



# **MDANTSANE FM ANNUAL COMPLIANCE REPORT**

**MARCH 2017**

# **2015/2016 ANNUAL COMPLIANCE REPORT**

## **MDANTSANE FM**

**Licence Period: 08 December 2013 to 07 December 2018**

### **1. PREFACE**

The Independent Communications Authority of South Africa (the Authority) has a statutory mandate in terms of the Constitution<sup>1</sup>, the ICASA Act<sup>2</sup>, the Electronic Communications Act<sup>3</sup> (ECA) and the Broadcasting Act<sup>4</sup> to regulate broadcasting activities in South Africa in the public interest. Among the responsibilities of the Authority is the task to ensure compliance by broadcasting service Licensees with the terms and conditions of their licence and any relevant legislation and/or regulations.

This report is intended to give an account of Mdantsane 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 and Regulations Regarding Standard Terms and Conditions.

### **2. BACKGROUND**

Mdantsane FM's Class Broadcasting Service Licence was renewed in December 2013 and is valid until December 2018. The Licensee provides a service to the geographically founded community of Buffalo City Municipality including Great Kei and a portion of Amahlathi and Ngqushwa areas in the Eastern Cape Province as set out in the Licensee's radio frequency spectrum licence.

---

<sup>1</sup> The Constitution of the Republic of South Africa, No 108 of 1996

<sup>2</sup> Act No. 13 of 2000, as amended

<sup>3</sup> Act No. 36 of 2005

<sup>4</sup> Act No. 4 of 1999

### **3. COMPLIANCE ASSESSMENT**

#### **3.1 Licensee**

Clause 1 of the schedule of licence provides that:

*“The Licence<sup>5</sup> is issued to:*

*1.1 Name of Company/Entity: Mdantsane FM*

*1.2 Name of the Station: Mdantsane FM*

*1.3 Control of the Licensee: Control shall vest in the Board of Directors of Mdantsane FM.”*

In the year under review, the Authority received no notifications lodged by the Licensee indicating a change in any of the above stated obligations. As such the Authority concludes that the Licensee retains its company name, name of the station (the programme recordings monitored confirmed that the Licensee’s on air name is Mdantsane FM) and control of the station.

As far as the “Control of the Licensee” is concerned, the Licensee has over the past 5 years been under the control of at least 4 of its initially 10-member board. In all meetings between the Licensee and the Authority, the Authority has always raised the issue that the board of directors do not form the quorum. This issue has always been parked, awaiting the elective Annual General Meeting prescribed – by the Licensee’s Constitution – to convene in the 2016/2017 financial year. The Authority has not yet received an indication, from the Licensee, as to when this AGM will be convened. The last meeting with the Licensee, in December 2016, had agreed that the AGM will convene before the financial year ends.

It is prudent that Mdantsane FM convenes this elective AGM as the Licensee cannot continue to function with a Board of Directors that has only 3 out of 10 members.

**However, for the purposes of clauses 1.1, 1.2 and 1.3 of the schedule of the licence, the Licensee was found to be in compliance in this regard.**

---

<sup>5</sup> Appendix A: Mdantsane FM’s Broadcasting Service Licence

### **3.2 Community**

Clause 4 of Mdantsane FM's schedule to the licence provides as follows:

*4.1 "The Licensee shall provide services to a geographic community residing within the geographic coverage area as aforesaid".*

Mdantsane FM submits that it provides service to the geographically founded community as specified in the Frequency Spectrum Licence. No reports were received indicating that the Licensee is not providing a service to its licensed footprint.

**The Licensee was found to be in compliance with clause 4.1 of the schedule of the licence.**

Clause 4.2 of the schedule of the licence stipulates that:

*"The Licensee shall provide for the participation of community members in the affairs of the station in the following ways:*

*4.2.1 The Licensee shall hold at least two (2) meetings annually with its community focusing on programming and programming-related matters for the selection and provision of programmes;*

*4.2.2 The Licensee shall furnish the Authority with proof of such meetings as well as the attendance thereof by members of the community;*

*4.2.3 The Licensee shall hold Annual General Meetings (AGM) for the following purposes:*

*4.2.3.1 To provide feedback on the Licensee's compliance with licence conditions,*

*4.2.3.2 To provide feedback on the Licensee's operational and financial performance; and*

*4.2.3.3 To elect members of the controlling structure, e.g. Board of Directors, Trustees etc. subject to the licensee's founding documents".*

On Monday 20 February 2017, the Authority requested <sup>6</sup> Mdantsane FM to submit proof of their compliance with clause 4 and the sub-clauses thereto in the year under review. The given deadline for this request was Tuesday 28 February 2017. Mdantsane FM failed to submit the required information.

However, the Authority recalls an AGM convened by the Licensee in December 2015 in which ICASA sat as an observer. The Authority reported on the proceedings of this AGM in a Post Visit Report<sup>7</sup> dated December 2016.

In the absence of proof that the Licensee complied with the other requirements of clause 4, the Authority can conclude that **the Licensee has, for the period under review, failed to comply with clause 4.2.1 and 4.2.2 of the schedule of the licence.**

### **3.3 Programming**

Clause 5.1 of the licence provides that the Licensee shall provide programming as follows:

#### *Clause 5.1.1 News and Information:*

*"The Licensee shall broadcast a total of sixty (60) minutes of news per day, of which 50% shall be local, 30% national and 20% international news.*

According to the Licensee's programming log sheets, Mdantsane FM broadcasts at least 60 minutes of news per day during the South African Performance Period. Upon monitoring the Licensee's programming profile, the Authority found that the Licensee schedules at least 10 full news bulletins per day during the week, at least 2 were found on Saturday and none on Sunday. All news bulletins lasted for at least 5 minutes each. In total, the Authority's monitoring revealed that the Licensee broadcast at least 50 minutes of news per weekday and 10 minutes on weekends.

---

<sup>6</sup> Email sent to Licensees – including Mda FM – requesting proof of Compliance with Clause 4

<sup>7</sup> Post AGM Report, Mda FM

In addition, the Authority's monitoring exercise found that the Licensee's news content is mostly local. National and international news were also identified during monitoring.

The following news extracts were amongst those monitoring:

1. *"Abaqhubi bezithuthi kuhola wendlela uR72 okwingingqi yaseTsholomnqa bothuswe ngabaphangi abe bexhobile, nabaye bazama ukuthutha izinto ebezikhweliswe kwesisigadla ngethuba bekukho uStop and Go kuyo le ndlela. Ozibinele ngamehlo, uMartin Mini, nobesuka eBhayi esingise kweli laseMonti uxelele ooNondaba belijelo okokuba bekumise izithuthi eziphantse zaba kumashumi amabini kunye nesigadla kuloStop and Go. Uthe, uye waqaphela iqela lamadoda aphakathi kweshumi elinesihlanu, ukuya kuma kumashumi amabini nabe exhobile ngeePanga, nathe avula ngemva kwesi sigadla. Lo kaMini wongeze ngelithi, isithuthi sowasetyhini nebesihamba phambi kwakhe siye sophulwa ifestile, kwaye wonke umqhubi ngalo elixesha ube exakene nalemeko kwaye abanye bazamile ukuyibaleka le meko. Othethela amaPolisa kwingingqi yaseMonti uLieutenant Colonel, Mthathi Tan, uthe uphango luzakwenziwa malunga ngayo le ngxelo";*
2. *Ivuk' umnye le ityalike yaseJesus Christ Family International, nekhokelwa ngumfundisi othand' ukuba yindumasi koNookrawuzana nozibiza njengoGqirha Mprofeti Mpostile Njengele Andile Myemana. Letyalike ileqana ezinkundleni ngelinge lokudla owaye sakuba yinkosikazi yeminyaka engamashumi amabini anesithandathu yalo kaMyemana uPhumza, isixa mali esingaka ngegidi ezibini ezinesiqingatha seerandi, nabatyhola ngelithi wayiba kwiimali zesiShumi kwithuba elikangaka ngeminyaka emithathu. Ngokutsho kweengxelo ezikhutshwe ngooNokrawuzana, amalungu alenkonzolo atyhola ngelithi; lemali iqale ukulahleka kumnyaka ka2009 ukuya ku2011 kwaye ibonwe kwinyanga kaCanzibe, mnyaka nje, ngethuba kusenziswa ubalo lwangaphakathi";*
3. *"Ukuhlabela mgama, naweGcuwa awunguye nakanye omncincane kweliphondo lemMpuma Koloni. Idolophu yaseGcuwa izakusindleka umnyhadalwa womsitho womculo woMngqungqo, iJazz – ngabula Nonyenye – nekunyaka wesibini sithetha nje ngomhla wamashumi amabini*

*anesibhozo kule imiyo, nalapho kuzakuba kuphethwe iindumasi namanxil' omculo afana noThandiswa Mazwayi nezinye iimvumi. Kungoku nje, kulindeleke ukuba kuthontelane inginginya yabantu abaqikelelwa kumawaka ngamawaka, nabazakube bezimase lo msitho kuzwelonke nekukho phakathi kwabo neendwendwe uSifiso Ncwane, uNathi Mankayi, noYolanda Vuthela, ukubala nje imbinana"; and*

4. *"Telecommunications Network Provider, MTN, has been granted an extension by the Nigerian Authorities to pay its multi billion rand fine. The network provider incurred the fine after it failed to disconnect 5.2 million subscribers with unregistered sim cards in that country. MTN Executive Chairperson, Phutuma Nhleko, has been meeting with the Nigerian Authorities to discuss issues of non-compliance and the remedial measures that may be adopted to address this matter. Nigeria accounts for 37% of MTN's revenue which operates in more than 20 countries in Africa and the Middle East".*

On the account that Mdantsane FM has, during the period under review, failed to broadcast a total of sixty (60) minutes of news per day as contemplated in the licence, **the Authority concludes that the Licensee has failed to comply with clause 5.1.1 of the schedule of the licence.**

#### *5.1.2 South African Music Content: 40%*

Mdantsane FM's general log sheets<sup>8</sup> submits that the Licensee plays at least 55% South African Music on a monthly basis. However, a monitoring exercise revealed that Mdantsane FM plays at least 60% South African Music content. The following music artists were found to enjoy airplay on Mdantsane FM: Kelly Khumalo, Arthur Mofokate, Zola, KO, Kid X, Nathi Mankayi, AKA, Bethusile Mcinga, Khanyisa Nkantsu, Dumi Mkokstaad, Butho Vuthela, Kholeka, Malibongwe Gcwabe and many others.

**The Licensee was found to be in compliance with clause 5.1.2 of the schedule of the Licence.**

---

<sup>8</sup> Mdantsane FM's Programming Log Sheets

### *5.1.3 Talk vs. Music: 60% Talk and 40% Music*

The monitoring exercise revealed that the Licensee programming format is dominated by talk. Mdantsane FM's format is constituted of 60% talk while at least 40% is dedicated to music.

**The Licensee was found to in compliance with clause 5.1.3 of the schedule of the licence.**

### *5.1.4 Language(s) of broadcast:*

*5.1.4.1 isiXhosa – 60%; and*

*5.1.4.2 English – 40%.*

Mdantsane FM's programming format was found to be mostly in isiXhosa with the use of English here and there during broadcasts. Programmes in English were also detected with the presenter interspersing between the two languages with English being dominant throughout the show. The Licensee's programming format made it difficult for the Authority to ascertain the percentage split because of the use of both isiXhosa and English during shows. However, the 60% isiXhosa and 40% English percentage split is to be found in the overall programming format of the Licensee. In the case of Mdantsane FM the Authority found that the Licensee's news scheduling carries at least 70% isiXhosa news Bulletins and 30% English News Bulletins in an average day.

On the basis that the Licensee's news scheduling carries 70% isiXhosa and 30% English content; **the Authority can conclude that Mdantsane FM has failed to comply with clause 5.1.4 of the schedule of the licence.**

*5.2 The Licensee shall keep a log of programmes broadcast which must be submitted on a monthly basis to the Authority. A pro-forma of the log to be kept will be supplied by the Authority."*

Mdantsane FM submits its log sheets to the Authority. However, they are not consistent with regards to submission deadlines. The Authority continues to encourage timeous submission of these forms.



**Mdantsane FM was found to be in compliance with clause 5.2 of the schedule of the licence.**

#### **4. REGULATIONS**

##### **4.1 South African Music Content Regulations**

Regulation 3.3 of the Regulations on South African Music Content as published on 31 January 2006 provides that:

*“Every holder of a community sound broadcasting licence to which these regulations apply must ensure that after eighteen months of the gazetting of these regulations, a minimum of 40% 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”<sup>9</sup>.*

Mdantsane FM’s general log sheets indicate that the Licensee plays at least 55% South African Music monthly. However, the monitoring exercise revealed that that Mdantsane FM plays at least 60% South African Music content in its programming. The following music artists were found to enjoy airplay on Mdantsane FM: Kelly Khumalo, Arthur Mofokate, Zola, KO, Kid X, Nathi Mankayi, AKA, Bethusile Mcinga, Khanyisa Nkantsu, Dumu Mkokstaad, Butho Vuthela, Kholeka, Malibongwe Gcwabe and many others.

**The Licensee was found to be in compliance with the Regulations on South African Music Content.**

##### **4.2 Compliance Procedure Manual – Form 12A**

The Licensee is required, in terms of the Compliance Procedure Manual Regulations, to submit a Form 12A which reports on all complaints received in the course of each financial year. In the year that is currently under review, Mdantsane FM submitted its Form 12As indicating that the Licensee received no complaints.

---

<sup>9</sup> Regulations on South African Music Content

The Licensee's complaints promo was detected during monitoring. This promo gives details on how listeners can lodge complaints about the service provided by Mdantsane FM.

**The Licensee was found to be in compliance with the CPMR.**

### **4.3 Code on People with Disabilities**

Regulation 3.1 (a) of the Code on People with Disability of 2007 stipulates that:

*"Broadcasting service Licensees must ensure that their services are made available and accessible to people with disability."*

Mdantsane FM's programming was found to cater for people with disabilities. In addition, the radio station's premises are accessible to people with disabilities. The Licensee boasts of its active partnership with Disability South Africa who also forms part of the Licensee's membership. Mdantsane FM reports of a feature in its programming profile which deals with challenges and opportunities available to people with disabilities. This feature is made possible by the contribution of Disability South African whom, as a member, participates in the Licensee's programming committees.

**The Licensee was found to be in compliance with the above-mentioned Regulation.**

### **4.4 Regulations regarding Standard Terms and Conditions for Class Licensees**

Regulation 2 (1) (d) of the Regulations Regarding Standard Terms and Conditions for Class Licensees<sup>10</sup> provide two fundamental regulations that are constantly and continuously used to measure a Licensee's compliance. The two regulations are Regulation 2(1) and the sub clauses, along with Regulation 9 in its entirety.

In terms of the provisions made by Regulation 2(1) Mdantsane FM has had no changes to its Licensee details and information in the year under review.

---

<sup>10</sup> Regulations regarding the Standard Terms and Conditions

In addition, Mdantsane FM makes it a point that all information required of them is submitted as per given format although not by the given deadlines. As it stands, the Authority can only conclude, in the absence of proof that the Licensee failed to comply with clause 4 and the sub-clauses to its licence because Mdantsane FM failed to comply with Regulation 9 of the Standard Terms and Conditions for Class Licensees.

On the basis that the Licensee did not comply with the Authority's request – dated Monday 20 February 2017 – for additional information; **the Authority concludes that Mdantsane FM failed to comply Regulation 9 of the Standard Terms and Conditions for Class Licensees.**

## **5. CONCLUSION**

Mdantsane FM complied with at least 50% of its measured aspects of compliance. A follow up workshop with the Licensee will be scheduled for the 2017/2018 financial year whereon the Authority will address the areas of non-compliance and give guidance on any remedial requirements.

## **6. TERMS OF REFERENCE**

- 6.1 Appendix A: Mdantsane FM's Broadcasting Service Licence
- 6.2 Appendix B: Email sent to Licensees – including Mdantsane FM – requesting proof of Compliance with Clause 4
- 6.3 Appendix C: Post AGM Report, Mdantsane FM
- 6.4 Appendix D: Mdantsane FM's Programming Log Sheets