



LM RADIO ANNUAL COMPLIANCE REPORT

MARCH 2023

2021/22 ANNUAL COMPLIANCE REPORT

EXTRISERVE (PTY) LTD BROADCASTING LM RADIO

Licence Period : 18 July 2014 - 17 July 2024

1. PREFACE

The Independent Communications Authority of South Africa ("Authority") has a statutory mandate in terms of the Constitution¹, the Independent Communications Authority of South Africa Act (ICASA Act²), the Electronic Communications Act³ (ECA) and the Broadcasting Act⁴ 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 and relevant legislation and regulations.

The purpose of the report is to provide an overview of LM Radio's compliance for the 2021/22 financial year. Aspects of compliance that are measured comprise the Geographic Coverage Area, Broadcast Language, Format, Local content Obligations, General Programming Obligations, Training and Skills developments and Ownership and Control Obligations. Furthermore, the report will measure compliance with regulations that include South African Music Content, Standard Terms and Conditions for Individual Licensees, Universal Service and Access Fund Regulations, General Licence Fee Regulations and the Code of Conduct for Broadcasters and the ICT Covid-19 Regulations.

2. BACKGROUND

The Authority issued a commercial broadcasting licence to Extriserve (Pty) Ltd broadcasting as LM Radio for ten (10) years from the date of issuance⁵. The Licensee has been licensed to provide broadcasting services to Gauteng Province as defined in their radio spectrum licence.

¹ The Constitution of the Republic of South Africa, No 108 of 1996

² Act No. 13 of 2000, as amended.

³ Act No. 36 of 2005

⁴ Act No. 4 of 1999

⁵ LM Radio Service Licence

3. COMPLIANCE ASSESSMENT

3.1 Geographic Coverage Area

Clause 3 of the service licence stipulates that the geographic coverage is:

"Gauteng Province as defined in the coverage map attached to the Licensee's radio frequency spectrum licence."

The Licensee broadcast on 702 kHz on AM with Sentech as their signal distributor.

The Licensee complies with its geographic coverage obligations.

3.2 Broadcast Language

Clause 4 of the service licence stipulates that:

"Principal Language shall be English."

The monitoring exercise confirmed that LM Radio broadcasts in English.

The Licensee complies with its language obligations.

3.3 Format

Clause 5.1 of the service licence stipulates that:

"The Licensee shall have a programming format that of 75 % "golden oldie" and nostalgic adult contemporary music".

The monitoring exercise confirmed that the Licensee's programming is dominated by nostalgic adult contemporary songs such as *Icehouse - Electric Blue, Petit Cheval - My Bleeding Heart, Lynyrd Skynyrd - Sweet Home Alabama* amongst others.

Clause 5.2 of the service licence stipulates that:

"The Licensee's programming format shall be supported by a speech content which shall comprise of a mixture of informative discussion and news related to lifestyle, music content, information, travel, weather, and public service messages of no more than 25%, ranging from 10 – 15% during peak times and 5 – 10% of peak times. The Licensee's peak time shall be from 06H00 to 09H00 and 16H00 to 18H00 on weekdays".

The monitoring exercise confirmed that the Licensee's programming is dominated by music supplemented by speech.

The Licensee complies with its format with its speech content focused on weather, lifestyle, infotainment, music quiz amongst other.

The Licensee complies with their format.

3.4 General Programming Obligations

Clause 7.1 of the service licence stipulates that:

"The Licensee shall broadcast news bulletins at peak times during weekdays at 06H00, 07H00, 08H00, 17H00 and 18h00. The Licensee shall broadcast news for a total of thirty (30) minutes per day. The Licensee shall broadcast a weekly average of 25% news from the Gauteng area, 35% national news and 40% international news.

The Licensee broadcasts news bulletins on weekdays every hour from 06H00 until 18H00 with the news bulletin being an average of three (3) minutes per bulletin for an overall daily of thirty-nine (39) minutes of news.

The following news items were monitored:

- *The Gauteng Education Department says all Grade 1 learners who applied online for the 2022 school year have been placed. The start of the academic year saw many frustrated parents line up outside schools to try and find space for their children.*
- *Carl Niehaus says the ANC has not paid him since last year. Niehaus says he has written to his attorney to urgently look into the matter with the Labour Court after learning that the ANC has paid some of its employees their outstanding salaries.*
- *Ukraine has called for a meeting with Russia and other members of a key European security group over the escalating tensions on its border. Foreign minister Dmytro Kuleba says Russia has ignored formal requests to explain the build-up of troops."*

The Licensee complies with clause 7.1 of its service licence.

Clause 7.2 of the service licence stipulates that:

"The Licensee will broadcast news in English."

The Licensee's news bulletins are broadcast in English only.

The Licensee complies with clause 7.2 of its service licence.

Clause 7.4 of the service licence stipulates that:

"The Licensee shall broadcast community events relating to its coverage area."

The Licensee submits that due to the National State of Disaster, there were not able to broadcast any community events because none were taking place during the period under review.

3.5 Ownership and Control structure of the Licensee

Clause 8 of the service licence stipulates that:

Until the publication of ownership and control regulation, the Licensee shall for the duration of this licence maintain at least thirty percent (30%) ownership and control of the station by persons from historically disadvantaged groups.

The Licensee's submission indicates that there is a thirty-five percent (35%) shareholding by persons from historically disadvantaged groups.

The Licensee complies with clause 8 of the service licence.

3.6 Promise of Performance

Clause 9.1 of the service licence stipulates that:

"The Licensee shall employ a local news team specifically for the production of local news."

The Licensee submitted that they have not employed a local news team due to financial constraints since the company has been put under business administration⁶.

⁶ Appendix B

The Licensee failed to comply with clause 9.1 of the service licence.

Clause 9.2 of the service licence stipulates that:

"At least 70% of the employees employed by the Licensee shall be historically disadvantaged persons from the licensed coverage area".

The Licensee submits that it employs eighteen (18) employees in total which includes permanent employees and independent contractors with twelve (12) falling under the category of historically disadvantaged persons for an average percentage of 66%.

The Licensee failed to comply with clause 9.2 of the service licence.

Clause 9.3 of the service licence stipulates that:

"The Licensee shall establish an employee training programme and shall spend a minimum of R1 116 000 (one million one hundred and sixteen thousand rand) over the licence period.

The Licensee submits that they have for the period under review spent sixty-three thousand three hundred and twenty thousand rands on training. It should be noted that the clause can only be assessed at the end of the licence period for the accumulative training spend.

Clause 9.4 of the service licence stipulates that:

"The Licensee shall assist in the development of broadcasting knowledge and skills amongst historically disadvantaged groups in the industry by "adopting" at least one (1) community sound broadcaster within the broadcasting coverage areas and provide them with, among other things, managerial and technical training through holding workshops and hand-on experiential training at LM Radio".

The Licensee submits a letter from Alex FM that reported that LM Radio housed and assisted them during the looting in July 2021. The provision of the place of broadcast assisted to ensure that Alex FM was able to continue to provide community broadcasting services to their licenced services of Alexandra Township.

The Licensee complies with clause 9.4 of the service licence.

Clause 9.5 of the service licence stipulates that:

"The Licensee shall provide the following amount annually to be used for annual broadcasting sound engineering, journalism training, programme presenting and production, sale and marketing, and news gathering internship (s) to persons from historically disadvantaged groups from the licensed coverage area."

The Licensee submits that is not able to comply with this clause due to the company operating under loss since inception.

The Licensee failed to comply with clause 9.5 of the service licence.

Clause 9.6 of the service licence stipulates that:

"The Licensee must provide at least two (2) minutes of airtime per day to promote corporate social responsibility initiatives such as awareness of HIV & AIDS, cancer, poverty alleviation, job creating and any other social objective".

The Licensee submits they have broadcast a total of one hundred and twenty (122) minutes of airtime to support social responsibility programmes for CANSA, Christmas Toy Drive and the National Council for People with Disabilities⁷. The licence condition requires two minutes of airtime per day without attaching any value to it and thus when calculated, it should be 14 minutes per week and then for the year under review should be seven hundred and twenty-eight (728) minutes. The number of items in the report falls short of the overall average calculated over an annual review.

The Licensee did not comply with clause 9.6 of their service licence.

4. REGULATIONS

4.1 South African Music Content

Regulation 3.2 of the ICASA Regulations on South African Music as published on 23 March 2016 stipulates that:

"A holder of a commercial sound broadcasting licence must ensure that after eighteen (18) months from the date of gazette of these Regulations, a minimum

⁷ Appendix B

of 35% 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 performance period”.

The Licensee submits on their Form 9A of the Compliance Procedure Manual Regulations that they broadcast an average of twenty percent (20%) of South African music which is less than the quotas for individual licences⁸. The Licensee does have a mid-week programme called SA Gold between 21H00 and 23H00 which exclusively broadcasts local music and most of the playlist is dominated by international music. Some of the local songs that were played include *Majozi – Lighthouse*, *Pierre de Charmoy – Paradise*, *Beatenberg – Beauty Like a Tightened Bow*, among others.

The Licensee did not comply with the South African music content regulations.

4.2 Standard Terms and Conditions for Individual Broadcasting Licences

During the period under review, the Licensee appeared before the Complaints and Compliance Committee (CCC), in November 2021 for non-compliance with the programming syndication percentage as provided for in the Regulations on Standard Terms and Conditions for Individual Licences and the revised percentages in the ICT Covid-19 Regulations. The complaint was brought by Primedia and the CCC directed the Licensees, LM Radio, and Magic 828, to desist from any further contravention of the ICT Covid Regulations as read with the Standard Terms Regulations and a suspended fine was imposed.

⁸ Appendix C

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

Regulation 3 of the Regulations in respect of Prescribed Annual Contributions of Licensees to the Universal Service and Access Fund (USAF), published in Government Gazette, No. 34010 of 10 February 2011, stipulates that:

1) *"Every holder of a licence granted in terms of Chapters 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".*

(2) *"A BS licensee who has paid an annual contribution to the MDDA must set off that contribution against its USAF Contribution, provided that the MDDA contribution and the USAF contribution against which it is set off are for the same financial year".*

The Licensee made their payment and attached proof of payment thereof.

The Licensee complies with the USAF Regulations.

4.4 General Licence Fees Regulations

Regulation 3 (1) of the General Licence Fees Regulations published in Government Gazette No. 36323 of 28 March 2013 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 provides for Licensees to pay an annual licence fee in accordance with their licensed revenue and to be calculated using the set formula.

Regulation 7(a) (b)(c) of Schedule 3 provides that Annual Licence Fees:

- a) *"Are due annually based on the licensee's financial year;*
- b) *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".*

The Licensee made their payment and attached proof of payment thereof.

The Licensee complies with the General Licence Fees Regulations.

4.5 Code of Conduct for Broadcasters

The Licensee is not a member of any industry body as referred to in Section 54 of the ECA and thus adheres to the Authority's Code of Conduct for Broadcasting service licences.

5. CONCLUSION

The Licensee does not fully comply with some of its licence conditions especially clauses to its promise of performance and music Regulations. The areas of non-compliance include, not providing for two (2) minutes of airtime per day to promote corporate social responsibility initiatives and playing 20% of SA music instead of 35% as per the ICASA Regulations on South African Music, 2016. All that will be taken up with the Licensee to rectify. Failure to rectify and to comply in full, the Licensee will be referred to the Complaints and Compliance Committee (CCC), for hearing and adjudication.

6. TERMS OF REFERENCE

Appendix A: LM Radio Licence.

Appendix B: Compliance Submission.

Appendix C: Form 9A