



5 FM

ANNUAL COMPLIANCE

REPORT

MARCH 2022

2020/2021 ANNUAL COMPLIANCE REPORT

SOUTH AFRICAN BROADCASTING CORPORATION (SABC) BROADCASTING AS 5 FM

LICENCE PERIOD: 18 December 2018 - 17 December 2028

1. PREFACE

The Independent Communications Authority of South Africa (the Authority) has a statutory mandate in terms of the Constitution, the ICASA Act, the Electronic Communications Act (ECA) and the Broadcasting Act 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.

The purpose of the report is to give an account of 5 FM's compliance with the terms and conditions as set out in its licence for the 2020/2021 financial year. Aspects of compliance that are measured comprise of Format, Local Content Obligations, General Programming Obligations and Training and Skills Development.

Further, the report will measure compliance with regulations that include South African Music Content, Standard Terms and Conditions for Individual Licensees, Universal Service and Access Fund, General Licence Fee, Code of Conduct for Broadcasters, and the ICT Covid-19 National Disaster Regulations first published in April 2020 and the subsequent amendments following the proclamation of the State of National Disaster.

The ICT Covid-19 National Disaster Regulations as amended have introduced exemptions with specific service licence conditions and/or revised quotas and such will be reflected in the body of the report accordingly.

2. BACKGROUND

5 FM is an Individual Sound Broadcasting Service Licensee of the South African Broadcasting Corporation (SABC). The radio station's mandate is to provide a Contemporary Hit Radio service to the geographic areas of Gauteng, Free State, Western Cape, Northern Cape, Eastern Cape, North-West, Kwazulu-Natal, Mpumalanga and Limpopo. The radio station is situated at SABC Headquarters of Auckland Park in Johannesburg, Gauteng Province. For the period 2020/2021 (peak COVID-19), there was no audience measurement report from the Broadcast Research Council of South Africa (BRC), however, for the licensee, the listenership figures for the previous reporting period were 647 000¹.

3. COMPLIANCE ASSESSMENT

3.1 Ownership and Control

Clause 1 of the licence stipulates that:

- 1.1 Name of company/entity: The South African Broadcasting Corporation*
- 1.2 Shareholders: The State shall hold one hundred (100%) percent of the shares of the Corporation*
- 1.3 Ownership by persons from historically disadvantaged groups: N/A*

For the period under review, there were no changes in the name and shareholding of the Licensee. 5 FM forms part of the commercial broadcasting service of the SABC and continues to be fully owned by the State.

The Licensee complies with clauses 1.1, 1.2 and 1.3 of its licence.

¹ <https://brcsa.org.za/brc-ram-listenership-report-oct18-mar19/>

3.2 Geographic Coverage

Clause 2 of the schedule to the licence states that:

"The coverage area is as defined in the map attached to the radio frequency spectrum licence".

The radio frequency spectrum licence outlines the radio station's coverage areas to be one of a national footprint in all major urban areas, with transmitter sites across major cities in all nine provinces.

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

3.3 Language(s)

Clause 3 of the schedule to the licence states that the language of broadcast is as follows:

"Principal Language: English".

For the period under review, the Authority's monitoring exercise confirmed that 5 FM's principal language is English. This is applicable to all programmes including news, sports and other general programming.

The Licensee complied with clause 3 above.

3.4 Format

Clause 4.1 of the schedule to the licence states that:

"The licensed service shall be a sound broadcasting service in a Contemporary Hit Radio format".

The licensee takes the format of a contemporary hit radio, which appeals to a youthful, socially active and vibrant audience. The monitoring exercise confirmed that the station broadcasts a wide range of hit radio shows with contemporary pop culture.

The Licensee complies with clause 4.2 of the schedule to its service licence.

Clause 4.2 of the schedule to the licence states that:

"The format may not deviate by more than fifteen percent (15%) from the above format".

For the period under review and in line with the ICT COVID-19 National Disaster Regulations, the performance period was shortened by a period of at least four (4) hours, which resulted in some programmes not airing as per regular programming schedule

However, the monitoring exercise found that the licensee did not deviate from its Contemporary Hit Radio format for the period under review.

The Licensee complies with clause 4.2 of the schedule to its licence.

Clause 4.3 states that:

"The service authorised by this licence forms part of the commercial service division of the Licensee".

5 FM is categorised as the commercial radio station of the SABC as outlined in its licence. Unlike its sister stations that fall under the public service division of the SABC, 5 FM has lesser public mandate obligations. This allows room for flexibility especially with regards to its Local Content obligations.

The Licensee complies with clause 4.3 of the schedule to its licence.

3.5 General programming obligations

3.5.1 General

Clause 6.1.1 of the schedule to its licence states that:

"To the extent that the Licensee provides programming of a religious nature, the Licensee shall ensure that its programming adequately reflects the diversity of South Africa's Religion".

The Licensee's revised Editorial Policy states, on clause 9.2.8 under matters of Policy on Religious Content that: *'The content should take account of regional factors, target audiences, language and cultural preferences, and the devotional needs of specific groups.'*

5 FM, falling under the commercial service division of the SABC, as well as being contemporary hit radio station, does not carry religious content.

The Licensee complies with clause 6.1.1 above.

Clause 6.1.2 of the schedule to the licence further provides that:

"The Licensee shall during the South African performance period provide material that caters and has due regard for the interests of all sectors of South African society and shall provide programming on health-related issues, gender issues relevant to all age groups".

For the period under review and in line with the ICT COVID-19 National Disaster Regulations, the performance period was shortened by a period of at least four (4) hours, which resulted in some programmes not airing as per regular programming schedule.

The monitoring exercise found that the Licensee prepares content that is audience specific while remaining relevant and informative. This is in keeping with its commercial objectives and radio station format.

Sound broadcasting Licensees were exempt from compliance with specific programming requirements and promises of performance during the National State of Disaster. Therefore, findings on compliance with this clause of the licence were not made/determined.

3.5.2 News and Current Affairs

Clause 6.2.1 of the schedule to the licence states that:

"The Licensee shall broadcast at least 30 minutes of News per day during the South African Performance Period".

For the period under review and in line with the ICT COVID-19 National Disaster Regulations, the performance period was shortened by a period of at least four (4) hours, which resulted in some programmes not airing as per regular programming schedule. However, from the monitoring exercise extracts of news that were found were the following:

- *"A former police commissioner in KwaZulu-Natal and a police captain who are allegedly connected to a 2010 tender fraud are expected to hand themselves over at the Durban Central Police Station on Monday morning. The two are the remaining suspects in the corruption case involving controversial Durban businessman Thoshan Panday and Police Colonel Navin Madhoe who were arrested and appeared in court on Friday. All four accused are linked to a R47 million fraudulent police accommodation tender awarded during the 2010 World Cup. Panday and Madhoe were granted bail of R100 000 and R10 000 respectively. NPA Spokesperson, Sipho Ngwema, says once the two remaining suspects have presented themselves at the police station, they will be processed to the Durban Magistrate's Court for a bail application. "Two suspects are supposed to hand themselves over at 8 o'clock on Monday at the Durban central police station. this is in connection with the R47 million d corruption case that is in connection with the world cup. There were two suspects that appeared last week's already on Thursday. They were released on bail so the two suspects will appear in court probably later on Monday after they have surrendered themselves at the central police station."*
- *Gautrain employees affiliated to the National Union of Metalworkers – (Numsa) are set to go on strike from tomorrow. The union says its members will be picketing as part of its indefinite strike until the Bombela Operating Company (BOC) engages them meaningfully on their demands. Numsa accuses the operating company of imposing a 4% wage increase on its members, without engaging or negotiating with them. They're demanding an 8% salary hike.*

Numsa Spokesperson Phakamile Hlubi-Majola says the picket will commence at 8 o'clock tomorrow morning.

- *"We condemn attempts by the BOC to intimidate our members into backing down from the strike and backing down on their demands. They have been sending out letters to employees, trying to encourage them to resign from NUMSA in an effort to block the strike. The management of Gautrain still have an opportunity to engage us, but they refuse. Instead they would rather jeopardise the livelihoods of thousands of commuters by provoking our members to strike and refusing to sit around the table to negotiate."*
- *South Africa has recorded 1573 new coronavirus infections, bringing the national total to 681 289. There are also 38 more Covid-19 related deaths – 37 from Gauteng and 1 from the Western Cape – bringing the total number of Covid-19 related deaths in SA to 16,976.*
- *The Mayor of the Sedibeng Municipality south of Johannesburg, Busisiwe Modisakeng, has conveyed her condolences to the family of murdered municipal manager, Stanley Khanyile. The 52-year-old was gunned down in Alberton on Saturday in what is suspected to have been a hit. He was shot six times while sitting in his car in the parking lot of a shopping centre. No one has been arrested in connection with the killing. Khanyile was due to appear in court on 16 October on charges of money laundering, fraud and theft relating to a multi-million-rand project in the Eastern Cape while he was the head of the provincial Social Development Department. He served as Sedibeng Municipal Manager from June 2017. Municipal Spokesperson, Saviour Kgaswane says the murder was brutal.*
- *"The brutal and inhumane murder of Mr Khanyile has left a devastating pain and sudden loss to the family of Sedibeng District Municipality and its stakeholders. I humbly urge that we provide the Khanyiles the much-needed space and support during this dark and trying time for their loss and grief and to ensure that Mr Khanyile receives a dignified send-off," says Modisakeng.*

Police Spokesperson Mathapelo Peters has appealed to the public to help the police with information on the shooting.

- *"The motive for the shooting is unclear at this stage. Anyone who may have witnessed the incident or any information that could lead to the apprehension of the suspect or suspects is urged to contact the nearest police station or to contact the saps crime stop number 08600 10111. All the information will be treated confidentially," says Peters."*

Sound broadcasting Licensees were exempt from compliance with specific programming requirements and promises of performance during the National State of Disaster. Therefore, findings on compliance with this clause of the licence were not made/determined.

Clause 6.2.2 of the schedule to the licence states that:

"The Licensee shall in the production of its news and current affairs programming:

- Exercise full editorial control in respect of contents of such programming;*
- Include matters of international, national, regional and where appropriate, local significance;*
- Meet the highest standards of journalistic professionalism;*
- Provide fair, unbiased, impartial and balanced coverage independent from governmental, commercial or other interference; and*
- Provide a reasonable opportunity for the public to receive a variety of points of view on matters of public concern.*

On 03 July 2020, the SABC released to the public, the revised SABC Editorial Policies after public consultation process. The policies, which were initially launched in 2004 are, according to the Licensee, a much-needed refresh that considers the changes in the broadcasting environment, public interest obligations and evolving content consumption patterns, among others.

The principle of editorial independence is entrenched in the SABC's Editorial Code, which states that *"The scope of the public service mandate means that the SABC has*

to provide consistent, relevant, useful and high-quality content, including information and analysis”.

For the period under review, there was a suspension on the above-mentioned obligation under the provisions of the ICT COVID-19 National Disaster Regulations. However, the monitoring exercise found that 5 FM broadcasts matters of national and international significance such as the latest developments related to the pandemic.

The Licensee complies with clause 6.2.2 of the schedule to its licence.

3.6 Training and Skills developments Obligations

Clause 7 of the schedule to SABC licence stipulates that:

"7.1 The Licensee must adopt and implement equal opportunity employment practice.

7.2 The Licensee must ensure that its management and staff are representative of South African society and that its human resource policies take into account the development of managerial, production, technical and other skills and expertise, particularly with regard to the historically disadvantaged persons.

7.3 The Licensee shall endeavour to achieve fair and reasonable participation by historically disadvantaged persons with respect to:

- (a) its management and control structures*
- (b) skills development*
- (c) enterprise development; and*
- (d) procurement*

7.4 The Licensee must, within thirty (30) days of the end of each financial year, provide the Authority the written information regarding its compliance with the above requirements.”

The Licensee submitted its Employment Equity and Transformation plan² report and its Training and Skills Development that provides a detailed breakdown of its compliance with the above requirements to the Authority for the period under review³ within 30 days of the end of the financial year.

These reports indicate that the Licensee has adopted and implemented equal opportunity employment practices and showed that the Licensee has remained committed to diversity and inclusion in the workplace. Its workforce represents the different groups of South African society.

The report further shows that the licensee delivered 765 training interventions for 690 employees. Of the total 690 employees, 491 were Africans, 67 were Coloureds, 41 were Indians, 91 were whites and 14 employees living with disabilities. The Licensee further endeavours to ensure that females are empowered and therefore 53,62% of the total employees trained were female.

Thus, confirming that the Licensee's policies consider the development of managerial, production, technical and other skills and expertise, particularly regarding the historically disadvantaged persons.

Fair and reasonable participation by historically disadvantaged persons is evident at all occupational levels and in decision-making positions.

The Licensee complies with its training and skills developments obligations.

The Licensee complies with clause 7 of its licence.

3.7 Provision of Audited Financial statements (AFS) to the Authority

Clause 8 of the licence stipulates that:

² Appendix D: SABC Employment Equity and Transformation: Report to ICASA, Reporting period: 01 April 2020 – 31 March 2021.

³ Appendix D: Skills and Development Report.

“The Licensee shall provide the Authority with the audited annual financial statements of the licensed service within four (4) months of the end of the Licensee’s financial year, if the Licensee may on good cause apply to the Authority for extension”.

The Licensee submitted its audited financial statements within the regulatory timeframes.

The Licensee complied with clause 8 of its licence.

4. REGULATIONS

4.1 ICT COVID-19 National Disaster Regulations

Following the government’s declaration of the National State of Disaster under the Disaster Management Act, 2002, the Authority published the ICT COVID-19 National Disaster Regulations in April 2020 and subsequent Amendments. The purpose of the Regulations was, among others, to prescribe minimum standards for Licensees in line with the National State of Disaster. The regulations generally provided for the relaxation of some obligations for Licensees under prevailing circumstances. The exemptions and/or suspensions for Broadcasting Licensees include:

- *The performance period was shortened from 05h00 – 23h00 to 07h00 – 21h00;*
- *The requirement for licensees to submit programming logs and recordings to the Authority quarterly was suspended;*
- *Television broadcasting service Licensees were exempted from compliance with the local television content quotas and specific advertising and programming requirements in terms of licence conditions during the National State of Disaster;*
- *Sound broadcasting service Licensees were exempted from compliance with specific programming requirements and promises of performance in terms of licence conditions during the National State of Disaster;*

- *Sound broadcasting service Licensees to comply with the local content music quotas; and*

There were no incidents of non-compliance with the ICT COVID-19 National Disaster Regulations for the period under review.

4.2. ICASA South African Music Content Regulations

Regulation 3(2) of the Regulations on South African Music Content as published on 23 March 2016 provides 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 monitoring exercise found at least 35% of SA Music Content during the monitoring period. Artists found on the playlist include Kabza De Small; Sho Madjozi; Jethro Tait; Matthew Mole; James Deacon; Connell Cruise; DJ Maphorisa and many others.

The monitoring exercise has taken into consideration the impact of the reduced performance period on compliance with this clause; therefore, findings of compliance with this clause of the licence were not made.

4.3 Regulations regarding Standard Terms and Conditions for Individual Licences

Regulation 11 (3) of the Standard Terms and Conditions for Individual Licences Regulations⁴ stipulates that:

⁴ Regulations regarding the Standard Terms and Conditions for Individual Licensee’s

"A station must clearly identify itself at intervals of not more than thirty (30) minutes."

There were no incidents of non-compliance with the Standard Terms and Conditions for Individual Licences committed by the licensee during the period under review.

The Licensee complies with the regulations on standard terms and conditions for individual Licensees.

4.4 Universal Service and Access Fund Regulations

Regulation 3 of the USAF Regulations⁵ stipulates that:

- (1) "Every holder of a licence granted in terms of Chapters 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".*
- (2) "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 for the same financial year".*

A confirmation of the Licensee's annual contribution to the MDDA was received from the Licensee and this was done within the stipulated timeframes.

The Licensee complies with the regulations in respect of Universal Service and Access Fund.

4.5 COMPLAINTS

Form 12A: Complaints Report of the Compliance Procedure Manual Regulations read with the Code of Conduct for Broadcasters requires that broadcasters complete the form bi-annually in accordance with the Licensees' Financial Year.

⁵ Universal Service and Access Fund Regulations

The Licensee is affiliated to the National Association of Broadcasters ("NAB"), and as such, any complaints related to this Licensee is administered through the Broadcasting Complaints Commission of South Africa ("BCCSA"). For the period under review, there were no complaints escalated to the Authority.

5. CONCLUSION

The Licensee broadly complied with its licence terms and conditions and related Regulations for public broadcasting during the period under review.

6. TERMS OF REFERENCE

- Attachment 1 : 5 FM's Broadcasting Service Licence
- Attachment 2 : 5 FM's Frequency Spectrum Licence
- Attachment 3 : Extract from the Licensee's Revised Editorial Policy (2020)
- Attachment 4 : The Licensee's training report
- Attachment 5 : Regulations regarding the standard terms and conditions
- Attachment 6 : Universal Service and Access Fund Regulations
- Attachment 7 : Proof of SABC's Contribution to USAF

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