



**Independent Communications Authority of South Africa**

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# MOSUPATSELA FM REPORT

**LICENSING AND COMPLIANCE PROGRAMME**  
**MARCH 2013**

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# **2011/2012 ANNUAL COMPLIANCE REPORT**

## **MOSUPATSELA FM STEREO**

**LICENCE PERIOD: 27 October 2008 to 26 October 2013**

### **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> and the Electronic Communications Act<sup>3</sup> ("ECA") 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 ("ECA"), the ICASA Act, any relevant legislation and regulations.

The following report is intended to give account of Mosupatsela FM Stereo's compliance with the terms and conditions as set out in its licence for the 2011/2012 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 and Universal Service and Access Fund (USAF).

### **2. BACKGROUND**

Mosupatsela FM Stereo is a Class Sound Broadcasting Service Licensee which was issued its converted licence on 27 October 2008. The Licensee's language(s) of broadcast are SeSotho, English, isiXhosa and Setswana. The radio station's mandate is to provide a service to the geographic areas of Botshabelo and surrounding areas in the Free State Province (*See broadcasting service licence and spectrum licence attached as Appendix A*).

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

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

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

Mosupatsela FM Stereo's broadcasts from the studios situated at RCM Building Office no. 3, Botshabelo, Bloemfontein. The radio station's signal distributor is Sentech.

### **3. COMPLIANCE ASSESSMENT**

#### **3.1 Control Structure**

Clause 1 of the licence terms and conditions stipulates that:

*"The Licence is issued to:*

*1.1 Name of Company/Entity: Mosupatsela FM Stereo.*

*1.2 Control of the Licensee: Control shall vest in the Board of Director of Mosupatsela FM Stereo.*

There were no changes reported by the Licensee to its company name and control structure.

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

Clause 1 of the schedule to the licence stipulates as follows:

*"Name of the radio station: Mosupatsela FM Stereo".*

The radio station's name is Mosupatsela FM Stereo as stipulated in the licence.

The Licensee complies with clause 1 of the schedule to its licence.

### **3.2 Geographic Coverage Area**

Clause 2 of the schedule to the licence stipulates that Mosupatsela FM Stereo's coverage area is as follows:

*"Botshabelo, Morakge, Thaba-Nchu, Klipfontein, Masham, Wolwepoort and surrounding areas as set out in the Licensee's radio frequency spectrum licence".*

The Licensee confirmed that it covers the geographic areas as specified in its spectrum licence.

The Licensee complies with the clause 2 of its licence.

### **3.3 Community**

Clause 3.1 of the schedule to the licence stipulates that:

*"The Licensee should provide services to a community residing within the geographic coverage area specified herein".*

Mosupatsela FM Stereo broadcasts from Botshabelo and provides its services to the geographic community residing within its coverage area.

The Licensee complies with the clause 3.1 of its licence.

Clause 3.2 of the schedule to the licence stipulates that:

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

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

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

Further clause 3.2.3 stipulates that:

*"The Licensee shall hold an Annual General Meeting (AGM) for the following purposes:*

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

*3.2.3.2 To provide feedback on the Licensee's operational and financial performance, and*

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

The Licensee has failed to convene a successful AGM's since the last elective AGM which was held on 23 November 2008. The purpose of convening an AGM is to provide for the participation of community members in the affairs of the radio station as well as provide feedback on the Licensee's compliance with the licence conditions, operational and financial performance and to elect members of the controlling structure.

The Licensee attempted to convene an AGM on 16 May 2010; however the board of directors cancelled the AGM a day before it was to convene and community members were informed about the cancellation on the day of the AGM. The board of directors sighted fear due to intimidation and threats received from certain members of the community. The board informed the Authority that the police advised the board to cancel the AGM as they could not guarantee their safety. On the day of the AGM, the community members resolved to continue with the AGM despite cancellation by the Board and ultimately elected an interim committee in the absence of the board.

The interim committee was mandated to take control of the operational and administrative functions of the radio station. The board of directors challenged the election of the interim committee and informed the Authority that the AGM

and the subsequent election of the interim committee was therefore unconstitutional and unlawful. The Authority established that the provisions of the Licensee's Articles of Association were not adhered to when the board was dissolved and the interim committee that was formed could not be recognised.

The Authority advised the Licensee to convene an AGM for the purposes of electing a controlling structure however according to the Licensee these attempts were met with resistance from the interim committee who continued to be in control of the radio station despite advice from the Authority that the interim committee was not recognised.

The Authority, through numerous correspondences, advised the interim committee to allow the board to take control of the station so as to allow the board to convene an AGM. Failure by the board of directors to convene an AGM resulted in the Authority referring the Licensee to the Complaints and Compliance Committee (CCC) for non-compliance with licence conditions and Articles of Association.

The matter was heard on 10 June 2011 and the CCC made the following recommendations to the Authority to ensure that the Licensee desists from further contraventions:

- *by establishing whether the Respondent is financially distressed and whether there is a reasonable prospect of rescuing the Respondent; alternatively whether the Respondent should be placed in liquidation;*
- *by initiating business rescue proceedings, alternatively by placing the Respondent in liquidation;*
- *by accepting the assistance and guidance of the Broadcasting Compliance Unit of ICASA in taking such steps, as well as the further steps outlined below, provided that the board of directors of the Respondent at all times retains full responsibility in respect of all decisions taken by such board in respect thereof;*

- *by establishing whether the existing members of the board of directors of the Respondent were properly elected as directors at the AGM held in October or November 2008 and have therefore been elected for a period of four years from the date of such election, as provided by articles 18.1.5 and 18.1.6 and, if so, all necessary steps must be taken to place the existing board of directors in full control of the Respondent, with the assistance and guidance of the Broadcasting Compliance Unit ICASA;*
- *if business rescue proceedings have commenced, by deciding within four months thereafter to hold an Annual General Meeting (AGM) and by informing listeners and members of the date of such AGM no less than 3 months before the date of such AGM, by means of regular broadcasts as well as at least twelve (12) printed notices to that effect which should be strategically placed at places within the geographical area to which broadcasts are made. Such notifications should continue regularly until the date of the AGM and should be updated from time to time to provide necessary information to the listeners and members about the AGM and matters pertaining thereto;*
- *by notifying listeners and members in such broadcasts and notices that in terms of Respondent's articles of association ("articles") only members who have paid-up membership, have received notices of invitation from the Respondent and have registered that they will attend the AGM, will be entitled to vote at such AGM (article 8.5), but that (article 7.4) any listener who is a South African citizen over the age of 18 years, as well as families, which include children under the age of 18 years, community based organisations and corporate entities, may apply for membership of the Respondent on application forms which are available at least four named places, provided that they commit themselves to the aims and objectives of the Respondent, including its constitutional principles (article 7.12). The completed application forms should be returned to the same place where they were obtained and an annual membership fee of R10, 00 must be paid there, for which a receipt will be issued. Applications for membership*

*will be processed by the Respondent upon receipt thereof (article 7.2). An applicant must be notified in writing within 14 days after delivery of the completed application form whether his/her application has been successful or not. The Secretary of the Respondent must send a notice of invitation to the AGM to all members by post, fax, email or by hand 21 days before the AGM (article 17.3). A member, so invited to the AGM, must thereafter not later than 10 days before the AGM in writing forward his/her name to the Secretary of the Respondent to be registered as a voting delegate otherwise he/she will not qualify as such and may not vote at the AGM (article 17.5). A document proving such registration must be handed to the member by the person in control of such registration at the point where such registration may take place. Persons who are not members or whose membership has lapsed may be allowed to attend the AGM provided that they forward their names in writing to the Secretary to be registered as "non-voting" delegates, not later than 10 (ten) days before the AGM (article 17.5).*

*Such registration will take place at the places where the membership application forms are available. If a member is not up to date with the payment of his/her annual membership fees, he/she should be given written notice at least 60 (sixty) days before the AGM that he/she is not up to date with such payments and should be informed that if he/she does not pay the outstanding amount at least 30 (thirty) days before the AGM, he/she will not be entitled to vote at such AGM and will only be entitled to attend the AGM as a non-voting delegate provided he/she has registered as such at the places where such registration may take place. A document proving such registration must be handed to the member by the person in control of registration at the point where such registration may take place.*

- *by further notifying listeners in such broadcasts and notices that in terms of the Respondent's articles (18.1.5 and 18.1.6 read with 9.1) the existing directors' term of office is four years, which means that the existing directors will retain their office as directors until about October or November 2012 (This is dependent upon whether the*



*existing directors were indeed elected as such in October or November 2008 which must be factually determined);*

- If the AGM is held before October or November 2012, no election of directors will take place unless-*
- a written proposal is timeously received from a member who has paid-up membership, seconded by such another member, that the existing board of directors should dissolve or cease its function;*
- Seventy-five (75) percent of the paid-up members at the AGM vote in favour of such proposal (article 23.1);*
- Such proposal must be received by the Secretary at least 30 days before the AGM to enable him/her to send out notices of invitation to the AGM to members 21 days before such meeting (article 17.3) and in order that members may in such notice be informed that such a proposal will be made at the AGM and will be placed on the agenda for the AGM (article 23.1);*
- If the AGM is held after the existing directors' term of office has expired, ten new directors may be elected, provided that, in terms of article 8.2.5, three (3) members of the existing board of directors shall be re-elected or retained upon the new board of directors subject to proper nomination as new directors, provided that if 75% of paid-up members at such AGM vote in favour of a proposal then the board of directors dissolves or ceases its function, ten new directors may be elected without any obligation that three (3) members of the existing board of directors shall be re-elected or retained in the new board of directors;*
- A written nomination of a person as a director of the board of directors of the Respondent must be signed by a paid-up member as a proposer and another member as seconder and should be forwarded to the Secretary at least 10 days before the AGM (article 8.2.1). Such*

*nomination shall be accompanied by a written declaration of the nominee to the effect that if he/she is chosen as a director, he/she agrees (under his/her signature) to act faithfully and to the best of his/her ability as a director of the Respondent, that he/she has no criminal record and that he/she is not holding executive or similar positions in any political party at any level, or that he/she has resigned from such positions at least three (3) months before the date of such nomination. Nomination and declaration forms will be available at all places where membership application forms, and other forms relating to the AGM, are available. Completed nomination and declaration forms must be delivered by hand to the person in control at the place where such forms are available at least 14 days before the AGM. A director may also be nominated from the floor at the AGM by members proposing and seconding such nomination (article 8.2.2), but in such a case the person nominated as a director must be present during such nomination and election (article 8.2.2) and the nominee's properly completed, written declaration (as aforesaid) shall be handed in from the floor. Members who are serving in or holding executive or similar positions in political parties shall not be eligible for nomination or election, unless they have resigned 3 months before such nomination (article 8.2.3) and their written declarations to that effect are handed in before such nomination (article 8.2.2);*

- *Voting shall be conducted through secret ballot (article 8.3);*
- *Serving members of the Board of Directors may be re-elected after their term of office has expired (article 8.7). If ten directors are to be elected, they will be elected to fill the following positions: Chairperson, Deputy Chairperson, Secretary, Deputy Secretary, Treasurer (articles 11 and 18.1.3), four directors as heads of sub-committees (articles 9.2 and 18.1.6) and one as the Station Manager (article 9.3);*
- *For the sake of clarity it is noted that if no proposal is made for the dissolution of the board of directors, or if 75% of the members present do not vote for such proposal, and the AGM is held before the term of*

*office of the existing directors has expired, no election of directors will take place at the AGM;*

- The duties of the AGM shall, amongst others, be-*
- to amend and or approve minutes of the previous AGM and special general meetings;*
- to receive, consider and approve the chairperson's report for the years under review, including business rescue proceedings which may have commenced in respect of the Respondent and the prospects of the Respondent in regard thereto;*
- to set out programmes, resolutions and make provision for membership fees for the ensuing year;*
- to elect directors only after expiry of the existing directors term of office, or, if the AGM is held before that time, and a proposal is adopted by 75% of the votes of the members present that the board of directors should dissolve or cease its function (articles 18.1.5, 18.1.6 and 23.1); and*
- The Authority should warn the Respondent that where a licensee has repeatedly been found guilty of material violations, the Authority may in terms of s17E (2) (d) (ii) of the ICASA Act, revoke Respondent's licence (See CCC judgement attached as Appendix B).*

On 18 April 2012, subsequent to the CCC judgement being received by the Authority and the Licensee, the Authority had a meeting with the Licensee to discuss the outcomes of the CCC hearing and recommendations of the CCC in this regard.

The Authority and the Licensee agreed on the following terms in order for the Licensee to comply with the recommendations of the CCC:

- *The board of directors informed the Authority that the radio station is experiencing extreme financial distress and is currently facing legal action from their creditors including SARS. The Licensee concedes that it is technically insolvent;*
- *The Licensee has two banking accounts one of which was opened illegally and therefore unofficial; it was agreed that all financial records (from the two accounts) will be furnished to the auditor for the purposes of consolidating all the necessary information and establish the solvent state of the Licensee;*
- *The Licensee confirmed that the officially appointed auditors for Mosupatsela FM are Gobodo Chartered Accountants and Auditors;*
- *It was agreed that the unofficial banking account which is administered by the following individuals: Mr Mosala, Mr Jones, Ms Morake will be closed with immediate effect and Mr Mosala will furnish the Compliance Unit with proof that the unofficial account is closed and all financial records are submitted to the auditor;*
- *The board of directors, in consultation with the Management Committee, will draw up a rescue plan outlining process and efforts it intends to make in rescuing Mosupatsela FM from its financial situation. The board will submit the rescue plan to the Compliance Unit on or before 3 May 2012. This is in accordance with the CCC recommendations above. All members of the board to sign the rescue plan and commit themselves to implementing same; and*
- *The Compliance Unit cautioned the radio station against behaving in a manner that tarnishes the image of the radio station. Management and a representative from the Board are to arrange a meeting with presenters to discuss code of conduct and other policies. Programmes Manager to sign agreements with presenters, committing themselves to behaving responsibly when presenting their respective programmes.*

*The agreements will be submitted to the Compliance Unit on or before 4 May 2012.*

To date the Licensee has not closed the illegal banking account and therefore unable to furnish the Authority with Audited Financial Statements. The individuals administering the account have failed to comply with the request by the Authority and CCC respectively to close the account.

Further, the Licensee has not furnished the Authority with the rescue plan and has sighted the fact that it is currently not in control of the operations of the radio station due to certain individuals denying them access to the premises of the radio station; thus making it difficult for the board to take control.

The board has informed the Authority that the station management refuse to cooperate with the board and therefore attempts at conducting the workshop have failed (*See post visit acknowledgement letter attached as Appendix C*).

The Authority has advised the board that it needs to take charge and put its house in order because the licence was issued to the board on behalf of the community as the custodians and therefore management is accountable to the board and not the other way round.

The Licensee convened an AGM on 08 December 2012 and invited the Authority however the Authority was unable to honour the invite. The Authority requested the Licensee to submit the minutes of the AGM, reports presented at the AGM, programme recordings preceding the AGM, names of the newly elected board of directors.

The Licensee advised the Authority that the AGM was disrupted and therefore is unable to submit the documentation as per the Authority's request. The Authority is in possession of a copy of the DVD recording of the AGM proceedings, held on 08 December 2012. The Licensee could not furnish the programme recordings preceding the AGM as it does not have access to the recordings.

The Licensee has advised the Authority that it has resolved to convene another AGM on 01 April 2013.

The Licensee has failed to adhere to all the recommendations of the CCC and therefore does not comply with clause 3.1.

### **3.4 Programming**

Clause 4.1 of the licence stipulates that:

*"The Licensee shall provide programming as follows:*

#### *4.1.1 Format:*

*"60% talk and 40% music".*

Clause 4.1.2 of the licence stipulates that:

*"The Licensee shall broadcast a total of ninety (90) minutes of news per day, of which forty five (45) minutes shall be local, thirty six (36) minutes national and nine (9) minutes international news".*

Clause 4.1.3 of the licence stipulates that:

*"The Licensee shall broadcast a South African music content of 65%".*

Clause 4.1.4 of the licence stipulates that the Language(s) of broadcast are as follows:

- "(a) 65% SeSotho*
- (b) 5% English*
- (c) 10% isiXhosa*
- (d) 20% Setswana".*

Clause 4.1.5 of the licence stipulates that:

*"The Licensee shall broadcast for 24 hours a day".*

The Authority requested the programme recordings from the Licensee to ascertain compliance with the above mentioned clauses. However the Licensee could not provide the recordings as it does not have access to the radio station and the programme recordings. Consequently, the monitoring exercise could not be conducted. It is also worth noting that the Licensee has also failed to submit general log sheets as per the Compliance Procedure Manual Regulations (CPMR) to the Authority (*See request for programme recordings letters attached as Appendix D*).

The Licensee has failed to comply with clause 4.1 of its licence.

## **4. REGULATIONS**

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

The Regulations on South African Music Content as published on 31 January 2006 stipulate 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" (See South African Music Regulations attached as Appendix E).*

Due to the non-submission of programme recordings monitoring of the Licensee's music content could not be conducted. Therefore compliance with the South African Music Regulations could not be assessed.

## **4.2 Regulations Regarding Standard Terms and Conditions for Class Broadcasting Licences**

During the year under review, the Authority identified non-compliance aspects by the Licensee with the standard terms and conditions for class licensees. (See *Regulations regarding Standard Terms and Conditions for Individual Licences attached as Appendix F*).

The Licensee does not comply with regulation 9 of the Regulations Regarding Standard terms and Conditions for Class Broadcasting services which requires the Licensee to provide the Authority with information so as to enable it to carry out its obligations under the Act.

## **4.3 Universal Service and Access Fund Regulations**

Regulation 3 of the USAF Regulations 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" (See USAF Regulations attached as Appendix G).*

The Licensee did not provide proof that it has paid its annual USAF contribution as per the USAF Regulation.

The Licensee does not comply with the USAF regulations.



## **5. CONCLUSION**

Mosupatsela FM Stereo has not, for the period under review, complied with the requirements as set out in its licence and relevant regulations. The Licensee has also failed to comply with the CCC Ruling. Mosupatsela is due for licence renewal. It is advised that the licence be called for the hearing in this regard, alternatively that this matter be referred back to the CCC should the AGM of 01 April 2013 not materialise so that the licence be revoked as per the stipulations of the CCC ruling which provides that "*...the Authority may in terms of s17E (2) (d) (ii) of the ICASA Act, revoke Respondent's licence*".

## **6. APPENDICES**

Appendix A: Mosupatsela FM Stereo broadcasting service and frequency spectrum licence

Appendix B: CCC Judgement;

Appendix C: Post visit acknowledgement;

Appendix D: Request for programme recordings letters;

Appendix E: South African Music Content Regulations;

Appendix F: Regulations Regarding Standard Terms and Conditions; and

Appendix G: Universal Service and Access Fund Regulations (USAF)