

# **2011/2012 ANNUAL COMPLIANCE REPORT**

## **HEART 104.9 FM**

**LICENCE PERIOD: 17 December 2008 – 16 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 regulations.

The following report is intended to give account of Heart 104.9 FM Radio’s performance for the 2011/2012 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, Ownership and Control Obligations and the Regulations on South African Music Content, Regulations Regarding Standard Terms and Conditions, Universal Service and Access Fund Regulations and General Licence Fees Regulations.

### **2. BACKGROUND**

Heart 104.9 FM is an Individual Sound Broadcast Service Licensee broadcasting in the Greater Cape Town Metropolitan area and immediate surrounds, including Stellenbosch, Paarl, Malmesbury and Wellington, the Southern Peninsula and the Helderberg Basin in the Western Cape. The radio station’s broadcasts from the studios situated at 3<sup>rd</sup> Floor, Satbel Centre, 2 De Smidt Street, Green Point, Cape Town.

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

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

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

Heart 104.9 FM Radio provides a programming format of music in an Adult Contemporary Jazz format providing a mix of music and information.

### **3. OWNERSHIP AND CONTROL**

Clause 1. of the schedule to the licence stipulates that the licence is issued to :

*"Name of Company/Entity: Radio Heart 104 (Pty) Ltd".*

The Licensee is Radio Heart 104 (Pty) Ltd as stipulated in its licence.

The Licensee complies with clause 1.1 of the schedule to the licence.

Clause 1.2 stipulates as follows:

*"Shareholders: Makana Radio Communication (Pty) Ltd (100%)".*

The Licensee is 100% owned and controlled by Makana Radio Communications (Proprietary) Limited.

The Licensee complies with clause 1.2 of its licence.

Clause 1.3 of the schedule to the licence stipulates as follows:

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

*Makana Investments Corporation (Proprietary) Limited- 33.33%*

*Fani Titi – 33.33%*

*Kagiso Media Investments (Propriety) Limited- 24.91%*

*Victory Parade 55 (Propriety) Limited- 8.43%".*

During the period under review, the Licensee lodged the notification with the Authority, advising of the changes in respect of its HDI shareholding equity which was approved by Council. The new HDI shareholding equity is as follows:

Tsiya Radio	59.96%
Victory Parade Trading 55 Pty Ltd	20.02%
Kagisa Media Ltd	20.02%

The Licensee complies with clause 1.1 above.

#### **4. COMPLIANCE ASSESSMENT**

##### **4.1. Geographic Coverage Area**

Clause 2 of the Schedule to the licence stipulates that:

*"The coverage area is Cape Town, as defined in the coverage map attached to the Licensee's radio frequency spectrum licence" (See Broadcasting Service and Radio Frequency Spectrum Licences attached as Appendices A).*

According to the Frequency Spectrum licence, Heart 104.9 FM covers the following areas: Cape Town and Cape Town Fringe that is Houtbay, Fishhoek, Bellville, Tygerberg, Bloubergstrand and also includes the following towns such as Atlantis, Darling, Paarl, Malmesbury, Wellington, Somerset West, Stellenbosch and Grabouw.

The Licensee has confirmed that it offers a service to the areas specified in the frequency spectrum licence.

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

#### **4.2. Broadcast Language(s)**

Clause 3 of the Schedule to the licence stipulates that Heart 104.9 FM's language of broadcast is:

*"Principal language: English".*

Monitoring confirmed that Heart 104.9 FM broadcasts in English.

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

#### **4.3. Format**

Clause 4 of the Schedule to the licence stipulates that:

*"The format of the station is an Adult Contemporary Jazz format".*

The Licensee submits that it provides a service in an Adult Jazz format.

The Authority's monitoring confirmed that the Licensee broadcasts in an Adult Contemporary Jazz format which includes Smooth Jazz, Soul, R&B and Adult Contemporary Pop.

During the period under review, artists featured included: Alexander O'Neal, Chrisette Michele, Lebo, Luther Vandross, Alicia Keys, Cee Lo Green, Robin S, Michael Jackson, Jamali, Adele, Lenny Kravitz, Jozi, R Kelly, Lisa Stansfield, Lira, Pm Dawn, Keyshia Cole, Rihanna, Bongo Maffin, Boyz II Men, Jordan Sparks, Gloria Gaynor, Lebo, Raheem Devaughn, Jamali, TLC, Usher, Bill Labounty, TKZee Pussycat Dolls, Corinne Bailey Rae, HHP, Liquideep, Ryan Leslie, Another Level, Gift Gwe, Ali Campbell, Player, Ne Yo, Mariah Carey, Loyiso, Cassie, Shakira, Black – Eyed- Peas, Ub 40, Karin, Jaheim, Brenda Fassie, Beyonce, Nicole Scherzinger, and Chad Saaiman and Mondoza.

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

#### **4.4. General Programming Obligations**

Clause 5.1 of the Schedule to the licence stipulates that:

*"The Licensee shall broadcast news on a regular basis for a minimum of thirty (30) minutes each day between 06h00 and 23h00".*

The monitoring exercise confirmed that the Licensee broadcasts news bulletins every hour on the hour from 06h00 to 18h00 and headlines every half hour to 18h30. Thirteen (13) news bulletins were identified and the duration of which was three (3) minutes per bulletin. In total, thirty nine (39) minutes of news per day was monitored.

The following are examples of news stories identified:

- *"Members of the South African Municipal Workers Union are due to down tools from today over a wage dispute with the employer. Employees want an eighteen percent (18%) pay hike but the South African Local Government Association is only offering just more than six percent (6%). Some two hundred thousand (200) thousand workers are expected to take part in the industrial action";*
- *"A march in Johannesburg by members of the South African Transport and Allied Workers Union and the Cleaning Sector has been postponed until Thursday. Fifteen thousand (15 000) SATAWU members some of whom earn just over one thousand rand (R1000) a month picketed at Johannesburg's Bayer's Naude Square on Friday saying they want a living wage";*
- *"Zimbabwe's department of Live Stock and Veterinary services has lifted the ban on cloven hoofed animals including cattle, sheep and goats from South Africa. The ban was effective after an outbreak of foot and mouth disease in Kwa- Zulu- Natal. A Zimbabwean official says animals can now be imported from*

*zones declared free of foot and mouth disease. These animals will however be quarantined before export and once they have arrived in Zimbabwe”;*

- *"A sixteen (16) year old boy is due to appear in British court today for the murder of a sixty eight (68) old men during the London riots, four (4) other people died during the four (4) days of disorder in London and other major English cities. Children as young as eleven (11) years old joined in the looting and arson which destroyed dozens of homes and businesses. British police say more than one thousands six hundred (1600) suspects have been arrested and nine hundred and forty (940) of them have been charged. Courts have been working through the night and even on Sunday to clear the backlog of riot related cases”;* and
- *"The US State department says the number of terror attack worldwide rose by almost five percent (5%) last year but fewer people were killed. The National Counter Terrorism Centre says while there were eleven and a half (11 500) thousand attacks in 2010, the number of victims fell by twelve percent (12%). It says the number of incidents in Afghanistan was up by more than two thousand (2000), in Iraq attacks were up by two hundred and thirty (230) it also had the highest number of deaths at more than two thousand seven hundred (2700)”.*

The Licensee complies with clause 5.1 of the Schedule to its licence.

Clause 5.2 of the Schedule to the licence which stipulates that:

*"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 maintains that whenever it reports on news that it has obtained from other sources other than its own journalists, such sources are disclosed during the relevant news bulletin.

The Authority's monitoring confirmed that the Licensee discloses its news sources, whenever it reports on news that has not been obtained by its own journalists. Sources include amongst others, news websites, tip offs and South African Press Association (SAPA).

The Licensee complies with clause 5.2 of the Schedule to its licence.

Clause 5.3 of the Schedule to the licence which stipulates that:

*"The Licensee shall broadcast news for an average of six (6) minutes every half an hour on all weekday mornings".*

The Authority's monitoring revealed that the Licensee does not broadcast six (6) minutes of news half hourly in the mornings. The news bulletins are approximately three (3) minutes. These are announced as headline news. The main bulletin is at the top of the hour.

The Licensee has conceded in its compliance report, for the period under review that, it did not provide six (6) minutes of news per half hour in the mornings. The Licensee avers that this requirement was part of the original P4 licence conditions and extremely difficult to adhere to depending on how news is defined. The Licensee acknowledges that obligations stipulated in Clause 5.3 have not been met and intends to rectify this with immediate effect.

In the correspondences exchanged between the Licensee and the Authority, the Licensee indicated that it requires clarification of what is defined as News as a music format station bearing in mind that its focus is not in current affairs but rather in delivering news information as in current news, entertainment news, sports news, weather and traffic.

Further, although the Licensee plans to incorporate this format into one packaged news bulletin at the top and bottom of the hour. The Licensee pointed out that weekday mornings in the context of radio means the period between 06h00 and 09h00 and that news includes weather and

traffic reports. Due to the vagueness of the licence obligation it could also refer to the period between 00h00-12h00 and this would be impossible for the radio station to comply with.

The Authority explained its position to the Licensee and pointed out that the interpretation of this clause requires Heart FM to broadcast news for six (6) minutes every half hour during weekday mornings. To this end, the Authority highlighted the fact that the interpretation of the above mentioned clause is that Heart FM is required to broadcast twelve (12) minutes of news every hour during weekday mornings as opposed to six (6) minutes every hour during weekday morning as is currently the case *(See correspondence attached as Appendix B for further details)*.

It was agreed that traffic and weather reports as stand-alone reports do not constitute news, unless same is incorporated in the main bulletin. Nevertheless, due to the lack of clear definition into what constitutes weekday mornings, at the time of writing this report, no agreement had been reached in this regard.

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

Clause 5.4 of the Schedule to the licence which stipulates that:

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

As indicated in clause 5.1 above, the Licensee broadcasts news from the African continent.

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

Clause 5.5 of the Schedule to the licence stipulates that:



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

The Authority's monitoring confirmed that the Licensee's programming has a distinct Western Cape feel which addresses the needs and character of its audience. For example, the programme called *"Lunch time mix"* entertains listeners at home or at work during lunch time and ends just before afternoon drive show. During the programme, listeners are given an opportunity to request songs via SMS's to studio and those requests are read to listeners on air.

Apart from regular news programming, traffic and sport, all of which have due regard to the character of its audience, socio-economic topics, entertainment news are broadcast. Further, there are a number of other programmes that are informative and educational and are targeted at the specific audiences in the coverage area such as *"Doctor Eve Show and "Weekend Anthem"*.

The Licensee complies with Clause 5.5 of the Schedule to its licence.

#### **4.5 Training and Skills Development**

Clause 6.1 of the Schedule to the licence stipulates that:

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

The Licensee submits that it has provided staff from previously disadvantaged backgrounds with the necessary training to improve skill and development. During the period under review, eight (8) Coloured females, two (2) African females, one (1) White female, one (1) African male and one (1) Coloured male received training.

Training included Project Management, Leadership, Brand Management, AMASA and radio workshop.

The Licensee complies with clause 6.1 of its licence.

Clause 6.2 of the Schedule to the licence stipulates that:

*"The Licensee shall establish an employee training programme and shall spend a minimum of one million Rand (R1 000 000) annually over the Licence period".*

The Licensee has reported that between the periods 2008 and 2011, it has invested seven hundred and fourteen thousand, seven hundred fifty rand (R714 750) to date on training and development of its staff.

The requirement of R1 000 000.00 is measured annually over the Licensee's licence period. To date the Licensee has spent seven hundred and fourteen thousand, seven hundred fifty rand (R715 750). Since the requirement is measured over the Licensee's licence period, a conclusion on compliance can only be drawn at the end of the Licensee's licence period.

Clause 6.3 of the Schedule to licence stipulates that:

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

The Licensee submits that it continues to appoint women as on air presenters and provide internship programmes for further development.

During the period under review, the Licensee appointed two (2) female Coloured on air presenters; one (1) news anchor/reporter and one (1) on-air presenter (See Appendix C).

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

Clause 6.4 of the Schedule to the licence stipulates that:

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

The Licensee has reported that it appoints interns on a regular basis as part of its commitment to develop learners and equip them with the necessary skills required within their field of studies. Further, the Licensee submits that internship programmes are for a period of three (3) to twelve (12) months. For the period under review the Licensee submits that it appointed two (2) coloured females, one (1) Coloured male and one (1) African female.

The Licensee complies with Clause 6.4 of the Schedule to its licence.

## **5. REGULATIONS**

### **5.1. South African Local Content Music Regulations**

Regulation 3.2 of the Regulations on South African Music Content, as published on 31 January 2006, stipulates 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" (See Appendix D).*

Monitoring confirmed that at least 21% of the Licensee's music content is South African music. The following artists were identified: *Lebo, Jamali, Liquiddeep, Jozi, Freshly Ground, Loyiso, Lloyd, Gang of Instrumentals, HHP, Gift Gwe, Thabo Mdluli, Bongo Maffin, Brenda Fassie, Mandoza, Crazy White Boy, Tk, Mandoza, RJ Benjamin, Jonathan Butler, Lira and TKZee.*

The Licensee did not comply with the Regulations on South African Music Content for the period monitored.

## **5.2. Standard Terms and Conditions**

During the previous financial review, Authority noted during its HDI Audit, that the Licensee changed the percentage in respect of its shareholding and did not submit the notification within seven (7) days of occurrence in terms of Regulation 2 (1)(c) of the Standard Terms and Conditions. The Licensee has since lodged the filing with the Authority.

No areas of non-compliance with the standard terms and conditions for individual licences were identified during the period under review (*See Regulations regarding Standard Terms and Conditions for Individual Licences attached as Appendix E*).

## **5.3 Universal Service and Access Fund Regulations**

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” (See USAF Regulations attached as Appendix E).*

The Licensee made payment of seventy five thousand, one hundred and eighty two rand and forty cents (R75, 182. 40) on 04 April 2012, to the Media Development and Diversity Agency (MDDA) and duly submitted proof of payment the Authority on 06 February 2013.

The Licensee has complied with f the USAF Regulations (*See Appendix F*).

#### **5.4 General Licence Fees**

Regulation 3(1) of the General Licence Fees Regulations stipulates 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 BS licences".*

Schedule 2 of the Annual Licences Fees regulations 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 stipulates that:

*"(b) in respect of payment, such are due and payable within 6 months from 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" (See Appendix G).*

During the period under review, Heart 104.9 FM made the required payment of two hundred and twenty two thousand, one hundred and ninety eight rand and seventy two cents (R 222 198. 72) within the required period.

The Licensee has, during the period under review, complied with the Licence Fees Regulation.

## **6. CONCLUSION**

The Licensee has generally complied with its licence terms and conditions except for clause 5.3 of the Schedule to its service licence and has conceded to the non-compliance however has undertaken to remedy the non-compliance. The Authority has advised the Licensee to consider amending clause 5.3 of its licence. Further, the Licensee does not comply with the South African Music Regulations and the Authority will communicate this to the Licensee in due course.

## **7. APPENDICES**

Appendix A: Individual Broadcasting Service and Spectrum Licence

Appendix B: Correspondence regarding non-compliance

Appendix C: Training and Skills development

Appendix D: South African Music Regulations

Appendix E: Standard Terms and Conditions Regulations

Appendix F: Universal Service and Access Fund Regulations

Appendix G: General Licence Fees Regulations