



SMILE FM

ANNUAL COMPLIANCE

REPORT

MARCH 2020

2018/2019 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 Constitution¹, the Independent Communications Authority of South Africa Act² (ICASA Act), the Electronic Communications Act³ (ECA) and the Broadcasting Act⁴ 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 2018/2019 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.

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 Province⁵.

3. COMPLIANCE ASSESSMENT

3.1 Licensee

Clause 1 of the Schedule to Smile 90.4 FM’s licence provides that:

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: Smile 90.4 FM’s Broadcasting Service License.

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%	5%
African people Investment Company (Pty) Ltd (“APIC”)	2.5%
Radio 021 FM (Pty) Ltd (formerly Firefly Investments 150 (Pty) Ltd	17%
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 was found to be compliant with clause 1 of the Schedule to its Licence.

3.2 Licence Period

Clause 2 of the Schedule to Smile 90.4 FM’s 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.

The Licensee was found to be compliant with clause 2 of the Schedule to 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 did not receive complaints in relation to the Licensee operating outside of its geographic coverage area.

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

3.4 Programming

Clause 4.1.1 of the Schedule to Smile 90.4 FM's 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 broadcast 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 provides its audience with weather, sports, traffic updates and current affairs. It further brings awareness to various Non-Profit Organisations and their projects such as the "Reach for A Dream" organisation. The Licensee also has entertaining segments where its audience can share their views and stories about the topics of the day through WhatsApp voice notes as well as guessing a secret sound that has a cash prize.

Further, "Smile Comedy Break" is an entertainment segment that is broadcast by the Licensee that features excerpts from various stand-up comedy shows.

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

The Licensee was found to be compliant with clause 4.1.1 of the Schedule to 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 play seven (7) to nine (9) South African tracks in an hour. The non-compliance was communicated to the Licensee during the previous period under review, to which the Licensee reverted that it cannot sustain the percentage as it plays an average of eleven (11) songs per hour and if it were to be compliant with the local content obligation it would negatively affect its musical offering to its audience as well as exceeding the fifty percent (50%) requirement. The Licensee further indicated that it will investigate the alternative of applying for a licence amendment to ensure that it can be compliant regarding its local content obligation.

Although, the Licensee does not meet the seven (7) to nine (9) songs in an hour requirement, the South African music that it does broadcast is representative of various genres including South African pop music, Afrikaans music and South African rock.

The Licensee was found to be non-compliant with clause 4.1.2.1.1, however, compliant 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."

Local/Regional news make up the majority of the news broadcast by the Licensee, followed by South African national news and international news makes up the minority of the news coverage broadcast by the Licensee. This was the finding of the monitoring exercise during the period under review.

The Licensee was found to be compliant with clause 4.1.3.1 of its Licence.

Clause 4.1.3.2 of the Schedule to Smile 90.4 FM's licence states that:

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

The monitoring exercise found that during the period under review the Licensee broadcast a minimum of fifty (50) minutes of news per day. News is broadcast throughout the performance period.

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

- *"The City of Cape Town has allocated an amount of 4 billion rand to formalise informal settlements, to improve housing sanitation and electricity provision. This announce was made this week by the City of Cape Town executive mayor, Dan Plato. Plato added that a further 2,1 billion rand has been allocated for the further development of new housing opportunities in such as Nyanga, Atlantis, Heideveld and Gugulethu."*
- *"Minister of Police, Bheki Cele, has appointed Victor Ofentse Senna as the new acting head of the Independent Police Investigating Directorate (IPID). Senna took up the position yesterday. This comes after the portfolio committee on police decided not to renew Robert McBride's contract as Executive Director of IPID."*
- *"Privaat maatskappye moet met die provinsiale department van maatskaplikesontwikkelings saam werk om die provinsie se inwoners op te hef. Dit is die oproep deur die lid van die uitvoerede raad, Albert Fritz, nadat 14 nutsmanne en bestuurders in sy department opleiding by die diensverskaffer Afrotech voltooi het. Fritz se woordvoerder Cayla Murray sê die tipe vennootskappe raak al hoe belangriker."*
- *"Eskom sê die moontlikheid bly hoog dat beurtkrag more en oor die naweek ingestle kan word. Die kragverskaffer sê water en diesel voorrad moet aangevul word om te verhoed dat beurtkrag weer ingestel word. De kragverskaffer het ook 'n beroep op verbruikers gedoen om krag baie spaarsaam te gebruik."*

The Licensee was found to be compliant with clause 4.1.3.2 of its Licence.

Clause 4.1.3.3 of the Schedule to Smile 90.4 FM's 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."

During the period under review, the monitoring exercise found that the Licensee discloses the source of news when the news is not produced and/or sourced by itself during the news broadcast.

The Licensee was found to be compliant with clause 4.1.3.3 of the Schedule to its Licence.

Clause 4.1.3.4 of the Schedule to Smile 90.4 FM's licence states that:

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

The monitoring exercise found that most of the Licensee's programming originates locally. In instances where the news and content are outsourced, the Licensee provides the source of the before mentioned.

The Licensee was found to be compliant with clause 4.1.3.4 of the Schedule to 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 the broadcast languages of the Licensee is English and Afrikaans. Further, it was found that English is the dominant language of broadcast while Afrikaans is supplementary. Further, presenters of the Licensee are bilingual and competent in the languages of broadcast. The languages of broadcast are reflected in the programming as well as the music of the Licensee.

The Licensee was found to be compliant with clause 4.4.1 of the Schedule to its licence.

3.5 Ownership and Control

Clause 5 of the Schedule to Smile 90.4 FM's 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 5.⁶

The Licensee was found to be compliant with clause 5 of the Schedule to licence.

3.6 Specific Terms and Conditions

Clause 6 of the Schedule to Smile 90.4 FM's 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."

⁶ Smile 90.4 FM's Form 1 of the Compliance Procedure Manual Regulations submission.

The Licensee confirmed to the Authority that it employs a news team to produce its local news.

The Licensee was found to be compliant with clause 6 of the Schedule to its service licence.

4. REGULATIONS

4.1 ICASA Compliance Procedure Manual, 2011 – 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.⁷ As per the submission, the Licensee received no complaints during the period under review. The monitoring exercise found that the Licensee regularly broadcast information on how its listeners can escalate any complaints to the Broadcasting Complaints Commission of South African.

The Licensee was found to be compliant with the Compliance Procedure Manual, as stated above.

4.2 Regulations regarding Standard Terms and Conditions for Individual Broadcasting Licensees, 2010 as amended

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 Licences⁸.

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

ICASA South African Music Content Regulations, 2016

Regulation 2 of the Regulations on South African Music Content, 2016 provides that:

⁷ ICASA Compliance Procedure Manual Regulations, 2011 as published in *Government Gazette* No. 34863 dated, 15 December 2011.

⁸ Appendix C: Standard Terms and Conditions for Individual Broadcasting Services, 2010 as published in *Government Gazette* No. 33294 dated, 14 June 2010, as amended.

*"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"*⁹.

The monitoring exercise found that the Licensee complies with the thirty five percent (35%) South African Music Content as stipulated in the above Regulations in as far as it broadcast an average of forty percent (40%) South African music tracks during the performance period. Additionally, the Licensee on a regular basis conducts interviews with South African artists and promotes new songs. These format factors contribute to the Licensee having an overall South African music percentage of fifty percent (50%).

Some of the South African music tracks that were broadcast during the period under review include: *Steven Lee "Runaway"; Suzzi Swanepoel "Man Vir My"; Brenton Charles "Closest To Heaven"; Holly Rey "Deeper"; Bottomless Coffee Band "Ek Sal Wag"; Osmosis "Between The Silences"; 2nd Life Band "Wie Is EK"; Paxton "Where Are You Now"; Roan Ash "Whiskey To My Soul" and Douvoordag "Die Avontuur" amongst others.*

Some of the interviews that were held with South African artist during the period under review include:

Paxton, Mathew Mole, Suggz, Riana Nel, Charlie Finch, Werner Bekker, December Streets, Richard Stirton, Chad Saaiman, Timothy de Monk, Josh Kempen, Heinz Winckler, Amy Jones, Craig Lucas and Jimmy Nevis amongst others.

The Licensee was found to be with the ICASA South African Music Content Regulations, 2016.

4.3 Universal Service and Access Fund, 2011

Regulation 3 (1) of the Regulations in respect of the Prescribed Annual Contributions of Licensees to the Universal Service and Access Fund, 2011¹⁰ 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)."*¹¹

⁹ Appendix D: ICASA South African Music Content Regulations, 2016 as published in *Government Gazette* No.39844 dated, 23 March 2016.

¹⁰ Published in *Government Gazette* No. 34010 dated, 10 February 2011.

¹¹ Appendix E: USAF Regulations, 2011 as published in *Government Gazette* No. 34010 dated, 10 February 2011.

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 of USAF fees, on 1 October 2019 and submitted the proof thereof to the Authority.

The Licensee was found to be compliant with the USAF Regulations, 2011.

4.4 General Licence Fees Regulations, 2012

Regulation 3 (1) of the General Licence Fees Regulations, 2012 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."¹²

Schedule 2 of the Annual Licences Fees regulations provide for Individual Commercial Broadcasting Services Licensees to pay an annual licence fee of 1.5% 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."¹³

The Licensee's financial year ends in December. The payment was made 01 October 2019 and the proof thereof was submitted to the Authority. As such, the Licensee did not make the payment within 6 months from the end of the licensee's financial year.

Although the Licensee made the required payment, such payment was late and therefore, the Licensee did not comply with the General Licence Fees Regulations, 2012.

¹² Appendix F: General Licence Fees Regulations, 2012 as published in *Government Gazette* No. 36323 dated, 28 March 2013, as amended.

¹³ *Ibid.*

5. CONCLUSION

The monitoring exercise found that Smile 90.4 FM was compliant with the majority of its licence 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: Standard Terms and Conditions for Individual Licensees, 2010 as amended;
- 6.4** Appendix D: ICASA South African Music Content Regulations, 2016;
- 6.5** Appendix E: USAF Regulations, 2011; and
- 6.6** Appendix F: General Licence Fees Regulations, 2012.