



**Independent Communications Authority of South Africa**

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# KAYA FM REPORT

LICENSING AND COMPLIANCE PROGRAMME  
MARCH 2013

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## **2011/12 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 and the Electronic 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 Electronic Communications Act ("EC Act"), the ICASA Act, and any relevant legislation.

The following report provides an overview of Kaya FM compliance with its licence terms and conditions for the period under review namely, June 2011 to May 2012. The report focuses on the following areas: Geographic Coverage, Languages, Format, Training and Skills Development Obligations, Financial Performance, Regulations regarding Standard Terms and Conditions and SA Music Content Regulations.

#### **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. 1 Central Place, 2<sup>nd</sup> floor, 30 Jeppe Street, Newtown, Johannesburg. The signal distribution service is conducted by Sentech (Pty) Ltd.

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

<sup>2</sup> The ICASA Act No, 13 of 2000,

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

### **3. COMPLIANCE ASSESSMENT**

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

Clause 1.1 of Kaya FM's licence stipulates that:

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

The Licensee complies 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%".*

There were no changes reported by the Licensee to its ownership and/or shareholding structure during the period under review.

The Licensee complies with clauses 1.1 and 1.2 of its licence.

Clause 1.3 of Kaya FM's licence stipulates that:

"Ownership held by persons from historically disadvantaged groups is as follows:

- *"Mokgosi Communications Enterprise Cc – 5%*
- *Thebe Convergent Technologies – 45.2%*
- *Shanike Investments – 24.9%*
- *NAIL – 44.5% in ordinary shares".*

No changes were reported by the Licensee in respect of ownership held by persons from historically disadvantaged groups during the period under review.

The Licensee complies with clause 1.3 of its licence.

### **3.2 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, Kaya FM covers the area indicated above. Further, monitoring confirmed that the radio stations coverage area is Johannesburg and surrounding areas (see Appendix B- frequency spectrum licence).

The Licensee confirms that its coverage area is as defined in its licence.

The Licensee complies with clause 2 of its licence.

### **3.3 Language**

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

*"Principal language: English".*

Kaya FM's principal language of broadcast is English. This was confirmed during the Authority's monitoring exercise.

The Licensee complies with clause 3 of its licence.

### **3.4 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 between music and talk is approximately sixty (60%) music and forty percent (40%) talk.

The Licensee complies with clause 4.1.1 and 4.1.2 of its licence.

Clause 4.2 of Kaya FM's stipulates that:

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

The Authority confirms that Kaya FM has, for the period under review, not changed its format.

The Licensee complies with clause 4.2 of its licence.

### **3.5 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 and headline news every half hour.

News is broadcast each day for approximately five (5) minutes per bulletin. On average, fifty (50) minutes of news is broadcast each day during the South African performance period. The following were some of the news items identified during the period under review:

- *"Murder accused, Thandi Maqubela, is to appear in court today for been implicated in the 2009 murder of her Acting Judge husband, Patrick Maqubela";*

- *"Striking Re ya Vaya bus drivers may be dismissed";*
- *"Gautrain management has assured that its train services will not be disrupted by the one day unprotected strike by their drivers"; and*
- *"The Minister of Public works, Gwen Mahlangu Nkabinde, says her department has already started taking steps to address the Public Protector's report".*

The Licensee complies 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 identified the following news bulletins as news related to the African continent:

- *"The Somali government is hoping to rope-in foreign organizations in assisting with digging boreholes in the capital, Mogadishu, while drought and famine continues to ravage the country";*
- *"The Swaziland government will go ahead with planned salary cuts for civil servants despite receiving a R2.4 billion bailout from South Africa"; and*
- *'National Security officials continued to monitor the Karan district in Mogadishu after militant group of Al Shabaab was expelled from the area over the weekend".*

The Licensee complies with clause 5.2 its licence.

Clause 5.3 of Kaya FM's licence stipulates that:

*"The source(s) of all news material (other than news sourced from 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 news sourced from the Licensee. News sources included South African Press Association (SAPA) and Voice of America ('VOA').

The Licensee complies with clause 5.3 of its licence.

### **3.6 Training and Skills Development Obligation**

Clause 6 of 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 two hundred and eighty five thousand, seven hundred and forty five rand and forty one cents (R 285 745.41) was spent on training and skills development during the period under review.

From the above, it is evident that the Licensee had a shortfall of fourteen thousand, two hundred and fifty four rand and fifty nine cents (R 14 254.59).

During the period under review, the Licensee did not comply with clause 6 of its licence.

### **3.7 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 scourge that may arise in the future”.*

During the period under review, the Licensee indicated that it has spent one million two hundred and fifty two thousand and five hundred and eight rand (1 252 508.00) worth of airtime on community related obligations broken down as follows:

| <b>Social Responsibility</b>                      | <b>Value</b>         | <b>Quarter</b> |
|---|----------------------|----------------|
| • Office of the Premier –<br>Young Women Dialogue | R 16 395.00          | Q 1            |
| • CANSA   | R19 980              | Q 2            |
| • Dream Fields                                    | R40 010              |                |
| • Nelson Mandela<br>Foundation                    | R423 900             |                |
| • Duduza Relief Promos                            | R164 770             | Q 3            |
| • Narcotics Anonymous<br>Awareness                | R13 950              |                |
| • Nelson Mandela<br>Foundation                    | R405 060             |                |
| CANSA   | R168 443             | Q 4            |
| <b>GRAND TOTAL</b>                                | <b>R1 252 508.00</b> |                |

The Licensee complies with clause 7 of its licence.

### **3.8 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."*

The Licensee has ownership by persons from historically disadvantaged groups as follows:

- Mokgosi Communications Enterprise Cc – 5%
- Thebe Convergent Technologies – 45.2%
- NAIL – 44.5% in ordinary shares,
- Shanike Investments – 24.9%

Further, persons from historically disadvantaged groups maintain operational control as defined in the licence.

Furthermore, Kaya FM reported that it has a profit incentive scheme based on Company 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 the 13<sup>th</sup> cheque.

The Licensee complies with clause 8 of its licence.

## **4. REGULATIONS**

### **4.1 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".*

Kaya FM plays approximately 30% South African music. The following were some of the artists and songs identified during the period under review: "*Ngeke kulunge*" by Afrotrraction, "*Jik'izinto*" by Zonke, "*Morwa*" by Jonas Gwangwa, "*Higher and higher*" by Brenda Fassie and "*How do you feel*" by TK.

The Licensee complies with regulation 3.2 above.

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

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

### **4.3 Regulations in respect of the Prescribed Annual Contributions of Licensees to the Universal Service and Access Fund**

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"*

During the period under review, the Licensee made a payment of two hundred and eighty eight thousand rand and sixty nine cents (R 295 288.69) to MDDA on 27 September 2012. Proof of payment was duly submitted to the Authority.

The Licensee complies with the USAF regulations.

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

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

Section 3 (1) of the 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 Licences, Individual and Class ECNS licences and Individual Commercial BS licences".*

Schedule 2 under Annual Licences Fees stipulates 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) 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".*

During the period under review Kaya FM's Audited Financial Statements for the year ended 30 June 2011 recorded a payment of one million, six hundred and seventy seven thousand, eight hundred and four rand and ten cents (R 1 677 804.10) in licence fees. This amount was paid on 24 December 2012, which is within the six months after its financial year end being June each year.

The Licensee has during the period under review, complied with regulation 3 (1), Schedule 3(4) (c) but has not complied with Schedule 3 (4) (b).

## **5. CONCLUSION**

The Licensee has sufficiently complied with relevant regulations and its licence terms and conditions except for compliance with clause 6 of its licence.

## **6. APPENDICES**

Appendix A: Kaya FM's broadcasting service licence

Appendix B: Kaya FM's frequency spectrum licence

Appendix C: Kaya FM's Compliance Reports

Appendix D: Programme Log sheets

Appendix E: Audited Financial Statements

Appendix F: Universal Service and Access Fund Regulations

Appendix G: General Licence Fees Regulations

Appendix H: Proof of payment of Licence Fees