



SMILE 90.4 FM ANNUAL COMPLIANCE REPORT

MARCH 2022

2020/2021 ANNUAL COMPLIANCE REPORT

CAPE TOWN RADIO (PTY) LTD BROADCASTING AS SMILE 90.4 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 Constitution¹, the Independent Communications Authority of South Africa Act² (ICASA Act), the Electronic Communications Act³ (ECA) and the Broadcasting Act⁴ 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.

This report seeks to give an account of Smile 90.4 FM’s compliance with the terms and conditions, as set out in its license, during the financial year ending March 2021. Aspects of compliance that are measured comprise of the service licence conditions of Geographic Coverage Area, Broadcast Language, Format, Local content Obligations, General Programming Obligations, and Ownership and Control Obligations.

Further, the report will measure compliance with regulations that includes South African Music Content, Standard Terms and Conditions for Individual Licensees, Universal Service and Access Fund, General Licence Fees, 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

Cape Town Radio (Pty) Ltd broadcasting as Smile 90.4 FM ("Smile 90.4 FM") is an Individual Commercial Sound Broadcasting Service Licensee providing a programming mix of music and information to the City of Cape Town Metropolitan in the Western Cape Province⁵.

3. COMPLIANCE ASSESSMENT

3.1 Licensee

Clause 1 of the Schedule to Smile 90.4 FM's licence provides that:

"1.1 Name of Company/Entity: Cape Town Radio (Pty) Ltd.

1.2 Name of the Station: Smile 90.4 FM

1.3 Shareholders:

<i>Videovision Entertainment (Pty) Ltd</i>	<i>70.5%</i>
<i>All Part Cape (Pty) Ltd – 5%</i>	<i>5%</i>
<i>African people Investment Company (Pty) Ltd ("APIC")</i>	<i>2.5%</i>
<i>Radio 021 FM (Pty) Ltd (formerly Firefly Investments 150 (Pty) Ltd</i>	<i>17%</i>
<i>Smile 90.4 FM Share Incentive Scheme Trust</i>	<i>5%</i>

There were no changes to clause 1 of the Schedule to Smile 90.4 FM's licence reported during the period under review.

The Licensee complies with clause 1 of the Schedule to its Licence.

3.2 Licence Period

Clause 2 of the Schedule to Smile 90.4 FM's licence provides:

"2.1 The effective date of the licence: 25 May 2012

2.2 The licence shall expire on: 24 May 2022"

⁵ Appendix A: Smile 90.4 FM's Broadcasting Service License.

The Licence of the Licensee is valid until 24 May 2022 and therefore no renewal application was needed to be lodged during the period under review.

The Licensee complies with clause 2 of the Schedule to its License.

3.3 Geographic Coverage Area

Clause 3 of the Schedule to Smile 90.4 FM's licence provides that:

"City of Cape Town Metropolitan area as indicated in the coverage map attached to the Licensee's radio frequency spectrum licence."

The monitoring exercise confirmed that Smile 90.4 FM provides services to the geographic coverage area as indicated on the coverage map attached to Smile 90.4 FM's radio frequency spectrum licence.

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

3.4 Programming

Clause 4.1.1 of the Schedule to Smile 90.4 FM's licence provides that:

"Format: The Licensee shall have a programming format of 60% music and 40% talk, providing entertainment, informative and educational programming by means of features on lifestyle issues and talk in the form of phone-in's and other forms of programming. The music to be broadcast will include amongst other genres, South African Pop, South African Afrikaans music, International Pop and International Gold."

The monitoring exercise confirmed that the Licensee broadcasts sixty percent (60%) music and forty percent (40%) talk and its broadcast is consistent with their licence obligation, during the period under review.

The Licensee provides programming that is entertaining, educational and informative through their many shows. The show *"Smile Breakfast"* features an entertaining game show called the *"Smile Secret Sound"* between 07h20 and 08h20 during the week and the show also includes numerous conversations on lifestyle issues and listener's call in to engage with the topics. The shows *"Smile Drive"* and *"Home time Party Edition"* also feature a variety of informative conversation about various lifestyle issues. *"The Honest Truth"* is another show that features educational topics in the form of discussions and sometimes includes dialogues with experts on leading issues wherein topics such as "the graving welfare gap" and "funding for NPOs is needed," are postulated and analysed. The

Licensee also informs their audience on relevant news, sports, weather and traffic updates.

The music genres broadcast during the period under review includes South African pop, South African Afrikaans music, International Pop and International Gold.

The Licensee complies with clause 4.1.1 of the Schedule to its Licence.

Clause 4.1.2 of the Schedule to Smile 90.4 FM's licence states that:

"Local Content Obligations:

4.1.2.1 The Licensee shall adhere to the following, namely:

4.1.2.1.1 Broadcast 50% South African music during its daily programming, The percentage will be sustained by the play listing of between seven (7) to nine (9) tracks in an hour.

4.1.2.1.2 South African music on its service will include amongst other genres, South African Pop music, South African Afrikaans and South African rock."

During the monitoring exercise of the period under review, the Licensee demonstrated a fair play of music from genres such as South African Pop music, South African Afrikaans music, South Afrikaans rock music, International Pop music and International Gold. The Licensee has music segments called "six in a row" which a feature into the hour that includes six songs being played consecutively during that specific hour, without the interruption of talk and is separate from other songs played in that hour.

The Licensee lodged an amendment application regarding this clause during the period under review and at the time of writing this report, the application has not yet been finalised by the Authority.

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 determined.

Clause 4.1.3 of the Schedule to Smile 90.4 FM's licence provides that:

"General Programming Obligations:

4.1.3.1 The Licensee shall broadcast its news in the following manner, 65% local/regional, 20% South African national and 15% international news."

The monitoring exercise as undertaken during the period under review found that, of the news broadcast by the Licensee, sixty-five (65) percent was local news, twenty (20) percent was national news and fifteen (15) percent was international news.

The Licensee complies with clause 4.1.3.1 of the Schedule to its Licence.

Clause 4.1.3.2 of the Schedule to Smile 90.4 FM's licence states that:

"The Licensee shall broadcast news on a regular basis for a minimum of thirty (30) minutes per day between 05h00 and 23h00."

Some of the news that was found during the period under review include:

- *"News on corona virus: President Cyril Ramaphosa has warned that a third wave of Covid-19 is constantly present as is the threat of new variants of the virus. Ramaphosa last night announced that the country is now on alert-level 1 of the Covid-19 lockdown due to falling infections, but he has urged everyone to still be cautious."*
- *"Under level 1 the curfew is between midnight to 4am. Alcohol will be sold during normal licensing hours. Gatherings will be permitted but only a hundred people indoors (100) and two-hundred and fifty outdoors (250), and only fifty percent (50%) capacity of the venue. Night clubs are still closed. The 33 land border's pass will remain shut. The president has also reiterated that mask-wearing is still mandatory. Ramaphosa has appealed to everyone to still follow the health protocols."*
- *"Meanwhile Premier Alan Winde has also warned that a third wave of infections could probably occur with the change of season at the beginning of winter. He also expressed concern about rumours that some people were passing as health workers by registering to receive the vaccine. He says additional measures have been put in place to verify the identity of those who receive the jab."*
- *"In other news, the National Police Commissioner, General Khehla Sithole, has condemned the murder of two officials who were attacked while patrolling Bloekombos informal settlement yesterday morning. A sergeant, 46, and a constable, 28 years old, were killed in what appears to have been*

an ambush. He has also ordered that the 72 Activation Plan be implemented to mobilise all the resources needed to investigate the case."

- *"Community Safety MEC Albert Fritz has conducted an oversight visit to the Mitchell's Plain Police Station and also visited the families of victims of gun violence that has engulfed the area recently. Fritz said that additional officers would be sent to the violent-hit Mitchell's Plain. A spate of shootings in the area over the past three days have claimed at least four lives and left others injured."*
- *"And further afield, Donald Trump says he has no plans to launch a new political party, telling the Conservative Conference in Florida that it would split the Republican vote. In his first speech since democrat Joe Biden became President, he also hinted that he might run for office again in 2024."*

The monitoring exercise confirmed that the Licensee broadcasts on average fifty (50) minutes of news per day. News bulletins average around four (4) minutes in duration and news headlines around thirty (30) seconds. The Licensee additionally broadcasts a daily news segment called *"News Cape Town Needs To Know"*.

The Licensee complies with clause 4.1.3.2 of the Schedule to its Licence.

Clause 4.1.3.3 of the Schedule to Smile 90.4 FM's licence reads:

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

The monitoring confirmed that the Licensee discloses the source of news material in the event where the news material is from a news agency or source other than itself.

The Licensee complies with clause 4.1.3.3 of the Schedule to its Licence.

Clause 4.1.3.4 of the Schedule to Smile 90.4 FM's licence states that:

"All programming will originate locally with the exception of outsourced news and content."

The monitoring confirmed that programming originates locally except for outsourced news and content.

The Licensee complies with clause 4.1.3.4 of the Schedule to its Licence.

Clause 4.4.1 of the Schedule to Smile 90.4 FM's licence states that:

"The Licensee shall broadcast 55% English and 45% Afrikaans."

The monitoring exercise confirmed that Smile 90.4 FM broadcast in English and Afrikaans. The allocation of these languages in terms of overall broadcast is aligned to the licence obligation that 55% of its broadcast should be in English and 45% should be in Afrikaans.

The Licensee complies with clause 4.4.1 of the Schedule to its licence.

3.5 Ownership and Control

Clause 5 of the Schedule to Smile 90.4 FM's licence reads:

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

The Licensee confirmed that during the period under review the minimum thirty (30%) percent of ownership and control of the station by persons from historically disadvantaged groups was maintained.

The Licensee complies with clause 5 of the Schedule to licence.

3.6 Specific Terms and Conditions

Clause 6 of the Schedule to Smile 90.4 FM's licence provides that:

"Besides sourcing of news from secondary source(s), the Licensee shall employ a news team specifically for the production of its local news."

The Licensee during the period under review employed a news team responsible to produce local news, consisting of four (4) news anchors/journalists during the week, one (1) sports and traffic presenter and two (2) weekend news readers.

The Licensee complies with clause 6 of the Schedule to its service licence.

4. REGULATIONS

4.1 ICASA Compliance Procedure Manual, 2011 – Form 12A

The Licensee is required, in terms of the Compliance Procedure Manual Regulations, to submit a Form 12A⁶ which reports on all complaints received during each financial year.

The Licensee submitted Form 12A within the prescribed timeframe.

The Licensee complies with the Compliance Procedure Manual, as stated above.

4.2 Regulations regarding Standard Terms and Conditions for Individual Broadcasting Licensees, 2010 as amended

The Authority is satisfied that during the period under review the Licensee did not contravene the regulation in respect of the Standard Terms and Conditions for Individual Licences⁷.

The Licensee complies with the Standard Terms and Conditions for Individual Broadcasting Service Licence.

4.3 ICASA South African Music Content Regulations, 2016

Regulation 2 of the Regulations on South African Music Content, 2016 provides that:

*"A holder of a commercial sound broadcasting service licence must ensure that after eighteen (18) months of the 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 evenly throughout the performance period"*⁸.

The monitoring exercise as undertaken during the period under review found that the Licensee broadcast an average of thirty-five (35) percent of South African music content during the performance period.

Some of the South African music tracks that were broadcast during the period under review include:

⁶ Appendix B: ICASA Compliance Procedure Manual Regulations, 2011 as published in *Government Gazette* No. 34863 dated, 15 December 2011.

⁷ Appendix C: Standard Terms and Conditions for Individual Broadcasting Services, 2010 as published in *Government Gazette* No. 33294 dated, 14 June 2010, as amended.

⁸ Appendix D: ICASA South African Music Content Regulations, 2016 as published in *Government Gazette* No.39844 dated, 23 March 2016.

Jarrad Ricketts "If You Like"; Jimmy Nevis "Heartboxing"; Danny K "Hurts So Bad"; Black Coffee "Drive"; Freshlyground "Fire Is Low"; Euphonik feat. Mi Casa "Don't Wanna Be (Your Friend)"; Lady Zamar "Collide"; Elvis Blue "Shine"; Majozi "Darling"; Jeremy Loops "Mortal Man"; Just Ginger "Sugarman"; Mango Groove "Dance Sum More".

Some of the interviews that were held with South African artist during the period under review include:

Prime Circle; Motlanalo; GoodLuck; The Cape Town Male Voice Choir; Tye Platinum; Sasha Lee Davids; Refentse Morake; Kyle Raziel; The Parlotones; Die Heuwels Fantasties; Christiaan Visser; Zolani Mahola; Louise Carver.

The Licensee complies with the ICASA South African Music Content Regulations, 2016.

4.4 Universal Service and Access Fund, 2011

Regulation 3 of the USAF Regulations⁹ provides 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 Broadcasting Service 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".*

The Authority has not been provided with proof that the Licensee made payment to the fund or the MDDA.

The Licensee's compliance with the USAF Regulations, 2011 could not be determined.

4.5 General Licence Fees Regulations, 2012

Regulation 3 (1) of the General Licence Fees Regulations, 2012 state that:

⁹ Appendix E: USAF Regulations, 2011 as published in *Government Gazette* No. 34010 dated, 10 February 2011.

*"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 Service licences."*¹⁰

Schedule 2 of the Annual Licences Fees regulations provide for Individual Commercial Broadcasting Services Licensees to pay an annual licence fee of 1.5% to the Authority.

Regulation 4(b) and (c) of Schedule 3 state that:

"(b) In respect of payment, such are due and payable within 6 months from 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."*¹¹

The Licensee made the payment on 11 June 2021 and submitted the necessary proof to the Authority.

The Licensee complies with the General Licence Fees Regulations, 2012.

5. CONCLUSION

The monitoring exercise as undertaken during the period under review confirmed Smile 90.4 FM's compliance with most of its obligations. The COVID-19 exemptions/suspensions that were implemented during the period under review have been lifted in the next financial year and the Authority will continue to monitor Smile 90.4 FM's compliance with its obligations.

6. TERMS OF REFERENCE:

- 6.1 Appendix A: Smile 90.4's Service Licence.
- 6.2 Appendix B: Compliance Procedure Manual Regulations, 2011.
- 6.2 Appendix C: Standard Terms and Conditions for Individual Licensees, 2010 as amended.
- 6.3 Appendix D: ICASA South African Music Content Regulations, 2016.
- 6.4 Appendix E: USAF Regulations, 2011.
- 6.5 Appendix F: General Licence Fees Regulations, 2012.

¹⁰ Appendix E: General Licence Fees Regulations, 2012 as published in *Government Gazette* No. 36323 dated, 28 March 2013, as amended.

¹¹ *Ibid.*

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