

COMPLIANCE REPORT

5 FM

Licence Period : 18 December 2008 - 17 December 2018

1. PREFACE

The Independent Communications Authority of South Africa (“the Authority”) has a statutory mandate in terms of the Constitution¹, the ICASA Act² and the Electronic Communications Act³ (“EC Act”) to regulate broadcasting activities in South Africa in the public interest. The Authority is tasked with ensuring compliance by broadcasters with the terms and conditions of their license, the Electronic Communications Act (“EC Act”), the ICASA Act and any relevant legislation.

The following report is intended to give account of 5 FM’s performance for the 2009/2010 financial year. Aspects of compliance that are measured comprise of geographic coverage, languages, format, local content obligations, general programming obligations, training and skills development obligations, finances, South African music content regulations and regulations regarding standard terms and conditions.

2. BACKGROUND

5 FM is a commercial radio station of the South African Broadcasting Corporation (“the SABC”). 5 FM provides a service in a Contemporary Hit Radio Rhythmic format nationally. The radio station’s principal language of broadcast is English. 5FM transmitter sites cover the following areas: Alexander Bay, Bloemfontein, Cape Town, Davel, Durban, Durban North, East London, George, Grahamstown,

¹ The Constitution of the Republic no 108, 1996

² ICASA Act no 13 , 2000 as amended

³ Electronic Communications Act no 36, 2005

Helderkruin, Hout Bay, Johannesburg, Kimberly, Knysna, Kroonstad, Middleburg, Nelspruit, Outshoorn, Paarl, Pietermaritzburg, Port Elizabeth, Potgietersrus, Pretoria North, Sea Point, Simonstown, Stellenbosch, Sunnyside, Table Mountain, The Bluff, Theunissen, Tygerberg and Welverdien (see *broadcasting service licence and spectrum licence attached as Appendix A*).

3. COMPLIANCE ASSESSMENT

3.1 Geographic Coverage Area

Clause 2 of the schedule attached to the licence stipulates that:

“The coverage area is as defined in the map attached to the radio frequency spectrum licence”.

5 FM complies with clause 2 above

3.2 Language(s)

Clause 3 of the schedule attached to the licence stipulates that:

“Principal Language: English”.

5 FM complies with clause 3 above.

3.3 Format

Clause 4.1 of the schedule attached to the licence stipulates that:

“The licensed service shall be a sound broadcasting service in a Contemporary Hit Radio Rhythmic format”.

5 FM offers a Contemporary Hit Radio Rhythmic format to its audience and thus complies with clause 4.1 of its licence.

Clause 4.2 stipulates that:

“The format may not deviate by more than fifteen percent (15%) from the above format”.

Monitoring of 5 FM conducted from 15-19 October 2009, revealed that the radio station did not deviate more than 15% from its format.

The radio station complies with clause 4.2 of its licence.

Clause 4.3 further states that:

“The service authorised by this licence forms part of the commercial service division of the licensee”.

5 FM is categorised as a commercial radio station of the SABC.

The radio station complies with clauses 4.3 of its licence.

3.4 Local Content Obligations

Clause 5.1 of the schedule attached to the licence stipulates that:

“The Licensee is encouraged to exceed the requirements imposed upon it by applicable provisions of the Music Content Regulations”.

All commercial radio stations are required to broadcast 25% South African music content in line with the South African Music Content Regulations, as published in Gazette No. 28453, 31 January 2006. Monitoring of the radio station’s programming profile revealed that approximately 27% of 5 FM’s music is comprised of South African music. Some of the local musicians featured are ‘Gang of Instrumentals’, ‘The Parlotones’, Jr’, ‘Goldfish’ and Prime Circle’.

5 FM complies with clause 5.1 above.

Clause 5.2 stipulates that:

“In each licence year, the Licensee shall, within 30 days of end of the quarter, submit to the Authority written records indicating the extent of:

5.2.1 the different genres; and

5.2.2 The South African music content, in programme material broadcast on the licensed service during the quarter, in each instance, distinguishing between genres, providing the relevant detailing relation to prime time and the period between 05h00 and 23h00 daily (“the South African performance period”), and expressing an aggregate in minutes and as a percentage of the total of all such programming material”.

According to the SABC, commercial radio stations are not required to submit the above information⁴. Further, the SABC states that the original licences did not require the SABC commercial radio to report quarterly. This provision was erroneously carried over from the public broadcasting radio licences. Commercial radio stations do not have quotas for programming genres to comply with other than news and music. To this end the SABC indicates that it was never the intention of the regulations on local content and music to prescribe reporting by a broadcaster on different genres of music, but it has always about the principle of whether the music is foreign or local.

The SABC has further indicated that section 93 (1) of the ECA provides that the Authority cannot grant licences with less favourable terms when converting existing licences. Such an additional provision requiring quarterly reporting by commercial radio would be construed as less favourable to the SABC.

⁴ Submission by SABC extrapolated from the SABC’s quarterly reports in respect of radio services.

3.5 General programming obligations

These obligations are found in clause 6 of the schedule attached to the licence and it provides as follows:

3.5.1 General

Clause 6.1.1 of the schedule attached to the licence stipulates that:

“The Licensee shall ensure that its programming adequately reflects the diversity of South Africa’s Religions”.

The Authority did not identify religious programmes during monitoring of 5 FM’s recordings or programming profile. The radio station’s programme schedule does not indicate religious programming (see footnote 4 for further details).

Based on the above, the Authority is unable to draw a conclusion on whether the licensee has complied with clause 6.11 of its licence.

Clause 6.1.2 stipulates that:

“The Licensee shall take reasonable steps to provide programming that reflects the cultural and traditional needs of its audience”.

The Authority did not identify programmes that reflect cultural and traditional needs of 5 FM’s audience during its monitoring exercise.

Clause 6.1.3 stipulates that:

“The Licensee shall, during the South African performance period, provide programme material that caters and has due regard for the interests of all sectors of South African society and shall provide programming on health related issues, gender issues relevant to all age groups”.

No programmes specifically dealing with health and gender issues were identified during monitoring of 5 FM's recordings.

3.5.2 News and Current Affairs

Clause 6.2.1 stipulates that:

“The Licensee shall broadcast at least thirty (30) minutes of news programming each day during the South African performance period”.

The Authority's monitoring exercise revealed that 5 FM consistently broadcast more than 30 minutes of news each day during the performance period. News bulletins include international, national and regional news. News is broadcast every hour on the hour and headlines at the bottom of the hour. On average, 5 FM broadcasts forty five 45 minutes of news on week days and 20 minutes on weekends, excluding headline bulletins. The following is an example of news item broadcast by 5 FM during the period monitored:

- 'Xenophobic attacks spread in parts of Mpumalanga'.

5 FM complies with clause 6.2.1 of its licence.

Clause 6.2.2 stipulates that:

“The Licensee shall in the production of its news and current affairs programming:

- (i) Exercise full editorial control in respect of the contents of such programming*
- (ii) Include matters of international, national, regional and where appropriate local significance*
- (iii) Meets the highest standards of journalistic professionalism*
- (iv) Provide fair, unbiased, impartial and balanced coverage independent from governmental, commercial or other interference*
- (v) Provide a reasonable opportunity for the public to receive a variety of points of view on matters of public concern”.*

The SABC's editorial policy provides that the licensee must exercise full editorial control in respect of contents of its programming. The editorial policy further indicate that the licensee endeavours to meet the highest standards of journalistic professionalism. Further, the policy provides for fair, unbiased and impartial coverage independent from government, commercial or other interference. Furthermore, in its news and programming content it includes matters of international national, regional and local significance.

During monitoring matters of international national, regional and local significance were detected (see 6.2.1 and 6.2.2 above). In its current affairs broadcast, the radio station provides an opportunity for the public to receive a variety of points of view on matters of public concern.

The radio station complies with clause 6.2.1 and 6.2.2 of its schedule to the licence.

3.6. Training and Skills development Obligations

Clause 7 of schedule attached to the licence stipulates as follows:

“7.1 The Licensee must adopt and implement equal opportunity employment practices.

7.2 The Licensee must ensure that its management and staff are representative of South African society and that its human resource policies takes into account the development of managerial, production, technical and other skills and expertise, particularly with regard to the historically disadvantaged persons.

7.3 The Licensee shall endeavour to achieve fair and reasonable participation by historically disadvantaged persons with respect to:

- (a) its management and control structures;*
- (b) skills development;*
- (c) enterprise development; and*
- (d) procurement.*

7.4 The Licensee must, within thirty (30) days of the end of each financial year, provide the Authority with written information regarding its compliance with the above requirements”.

The SABC submitted a training and skills development report indicating that its management and staff is representative of South African society and that for the period under review there was reasonable participation by historically disadvantaged people in management and skills development.

The Authority confirms that the Licensee has complied with the provisions of this clause *(see skills development report attached as Appendix C)*.

3.7. Provision of Audited financial statements to the Authority

Clause 8 of the licence provides that:

“To provide the Authority with the audited annual financial statements of the licensed service within four (4) months of the end of the licensee’s financial year, provided that the licensee may on good ground shown apply to the Authority for extension”.

The SABC submitted their Audited statements for the 2009/10 financial year.

The Licensee has complied with clause 8 of its licence.

4. REGULATIONS

4.1. South African Music Content Regulations

Regulation 3.2 of the Regulations on South African Music Content as published on 31 January 2006 provides that:

“Every holder of a commercial sound broadcasting licence to which these regulations apply must ensure that a minimum of 25% 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”.

Monitoring of the radio station’s programming profile revealed that approximately 27% of 5 FM’s music is comprised of South African music. Some of the local musicians featured are ‘Gang of Instrumentals’, ‘The Parlotones’, Jr’, ‘Goldfish’ and Prime Circle’.

Furthermore, 5 FM conducts interviews with local artists and promotes debut albums as part of its contribution to local content.

The radio station complies with the regulations on South African Music Content (See *Regulations on South African Music Content attached as Appendix D*).

4.2. Regulations regarding Standard Terms and Conditions for individual broadcasting licences

During the year under review, the Authority did not identify any non compliance by the Licensee with the standard terms and conditions for individual licensees (See *Regulations regarding Standard Terms and Conditions for Individual Licences attached as Appendix E*).

5. CONCLUSION

From the above information, it can be concluded that the licensee has satisfactorily complied with the terms and conditions of its licence.

6. APPENDICES

Appendix A: Sound broadcasting service and frequency spectrum licences

Appendix B: SABC’s Editorial Policy

Appendix C: Skills Development Report

Appendix D: Regulations on South African Music Content

Appendix E: Regulations regarding Standard Terms and Conditions for Individual Licences