.2** Appendix B: Form 9 submission;
- 6.3** Appendix C: Training and Development Report; and
- 6.4** Appendix D: Report on Community related obligations