



KAYA FM

ANNUAL COMPLIANCE

REPORT

MARCH 2022

2020/2021 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 report that follows, it is intended to give account of Kaya FM's compliance with the terms and conditions as set out in its licence for the 2020/2021 financial year. Aspects of compliance in the service licence that are measured comprise of Coverage Area, Broadcast Language (s), Format, Local Content Obligations, General Programming Obligations, Training and Skills Development, Community - related Obligations and Ownership and Control Obligations.

Further, the report will measure compliance with Regulations that include the 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 Regulations first published in April 2020 and the subsequent amendments following the proclamation of the State of National Disaster.

The ICT Covid-19 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.

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.

2. BACKGROUND

The Authority issued a renewed commercial broadcasting licence on 04 June 2019 to Kaya FM (Pty) Ltd valid for ten (10) years from the effective date. The Licensee provides sound commercial broadcasting services in the Gauteng province.

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".

The coverage area is as per the coverage map on the frequency spectrum licence. The signal distribution is provided for by Sentech.

The Licensee complies with its geographic coverage area.

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 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 main broadcast is music driven from the breakfast show until the afternoon drive time, with exclusive talk content after the drive time for three (3) hours. The weekend programming is dominated by adult contemporary music from the rest of the African content and from the African diaspora supplemented by 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 notified the Authority of changes to their format and no format changes were found during the monitoring exercise for the period under review.

The Licensee complies 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 weekday news from 06h00 until 18h00 and from 07H00 until 13H00 on Saturday and Sunday. The news broadcasts are an average of four and half minutes for an average total of fifty-nine minutes weekdays and thirty-two minutes over the weekends.

The news items heard during the period under review, among others, were the following:

- *"Security agencies are on high alert at some independent schools in the province with members of the Congress of South African Students waiting to force them to shut down. The student body says its unfair that some schools that are well resourced are still choosing to have face to face classes.*
- *The Public Protector's office says any remedial action against Malusi Gigaba in relation to the Gupta naturalisation matter will serve no judicious purpose*

because he is no longer a member of Parliament. A report released by the office of Busisiwe Mkhwebane has found that while the former Home Affairs minister has breached the executive ethics code on the Gupta citizenship, he didn't abuse his power".

- *The ANC Caucus in the Gauteng Legislature has rejected a motion of no confidence by the DA in Premier David Makhura. The DA recently wrote to the speaker of the Gauteng Provincial Legislature Ntombi Mekingwe requesting that a special seating be convened urgently to debate a motion of no."*

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:

- *"Police in Malawi has arrested four people for using bank notes to decorate Valentine's Day bouquet. This comes after the day of love celebration images circulated on social media with couples sharing the gifts that they received or were given."*

The Licensee includes a news story from the African content 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 news broadcast does disclose the source, but majority of their news is from interviews conducted on the other shows. They also invite listeners to call with any news related stories to the news desk.

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".

The Licensee's submits that's they have spent around four hundred and ninety thousand rands during the financial year under review for training and development for their employees.

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 submits that it allocated airtime to promote social responsibility programmes for campaign such as Back to School, Breast Cancer Awareness amongst others for a total value over a million rands⁵.

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 submits that their executive management consists of thirteen (13) employees are all from previously disadvantaged group, with the four out of five of the remuneration committee members from previously disadvantaged group. The radio

⁵ Appendix C

station however submits that's the financial performance of the company for the year under didn't meet the requirement for profit sharing.

The Licensee complies with clause 9 of the schedule to its service licence.

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

Regulation 3 (2) of the ICASA South African Music Contents Regulations published on 23 March 2016 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".

In response to Covid 19 pandemic, the Authority promulgated the ICT Covid 19 National Disaster Regulations on 06 April 2020 to mitigate whatever negative impact on the broadcasting services at large. Under Minimum Standard, regulation 4 (7) stipulates that:

"The performance period for both sound and television broadcasting shall run from 07h00 to 21h00".

The Licensee's local music content submission reflects an average of thirty six percent (36%) for overall local music output which includes music played, promotion of new musicians and interviews that might be added through the format factor point system. Some of the South African artists featured included *Khaya Mthethwa & Oasis Worship, Musa, Thabsie feat Mthunzi, Letta Mbulu & Caiphus Semenya* amongst others.

The Licensee complies with the South African Music Content Regulation.

4.3 Standard Terms and Conditions

The Authority could not find any instances of non-compliance by the Licensee with the Regulations regarding Standard Terms and Conditions for Individual Licences during the year under review.

4.4 Regulations in respect of the Prescribed Annual Contributions of Licensees to the Universal Service and Access Fund

Regulation 3 of the Regulations in respect of Prescribed Annual Contributions of Licensees to the Universal Service and Access Fund (USAF), published in Government Gazette, No. 34010 of 10 February 2011, 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".

Kaya FM's financial year end is June, and they paid their contribution to the Universal Service and Access Fund on 06 January 2022.

The Licensee complies with the USAF regulations.

4.6 General Licence Fees Regulations

Regulation 3 (1) of the General Licence Fees Regulations published on Government Gazette No. 36323 of 28 March of 2013 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 provides for Licensees to pay an annual licence fee in accordance with their licensed revenue and to be calculated using the set formula.

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 have paid their licence fees on 06 January 2022.

The Licensee complies with the General Licence Fees Regulations.

5. CONCLUSION

The ICT Covid 19 National Disaster Regulations as referred to in the preface, introduced exemptions and suspended specific terms and conditions in the licences and regulations. Therefore, the compliance assessment with such conditions and regulations will be conducted in the next review wherein most of the exemption would probably have been lifted by the subsequent amendment.

The Licensee has complied with the relevant regulations and its service license terms and conditions for the year under review

6. TERMS OF REFERENCE

Appendix A: Kaya FM's broadcasting service licence

Appendix B: Form 9 submission

Appendix C: Training and Development Report

Appendix D: Report on Community related obligations

Appendix E: ICT Covid 19 National Disaster Regulation

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