

# **2011/2012 ANNUAL 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 Constitution<sup>1</sup>, the ICASA Act<sup>2</sup> and the Electronic Communications Act<sup>3</sup> ("EC Act") to regulate broadcasting activities in South Africa in the public interest. The Authority is tasked with ensuring compliance by broadcasters with the ICASA Act, the EC Act, the terms and conditions of their licence, any relevant legislation and regulation.

The following report is intended to give an account of 5 FM's performance for the 2011/2012 financial year. Aspects of compliance that are measured comprise of the Geographic Coverage Area, Language(s), Format, Local Content Obligations, General Programming Obligations, News and Current Affairs, Training and Skills Development Obligations, Finances, South African Music Content Regulations, regulations Regarding Standard Terms and Conditions, Universal Service and Access Fund Regulations and General Licence Fees Regulations.

### **2. BACKGROUND**

5 FM is an Individual Commercial Sound Broadcasting Service Licensee of the South African Broadcasting Corporation ("the SABC"). The radio station's mandate is to provide a full spectrum service to the geographic areas of Gauteng, Free State, Western Cape, Northern Cape, Eastern Cape, North West, Kwazulu-Natal,

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<sup>1</sup> The Constitution of the Republic No 108, 1996

<sup>2</sup> ICASA Act No 13, 2000, as amended

<sup>3</sup> Electronic Communications Act No 36, 2005

Mpumalanga and Limpopo Provinces (*See broadcasting service licence and spectrum licence attached as Appendix A*).

### **3. COMPLIANCE ASSESSMENT**

#### **3.1 Ownership and Control**

Clause 1.1 of the licence states that:

*"Name of the Company/Entity: The South African Broadcasting Corporation"*

Clause 1.2 of the licence states that the shareholders are as follows:

*"Shareholders: The State: 100%"*

Clause 1.3 of the licence states as follows:

*"Ownership held by persons from historically disadvantaged groups: NA"*

5 FM forms part of the commercial service of the SABC and is 100% owned by the State.

The radio station complies with clauses 1.1, 1.2 and 1.3 of its licence.

#### **3.2 Geographic Coverage**

Clause 2 of the schedule to the licence states that:

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

According to the frequency spectrum licence, the radio station's coverage is the provinces: Gauteng, Free State, Western Cape, Northern Cape, Eastern Cape, North

West, Kwazulu-Natal, Mpumalanga and Limpopo. The Licensee confirms that 5 FM's coverage areas have not changed.

The radio station complies with clause 2 of the schedule of its licence.

### **3.3 Language(s)**

Clause 3 of the schedule to the licence states that the language of broadcast is as follows:

*"Principal Language: English".*

The Authority's monitoring confirmed that the Licensee's principal language of broadcast is English.

The radio station complies with clause 3 above.

### **3.4 Format**

Clause 4.1 of the schedule to the licence states that:

*"The licensed service shall be a sound broadcasting service in a Contemporary Hit Radio format".*

The radio station provides a Contemporary Hit Radio format to its audience.

Clause 4.2 of the schedule to the licence states that:

*"The format may not deviate by any more than fifteen percent (15%) from the above format.*

The monitoring exercise confirmed that the format of the radio station is as defined in the licence. Further, the radio station did not deviate from its format during the period under review.

The radio station complies with clause 4.1 and 4.2 of the schedule to its licence.

Clause 4.3 of the schedule to the licence states that:

*"The service authorised by this licence forms part of the commercial service division of the Licensee".*

5 FM is categorised as the commercial radio station of the SABC as outlined in the licence.

The radio station complies with clause 4.3 of the schedule to its licence.

### **3.5 Local Content Obligations**

Clause 5 of the schedule to its licence states that:

*"In each year, the Licensee shall, within thirty (30) days of end of the quarter, submit to the Authority written records indicating the extent of:*

*Clause 5.1 different genres and*

*Clause 5.2 South African Music Content in programme material broadcast in the licensed service during that quarter, in each instance, distinguishing between genres, providing the relevant details in relation to prime time and the period between 5h00 and 23h00 daily ("the South African broadcast period"), and expressing relevant details both as 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 information. 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 been about the principle of whether the music is foreign or local.

### **3.6 General programming obligations**

#### **3.6.1 General**

Clause 6.1.1 of the schedule to its licence states that:

*"To the extent that licensee provides programming of a religious nature, the Licensee shall ensure that its programming adequately reflects the diversity of South Africa's Religion".*

The licensee's editorial policies in terms of religious diversity state that:

*"Religious programmes should take account of regional factors, target audiences, language and cultural preferences, and the devotional needs of specific groups" (See an extract on SABC's editorial policy attached as Appendix B).*

The radio station complies with clause 6.1.1 above.

Clause 6.1.2 of the schedule to the licence further states that:

*"The Licensee shall during the South African performance period provide 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".*

During the Authority's monitoring exercise, it was established that 5 FM caters for all sectors of South African society in terms of the different types of topics often engaged in. One of the programmes identified dealt with passing of the Protection of State Information Bill.

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

### **3.6.2 News and Current Affairs**

Clause 6.2.1 of the schedule to the licence states that:

*"The Licensee shall broadcast at least 30 minutes of News per day during the South African Performance Period".*

The monitoring exercise revealed that 5 FM broadcasts news bulletins every hour on the hour from 06h00 to 18h00 and headlines every half hour, the duration of which is five (5) minutes. Approximately sixty five (65) minutes of news was monitored each day during the South African performance period.

The following were among the news items covered for the period under review:

- *"The suspended president of the youth league, Julius Malema says without the vocal youth league, the youth of this country are facing a bleak future. He has appealed to youth league leaders to rise up and save the league";*
- *"The African bloc on the Durban climate change talks, say the need up to 5 trillion rand to pay for measures to mitigate and adapt to climate change. The amount is six times more than the 800 billion rand agreed to in Cancun last year for the Green Climate Fund. The fund is supposed to help developing countries"; and*
- *"A new national strategic plan on HIV Aids and TB will be released by President Jacob Zuma today. The plan will be a guide on how to tackle the pandemic over the next 5years. Various sectors under the national aids council have contributed to the plan".*

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

Clause 6.2.2 of the schedule to the licence states that:

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

- (i) Exercise full editorial control in respect of contents of such programming;*
- (ii) Include matters of international, national, regional and where appropriate, local significance;*
- (iii) Meet the highest standards of journalistic professionalism;*
- (iv) Provide fair, unbiased, impartial and balanced coverage independent from governmental, commercial or other interference; and*
- (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 indicates 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 (*See SABC's Editorial Policy extract attached as Appendix B*).

The Authority's monitoring exercise confirmed that the radio station broadcasts matters of international, national regional and local significance. On Gareth Cliff's morning show, a topic of presidential spokesperson Mac Maharaj was featured.

During the discussion Maharaj spoke about his case with the *Mail & Guardian* newspaper and how the newspaper accessed certain information belonging to him.

5FM's news bulletins and current affairs programmes are reflective of matters of international national, regional and local significance. The editorial Policies form part of the SABC's Charter and monitoring of Metro FM's news and current affairs programmes for the period under review demonstrated compliance with clause 6.2.2 of its licence but the Charter as contained in the Broadcasting Act of 1999 as amended.

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

### **3.7 Training and Skills developments Obligations**

Clause 7 of the schedule to the licence states the following:

- 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 take 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; and*

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

The SABC submitted a skills development and training report of the entity as a whole, indicating that its management and staff are representative of South African society. The SABC submits that it is in the process of vetting information which relates to its implementation of equal opportunity employment practices.

This information will detail the SABC’s management and control structures and procurement allocations. The information will be submitted as soon as the process is complete.

The Licensee further submits that Skills Development is not only a national priority, but that of the SABC at large. The Licensee submits that the technological landscape that keeps on evolving calls for the SABC to continually equip its employees with the necessary skills in order to remain competitive and sustainable. The Licensee states that in the year 2011/12, there have been a number of positive developments in response to the myriad challenges posed by the change in technology (migration from analogue to a digital space). The SABC submits that more than half of the total SABC employee population (2049) was trained in the respective divisions/clusters. Furthermore, its total expenditure on training amounted to twenty two million, nine hundred and eight thousand, seven hundred and sixty three rand (R22, 908, 763) spread across various divisions for 4612 interventions which included Learnerships/Internships. Of the 2049 employees that were trained, 47% are females and 53% are males.

Further, the SABC states that a total of 93 new bursaries were awarded in 2011/2012, bringing a total number of bursaries to 231, which includes bursaries awarded under the SABC foundation. According to SABC, the amount invested to maintain these new and existing bursaries was three million two hundred thousand rand (R3, 200 000); and were awarded in line with the critical and scarce skills identified within the broadcast industry.

The Licensee submits that it has exceeded most of the quotas prescribed by licence conditions. The Licensee further submits that it intends to adhere to its BBBEE obligations and remains committed to contributing to the growth of the South African Economy through the empowerment of previously disadvantaged individuals (*See Skills and Development report attached as Appendix C*).

The radio station complies with clause 7 of its licence.

### **3.8 Provisions of Audited financial statements**

Clause 8 of the schedule to its licence states that:

*"The Licensee shall 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 2011/2012 financial year.

The radio station complies with clause 8 of the schedule to its licence.

## **4. REGULATIONS**

### **4.1 The South African Music Content Regulations**

Regulation 3.2 of the Regulations on South African Music Content states 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 broadcasts in the performance period consist of South African music and that such music is spread reasonably evenly throughout the said period" (See South African Music Regulations attached as appendix D).*

Monitoring indicated that the radio station plays approximately 29% South African music. Some of the local artists featured during the period under review were MiCasa; AKA and Locknville.

The radio station complies with the South African Music Content Regulations.

### **4.2 Standard Terms and Conditions**

During the year under review, the Authority did not identify any non-compliance by 5 FM with the standard terms and conditions for individual licensees (See *Regulations regarding Standard Terms and Conditions for Individual Licences attached as Appendix E*).

### **4.3 Universal Service Obligation Fund**

Regulation 3 of the USAF Regulations states 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” (See USAF Regulations attached as Appendix F).*

The Licensee paid its annual contribution fee of eight million fifty seven thousand, seven hundred and fifty two rand (R 8, 057 752. 00) to the fund and received confirmation of payment in a form of a Section 18A certificate from the MDDA. The Licensee submitted proof of payment to the Authority in March 2012.

The radio station has complied with the regulations in respect of Universal Service and Access Fund.

#### **4.4 General Licence Fees Regulations**

Regulation 3 of the General License Fees Regulations states 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 Licences, Individual and Class ECNS licences and Individual Commercial BS licences".*

Schedule 2 under Annual Licences Fees provides for Individual Commercial Broadcasting Service Licensees to pay an annual licence fee of 1.5% of gross profit to the Authority.

Regulations 4 (b) and (c) of Schedule 3 provides that:

- (b) *in respect of payment, such are due and payable within 6 months from the end of the licensee's financial year; and*

*(c) may only be paid by way of an electronic transfer or via direct deposit into the Authority's bank account".*

The SABC is exempted from paying the licence fees.

## **5. CONCLUSION**

5 FM has generally complied with its licence terms and conditions and applicable regulations.

## **6. APPENDICES**

Appendix A: Service and Frequency spectrum licence

Appendix B: SABC Editorial Policy

Appendix C: Skills Development Report

Appendix D: South African Music Content Regulations

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

Appendix F: Universal Service and Access Fund Regulations

Appendix G: Licence Fees Regulations