

# COMPLIANCE REPORT

## 94.5 K-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, the ICASA Act and the Electronics Communications Act (“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 “ECA”, the ICASA Act and any relevant legislation.

The following report is intended to give account of 94.5 K-FM’s performance in the licence year, that is, January – December 2009 in line with the Licensee’s licence year. Aspects of compliance that are measured comprise of format, general programming obligations, training and skills, community-related obligations, ownership and control and standard terms and conditions.

It is to be noted that during the period under review the Authority did not conduct its own monitoring exercise to measure compliance by 94.5 K-FM with its programming obligations. Recordings could not be obtained by the Authority as the period fell outside the 60 day period stipulated in section 53 (1) of the Electronic Communications Act (ECA) which provides as follows:

*“A broadcasting service licensee must-*

*(a) on demand by the Authority , produce to the Authority any recording of every programme broadcast in the course of his or her broadcasting service for examination or reproduction, within 60 days from the date of broadcast;”.*

Consequently, the information contained in this report under general programming obligations is based on 94.5 K-FM’s compliance report submitted to the Authority for the period under review as captured under 3.4 below.

## **2. BACKGROUND**

In December 2008, the Authority issued K-FM Radio (Pty) Ltd with a commercial sound broadcasting service licence and a radio frequency spectrum licence in terms of the Electronic Communications Act (EC Act) of 2005. The licensee's licence is valid for ten (10) years and expires on 16 December 2018.

K-FM provides a programming format of talk and music in an adult contemporary format providing a mix of music and information including coverage of community affairs to the Greater part of Western Cape and Southern Cape (see 94.5 K-FM's licence attached as Appendix A).

## **3. COMPLIANCE ASSESSMENT**

### **3.1 Shareholding, Ownership and Control**

Clause 1.1 of the service licence provides that:

*"The Licence is issued to K-FM Radio (Pty) Ltd".*

The Licensee is K-FM (Proprietary) Limited and the radio station is in compliance with clause 1.1 of the service licence.

Clause 1.2 of the service licence provides that:

*"Shareholders: New Africa Media (Pty) Ltd (66.5%)*

*Broad Cape Investments (Pty) Ltd (28.5%)*

*Employee Share Trust (5%)".*

The radio station has reported that subsequent to the Authority issuing the converted licence to Primedia in 2008, there were changes in Primedia's shareholding and the Authority was duly notified in this regard the most recent notification was on 30 June 2009. Further, the radio station has indicated that in acquiring the 66.5% of the shares held by NAM in K-FM, Primedia Broadcasting would have indirect control over K-FM. However, this would not require any amendments of K-FM's licence

conditions as Primedia Broadcasting was simply “stepping into NAM’s shoes”. Accordingly the shareholding is as follows:

Mineworkers Investment Company (Pty) Ltd	(49.1%)
Kish Consortium	(25.1%)
Brait Entities	(19.8%)
Titan	(3%)
Sabvest, together with BPESAM I Ltd and BPESAM II Limited	(1%)
KV & GR Direct	(2%)

Clause 1.3 of the service licence provides that:

*“Ownership held by persons from historically disadvantaged groups: 30.99%”.*

The radio station has confirmed that Mineworkers Investment Company (Pty) Ltd Trust whose beneficiaries are Blacks from the mining and construction sectors hold 49.1% Equity Shareholding.

During the period under review radio station has complied with clause 1.3 of its licence.

### **3.2 Geographic Coverage Area**

Clause 2 of the schedule to the licence provides that:

*“Greater part of the Western and Southern Cape, as defined in the coverage map attached to the Licensee’s radio frequency spectrum licence.”*

The radio station complies with clause 2 above.

### **3.3 Broadcast Language/s**

Clause 3 of the schedule to the licence provides that:

*“Afrikaans and English”.*

The radio station has confirmed that its principal languages of broadcast are English and Afrikaans.

Based on the radio station’s submission, it can be concluded that the radio station complies with clause 3 of its licence.

### **3.4 Format**

Clause 4 of the schedule to the licence provides that:

*“The Licensee shall have a programming format of talk and music in an adult contemporary format providing a programming mix of music and information (including coverage of community affairs)”.*

The radio station confirms that it broadcasts adult contemporary music with a mix of talk and information thus in compliance with clause 4 of its licence.

The radio station complies with clause 4 of the licence.

### **3.5 Local Content Obligations**

Clause 5 of the schedule to the licence provides that:

*“The Licensee shall ensure at least thirty percent (30%) local content in its music output”.*

The radio station has reported that during the year under review it ensured that it complied with the minimum requirement (*See Appendix B*).

No verification was done and conclusions drawn as recordings were unavailable.

### **3.6 General Programming Obligations**

Clause 6.1 of the schedule to the licence provides that:

*“The Licensee shall broadcast news for five (5) minutes every hour per day.”*

The radio station has submitted that during its morning and afternoon drive shows, it broadcasts 7 minutes of news per hour and during afternoon drives it broadcasts 3 minutes of news per hour. Further, while it may not always have 5 minutes of news per hour, as has been shown over some hours it broadcasts in excess of the 5 minutes.

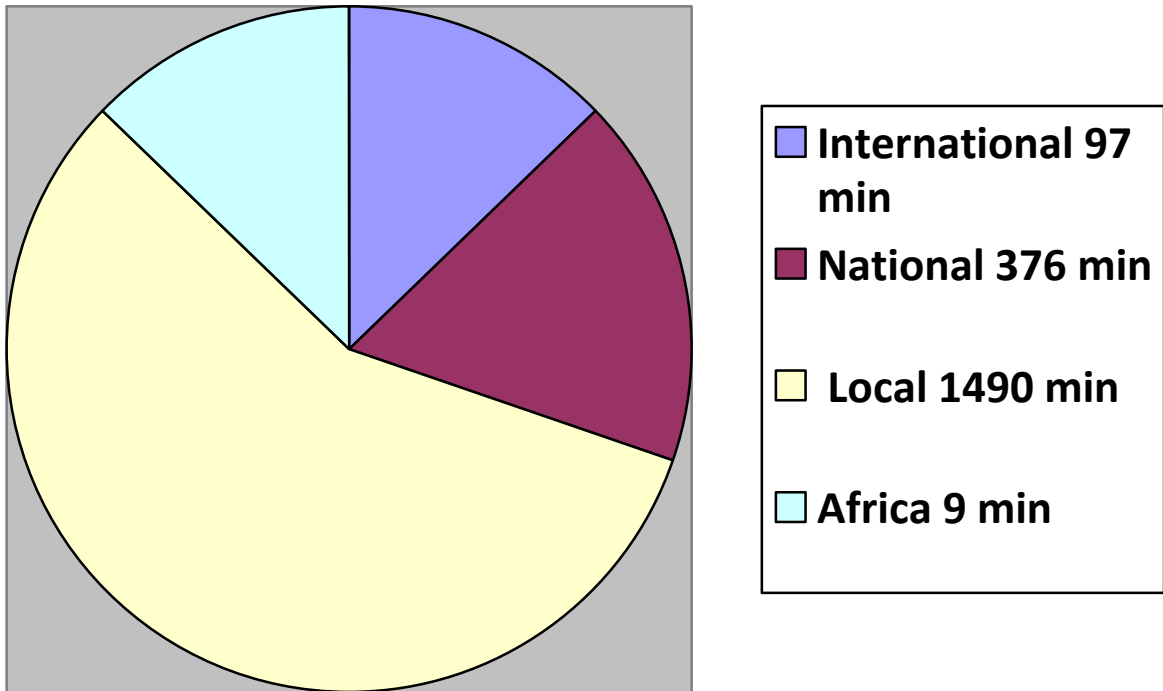
The radio maintains that during the period under review it has substantially complied with clause 6.1 above.

No verification was done and conclusions drawn as recordings were unavailable.

Clause 6.2 of the licence provides that:

*“The news shall include news from African continent and related coverage area”.*

According to the report submitted by the radio station, the radio station’s news bulletins carry content of the radio station’s geographic area as well as content from African continent. During December 2009, the radio station broadcast One thousand nine hundred and seventy two (1972) news bulletins. The breakdown is reflected in the graph below: (See Appendix C for further details).



However, no verification was done by the Authority and conclusions drawn as recordings were unavailable.

### 3.7 Training and Skills Development Obligations

Clause 7 of the schedule to the licence provides that:

*“The Licensee shall spend one percent (1%) of its annual salary payroll over its licence period on staff training and development, particularly on staff from historically disadvantage groups”.*

During the period under review the radio station has reported that it has spent fifteen million eight hundred and fifty eight thousand seven hundred and sixty five rand and ninety two cents (R15 858 765.92) on staff salaries. One percent (1%) of this amount

is calculated as R158 587.66 and K-FM reports to having spent three hundred and thirty one thousand one hundred and fourteen rand (R331, 114.00) on training.

The radio station indicated that it has trained sixty three (63) staff members, of which forty three (43) of whom were black. This makes 82% of the overall trained staff members from the previously disadvantaged group.

The radio station has complied with clause 7 of its licence.

### **3.8 Community-related Obligations**

Clause 8.1 of the schedule to the licence provides that:

*“The licensee shall offer community sound broadcasters the following training:*

*8.1.1 programme presenting and production, news, sales, marketing and sound engineering through mentoring and on the job training that is, having such staff ‘shadow’ 94.5 KFM’s presenters, producers, news reports, sales representatives, marketing staff and sound engineers while at work.*

*8.1.2 in house training by way of internships to cover sales marketing, traffic news, and broadcasting production and presentation”.*

During the period under review the radio station has reported to have held workshops for community radio stations at its premises, giving advice to participating in formal settings where people from community radio stations are being up-skilled. The workshops were held jointly with 567 Cape Talk. The radio station further maintains that a practice of hosting Primedia Radio Day in Cape Town was established in September 2009. Staff from community radio stations attended and exchanged ideas with 94.5K-FM and 567 Cape Talk. In addition a creative workshop for the guests and management was held and conducted by Primedia’s consultant.

The radio station has complied with clause 8.1.1 and 8.1.2 of its licence.

Clause 8.2 of the schedule to the licence provides that:

*“The Licensee shall:*

*8.2.1 raise at least R250 000,00 ( two hundred and fifty thousand Rand) in cash and goods annually, and*

*8.2.2 provide airtime worth R250 000, 00 ( two hundred and fifty thousand Rand) annually towards supporting community organisations such as those benefitting:*

- (a) People infected or affected by HIV and Aids;*
- (b) The terminally ill and/or the elderly;*
- (c) Schools;*
- (d) Women;*
- (e) Children; and/or*
- (f) Animal welfare; and or*
- (g) Natural/environmental disasters such as fires and floods”.*

The radio station has confirmed that it raised an amount of five hundred and two thousand rand (R502 000.00) for various charitable organisations (See *Appendix D for details*).

The radio station has also indicated that during this period it availed one million three hundred and forty six thousand four hundred and ten rand (R1 346 410) worth of airtime for public service announcements (see *Appendix D*).

The radio station has complied with clause 8.2.1 and 8.2.2 of its licence.



### **3.9 Ownership and Control**

Clause 9.1 of the schedule to the licence provides that:

*“The Licensee shall maintain a minimum of thirty percent (30%) ownership and control of the station within the broadcast geographic coverage area”.*

The radio station confirms that to date the shareholding remains as is reflected in the licence.

The radio station is compliant with clause 9.1 of its licence.

Clause 9.2 of the schedule to the licence provides that:

*“The Licensee shall operate staff share incentive scheme holding 5% of the shares in the Licensee and benefiting all staff”.*

The radio station confirms that 5% of the licensee’ shareholding is for the Employee Share Trust as reflected in the licence.

The radio complies with clause 9.2 of its licence.

Clause 9.3 of the licence provides that:

*“The Licensee shall ensure that fifty percent (50%) of its Board of Directors are persons from historically disadvantaged groups”.*

The radio station confirms that during the period under review its Board of Directors comprised of six full directors and five alternates. Of the six full directors, three (3) are Coloured; one is female, one Indian male, one white female and one African male.

The Board of Directors is constituted of 83% of persons from the historically disadvantaged groups.

The radio station complies with clause 9.3 of its licence.

Clause 9.4 of the licence provides that:

*“The Licensee shall ensure that the majority of all senior management and staff are persons from the historically disadvantaged groups”.*

The radio station has reported that it employed the CEO who is a White female, COO who is a White male and CFO who is a Coloured female. This means that, sixty six percent (66%) of the licensee’s top management is made up of persons from the historically disadvantaged groups.

Overall, of the 15 individuals that are in the Management of the licensee 6 are Black and 3 are female which constitutes 60%, of the licensee senior management from the historically disadvantaged groups.

The radio station complies with clause 9.4 above.

#### **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 stipulate 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 Regulations on South African Music Content attached as Appendix D).*

The radio station has confirmed that it complies with the minimum requirement African music and is in compliance with the regulation above, however no verification was done and conclusions drawn as recordings were unavailable.

#### **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 radio station 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**

During the period under review 94.5 KFM has sufficiently complied with its licence terms and conditions and applicable regulations.

#### **6. APPENDICES:**

**Appendix A:** Licence Conditions

**Appendix B:** Proof of compliance with thirty percent (30%) local content.

**Appendix C:** Proof of African continent news broadcast

**Appendix D:** Breakdown of benefiting charity groups and airtime provided

**Appendix E:** Regulations on South African Music Content

**Appendix F:** Regulations on Standard Terms and Conditions for Individual Licences