



BAY FM ANNUAL COMPLIANCE REPORT

MARCH 2022

2020/2021 ANNUAL COMPLIANCE REPORT

CAMPUS BAY FM BROADCASTING AS BAY FM

LICENCE PERIOD: EXPIRED IN JULY 2019 RENEWAL IN PROGRESS.

1. PREFACE

The Independent Communications Authority of South Africa ("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 services 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 licence⁵ and any relevant legislation and/or regulations.

While the second amendment to the ICT Covid-19 Regulations, gazetted on 05 May 2020, sought to exempt Licensees from compliance with their specific terms and conditions and promises of performance; an all-conclusive report is necessary for Bay FM as it should highlight the progress it has made in terms of rectifying historic non-compliance⁶.

The purpose of the report is to give an account of Bay FM's compliance with the terms and conditions, as set out in its license, for the period starting 01 April 2020 ending 31 March 2021. Aspects of compliance that this report will measure include Geographic Coverage, Community Participation, Programming, Format, News and Information, Local Content Obligations, Language(s), South African Music Regulations, Regulations Regarding Standard Terms and Conditions.

2. BACKGROUND

In March 2019, the Authority published an Annual Compliance Report for Bay FM, formerly known as Campus Bay. In this report the Authority recorded various areas of non-compliance with the licence terms and conditions and determined

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 Bay FM's Broadcasting Service License

⁶ Bay FM Annual Compliance Report March 2019

that an intervention exercise would be necessary to assist the Licensee to comply in full.

Immediately after the publication of the 2019 Annual Compliance Report, the Licensee was required to prioritise the change in the contact details and address. This would have been the Licensee's first task as other areas of non-compliance required monitoring over an extended period of time. In a meeting with the Authority in October 2019, Bay FM advised of their inability to submit an appendix 4.2 of Form L (the Resolution) as they could not get hold of the "*contact person as per the Licence*".

Herein further, the report will highlight on the Licensee's attempts to correct its non-compliance in the past.

3. COMPLIANCE ASSESSMENT

3.1 Licensee

Clause 1 of the Licence provides that:

"The Licence is issued to:

1.1 Name of Entity: Campus Bay FM

1.2 Name of the Station: Bay FM

1.3 Control of the Licensee: Control shall vest in the Board of Directors of a Non-Profit Company known as Campus Bay FM."

Bay FM's submissions confirm that the Licensee continues to go by the name of the station and that all branding is reflected as Bay FM. Active monitoring of the Licensee's programme recordings also confirmed that the name is still as per clause 1.2 of the licence.

In the period under review, the Authority can conclude that Bay FM complied with clause 1 of the Licence.

3.2 Licence Area

Clause 3 of Bay FM's service licence provides as follows:

"The Licensee shall provide services to Nelson Mandela Bay Municipality which includes Port Elizabeth, Uitenhage, Despatch, Jeffreys Bay, Humansdorp, Patensie and the surrounding areas in the Eastern Cape Province as set out in the Licensee's radio frequency spectrum licence⁷."

Bay FM's coverage areas is still as prescribed in the licence document. Further, in the year under review, the Authority did not receive reports or complaints indicating that the radio station has interfered in areas that are outside its coverage area.

The Licensee complied with clause 3 of its licence.

3.2 Community

Important to note: The promulgation of the ICT Covid-19 Regulations in April 2020 means compliance with the clause on community participation i.e. holding of or convening an annual general meeting (AGM) or other consultative community meetings, would not be enforced and therefore, no reporting regarding the clause. The case with Bay FM is unique in that a lot weighed on their renewed licence. This part of the report, therefore, it is merely for the purposes of highlighting the efforts the Licensee went into in order to correct the non-compliance found in 2019.

Clause 4.1 of Bay FM's schedule to the licence reads:

"The Licensee shall provide services to a geographic community of all languages in particular those in the age group 16 to 24 years residing within the geographic coverage area specified herein".

The Licensee submits that they provide broadcasting service as prescribed by the licence document.

The monitoring exercise carried out on the Licensee's programming profile found that Bay FM's programme offering is indeed targeted at the age group specified by the clause. The nature of music selection and content in programming confirmed that the Licensee mostly targets the age group per the licence clause.

⁷ Appendix C: Bay FM's Frequency Spectrum License

Clause 4.2 of the schedule to the licence provides 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.

The October 2019 meeting was the first leg of the Authority's interventions in correcting Bay FM's non-compliance as recorded in the 2019 Annual Compliance Report. The purpose of that meeting was to map out a timeline within which the Authority expected to see efforts towards compliance unfolding. As a conclusion from the October 2019 meeting, Bay FM would have convened its first Annual General Meeting in March 2020, in seven years. In addition to this, the meeting concluded that one community participation meeting will be convened at least 3 months into the new financial year which would have been around June 2020. The second community participation meeting was expected to sit before December 2020.

All three meetings, prescribed by this clause and discussed in the October 2019 engagement, would have been preceded by an administrative process where the Licensee invites individuals and non-profit organisations to be part of its membership structure. At the end of January 2020, Bay FM submitted its membership list to ICASA subsequent to the invitation sent out for membership admission.

While the Licensee was in preparations to convene the AGM, the National State of Disaster was declared, and the 21 days Lockdown Level 5 was introduced on 26 March 2020. Therefore, Bay FM could not convene its Annual General Meeting as well as the two meetings scheduled for later in the same year because of the Lockdown and the regulations introduced during that time. In essence, Bay FM could not convene the two meetings prescribed by this clause but was willing in all preparations.

The ICT Covid-19 Regulations exempted Licensees from complying with this obligation as such compliance with clause 4.2.1 will not be concluded on.

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.

Bay FM could not convene the two meetings and as such there was no proof of meetings for them to submit.

The ICT Covid-19 Regulations exempted Licensees from complying with this obligation as such compliance with clause 4.2.1 will not be concluded on.

While 4.2.3 prescribes that:

"The Licensee shall hold Annual General Meetings (AGM) 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".

Community Sound broadcasting Licensees were exempt from compliance with the requirement to convene community meetings during the National State of Disaster. Therefore, findings on compliance with this clause of the licence were not made/determined. Having observed the zeal the Licensee had had in preparing for their important meeting, we can safely conclude that their not holding the AGM as they had planned, it was due to the introduction of Lockdown in March 2020 in the country, with the Regulations that were formulated to restrict and limit public gatherings as a direct response to curb the spread of the Covid 19 pandemic.

3.4 Programming

Clause 5.1 of the schedule to the licence provides as follows:

"The Licensee shall provide programming as follows:

5.1.1 Local News and Information: *"The Licensee shall broadcast a total of forty (40) minutes of news per day, 60% of which shall be news from the community produced by the station on issues affecting the community."*

The Licensee's programming log sheets⁸ show that Bay FM schedules an average of 40 minutes of news per day during the South African Performance Period.

The Authority's monitoring exercise found that Bay FM currently schedules 7 news bulletins between 07h00 and 17h00. Each news bulletin lasts for approximately 6 minutes including, financial indicators and the weather report. An improvement from the previous reporting year is that the Authority found that more than 70 percent of Bay FM's news content was of local significance. Most of the overall news bulletin is produced by the Licensee with the assistance of local community service departments and other sectors. This calculates to around 42 minutes of news per day, including Saturdays and Sundays, with approximately 70 percent local content.

While the monitored programme recordings did not find any inconsistencies in the Licensee's weekend news output, Bay FM has always expressed the difficulty involved in executing that obligation due to working with volunteers mostly. The Broadcasting Compliance unit has advised the Licensee to consider the option of applying for an amendment on their weekend news output.

The news extracts that were found during monitoring, include the following:

- *"President Cyril Ramaphosa says he does not view former President Jacob Zuma's recent letter as an insult to him. In a scathing letter Zuma lambasted Ramaphosa of leading the ANC on auto drive by accusing the party of criminality and saying the ANC is 'Accused Number 1' in allegations of corruption. Ramaphosa said at a media conference on the NEC special meeting this weekend he is not easily insulted and will not be responding to the letter. Meanwhile, Ramaphosa says state institutions and law enforcement agencies have no part playing party politics, thus to remain objective. He adds that government is currently strengthening the national prosecuting authority."*
- *"Deputy President David Mabuza says he is grateful to be alive after falling ill for about a month. Two weeks ago he postponed a question-and-answer session in the National Assembly due to him being booked off sick. Last month as well, he canceled a scheduled session in the National Council of*

⁸ Appendix D: Bay FM's Programming Log Sheets (Sample)

provinces due to the same reason. Mabuza says his condition was quite bad."

- *"The City of Cape Town says bold strategies will be required to create an urban environment that is climate resilient, resource efficient and carbon neutral. The city is inviting the public to comment on its draft climate change strategy which will be open for comments from today until the end of the month. the mayoral committee member for energy and climate change, Phindile Maseti, says climate change is a global threat that can only be tackled collectively."*
- *"One of the passengers on a flight from Greece to Wales last week said there were no social distancing rules on the plane. The more than 200 people on a trip from the Island of Santee to Cardiff were all told to isolate after seven passengers tested positive for the coronavirus after arriving in the Welsh capital. Stephanie Whitfield told Sky News that passengers did not wear their masks correctly and regularly took them off to speak to one another. The seven patients are from the three different groups who visited the Santees, popular among young people as a party island."*

5.1.2 South African Music Content: 40%

Bay FM's programming log sheets indicate that the Licensee plays at least 87% South African Music content in its profile. The Authority's monitoring exercise revealed that the Licensee broadcasts approximately 82% South African Music content in their programming. The Authority's finding was that the Licensee schedules at least 7 local songs in each 3-hour programming slot and the Local Top 40 on Friday evening makes out for the balance in terms of quota expectation.

The following local artists were identified as enjoying airplay on Bay FM: Kurt Darren, Zahara, Ami Faku, DJ Maphorisa, Buster 929, Cooper Papi, DJ Gugu, Destruction Boyz, Mafikizolo, Dr Malinga, Busiswa, Prince KB, Babes wDumo, Elvis Blue, Buhle, Mampintsha, DJ Tira, Mshunqisi, Naak Music, AKA, Nathi Mankayi, Musa Sukwene, Kwesta, Ringo Madlingozi, Kabza De Small, Casper Nyovest, Black Coffee ft Busie, Prince KB, Qwabe Twins La Soulmates, Arno Carstens, Amanda Black and many others.

Bay FM complies with clause 5.1.2 of the licence.

5.1.3 Talk vs Music: 40% Talk and 60% Music

A monitoring exercise carried out by the Authority on Bay FM's programming profile found that Bay FM's programming profile is dominated by music. Bay FM plays approximately forty minutes of music – between five and six five songs – in an average hour.

That translates to at least sixty six percent of music played during an hour's programming. In calculation, the Licensee's programming format is at most times, 36% talk and 63% music.

The ICT Covid-19 Regulations exempted Licensees from complying with this specific programming obligation. As such Bay FM's compliance with clause 5.1.3 will be excused.

5.1.4 Language(s) of broadcast:

5.1.4.1 Afrikaans – 30%

5.1.4.2 IsiXhosa – 30%

5.1.4.3 English – 40%

The Authority's monitoring exercise found that Bay FM's programming profile used a fair representation of the licenced languages during the year under review. Afrikaans and IsiXhosa was heard during programming and in reasonable amounts. The Authority's last report found that there was no programming in isiXhosa and little Afrikaans programming on Bay FM.

News in English and Afrikaans was heard during the monitoring exercise, while only English news was found in the last report. News in isiXhosa could not be found and the Licensee blamed this on programming administration during the State of National Disaster. According to Bay FM, there had been a bit of difficulty scheduling News in isiXhosa because of distances presenters had to travel to get to town and the limit on movement during the Lockdown. The contrast between the last report and this monitoring exercise is very clear and an indication that the Licensee is on the mend.

If it wasn't for the exemption on the first the ICT Covid-19 Regulation, a conclusion would be that the Licensee did not to comply with clause

5.1.4 of the Licence. However, the Authority is satisfied with the Licensee's efforts, to correct the non-compliance of the past.

Clause 5.2 of Bay FM's Schedule to the licence makes the following recommendations:

"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."

Bay FM endeavours to keep to the "monthly basis" submission. However, it is not always the case that the Licensee submits its monthly programming log sheets timeously. In leniency towards overstretched administrators in community radio stations, it is noteworthy that Bay FM would often give notice to possible late submission of log sheets.

3.5 Promises of Performance

According to clause 8.1 of the Licence...

"60% of the Licensee's talk programming content shall be aimed at the promotion of literacy, education, community upliftment and informal programming. This will include informal education such as skills development."

In the year under review, the Authority found numerous segments of information, in different time slots, that could be translated as promoting literacy and education. These segments are approximately 15 minutes long and are in all three languages of broadcast. At least 4 slots per day carry 15 minutes of educational offerings and 1 hour of literacy promotion and education per day. In addition, the programmes were heard and which carry purely educational and community uplifting content, were the following:

- Community Matters every Wednesday from 20h00 – 22h00.
- Small Biz Talk, once a month on the last Thursday of the month, from 10h00 to 11h00 – this focuses on small businesses and start-up businesses.
- Family Matters, every Monday from 18h00 – 20h00
- Lekamos, every Saturday from 20h00pm to 23h00. This music programme focuses on upliftment and support for the local artists.

- E-kasi Commitment, every Saturday morning between 05h00 – 06h00. This is a show catering for the differently abled community and is offered in isiXhosa

These findings stand in stark contrast to those recorded in the last report for Bay FM. They indicate great strides towards correcting the non-compliance advised by the Authority's last report.

While regulation 8(b) of the ICT Covid-19 Regulations did exempt Licensee's from complying with their promises of performance, Bay FM satisfactorily complied with clause 8.1 of its licence.

Clause 8.2 give the following prescription:

"The Licensee shall broadcast a broad-based programming that will involve the whole community."

The Authority has always applauded Bay FM's all-inclusive style of programme offering. In monitoring the Licensee's programming profile, the Authority found that Bay FM offers a broad-based programming which considers the entertainment, informative and educational needs of the community at large.

Bay FM complied with clause 8.2 of the licence.

4. REGULATIONS

4.1 Compliance Procedure Manual – Form 12A

The Licensee is required, in terms of the Compliance Procedure Manual Regulations⁹, to submit a Form 12A which reports on all complaints received in each financial year. In the year under review, Bay FM submitted its Form 12A, indicating that the Licensee received no complaints.

4.3 ICASA South African Music Content Regulations

Regulation 3 of the ICASA South African Music Content Regulations 2016¹⁰ stipulates that:

⁹ Appendix E: Compliance Procedure Manual Regulations

¹⁰ Appendix F: ICASA South African Music Content Regulations

"A holder of a community sound broadcasting service licence must ensure that after eighteen (18) months from the date of 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 evenly throughout the performance period."

The Authority's monitoring exercise revealed that the Licensee plays approximately 82% South African Music content in their programming. The Authority's finding was that the Licensee schedules at least 7 local songs in each 3-hour programming slot and the Local Top 40 on Friday evening makes out for the balance in terms of quota expectation.

The local artists that were heard enjoying airplay on Bay FM, were the following: Kurt Darren, Zahara, Ami Faku, DJ Maphorisa, Buster 929, Cooper Papi, DJ Gugu, Destruction Boyz, Mafikizolo, Dr Malinga, Busiswa, Prince KB, Babes wDumo, Elvis Blue, Buhle, Mampintsha, DJ Tira, Mshunqisi, Naak Music, AKA, Nathi Mankayi, Musa Sukwene, Kwesta, Ringo Madlingozi, Kabza De Small, Casper Nyovest, Black Coffee ft Busie, Prince KB, Qwabe Twins La Soulmates, Arno Carstens, Amanda Black and many others.

4.4 Regulations regarding Standard Terms and Conditions for Class Licensees

Regulation 2 (1) (d) of the Regulations Regarding Standard Terms and Conditions for Class Licensees¹¹ provides two regulations that are constantly and continuously used to measure a Licensee's compliance. The two regulations are 2(1) and regulation 9.

In the past report, the Broadcasting Compliance raised an issue with Bay FM's failure to submit a Form L of the Licensing Process and Procedure Regulations. The Form would have notified the Authority of changes in the contact information for the Licensee. Post publication of that report, Broadcasting Compliance set out to assist the Licensee to fill in and submit the Form L. This exercise proved fruitless as we were unable to locate the contact person as per the Licence.

¹¹ Appendix G: Regulations regarding the Standard Terms and Conditions

The contact person as per the Licence is required by the Form for the submission of a resolution to effect the changes.

The Authority has recently learnt that the contact person as per the Licence has passed on. Bay FM will be advised to submit an affidavit to that effect so that the notification process can continue.

5. CONCLUSION

The Authority found that the Licensee has substantially improved its operations post the October 2019 intervention. There is continued engagements between the Authority and Bay FM to clear out some misinterpretations of the regulations and the Licence document.

6. TERMS OF REFERENCE

Appendix A: Bay FM's Broadcasting Service Licence

Appendix B: Bay FM Annual Compliance Report March 2019

Appendix C: Bay FM's Frequency Spectrum Licence

Appendix D: Bay FM's Programming Log Sheets (Sample)

Appendix E: Compliance Procedure Manual Regulations

Appendix F: Regulations on South African Music Content

Appendix G: Regulations regarding the Standard Terms and Conditions

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