



Independent Communications Authority of South Africa

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M-POWER FM REPORT

LICENSING AND COMPLIANCE PROGRAMME
MARCH 2013

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2010/2011 ANNUAL COMPLIANCE REPORT

M-POWER FM 94.2

Licence Period : 01 October 2007- 30 September 2017

1. PREFACE

The Independent Communications Authority of South Africa (“the Authority”) has a statutory mandate in terms of the Constitution¹, the ICASA Act² and the Electronic Communications Act³ (“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 report is intended to give a detailed account of M-Power FM’s performance for the period 2010/ 2011 in line with its licence year. The report focuses on the following aspects: Ownership and Control, Management, Geographic Coverage, Languages, Format, Local Content Obligations, General Programming Obligations, Training and Skills Development Obligations, Complaints, South African Music Content Regulations, General Licence Fees Regulations, Universal Service and Access Regulations and Regulations on Standard Terms and Conditions for licences.

2. BACKGROUND

M-Power Radio is an Individual Commercial Sound Broadcasting Service Licensee.

On 01 October 2007, the Authority granted and issued a Commercial Broadcasting Service Licence to M Power FM (Pty) Ltd (*See licence attached as Appendix A*). The radio station is mandated to provide a twenty four (24) hour

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

² ICASA Act No 13, 2000 as amended

³ Electronic Communications Act No 36, 2005

service to the following areas: Carolina, Davel, Dullsroom, Lydenburg, Middelburg, Nelspruit and Piet Retief.

3. COMPLIANCE ASSESSMENT

3.1. Geographic Coverage

According to the frequency spectrum licence, the Licensee covers the following areas:

"Carolina, Davel, Dullsroom, Lydenburg, Middelburg, Nelspruit and Piet Retief"
(See Appendix A).

No changes were made to the Licensee's coverage area during the period under review.

The Licensee complies with its frequency spectrum licence.

3.2 Control Structure

Clause 1 of Schedule C of the licence stipulates that:

"The control structure of the licensee is and remains as follows:

<i>Africa Media entertainment ("AME")</i>	<i>- 24.9%</i>
<i>Direng Investment</i>	<i>- 27.1%</i>
<i>Mbombela Consortium</i>	<i>- 48%</i>

No changes were made by the Licensee to its control structure during the period under review. It is worth noting that the Licensee had a meeting with the Authority's Licensing and Compliance Programme on 28 March 2012. The Licensee indicated that it is facing challenges and contemplating bringing in a strategic partner. Further, that AME has been considering increasing its equity stake in M-POWER, and sought the Authority's advice in this regard. The Authority advised that the licensee would have to undertake the proper

amendment process and that in its quest to salvage the station, the Licensee must ensure that it complies with the provisions as enunciated in sections 64, 65 and 66 of ECA. To date, no further communique has been received from the Licensee.

For the period under review the Licensee still complies with clause 1 of Schedule C of its licence.

3.3 Format

Clause 2 of Schedule C stipulates that:

“The licensee shall broadcast adult contemporary music format which will be supplemented with a mixture of urban and contemporary pop music targeting adults within the LSM 5 to 10”.

The radio station has an adult contemporary format, which consistently broadcasts urban and contemporary pop music; targeting adults within the LSM 5 to 10. This was confirmed during the Authority’s monitoring exercise, where urban pop music is broadcast.

The Licensee complies with clause 2 of Schedule C of its licence.

3.4 Language (s)

Clause 4 of Schedule C of the licence stipulates that:

“The licensee shall broadcast primarily in the English language to the LSM 5 to 10 target audience. However, it will strive to avoid alienating some language groups and thereby contribute to unifying a culturally diverse province”.

The radio station’s principal language is English, with a balanced mix of local languages such as Afrikaans, isiSwati and isiNdebele during some of the shows.

This was confirmed during the Authority’s monitoring exercise.

The Licensee complies with clause 4 of Schedule C of its licence.

3.5 Programming

3.5.1 News

Clause 3.1.1 of Schedule D of the licence stipulates that:

"The licensee must broadcast 44 minutes of news (in the form of hourly bulletins between 06h00 and 18h00) each day, as well ten minutes of sports news each day Monday to Friday and 12 minutes on weekends. The duration of each bulletin will not exceed three minutes".

Information submitted by the Licensee to the Authority indicated a breakdown of news broadcast as follows:

- Total minutes weekdays = 39 minutes
- Total minutes Weekends= 12 minutes
- Total minutes Sports = 10 minutes
- Total minutes per week = 357 minutes (See Appendix C).

The Authority's monitoring exercise indicated that M-Power FM broadcasts an average of fifty four (54) minutes of news bulletins and headlines on week days, and an average of 36 minutes news bulletins weekends. A total of 18 minutes of sports news per day was monitored.

The following are the example of news items broadcast by M-Power FM during the period under review:

- *"Human Settlements minister Tokyo Sexwale has lashed out at government handling of the suspension of the Crime Intelligence boss Richard Mdluli, becoming the first minister to speak about the atmosphere of fear it has generated . Mdluli was suspended for a third time yesterday, when Jhb labour court judge Andre van Niekerk, ruled that a court order set aside for Mdluli's suspension be rescinded" ;*

- *"Nigeria has declared a three day mourning following a plane crash killed a hundred and fifty people in Lagos yesterday. The country's President, Goodluck Jonathan has cancelled all his public engagement for the next two days, and called for the Nigerian flag to be flown half-mast";*
- *"The Democratic Alliance in Mpumalanga says they plan to report far right groups to the Human Rights Commission, DA's spokesperson Anthony Bernadie says this follows a protest in Delmas in which racist slogans and posters were used. Slogans which accused black South Africans of being barbarians were used. He says the defamatory slogans are in violation of the bill of rights, he says they plan to report several far right groups including the AWB to the Commission today";*
and
- *"The Department of Communications is hosting its first ever ICT Indaba Conference which starts today and ends on Thursday. Spokesperson says the Indaba hosted by the South African government in partnership with the International Telecommunications Union and world leading companies such as MTN and others. He says the aim of this African focused International ICT event, is to use technology to fast track the development in this continent and to uplift poor people".*

The Licensee complies with clause 3.1.1 of Schedule D of its licence.

Clause 3.1.2 of Schedule D of the licence stipulates that:

"The licensee shall make use of SAPA for national and international news. The licensee will also use its own news team and stringers as well as African Eye News Service to source local news".

In its submission to the Authority, the Licensee did not indicate that it is making use of South African Press Association (SAPA) for national and international news, as they have not submitted said reports. The Licensee did, however,

submit that it used Newsflash to source news bulletins over and above its news team. There was no disclosure of news sources during the monitoring exercise.

The Licensee used its own news team for local news.

The Licensee does not comply with clause 3.1.2 of Schedule D of its licence.

Clause 3.1.3 of Schedule D stipulates that:

"The licensee must broadcast 40% of news that has been generated from the coverage area".

The Authority's monitoring exercise revealed that at least 26% of news is generated from the coverage area. The bulk of news monitored comprised of 55% national news, which take up 19% of news broadcasts.

Clause 3.1.4 of Schedule D stipulates that:

"News will be broadcast in English only".

The Authority's monitoring exercise confirmed that news is broadcast in English only (See 3.1.4 above).

The Licensee complies with clauses 3.1.3 and 3.1.4 of its licence.

3.5.2 Current Affairs

Clause 4 of Schedule D stipulates that:

"Current affairs programming must be broadcast between 06h00 and 19h00 during weekdays, and at least 20% of such programming must be generated from the coverage area".

The Authority's monitoring exercise confirmed that the radio station broadcasts current affairs programmes. Current affairs programmes monitored dealt with

local issues affecting residents within the M-Power FM coverage area. Other current affairs programmes of national interest were broadcast. One local topic monitored was about a charitable organisation, teaming up with business and residents to raise funds to help the poor.

The Licensee complies with clause 4 of its licence.

3.5.3 Local Content

Clause 3.2 of Schedule D stipulates that:

"The licensee must promote and develop South African music talent by airing music events, regular interviews with musicians and promoting new musicians from Mpumalanga Province".

The Authority's monitoring exercise for the period under review, revealed that M-Power FM does source and promote South African music talent. On a weekend show called "*What's Up Mpumalanga*" presented by Young Dave, an interview with a South African up and coming musician was conducted.

The following are some of local artists featured M-Power FM: Melanie Louw, Jannie Moolman, Zanne Stalberg and Theane Kotze.

The Licensee complies with clause 3.2 of its licence.

3.6 Ownership and Control

Clause 1.1 of Schedule D stipulates that:

"The licensee must ensure that it has majority black shareholding and remains black- controlled".

The Licensee's shareholding structure indicates that the Licensee has majority of black shareholders through Mbombela Consortium at 48% and Direng Investments at 27.1%.

The Licensee complies with clause 1.1 of Schedule D of its licence.

Clause 1.2 of Schedule D stipulates that:

"No shareholder of AME will have more than a 20% stake in M-Power".

The Licensee has confirmed that no individual shareholder of AME has more than 20% in M-Power FM (See Appendix B).

The Licensee complies with clause 1.2 of Schedule D of its licence.

3.7 Management

Clause 1.3 of Schedule D stipulates that:

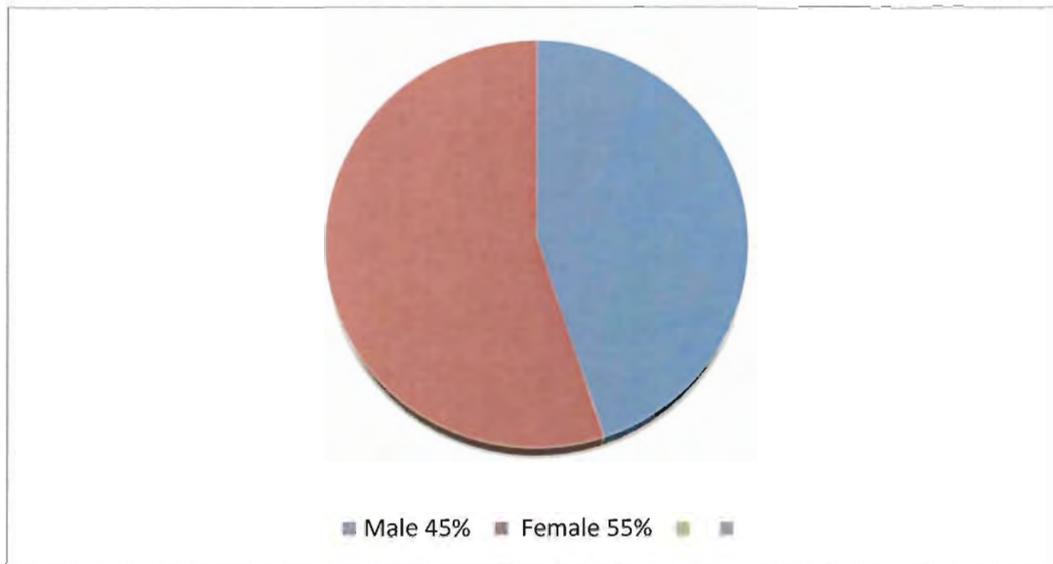
"The licensee shall ensure equitable representation of women on its board and management structures".

The Licensee's management team is comprised of four (4) people of which three (3) are women. The management team is as follows:

- Portia Adams, white Female;
- Jane de Jager, white female;
- Tony Murrell, white male; and

- Janine Taljaard, white Female

The figure below represents gender breakdown at senior management and board of director's level excluding the projects manager:



The Licensee's board is comprised of five (5) people. Of this number, one (1) is a woman. The board members are as follows:

- Ethel Shongwe (F, Black)
- Sinky Ngobe Nkosi (M, Black)
- Gay Mokwena (M, Black) (Chairperson)
- Raymond Kevan (M, White)
- Mark Schormann (M, White) (Acting Managing Director)

Representation of women on the current board still stands at 10%. According to M-Power's submission, they are striving towards a more balanced and representative board in terms of gender.

The Licensee complies with equitable gender representation at management level but there is more room for improvement at board level.

Clause 2.1 of Schedule D stipulates that:

"The licensee must ensure that 50% of the people employed in its senior management are black, of whom 30% will be black women, within a five year period. Furthermore, the licensee must ensure that it employs historically disadvantaged individuals from Mpumalanga".

The Licensee confirms that it currently does not have 50% black senior management staff but continues to work working toward that objective. The Licensee's licence was issued in October 2007 and this objective had to be achieved within a five year period, which is October 2012.

In terms of employment of historically disadvantaged individuals from Mpumalanga, the Licensee confirms that it complies with this requirement as all historically disadvantaged individuals in its employ are from Mpumalanga.

The Licensee has failed to comply with the 50% requirement and 30% women representation at senior management level. The Licensee has however complied with employment of historically disadvantaged individuals from Mpumalanga.

Clause 1.2 of Schedule D stipulates that:

"The licensee has entered into a management consultancy agreement with AME, in terms of which AME will operate and manage ...for the first period of the licence. The consultancy agreement entails the provision of services such as finances, technical, sales, marketing, programming, production, news and human resources. AME is also required to transfer skills and conduct training and development projects to equip the local residents who will eventually attend to the running of station".

The Licensee has reported that the contract was indeed entered into with AME as specified in the licence and training was provided as required. However, due to the poor performance of AME regarding the arrangement, the contract was formally terminated in 2009.

Clause 1.3 of Schedule D stipulates that:

'AME in consultation with M-Power FM's Board, nominate the managing and financial directors of M-Power FM, who will be trained to assume and discharge their responsibilities'.

The Licensee has indicated that AME did make the nominations for the positions indicated in the licence and the Board accepted the Managing Director suggested. Further, a full time financial director was also appointed. Both persons were trained as envisaged in the licence.

The does not comply with clause 1.2 and 1.3 of Schedule D of its licence.

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" (Regulations on South African Music Content attached as Appendix C).

M Power FM plays on average 38% of South African music. The following artists were identified: Melanie Louw, Jannie Moolman, Zanne Stalberg and Theane Kotze.

The Licensee complies with regulation 3.2 of the Regulations on South African Music Content.

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 M-Power FM with the standard terms and conditions for individual licensees (*See Regulations regarding Standard Terms and Conditions for Individual Licences attached as Appendix D*).

4.3 Universal Service and Access Fund (USAF) Regulations

Regulation 3 (1) of the prescribed annual contribution of licences to USAF regulations published on 10 February 2011 stipulates that:

"Every holder of the licence granted in terms of Chapter 3, 4 and /or 9 or converted in terms of Chapter 15 of the Act, must pay an annual contribution of 0.2 % of the annual turnover, to the Fund".

Regulation 3 (2) stipulates that:

"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".

At the time of writing this report, proof of payment had still not been submitted by the Licensee (*See Appendix E*).

The Licensee does not comply with regulation 3 (1) and (2) of the USAF regulations.

4.4 General Licence Fees Regulations

General License Fees Regulations came into effect on the date of publication in the government Gazette no. 32084, on 01 April 2009. Regulation 3 (1) (a) 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"

The licensee reported that its financial statements are still with its auditors (Stabilis). The Licensee also state that they have paid license fees. The Authority cannot confirm whether license fees have been paid, as audited financial statements have not been submitted by the licensee. The Authority has in its possession income and expenditure statement submitted by M-Power FM, indicating that the Licensee generated ten million one hundred and twenty four thousand seven hundred and thirty six rand (R 10 124 736.00).

M-Power FM is exempted from paying licence fees since it satisfies the turnover threshold of thirteen million rand (R13000 000.00) as per the requirements for classification as a small enterprise, as defined in the National Small Enterprise Act No 102 of 1996.

4.5. Code of Conduct for Broadcasters

The Licensee is a member of the National Association of Broadcasters (NAB) and complaints in relation to the Code of Conduct are administered by the Broadcasting Complaints Commission of South Africa ("BCCSA").

The Authority is not aware of any complaints that were lodged with the BCCSA against M-Power FM, during the period under review.

5. CONCLUSION

While the Licensee has complied with some of its licence terms and conditions for the period under review; the following clauses were not fully complied with:

3.1.2, 2.1, 1.2, 1.3 of Schedule D and the Licensee did not comply with the USAF Regulations. Over and above the engagement of Licensee by the Authority on non-compliance matters in the previous fiscal year, the Licensee has on 28 March 2012, approached the Authority and conceded that it is struggling. At the time of writing this report, the Licensee had still not advised of its next course of action.

6. APPENDICES:

Appendix A: M Power FM Service and Frequency License

Appendix B: M Power FM Compliance Submission

Appendix D: Regulations on South African Music Content

Appendix E: Regulations regarding Standard Terms and Conditions for Individual Licences

Appendix F: Universal Service and Access Fund Regulations

Appendix G: General Licence Fees Regulations