



# **KAYA FM ANNUAL COMPLIANCE REPORT**

**MARCH 2017**

# **2015/16 ANNUAL COMPLIANCE REPORT**

## **KAYA FM (95.9 MHz)**

**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, the Electronic Communications Act (ECA) and the Broadcasting Act to regulate broadcasting activities in South Africa in the public interest. One of the main tasks of the Authority is to ensure compliance by broadcasters with the terms and conditions of their licence, the ECA, the ICASA Act, any relevant legislation and regulations.

The purpose of this report is to give an account of Kaya FM's compliance with the terms and conditions as set out in its licence for the 2015/2016 financial year. Aspects of compliance that are measured comprise of geographic coverage, community participation, programming, format, news and information, local content obligations, language(s), South African Music Regulations, Regulations Regarding Standard Terms and Conditions, Regulations Regarding Licence Fees and Universal Service and Access Fund (USAF).

### **2. BACKGROUND**

Kaya FM is an Individual Commercial Sound Broadcast Service Licensee broadcasting in and around Johannesburg. The radio station is broadcasting from the studios situated at No. 195 Jan Smuts Avenue, Parktown North, Johannesburg. The signal distribution service is conducted by Sentech (Pty) Ltd.

### **3. COMPLIANCE ASSESSMENT**

#### **3.1. Control Structure**

##### **3.1.1. Ownership and Control**

Clause 1.1 of Kaya FM's licence stipulates that:

*"The licence is issued to Kaya FM (Pty) Ltd".*

Kaya FM is still owned by Kaya FM (Pty) Ltd.

**The Licensee was found to be in compliance with clause 1.1 of its licence.**

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

- *"Thebe Convergent, Technologies (Pty) Ltd– 45.2%*
- *New Africa Media Holdings (Pty) Ltd – 24.9%,*
- *Shanike Investments – 24.9%*
- *Kaya Investments (Pty) Ltd – 20.28%"*
- *Mokgosi Communications Enterprise CC – 5%".*

During the period under review, there were no changes reported by the Licensee to its shareholding structure. According to the Licensee, ownership held by persons from historically disadvantaged groups remains above the 30% minimum threshold.

**The Licensee was found to be in compliance with clause 1.2 of its licence.**

**3.1.2 Geographic Coverage Area**

Clause 2 of Kaya FM's licence stipulates that:

*"The coverage area is Johannesburg, as defined in the coverage map attached to the Licensee's radio frequency spectrum licence".*

According to the frequency spectrum licence<sup>1</sup>, Kaya FM covers the areas indicated above. Further, monitoring confirmed that the radio stations coverage area is Johannesburg and surrounding areas.

**The Licensee was found to be in compliance with clause 2 of its licence.**

**3.1.3 Language**

Clause 3 of Kaya FM's licence stipulates that the language of broadcast is as follows:

---

<sup>1</sup> Appendix B: Frequency Spectrum Licence

*"Principal language: English".*

Kaya FM's principal language of broadcast is English.

**The Licensee was found to be in compliance with clause 3 of its licence.**

### **3.2 Format**

Clause 4.1 of Kaya FM's licence stipulates that:

*"The Licensee shall have programming format as follows:*

*Clause 4.1.1 An African-focused adult contemporary/jazz music;*

*Clause 4.1.2 Sixty percent (60%) music and forty percent (40%) talk".*

The Authority's monitoring exercise confirmed that Kaya FM offers an African-focused adult contemporary/jazz music format. Monitoring further confirmed that the split is 60% music and 40% talk as stipulated in the licence.

**The Licensee was found to be in compliance with clause 4.1.1 and 4.1.2 of its licence.**

Clause 4.2 of Kaya FM's licence stipulates that:

*"The Licensee shall not change more than fifteen percent (15%) of its format between 05h00 and 23h00".*

The Authority can confirm that Kaya FM has, for the period under review, adhered to the requirement above. On this basis, **the Licensee was found to be in compliance with clause 4.2 of its licence.**

### **3.3 General Programming Obligations**

Clause 5.1 of Kaya FM's licence stipulates that:

*"The Licensee shall, during each day, broadcast news on a regular basis for minimum of thirty (30) minutes each day during the South African performance period (05h00 and 23h00)".*

Kaya FM broadcasts news every hour on the hour each day and headline news every half hour. The Licensee broadcasts for approximately 5 minutes of news per bulletin and an average of 50 minutes of news each day during the South African performance period. The following were among the news items identified during the period under review:

- *" A planed taxi strike has been temporary suspended. The strike was scheduled to start today affecting commuters in Soweto, West Rand in Ekurhuleni and Johannesburg. National taxi alliance has down tools accusing the Metro police of impounding their vehicles."*;
- *"Prospective voters wishing to participate in this year's municipal elections have until today to register"*;
- *"KZN MEC Willis Mchunu has dismissed rumours that he has been identified as Premier Senzo Mchunu's possible replacement. Mchunu says he has not received any credible information from the ANC;*
- *The Tshwane Municipality has started with its light house project transforming sharks into double stories in Mamelodi East of Pretoria in an effort to narrow down the housing backlog;*
- *Suspected Xenophobic attacks have led to the death of 2 people who were killed late last night in an informal settlement in Pretoria East and*
- *"Scores of people have been killed when a volcano erupted in Western Indonasia".*

**The Licensee was found to be in compliance with clause 5.1 of its licence.**

Clause 5.2 of Kaya FM's licence stipulates that:

*"Each news bulletin shall contain news related to the African continent".*

The Authority's monitoring exercise revealed that the Licensee's news broadcast contain news related to African continent such as:

- *"In Tanzania, the President, President John Magufuli sacked his interior Minister for reportedly arriving in Parliament drunk. The President has revoked the appointment of Home Affairs Minister Charles Kitwanga for arriving drunk and failing to responding properly to questions"*

**The Licensee was found to be in compliance with clause 5.2 its licence.**

According to clause 5.3 of Kaya FM's licence:

*"The source(s) of all news material (other than news sourced by the Licensee) shall be disclosed during the news broadcast".*

During the period under review, the Authority's monitoring exercise confirmed that KAYA FM discloses and credits sources of news material other than its own news sources. News sources included Voice of America ('VOA'), UN Radio and Government Departments.

**The Licensee was found to be in compliance with clause 5.3 of its licence.**

**3.4 Training and Skills Development Obligation**

Clause 6 of the Kaya FM licence stipulates that:

*"The Licensee shall spend at least R 300 000 (three hundred thousand Rand) annually to human resource development".*

In its submission to the Authority, the Licensee indicated that an amount of R419 475.66 was spent on training and skills development<sup>2</sup> during the period under review. This is a decrease from the R817 416.46 spent on training in the last financial year. Training and development initiatives included Couching, MS Excel for beginners, Eighty20 Training and on air presentation.

**The Licensee was found to be in compliance with clause 6 of its licence.**

**3.5 Community – related obligations**

Clause 7 of Kaya FM's licence stipulates that:

*"The Licensee shall spend R500 000 (five hundred thousand rand) of air-time per annum to promote corporate social responsibility initiatives such as awareness of HIV/AIDS, cancer, poverty alleviation, job creation and any other social objective".*

---

<sup>2</sup> Report on Training and Skills Development obligations

During the period under review, the Licensee indicated that it has spent R 1 185 280.00 worth of airtime on community related obligations<sup>3</sup> broken down as follows:

<b>Social Responsibility</b>	<b>Value</b>	<b>Quarter</b>
<ul style="list-style-type: none"> <li>JHB Child welfare- comedy</li> </ul>	R 60 130.00	Q 1
<ul style="list-style-type: none"> <li>Gift of the givers</li> <li>Nelson Mandela Centre of Memory</li> </ul>	R 76 550.00 R 1 048 600.00	Q 3
<b>GRAND TOTAL</b>	<b>R 1 185 280.00</b>	

The amount indicated above excludes airtime spent on the Broadcasting Complaints Commission of South Africa announcement, which has been included by the Licensee as a public service announcement and part of its corporate social responsibility initiative.

**As evidenced above, the Licensee has exceeded the minimum requirements an indicator of over compliance with clause 7 of its licence.**

### **3.6 Control by Persons from Historically Disadvantaged Groups**

Clause 8 of Kaya FM’s licence stipulates that:

*"Persons from historically disadvantaged groups shall maintain operational control through management, executive, remuneration and audit committees. The Licensee must ensure that staff is involved in a profit-sharing scheme."*

Kaya FM reported that it has a profit incentive scheme based on profit and individual performance. The scheme runs concurrently with the financial year and payout is equivalent to a full 13<sup>th</sup> cheque and is paid out to all employees earning R120 000 or under, per annum, both permanent and contractors. An additional bonus pool is distributed between qualifying individuals, after pay out of the 13<sup>th</sup> cheque.

**The Licensee was found to be in compliance with clause 8 of its licence.**

---

<sup>3</sup> Report on Community related obligations

## **4. REGULATIONS**

### **4.1 Complaints- Compliance Procedure Manual Regulations (CPMR)**

The Licensee is required, in terms of the Compliance Procedure Manual Regulations, to submit a Form 12A which reports on all complaints received during the period under review.

The Licensee submitted Form 12 in accordance with the Regulations regarding the Code of Conduct for Broadcasting Service Licensees. All complaints lodged with the Broadcasting Complaints Commission of South Africa (BCCSA) against the Licensee were found to not have made out *prima facie* cases in terms of the Code and were accordingly not entertained.

**The Licensee complied with the Compliance Procedure Manual Regulations.**

### **4.2 SA Music Content**

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".*

During the period under review, approximately 27% South African music was aired excluding format factor points. Artists such as Jonas Gwangwa, Caphius Semanya , Ray Phiri, Lenyora Thebe, Nathi, Zonke and Zahara were featured. The Licensee also conducted interviews with the likes of Mark Ginsburg, Steve Kekana and Babys Mlangeni, Tlokwe Sehume, Nathi, KB, Lira and Zoe, Chicco, J Something and Alex Tantseli. Further, The Licensee covered live music events including the following: Pule Phetoe, Nomfundo Xaluva and Thuto Motseme. Over and above interviews and coverage of live music all of which are aimed to incentivize the artists, Kaya FM promoted tracks by new musicians including but not limited to: "Intonga yam" by Amanda; "Chasing Sons" by "Msaki and Vuka" by Iziqhaza.

**The Licensee was found to be in compliance with Regulation 3.2 above.**



### **4.3 Standard Terms and Conditions**

During the year under review, the Authority did not identify instances of non-compliance by the Licensee with the standard terms and conditions for class licensees.

### **4.4 Universal Service and Access Fund Regulations (USAF)**

Regulation 3 (1) of the Regulations in respect of Prescribed Annual Contributions of Licensees to the Universal Service and Access Fund (USAF)<sup>4</sup>, 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”*

During the period under review, the Licensee paid R 309 221.15 on 14 December 2016 towards the Universal Services and Access Fund or MDDA Fund<sup>5</sup>.

**The Licensee was found to be in compliance with the provisions of the USAF regulations.**

### **4.5 General Licence Fees Regulations**

The General Licence Fees Regulations came into operation on the date of publication, being 1 April 2009.

Section 3 (1) of the regulations provides 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*

---

<sup>4</sup> Regulations Regarding Standard Terms and Conditions

<sup>5</sup> Proof of USAF payment

*licences and Individual Commercial BS licences”.*

Schedule 2 under Annual Licences Fees provides that:

*“Individual Commercial Broadcasting Service Licensees to pay an annual licence fee of 1.5% of gross profit to the Authority”.*

Schedule 3 (4) (b) (c) provides 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”.*

During the period under review Kaya FM’s Audited Financial Statements for the year ended 30 June 2015 recorded a payment of its licence fees to the value of R498 054.18.

### **The Licensee was found to be in compliance with Licence Fees Regulations**

## **5. CONCLUSION**

For the year in review, the Licensee has fully complied with relevant regulations and its licence terms and conditions.

## **6. TERMS OF REFERENCE**

- 6.1 Appendix A: Kaya FM’s broadcasting service licence and frequency spectrum licence