



# **ITHEKU FM ANNUAL COMPLIANCE REPORT**

**MARCH 2021**

# **2019/2020 ANNUAL COMPLIANCE REPORT**

## **ETHEKWINI BROADCASTING SERVICE BROADCASTING AS ITHEKU FM**

**Licence Period: 17 April 2019 TO 16 April 2024**

### **1. PREFACE**

The Independent Communications Authority of South Africa ("the Authority") has a statutory mandate in terms of the Constitution<sup>1</sup>, the ICASA Act<sup>2</sup>, the Electronic Communications Act<sup>3</sup> and the Broadcasting Act<sup>4</sup> 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 licences, the three Acts and any relevant legislation and Regulations.

The purpose of the report is intended to give an account of Ethekewini Broadcasting Service ("Itheke FM"/"the Licensee")'s performance for the 2019/2020 financial year. Aspects of compliance that are measured comprise of the geographic coverage, community participation, programming obligations, language(s) of broadcast, broadcast content format, Compliance Procedure Manual Regulations, South African Music Content Regulations and Regulations regarding Standard Terms and Conditions for Class Broadcasting Services.

### **2. BACKGROUND**

Itheke FM holds a Class Community Sound Broadcasting Service ("C-CSBS") licence and a Radio Frequency Spectrum ("RFS") licence (collectively referred to as "licences") for the provision of services to eThekewini Metropolitan Municipality in the KwaZulu-Natal Province.

### **3. COMPLIANCE ASSESSMENT**

#### **3.1 Control Structure**

Clause 1 of the schedule to the licence states that:

*"The Licence is issued to:*

- 1.1 *Name of Company/Entity: Ethekewini Broadcasting Service.*
- 1.2 *Name of the Station: Itheke FM.*

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<sup>1</sup> The Constitution of the Republic of South Africa Act, 1996 (Act No. 108 of 1996).

<sup>2</sup> ICASA Act, 2000 (Act No. 13 of 2000), as amended.

<sup>3</sup> Electronic Communications Act, 2005 (Act No. 36 of 2005).

<sup>4</sup> Broadcasting Act, 1999 (Act No. 4 of 1999).

1.3 *Control of the Licensee: Control shall vest in the Board of Directors of Ethekwini Broadcasting Service".*

There were no changes reported by the Licensee to its control structure during the period under review. The licensee is still Ethekwini Broadcasting Service. The name of the Licensee's radio station is Itheke FM and the control of the Licensee is in the hands of the Board of Directors of Ethekwini Broadcasting Service.

**The Licensee complies with clause 1 of the schedule to its licence.**

### **3.2 Licence Period**

Clause 2 of the schedule to the licence states that:

*"2.1 The effective date of the Licence: 17 April 2019.*

*2.2 The Licence shall expire on: 16 April 2024."*

Itheke FM's licences were renewed on 05 October 2018.

**The Licensee complies with clause 2 of the schedule to its licence.**

### **3.3 Geographic Coverage Area**

Clause 3 of the schedule to the licence stipulates that:

*"The Licensee shall provide services to Ethekwini Metropolitan Municipality in Kwa-Zulu Natal Province as set out in the Licensee's radio frequency spectrum licence".*

The Licensee's geographic coverage area remains as is prescribed and specified in its licences.

**The Licensee complies with clause 3 of the schedule to its licence.**

### **3.4 Community**

Clause 4.1 of the schedule to the licence states that:

*"The Licensee shall provide services to a Christian community residing within the geographic coverage area specified herein".*

The Licensee confirms that its services are offered to the Christian community that resides within its geographic coverage area.

**The Licensee complies with clause 4.1 of the schedule to its licence.**

Clause 4.2 of the schedule to the licence stipulates that:

*"The Licensee shall provide for the participation of community members in the affairs of the station in the following ways:*

*4.2.1 The Licensee shall hold at least two (2) meetings annually with its community on programming and programme-related matters for the selection and provision of programmes;*

*4.2.2 The Licensee shall furnish the Authority with proof of such meetings as well as the attendance thereof by members of the community; and*

The Licensee submitted that they held two (2) programming meetings with the community, on 09 March and on 13 July 2019, respectively. The Licensee forwarded the minutes and attendance registers for both meetings to the Authority. The attendance registers for the programming meetings are also copies of the attendance register of the Annual General Meeting held on 31 December 2019 (**See clause 4.2.3 below**). The only difference between the attendance registers of the programming meetings held on 09 March 2019 and 13 July 2019 and the Annual General Meeting held on 31 December 2019, are the dates.

**The Licensee did not comply with sub-clauses 4.2.1 and 4.2.2 of the schedule to its licence.**

The clause on the Annual General Meetings (AGMs), in the licence stipulates that:

*4.2.3 The Licensee shall hold Annual General Meetings (AGMs) for the following purposes:*

*4.2.3.1 To provide feedback on the Licensee's compliance with licence conditions,*

*4.2.3.2 To provide feedback on the Licensee's operational and financial performance; and*

*4.2.3.3 To elect members of the controlling structure, e.g. Board of Directors, Trustees etc. subject to the Licensee's founding documents".*

The Licensee submitted that it held its Annual General Meeting on 31 December 2019. The Licensee submitted the AGM minutes and financial statements to the Authority. As stated above, the attendance register of the AGM held on 31 December 2019 is identical to the attendance registers of the programming meetings held on 09 March 2019 and 13 July 2019. Only the dates have been changed on the attendance registers of the three (3) meetings.

**The Licensee did not comply with clause 4.2.3 and sub-clauses of the schedule to its licence.**

### 3.5 Programming

Clause 5.1 of the schedule to the C-CSBS licence states that:

*"The Licensee shall provide programming as follows:*

**5.1.1 News And Information:** *The Licensee shall broadcast a total of two-hundred and sixteen (216) minutes of news per day, of which one hundred and fifty one (151) minutes shall be local news , fifty four (54) minutes shall be national news and eleven (11) minutes shall be international news".*

**5.1.2 "South African Music Content:** *100%".*

**5.1.3 "Format:** *50% Talk and 50% Music".*

**5.1.4 "Language(s) of broadcast:**

**5.1.4.1** *isiZulu – 85%*

**5.1.4.2** *isiXhosa – 10%;and*

**5.1.4.3** *English – 5%;".*

The Licensee was informed by the Broadcasting Compliance Unit (BCU) of its intention to compile the Annual Compliance Report and the required submission for the 2019/2020 financial year on 18 March 2020. Itheku FM submitted monthly programming logs for the period April 2019 – March 2020 on 05 May 2020. The Licensee was reminded of the outstanding submission on 11 May 2020, 02 December 2020 and 29 January 2021. The Licensee submitted minutes and attendance registers for the programming meetings and the AGM, complaints form and did not submit recordings. Without the recordings the BCU could not monitor the programming obligations of Itheku FM.

**The Licensee did not comply with clause 5.1. of the schedule to its licence.**

Clause 5.2 of the schedule to the C-CSBS licence stipulates that:

*"The Licensee shall keep a log of programmes broadcast which must be submitted on a monthly basis to the Authority. A pro-forma of the log to be kept will be supplied by the Authority".*

The Licensee does not submit a log of programmes broadcast to the Authority on a monthly basis as required by clause 5.2. The Licensee submitted the April 2019 to March 2020 programming logs on 05 May 2020 after being advised by the BCU of the intention to compile the Annual Compliance Report.

**The Licensee did not comply with clause 5.2 of the schedule to its licence.**

## **4. REGULATIONS**

### **4.1 ICASA Compliance Procedure Manual Regulations, 2011**

The Licensee is required, in terms of the ICASA Compliance Procedure Manual Regulations, 2011 as published in *Government Gazette* No. 34863 dated, 15 December 2011, to submit a Form 12A which reports on all complaints received during the financial year under review.

For the year under review, the Licensee submitted a complaints report and reported that there were no complaints received during the period under review.

**The Licensee complies with the ICASA Compliance Procedure Manual Regulations.**

### **4.2 ICASA South African Music Content Regulations, 2016**

Regulation 3(3) of the ICASA South African Music Content Regulations as published in the *Government Gazette* No. 39844 dated 23 March 2016 states that:

*"A holder of a Community Sound Broadcasting service licence must ensure that after eighteen months (18) from the date gazetting of these Regulations, a minimum of 60% increasing by 10% annually to reach 80% 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 performance period".*

The BCU could not do the monitoring to determine compliance with the South African Music Regulations, since the Licensee did not submit recordings as requested.

**The Licensee did not comply with the South African Music Content Regulations.**

### **4.3 Regulations regarding Standard Terms and Conditions for Class Broadcasting Services<sup>5</sup>**

The Licensee did not submit information as requested by the BCU and contravened Regulations 9(1)(a), 9(1)(d) and 9(4) of the Regulations.

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<sup>5</sup> Standard Terms and Conditions for Class Broadcasting & Electronic Communications Network Services, 2010 as published in *Government Gazette* No. 33296 dated, 14 June 2010, as amended

**The Licensee did not comply with the Standard Terms and Conditions for Class Broadcasting Services.**

## **5. CONCLUSION**

For the 2019/20 financial year, the Licensee submitted the same attendance register for three (3) different meetings, did not submit recordings as requested, submitted monthly programming reports, a year later which means non-compliance with most obligations of its C-CSBS licence and applicable Regulations. The Licensee will be informed of the non-compliance and a possible referral to the Complaints and Compliance Committee (CCC).

## **6. TERMS OF REFERENCE**

- 6.1** Appendix A: Itheke FM C-CSBS and RFS licences;
- 6.2** Appendix B: Itheke AGM minutes and attendance register;
- 6.3** Appendix C: Itheke Programming meetings;
- 6.4** Appendix D: Itheke Annual Financial Statements;
- 6.5** Appendix E: Itheke Complaints Report;
- 6.6** Appendix G: ICASA South African Music Content Regulations, 2016 as published in *Government Gazette* No. 39844 dated, 23 March 2016. (**Repealed** - *ICASA South African Music Content Regulations, 2006 as published in Government Gazette No. 28453 dated, 31 January 2006*);
- 6.7** Appendix H: Regulations on Standard Terms and Conditions for Class Broadcasting & Electronic Communications Network Services, 2010 published in *Government Gazette* No. 33296 dated, 14 June 2010, as amended. (Undergoing another amendment in 2019); and
- 6.8** Appendix I: ICASA Compliance Procedure Manual Regulations, 2011 as published in *Government Gazette* No. 34863 dated, 15 December 2011 (re: submission of Form 12A: ECN/S and BS Complaints Reporting).

**END**

**March 2021**