



NKQUBELA COMMUNITY RADIO ANNUAL COMPLIANCE REPORT

MARCH 2022

2020/2021 ANNUAL COMPLIANCE REPORT

NKQUBELA COMMUNITY RADIO

LICENCE PERIOD: 27 OCTOBER 2018 to 26 OCTOBER 2023

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 Act to regulate broadcasting activities in the public interest. The Authority has a mandate to ensure compliance by broadcasters with the terms and conditions of the licence, the ECA, the ICASA Act and any other relevant legislation and Regulations.

The purpose of this report is to give an account of Nkqubela Community Radio's compliance with the terms and conditions as set out in its licence for the 2020/2021 financial year. 2020/2021 financial year. Aspects of compliance that are measured comprise of the Geographic Coverage, Community participation, and Programming Obligations.

Furthermore, the report will measure compliance with regulations that include South African Music Content, Standard Terms and Conditions, and the ICT Covid-19 National Disaster Regulations⁴ 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.

¹ The Constitution of the Republic of South Africa, No 108 of 1996

² ICASA Act No 13 of 2000, as amended

³ Electronic Communications Act No 36 of 2005

⁴ The ICT COVID-19 National Disaster Regulations, 2020 as published in *Government Gazette* No. 43207 dated, 06 April 2020, as amended.

2. BACKGROUND

Nkqubela Community Radio is a class broadcasting service Licensee providing services to a geographic community residing in the Nelson Mandela Metropolitan Municipality in the Eastern Cape Province. The radio station provides a programming format that is a mix of talk and music.

3. COMPLIANCE ASSESSMENT

3.1 Control Structure

Clause 1 of the schedule to the licence provides that:

"The Licence is issued to:

1.1 Name of company/entity: Nkqubela Community Radio.

1.2 Name of Station: Nkqubela Community Radio.

1.3 Control of the Licensee: Control shall vest in the Board of Directors of Voluntary Association known as Nkqubela Community Radio".

There were no changes reported by the Licensee to its company name and control structure during the period under review. However, the Authority's monitoring processes revealed that the Licensee changed its name and registered a new entity without following proper processes. This is in contravention of Regulation 8 of the Community Broadcasting Services Regulations, 2019.

The Licensee did not comply with clause 1 of the schedule to its licence.

3.2 Licence Period

Clause 2 of the schedule to the licence provides that:

"2.1 The effective date of the licence is 27 October 2018.

2.2 The licence shall expire on 26 October 2023."

The licence is still valid.

3.3 Licence Area

Clause 3 of the schedule to the licence provides that Nkqubela Community Radio's coverage area is as follows:

"The Licensee shall provide services to Nkqubela and surrounding areas in the Eastern Cape Province as set out in the Licensee's radio frequency spectrum licence".

The Licensee confirmed that it provides a service to Port Elizabeth and its surrounding areas in the Nelson Mandela Metropolitan Municipality in the Eastern Cape Province, not Nkqubela as stated in the licence. There is no area or municipality called Nkqubela; therefore, this could be an error from the Authority's side. The technical specifications attached to the spectrum licence show the coverage area as Port Elizabeth. The Licensee was advised to contact Licensing to resolve the matter.

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

3.4 Community

Clause 4.1 of the schedule to the licence provides that:

"The Licensee shall provide services to a Labour (workers) community of interest residing within the geographic coverage area specified herein".

The Licensee submits that it provides a sound broadcasting service as prescribed by the licence document.

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

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; and

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".

Compliance with this clause of the licence was suspended during the period under review as per the ICT Covid-19 National Disaster Regulations.

Further, clause 4.2.3 provides that:

"The Licensee shall hold an Annual General Meeting 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 any Special Annual General Meeting as and when required by the Constitution; 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".

Compliance with this clause of the licence was suspended during the period under review as per the ICT Covid-19 National Disaster Regulations.

3.5 Programming

Clause 5.1 of the schedule to the licence provides that:

"The Licensee shall provide programming as follows:

5.1.1 Local News and Information: The Licensee shall broadcast a total of fifty (50) minutes of news per day. This shall include news from the community produced by the station on issues affecting the identified community."

The Authority's monitoring exercise revealed that the Licensee broadcasts a total of fifty (50) minutes per day. It broadcasts ten five-minute bulletins in English and isiXhosa and they cover local and national news. No news on issues affecting the identified community, produced by the station, was identified during the monitoring exercise.

The following are some of the news items that were identified:

- *"Isebe lezeMpilo leli leMpuma-Koloni lithi kungoku nje akukho mali ibekelwe bucala ukuqesha abasebenzi bezonyango abebengxungxile ukususela kwinyanga kaApril yonyaka ophelileyo. Ukanti oku kuvakaliswe sisithethi selisebe uSizwe Kuphelo kulandela isijwili sabasebenzi bezonyango ekuquka kubo oogqirha nabongikazi abakhala ngokungahlawulwa iintlawulo zabo, kuquka nezamaxesha ongezelelekiyo empangelo, ivertime ngokwentetho yaseSingensini. Ababasebenzi ababetyikitye izivumelwano zengqesho nesebe lezeMpilo leliphondo, basebenze ukususela kumhla*

wokuqala kwinyanga kaApril nyakenye. Izivumelwano zabo zizakuphelelwa ekupheleni kwalenyanga kaMarch. Ukanti elisebe livakalise okokuba alizukubaqesha nanjengoko bebexhomekeke kwinkxaso-mali ibibekelwe bucala ukulwa nobhubhane weCOVID-19.

- A 43-year-old man is expected to appear in the Motherwell Magistrate's Court today on a charge of attempted murder after he allegedly knocked over and dragged an elderly man underneath a vehicle for more than 20 metres. Police Spokesperson, Captain André Beetge says the 43-year-old suspect had been arrested on Saturday and charged with attempted murder. Beetge says the suspect drove a white Renault Sandero at high speed and is alleged to have run over 30-year-old Lubabalo Thusayi in Nqabara Street in NU9. Beetge says while Lubabalo managed to get out of the way, his father Thamsanqa was hit. Thamsanqa regained consciousness at the Livingstone Hospital and was discharged four days later. Beetge says it was established that the vehicle belonged to a former girlfriend of Lubabalo. He says the driver in the vehicle was allegedly one of the woman's relatives.
- President Cyril Ramaphosa says government is considering easing lockdown regulations in preparation for the Easter and Ramadan religious holidays from this weekend. This announcement follows an extremely constructive virtual meeting the President had with the leaders of the faith community who could not host any services last year due to the pandemic. Ramaphosa says it is understandable that after more than a year of labouring under restrictions on religious gatherings, the faith community is keen for a return to a semblance of normality. The President says a number of religious organisations have asked that some of the existing restrictions on the size of congregations be eased, especially as they prepare for Easter and Ramadan services. He said the government is deliberating on these and other issues and will make an announcement soon".

The Licensee does not broadcast news on issues affecting the identified community (workers/Labour), produced by the station, as required by sub-clause 5.1.1 of its licence.

The Licensee partially complies with its news obligation.

Clause 5.1.2 of the licence provides that:

"South African Music Content: 80%"

The Authority's monitoring exercise confirmed that the radio station broadcasts South African music. However, due to the shortened performance period, actual percentages could not be determined.

The Licensee's compliance with this clause could not be determined.

Clause 5.1.3 of the licence provides that the format is as follows:

"70% Talk and 30% Music"

The monitoring exercise revealed that the Licensee's shows are a mixed blend of music and talk. The station has discussions throughout the day and interviews on issues that affect the community. The mid-morning and evening shows are more talk with discussions on matters that affect the community. There are also shows that are informative and educational, with discussions on careers, politics, property investments and health matters among others.

The Licensee complies with its prescribed format.

Clause 5.1.4 of the licence provides that:

Language(s) of broadcast:

5.1.4.1 isiXhosa – 60%

5.1.4.2 English – 30%

5.1.4.3 Afrikaans – 10%.

The monitoring exercise revealed that the Licensee broadcasts its programmes mainly in isiXhosa, with some programmes broadcast in English, especially on weekends. News is also broadcast in English and isiXhosa. Afrikaans was not identified during the monitoring exercise.

The Licensee did not comply with its languages of broadcast obligation.

Clause 5.2 of the schedule to the licence provides 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 ICT Covid-19 National Disaster Regulations exempted Licensees from submitting programming logs as stipulated in their licence terms and conditions. However, Licensees were required to keep the information and submit to the Authority upon request.

The Licensee submitted the programming logs when requested to do so by the Authority.

4. PROMISE OF PERFORMANCE

Clause 8 of the schedule to the licence provides that:

"8.1 60% of the Licensee's talk content shall be aimed at education, labour issues, literacy and information to the community. This will include informal education such as skills development.

8.2 The Licensee shall broadcast programmes relating to children, youth, adults, the elderly and the disabled.

8.3 The Licensee shall establish and maintain a democratically elected co-ordinating committee that includes representatives of community-based organisations, non-governmental organisations, cultural organisations and individual members from its coverage area in the promotion of labour related issues and labour awareness".

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

5. COMPLAINTS

The Licensee is required, in terms of the Compliance Procedure Manual Regulations, to submit a Form 12A which reports on all complaints received during the financial year under review.

The Licensee has not submitted a Form 12A (Complaints Report) as required by the Compliance Procedure Manual Regulations, 2011.

The Licensee did not comply with the relevant clause of the Compliance Procedure Manual Regulations.

6. REGULATIONS

6.1 ICASA Regulations on South African Music

Regulation 3 (3) of the Regulations on South African Music Content as published on 23 March 2016 stipulates that:

"A holder of a community sound broadcasting licence must ensure that after eighteen (18) months of the 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 said period".

For the period under review, the obligation in accordance with the SA Music regulations above, provides for at least eighty percent (80%) of South African music content to be played by community sound broadcasting Licensees.

The Authority's monitoring exercise revealed that the radio station plays a significant amount of South African music during the performance period. Various genres were identified on the station's music line-up including House, Hip Hop, Reggae, Afro-Soul and Kwaito with artists such as *Moneoa, Bucie, Lebo Mathosa, Zakes Bantwini, Sea Bee, Fifi Cooper, Beatenberg, Robbie Malinga, Mi Casa and Bongo Muffin.*

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

6.2 Regulations Regarding Standard Terms and Conditions for Class Broadcasting Licences

The monitoring exercise revealed that the Station Manager occupies dual roles by also being a presenter on the station, which is in contravention of Clause 10A (7) (d) of the regulations on Amended Standard Terms and Conditions for Class Licences, 2016 published in *Government Gazette* No. 39872 dated 30 March 2016, which provides that:

"The Board of Directors/Trustees and station management must not occupy dual roles with regard to being managers/presenters at the station

The Licensee did not comply with the Regulations Regarding Standard Terms and Conditions for Class Broadcasting Licences

7. CONCLUSION

The exemptions and suspensions imposed on Licensees due to the National State of Disaster have been lifted for the next review period. Complete monitoring of compliance with licence conditions and regulations will be conducted in the next review. However, the Broadcasting Compliance Unit will follow up with the Licensee on identified areas of non-compliance.

8. TERMS OF REFERENCE

Appendix A: Nkqubela Community Radio's Service Licence;

Appendix B: Standard Terms and Conditions for Broadcasting Services, 2010 as published in *Government Gazette* No. 33296 dated, 14 June 2010, as amended;

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

Appendix D: ICASA Compliance Procedure Manual Regulations, 2011 as published in *Government Gazette* No. 34863 dated, 15 December 2011; and

Appendix E: The ICT COVID-19 National Disaster Regulations, 2020 as published in *Government Gazette* No. 43207 dated, 06 April 2020, as amended.

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