



# **HEART 104.9 FM ANNUAL COMPLIANCE REPORT**

**MARCH 2023**

## **2021/2022 ANNUAL COMPLIANCE REPORT**

### **RADIO HEART 104.9 (PTY) LTD BROADCASTING AS HEART 104.9 FM**

**Licence Period: 18 December 2018 – 17 December 2028**

#### **1. PREFACE**

The Independent Communications Authority of South Africa (the Authority) has a statutory mandate in terms of the Constitution<sup>1</sup>, the Independent Communications Authority of South Africa Act<sup>2</sup> (ICASA Act), the Electronic Communications Act<sup>3</sup> (ECA) and the Broadcasting Act<sup>4</sup> 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 is intended to give account of Radio Heart 104.9 (Pty) Ltd compliance for the 2021/2022 financial year. Aspects of compliance that are measured comprise of Geographic Coverage, languages, Format, Local Content Obligations, General programming Obligations, Regulations Regarding Standard Terms and Conditions, Universal Service and Access Fund Regulations, General Licence Fees Regulations.

#### **2. BACKGROUND**

Radio Heart 104.9 (Pty) Ltd, broadcasting as Heart 104.9 FM ("Heart 104.9 FM") is an Individual Commercial Sound Broadcasting Service Licensee providing a programming mix of music and information to the Cape Town, Cape Town Fringe, Overberg and West Coast areas in the Western Cape Province<sup>5</sup>.

#### **3. COMPLIANCE ASSESSMENT**

##### **3.1 Licensee**

Clause 1 of Heart 104.9 FM's licence provides that:

*"1.1 Name of Company/Entity: Radio Heart 104.9 (Pty) Ltd.*

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

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

<sup>3</sup> Act No. 36 of 2005

<sup>4</sup> Act No. 4 of 1999

<sup>5</sup> Appendix A: Heart 104.9 FM's Broadcasting Service License.

1.2 *Shareholders: MRC Media (Pty) Ltd (100%)*

1.3 *Ownership held by persons from historically disadvantaged groups:*

*Tsiya Radio – 41.48%*

*Kagiso Media Investments (Proprietary) Limited – 14.39%*

*Victory Parade 55 (Proprietary) Limited – 8.96%*

During the period under review, the Licensee updated the name of its shareholder by duly submitting the necessary form to effect the change on the licence. The Licensee was issued the updated Individual service licence on, 18 March 2022.

**The Licensee complies with clause 1 of its service licence.**

### 3.2 **Name of Station**

Clause 1 of the Schedule to the Licensee's licence provides:

**"Name of Station:** *Heart 104.9 FM*"

No changes to the name of the licensee were submitted during the period under review. The monitoring exercise further confirmed that the Licensee identifies itself as Heart 104.9 FM on air and on its various social media channels.

**The Licensee complies with clause 1 of the Schedule to its service licence.**

### 3.3 **Geographic Coverage Area**

Clause 2 of the Schedule to the Licensee's licence provides that:

**"Coverage Area:** *Cape Town, Cape Town Fringe, Overberg and West Coast areas as defined on the coverage map attached to the Licensee's Frequency Spectrum Licence.*"

The Licensee confirmed that during the period under review it provided services to the coverage area as defined in the coverage map attached to its Frequency Spectrum Licence. The Authority did not receive any complaints or reports to the contrary.

**The Licensee complies with clause 2 of the Schedule to its service licence.**

### 3.4 **Broadcast Language**

Clause 3 of the Schedule to the Licensee's licence provides that:

**"Broadcast Language:** *Principal Language: English*"

The monitoring exercise confirmed that the content broadcast by the Licensee was in English. This is in line with the prescribed broadcast language stating that the Licensee's principal language is English.

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

**3.5 Format**

Clause 4 of the Schedule to the Licensee's licence states that:

*"The format of the station is an adult contemporary jazz format."*

The monitoring exercise found that the format of the station is aligned to the prescribed format of adult contemporary jazz, as prescribed in the licence of the Licensee.

**The Licensee complies with clause 4 of the Schedule to its service licence.**

**3.6 General Programming Obligations**

Clause 5.1 of the Schedule to the Licensee's licence states:

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

Some of the news coverage, found during the monitoring exercise, include:

- *"Manenberg police have arrested a suspect in connection with a murder case, while a second suspect is still wanted. This arrest is in comes after a thirty-four-year-old man was shot and killed on the corner of Duinefontein Avenue and George street on Friday. There has been a spate of killings in that area over the past week, all believed to have been gang-related."*
- *"Overstrand authorities say that mop up operations are continuing following a massive fire between Walkers Bay and Stanford over the weekend. The blaze which broke out on Friday has been raging out of control and this led to the evacuation of people in Die Kop informal settlement. Fortunately, no one has been injured but some parts of Stanford have been without electricity due to the fire."*
- *"Energy expert, Professor Samson Mamphweli, says the massive number of breakdowns at Eskom's power stations is a cause for concern. On Wednesday*

*total breakdowns amounted to more than fourteen thousand megawatts and that has led to the power utility having to ramp up power cuts to stage 4 for a period of three days. Over the past week Eskom has had to deal with several units breaking down or tripping at some of its plants."*

- *"The South African Aviation Authority has indefinitely suspended Kulula and British Airways flights. The operating company, Comair, has said that it had hoped to resume flying again by midday yesterday. Comair had been given twenty-four hours to prove that the fears for the safety for passengers and crew are unfounded."*

The monitoring exercise found that the Licensee broadcast a minimum of thirty (30) minutes of news each day between the period of 05h00 and 23h00, on average the total amount of news broadcast by the Licensee is forty-five minutes. News is broadcast on the hour from 06h00 with the last news bulletin broadcast at 18h00 during weekdays.

#### **The Licensee complies with clause 5.1 of the Schedule of its service licence.**

Clause 5.2 of the Schedule of the Licensee's licence states:

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

The Licensee submits that most of its news broadcast is self-originated. In circumstances where the news material is from a source other than itself, the monitoring exercise confirms that the Licensee discloses the source of that news material during the news broadcast. External news sources used by the Licensee include press releases, other radio stations, Newsflash, and online news services.

#### **The Licensee complies with clause 5.2 of the Schedule of its service licence.**

Clause 5.3 of the Schedule to the Licensee's licence reads as follows:

*"The Licensee shall broadcast news for an average of six minutes every hour between 06h00 – 09h00 on all weekdays mornings."*

The monitoring exercise found that on average, the Licensee broadcasts four (4) minutes and thirty (30) seconds of news every hour between the period of 06h00 and 09h00.

Therefore, the total news out per our can be broken down to an average duration of four (4) minutes of news on the hour and an average duration of thirty (30) second of news headlines between the hours.

**The Licensee does not comply with clause 5.3 of the Schedule to its service licence.**

Clause 5.4 of the Schedule to the Licensee's licence reads:

*"In compiling news, the Licensee shall include news from the African continent."*

Some of the news from the African continent that was covered during the period under review, include:

- *"Peace talks between Chad's Transitional Military Council and representatives of armed groups has been delayed by 48 hours. the first round of negotiations was said to kick off in Doha, Qatar. The talks could mark a critical passage in the country's transition towards elections. Chad was thrown into turmoil following the death of long-time ruler Idris Deby."*
- *"A former Central African Republic militia leader, Maxime Jeoffroy Eli Mokom Gawaka, who is accused of various war crimes as well as crimes against humanity, has been handed over by Chadian Authorities to the International Criminal Court following the finding that there was reasonable grounds to suspect that Mokom as a National Coordinator of Operations of the Anti-Balaka was responsible for crimes including murder, torture, persecution and enforced disappearance."*

The monitoring exercise confirmed that the Licensee regularly includes news from the African continent in its news broadcast throughout the performance period.

**The Licensee complies with clause 5.4 of the Schedule to its service licence.**

Clause 5.5 of the Schedule's to the Licensee's licence states:

*"In compiling information programmes, the Licensee shall give due regard to the character of its audience."*

The monitoring exercise found that the Licensee does give due regard to the character of its audience in compiling information programmes that are relevant to the audience with an emphasis on the values such as caring, upliftment, entertaining, that the listeners of Cape Town appreciate.

**The Licensee complies with clause 5.5 of the Schedule to its service licence.**

### **3.6 Training and skills development**

Clause 6.1 of the Schedule to Heart 104.9 FM's licence reads:

*"The Licensee shall put particular emphasis on the training and development of staff from historically disadvantaged groups."*

The Licensee has a staff complement of thirty-nine (39). Of the thirty-nine (39), only three (3) are white, the rest are staff from historically disadvantaged groups. The Licensee states that the effects of lockdown restrictions, coupled with subdued economic activity following Covid-19, impacted its overall training and development but that it continues to emphasise the training of its staff.

**The Licensee complies with clause 6.1 of the Schedule to its service licence.**

Clause 6.2 of the Schedule to Heart 104.9 FM's licence states:

*"The Licensee shall establish an employee training programme and shall spend a minimum of one million, one hundred and sixteen thousand rand (R1 116 000.00) over the licence period."*

The Licensee for the period under review invested R431,061 for various training and development initiatives. This contributes to its obligation to spend one million, one hundred and sixteen thousand rands (R1 116 000.00) over the licence period, which is ten (10) years.

**The Licensee complies with clause 6.2 of the Schedule to its service licence.**

Clause 6.3 of the Schedule to Heart 104.9 FM's licence reads:

*"The Licensee shall actively pursue the appointment of more women on-air presenters"*

The Licensee has nineteen (19) presenters. Its female presenters have increased over the licence period and the Licensee currently has six (6) female presenters on air. The Licensee has advised that it has embarked on sourcing new talent that may be best suited for possible line-up changes over the next two years, with the

focus being to drive new and younger talent. The Authority will await to see the outcome thereof during the next period under review.

**The Licensee complies with clause 6.3 of the Schedule to its service licence.**

Clause 6.4 of the Schedule to Heart 104.9 FM's licence states:

*"The Licensee shall regularly receive and train interns and students from tertiary institutions across South Africa."*

During the period under review, the Licensee did not receive and train interns and students from tertiary institutions across South Africa due to the COVID-19 pandemic. However, the licensee during previous periods under review has shown a commitment to training interns and students. Further, the obligation does not suggest that the Licensee needs to receive and train interns and students on an annual basis.

**The Licensee complies with clause 6.4 of the Schedule to its service licence.**

#### **4. REGULATIONS**

##### **4.1 Compliance Procedure Manual Regulations – Form 12A**

The Licensee is required, in terms of the Compliance Procedure Manual Regulations<sup>6</sup>, to submit a Form 12A which reports on all complaints received during each financial year.

The Licensee submitted the required Form 12A during the period under review. The report indicated that the two complaints against the Licensee was heard by the Broadcasting Complaints Commission of South Africa. The Licensee received a reprimand for one of the complaints while the other complaint was closed.

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

##### **4.2 Regulations regarding Standard Terms and Conditions for Individual Licensees**

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<sup>6</sup> ICASA Compliance Procedure Manual Regulations, 2011 as published in Government Gazette No. 34863 dated, 15 December 2011.



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 Licensees<sup>7</sup>.

### **The Licensee complies with the Standard Terms and Conditions for Individual Broadcasting Service Licensees.**

#### **4.3 ICASA Regulations on South African Music Content**

Regulation 2 of the ICASA South African Music Content Regulations, as published on 23 March 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"*<sup>8</sup>.

The monitoring exercise found that on average the Licensee broadcast thirty-two (32) percent of South African music. South African music is spread evenly throughout the performance period. Further, the Licensee places particular emphasis on South African music and South African artists during *"The Take Over with Lunga Singama"* which is broadcast weekdays between 18h00 and 22h00.

Some of the South African music that the:

*Jarrad Ricketts "Mama I Made It"; Miguel Preguerio "Hola"; Terence Rhoda ft. Keeno Lee "Things We Do"; The Pedestrians "Honest"; Ameen Harron ft Ameer & Kris Kidd "Mamita Dura".*

Some of the interviews that the Licensee held with South Africa artists, during the period under review include:

*Keeno Lee; The Pedestrians; Lee Cole; Lady Litsa; Vuvu Khumalo; Yanga Sobetwa; Alistair Izobell; Goodluck.*

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<sup>7</sup> Standard Terms and Conditions for Individual Broadcasting Services, 2010 as published in Government Gazette No. 33294 dated, 14 June 2010, as amended.

<sup>8</sup> ICASA South African Music Content Regulations, 2016 as published in Government Gazette No. 39844 dated, 23 March 2016.

## **The Licensee complies with the ICASA Regulations on South African Music Content.**

### **4.4 Universal Service and Access Fund**

Regulation 3 (1) of the Regulations in respect of the Prescribed Annual Contributions of Licensees to the Universal Service and Access Fund, 2011<sup>9</sup> state that:

*"Every holder of a licence granted in terms of Chapter 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 (USAF)."*

Further, Regulation 3 (3) states 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."*

The Licensee made the required payment on 25 August 2022 and submitted the proof thereof to the Authority.

## **The Licensee complies with the USAF Regulations.**

### **4.5 General Licence Fees**

Regulation 3 (1) of the General Licence Fees Regulations<sup>10</sup> state 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 Service licences."*

Schedule 2 of the General Licence Fees regulations provide for Individual Commercial Broadcasting Services Licensees to pay an annual licence fee of 1.5% of gross profit 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;*

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<sup>9</sup> USAF Regulations, 2011 as published in Government Gazette No. 34010 dated, 10 February 2011.

<sup>10</sup> General Licence Fees Regulations, 2012 as published in Government Gazette No. 36323 dated, 28 March 2013, as amended.

*(c) May only be paid by way of an electronic transfer or via direct deposit into the Authority's bank account.”<sup>11</sup>*

The Licensee made its general licence fees payment on 25 August 2022 and submitted the proof thereof to the Authority.

### **The Licensee complies with the General Licence Fees Regulations.**

## **5. CONCLUSION**

The monitoring exercise undertaken during the period under review found that the Licensee did comply with most of its obligations. However, it was found that the Licensee did not comply with its obligation to broadcast news for an average of six minutes every hour between 06h00 and 09h00 on all weekday mornings. The licensee will be required to provide the Authority with the necessary remedial action that it will take to rectify the non-compliance. And failure to remedy the non-compliance will result in a referral to the Authority's Complaints and Compliance Committee ("CCC").

## **6. TERMS OF REFERENCE**

- 6.1 Appendix A: Heart 104.9 FM's Licence
- 6.2 Appendix B: Heart 104.9 FM's Report
- 6.3 Appendix C: Regulations Regarding Standard Terms and Conditions for Individual Licensees
- 6.4 Appendix D: South African Music Regulations
- 6.5 Appendix E: USAF Regulations
- 6.6 Appendix F: General Licence Fees Regulations

**END**

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<sup>11</sup> *Ibid.*