



POWER 98.7 FM ANNUAL COMPLIANCE REPORT

MARCH 2022

2020/2021 ANNUAL COMPLIANCE REPORT

POWER 98.7 FM (PTY) LTD BROADCASTING AS POWER 98.7 FM

LICENCE PERIOD: 25 May 2012 – 24 May 2022

1. PREFACE

The Independent Communications Authority of South Africa (“the Authority”) has a statutory mandate in terms of the Constitution, the ICASA Act and the Electronic Communications Act of 2005 (“EC Act”) 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, the Electronic Communications Act, the ICASA Act, any relevant legislation and Regulations.

The report that follows, it is intended to give account of Power 98.7 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 Geographic Coverage, Broadcasting Languages, Format, General Programming Obligations, Training and Skills Development and Community-Related Obligations.

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 Regulations¹ 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

In May 2012, the Authority issued Power 98.7 FM (Pty) Ltd (“the Licensee”) with an Individual Commercial Sound Broadcasting Service licence² and a Radio Frequency Spectrum licence³ in terms of the EC Act.

¹ The ICT COVID-19 National Disaster Regulations, 2020 as published in *Government Gazette* No. 43207 dated, 06 April 2020, as amended.

² Appendix A: Power 98.7 FM Broadcasting Service Licence

³ Appendix B: Power 98.7 FM Frequency Spectrum Licence

The Licensee broadcasts as Power 98.7 FM and provides a service in the Gauteng province. The radio station is broadcasting from the studios situated at 79 Central Street, Houghton. The signal distribution service is conducted by Sentech (Pty) Ltd.

3. COMPLIANCE ASSESSMENT

3.1 Control Structure

3.1.1 Ownership and Control

Clause 1 of Power FM 98.7 provides that:

"The licence is issued to:

1.1 Name of Company/Entity: Power 987 FM (Pty) Ltd

1.2 Name of Station: Power 987 FM".

The monitoring exercise indicates that the Licensee refers to itself as Power 98.7 FM (Pty) Ltd.

The Licensee complies with clause 1 of its licence.

1.3 Shareholders:

Janistone (Pty) Ltd	– 68.53%
AiH Media (Pty) Ltd	– 3.82%
MIB Radio & Media Investments (Pty) Ltd	– 7.83%
Friedshelf 1136 (Pty) Ltd ("Ndalo Radio Broadcasting")	– 8.100%
Friedshelf 1125 (Pty) Ltd ("Kgalakgadi Media")	– 4.48%
Friedshelf 1134 (Pty) Ltd ("Thonga Media")	– 2.24%
Friedshelf 1135 (Pty) Ltd ("TT Media and staff")	– 2.77%
Friedshelf 1122 (Pty) Ltd ("Jacobs the 4")	– 2.24%

The Licensee's share certificates and annual compliance submissions show that its shareholding has changed but it did not file a notice with the Authority with regards to the changes, in line with the Standard Terms and Conditions Regulations. The Licensee has on numerous occasions been advised of this irregularity and advised to correct it accordingly. However, to date the Licensee has not rectified the irregularity.

The Licensee does not comply with clause 1.2 of its license.

3.2 Contact Details

Clause 2 of the schedule to Power 98.7 FM's licence provides that:

1.4 "The contact person for the Licensee shall be:

1.4.1 Name: Mr. Given Mkhari;

1.4.2 Tel: 010 014 9000;

1.4.3 Fax: 011 014 9099;

1.4.4 Cell: 082 561 1661

1.4.5 Email: GivenM@powerfm.co.za

SeanokengM@powerfm.co.za

3.3 Notices and Addresses

Clause 3 of the licence provides that:

3.1 "The Licensee chooses the following addresses as its principal addresses:

3.1.1 Postal Address: PO Box 5313

Rivonia

Bryanston

2191

3.1.2 Physical Address: 79 Central Street

Houghton Estate

2198

The were no changes reported by the Licensee to its principal addresses during the period under review. The Licensee has however submitted a different person as its contact person but it did not submit a notification to the Authority in line with the Processes and Procedures Regulations and as per the Standard Terms and Conditions Regulations.

The Licensee did not comply fully with clause 2 of the schedule to its licence.

3.4 Geographic Coverage Area

Clause 2 of the schedule to Power 98.7 licence provides that:

"Geographic coverage:

"Gauteng, as indicated in the attached coverage map, from time to time".

The Authority did not receive reports suggesting the Licensee broadcasts outside the defined coverage area.

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

3.5 Broadcast Language

Clause 3 of the schedule to Power 98.7 FM's licence provides that:

"Principal Language: English, however the other common languages spoken in the area will be flexibly used in accordance with listeners".

Power 98.7 broadcasts programmes in English as its primary language.

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

3.6 Format

Clause 4 of the schedule to Power 98.7 FM licence provides that:

"The Licensee shall be a full-service adult contemporary talk radio station with up to 70% of the airtime devoted to talk and at least 30% to music".

The Authority's monitoring exercise found that the Licensee broadcasts a full service, which is made up of predominantly adult contemporary talk and at least 30% music, as required by the clause above.

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

3.7 Local Content Obligations

Clause 5 of the schedule to Power 98.7 FM licence provides that:

"The Licensee shall broadcast 35% of South African music".

The Licensee's quarterly submissions indicate that it broadcasts approximately 50% South African music.

The monitoring exercise confirmed that the Licensee broadcasts a significant amount of South African music during the performance period. However, due to the shortened performance period, actual percentages could not be determined.

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

3.8 General Programming Obligations

Clause 6.1 of the schedule to Power 98.7 FM's licence provides that:

"The Licensee shall primarily dedicate current affairs programmes in the morning, during its midday and afternoon show. The licensee will further broadcast programmes beyond current affairs as they will also include entrepreneurship, sports arts entertainment and lifestyle content".

The Licensee's submissions indicate that it primarily broadcasts current affairs shows in the morning, during its midday and afternoon show. It also submitted that it broadcasts beyond current affairs with programming that includes entrepreneurship, sports, arts, entertainment and lifestyle content as required by the above clause.

The monitoring exercise also confirmed that Power 98.7 FM broadcasts current affairs programmes in the morning, midday and afternoon, and other programmes beyond current affairs which include entrepreneurship, sports, arts, entertainment and lifestyle content. The Licensee broadcasts *Power Breakfast* between 06h00 and 09h00, *Power Update* between 12h00 and 13h00 and *Power Hour* between 17h00 and 18h00 as part of its current affairs programming. The Licensee also broadcast *Power Talk*, *Power Drive* and *Power Business* as part of its entrepreneurship, sports, arts, entertainment and lifestyle programmes. These shows cover a variety of topics that are interesting and beneficial to the listeners and provide platforms for robust discussions between listeners and guests.

The Licensee complies with clause 6.1 of the schedule to its licence.

Clause 6.2 of the schedule to Power 98.7 FM's licence provides that:

"The Licensee shall broadcast reports from correspondent reporters in various African countries on current events in their regions on Sunday mornings".

The monitoring exercise did not identify any reports by correspondent reporters in various African countries, on current events in their regions on Sunday mornings, during the period under review.

The Licensee did not comply with clause 6.2 of the schedule to its licence.

Clause 6.3 of the schedule to Power 98.7 FM's licence provides that:

"The Licensee shall emphasize local and regional news and employ a news team specifically for the production of local news".

The monitoring exercise confirmed that Power 98.7 FM puts more emphasis on local and regional news and the licensee has confirmed that it has employed a news team specifically to produce local news.

The Licensee complies with clause 6.3 of the schedule to its licence.

Clause 6.4 of the schedule to Power 98.7 FM's licence provides that:

"The Licensee shall broadcast news on a regular basis for a minimum of forty-nine (49) minutes each day between 05h00 and 23h00".

The monitoring exercise revealed that Power 98.7 FM broadcasts more than sixty (60) minutes of news per day. It broadcasts news bulletins every hour during performance period, and each bulletin is approximately five minutes.

These are some of the news items that were identified during the monitoring exercise:

- *"Wits SRC President, Mpendulo Mfeka has told Parliament that Mthokozisi Ntumba's blood was on the hands of Wits management. Mfeka addressed Parliament's Portfolio Committee on Higher Education on the recent protest that triggered Ntumba's alleged murder. Ntumba was caught in the crossfire between protesting students and police while walking out of a clinic in Braamfontein. Addressing the Committee, Mfeka has called for Parliament to look into the tragedy.*
- *"The Automobile Association has given the Gauteng government until the end of this month to pronounce its decision on the future of e-tolls in the province. AA spokesperson Layton Beard says the long-awaited announcement by the government on the future of e-tolls cannot be delayed any further and must provide a clear direction for Gauteng road users. Despite opposition from civil organisations, the South African Roads Agency says that it is planning on the implementation of a new legal framework to ensure that motorists pay their e-tolls. The e-tolling system was launched in 2013 by SANRAL and has been met with resistance from road users. Initially it was meant to improve the road network in Gauteng.*

- *The Gauteng Department of Health says it will put measures in place to address irregular spending and the financial losses incurred in the 2019/2020 financial year. The Department was presenting before SCOPA its audit action plan in response to areas of concern highlighted by the Auditor-General in the 2019/2020 financial year. The Auditor-General raised six risk areas that need to be addressed by the department. These included the quality of financial statements, the quality of performance information, supply chain, financial health of the department, human resources and information and technology.*
- *Dr Nong Cyprian Ngong has become the first Nigerian citizen to be jabbed with the Oxford AstraZeneca vaccine. Africa's most populous country began to vaccinate its population as it is set to administer millions of doses of the AstraZeneca vaccine it received from COVAX facility. Nigeria, like South Africa decided to start vaccination with frontline healthcare workers, with President Buhari receiving his shot a short while ago. Nigeria has over 158 000 infections with just over 2000 deaths. Dr Cyprian says he is glad he's contributing towards Nigeria's herd immunity."*

The Licensee complies with clause 6.4 of the schedule to its licence.

Clause 6.5 of the schedule to Power 98.7 FM's licence provides that:

"The Licensee will also broadcast breaking news as they unfold and these are likely take over a programme being broadcast instead of being contained solely within the news bulletin".

The monitoring exercise confirmed that Power 98.7 FM broadcast breaking news as they unfold; news which at times overlap with regular programming and are not contained solely within the news bulletins.

The Licensee complies with clause 6.5 of the schedule to its licence.

Clause 6.6 of the schedule to Power 98.7 FM's licence provides that:

"Should the Licensee source news material from a news agency/source other than itself, the source(s) thereof shall be disclosed to the Authority".

The monitoring exercise revealed that most of Power 98.7 FM's news bulletins are self-originated. However, it was confirmed that the Licensee discloses sources of news whenever it reports news obtained from other sources other than itself.

The Licensee complies with clause 6.5 of the schedule to its licence.

3.9 Ownership and Control Structure of the Licensee

Clause 7 of the schedule to Power 98.7 FM's licence provides that:

"The Licensee shall for the duration of this licence maintain at least thirty per cent (30%) ownership and control of the station by persons from historically disadvantaged groups".

The Licensee submits that 94.9% of its ownership and control is by historically disadvantaged groups. Furthermore, its B-BBEE status verification certificate states that more fifty-one (51) percent of its ownership and control is by persons from historically disadvantaged groups.

The Licensee complies with clause 7 of the schedule to its licence.

3.10 Specific Terms and Conditions

Clause 8 of the schedule to Power 98.7 FM's licence provides that:

"The Licensee shall broadcast a minimum of 3% African music (excluding music from South Africa) per month between 05h00 and 23h00".

The Licensee's submissions indicate that it broadcasts more than 3% African music.

Sound broadcasting Licensees were exempted from compliance with specific programming requirements during the National State of Disaster, as per the ICT Covid-19 National Disaster Regulations. Therefore, findings on compliance with this clause of the licence were not made/determined.

4. REGULATIONS

4.1 SA Music Content

Regulation 3.2 of the ICASA Regulations on South African Music Content⁴, as published on 23 March 2016, stipulates that:

"Every holder of a commercial sound broadcasting licence to which these regulations apply must ensure that 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 revealed that Power 98.7 FM plays a significant amount of South African Music spread reasonably evenly throughout the performance period. However, due to the shortened performance period, actual percentages could not be determined.

The South African artists featured included among others, *Zonke, Hugh Masekela, Nathi, Kelly Khumalo, Sun-El Musician, King Monada, Ladysmith Black Mambazo, Joe Nina, and Lira.*

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

4.2 Standard Terms and Conditions

The Licensee contravened regulation 2 of the Regulations on Standard Terms and Conditions for Individual Licensees, as amended and published on 30 March 2016, which stipulates that:

"(1) A Licensee must submit written notice to the Authority within seven (7) days of the occurrence of the following changes:

- (a) the name of the Licensee;*
- (b) contact details including the contact person;*
- (c) shareholding;*
- (d) Physical address; and*

⁴ Appendix C: ICASA South African Music Content Regulations, 2016 as published in Government Gazette No. 39844 dated, 23 March 2016

(e) Financial year end.”

The Licensee did not submit a written notice to notify the Authority of the changes to its shareholding and contact person.

The Licensee did not comply with the above Regulations.

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

Regulation 3 (1) of the Regulations in respect of Prescribed Annual Contributions of Licensees to the Universal Service and Access Fund (USAF), as published in the Government Gazette, No. 31499 of April 2009, stipulates that:

“Every holder of a Licence granted in terms of Chapter 3 or converted in terms of chapter 15 of the Act, must pay an annual contribution of 0.2% of the annual turnover, derived from the licensee’s licence activity, to the Fund (the Fund)”.

Further, Regulation 3 (3) stipulates that:

“A broadcasting service licensee who has paid an annual contribution to the Media Development and Diversity Agency (MDDA) must set off that contribution against its prescribed annual contribution to the Fund”

Power 98.7 FM’s financial year end is February. The Licensee paid its Universal Service and Access Fund annual contribution on 16 August 2021 and submitted the proof of payment on 01 March 2022, as required by the regulations.

The Licensee complies with the above regulations.

4.4 General Licence Fees Regulations

Regulation 3 (1) of the General Licence Fees Regulations provides 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 Broadcasting Licences”.

Schedule 2 of the Annual Licences Fees regulations 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), 7(b) and 7(c) of Schedule 3 provides that:

- a) Are due annually based on the licensee financial year;*
- b) Are due and payable within 6 months from the end of 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".*

Power 98.7 FM's financial year end is February. The Licensee paid its license fee on 28 February 2022 and submitted proof of payment thereof, as required by the regulations. The Authority notes that the payment is however late (*twelve (12) months after the completion of the financial year*) as it was due on 31 August 2021, six (6) months after the licensee's financial year.

The Licensee partially complies with the above regulations.

5. 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, Power 98.7 FM repeatedly did not comply with clause(s) 1.2 and 6.2 of the schedule to its licence terms and conditions. The Licensee has also failed to comply with regulation 2 of Regulations on Standard Terms and Conditions for Individual Licences.

The continued non-compliance by the Licensee herein (i.e. change in shareholding without filing the relevant notice, to inform the Authority thereof, to date), is of serious nature and Power FM will be advised of the Authority's intention to refer its non-compliance to the Complaints and Compliance Committee (CCC), for hearing and adjudication.

6. TERMS OF REFERENCE

Appendix A: Power 98.7 FM's broadcasting service licence

Appendix B: Power 98.7 FM frequency spectrum licence

Appendix C: SA Music Content Regulations

Appendix D: Regulations on Standard Terms and Conditions for Individual
Licences

Appendix E: Universal Service and Access Fund Regulations

Appendix F: General Licence Fees Regulations

Annexure D: Standard Terms and Conditions for Individual Broadcasting Services, 2010
No. 33294 dated, 14 June 2010 as amended;

Annexure E: USAF Regulations, 2011 as published in *Government Gazette* No. 34010
dated, 10 February 2011;

Annexure F: Code of Conduct for Broadcasting Service Licensees, 2009 as published in
Government Gazette No. 32381 dated, 06 July 2009;

Annexure G: Proof of Power FM's Contribution to USAF:

Annexure H: Proof of payment of annual licence fees; and

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

END