



Independent Communications Authority of South Africa

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NEWCASTLE COMMUNITY RADIO REPORT

LICENSING AND COMPLIANCE PROGRAMME
MARCH 2013

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2011/2012 ANNUAL COMPLIANCE REPORT

NEWCASTLE COMMUNITY RADIO

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,¹ the ICASA Act of 2000² and the Electronic Communications Act ("EC Act") of 2005³ 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 and any relevant legislation and regulations.

The following report is intended to give account of Newcastle Community Radio's performance for the 2011/2012 financial year. Aspects of compliance that are measured comprise of the Geographic Coverage, Community, Programming Obligations, South African Music Content Regulations, Regulations Regarding Standard Terms and Conditions and Regulations in Respect of Prescribed Annual Contributions of Licensees to The Universal Service and Access Fund.

2. BACKGROUND

Newcastle Community Radio is a Class Sound Broadcasting Service Licensee. The radio station's mandate is to provide a sound broadcasting service to the geographic community of Newcastle, Madadeni, Osizweni, Utrecht, Danhauser, Ncandu, Lennoxton, Fairly, Ballengeich, Mullerspas and Normandien in the Kwa-Zulu Natal Province as specified in its frequency spectrum licence (*See frequency spectrum licence attached as Appendix B*).

¹ The Constitution No, 108 of 1996,

² The ICASA Act No, 13 of 2000,

³ The Electronic Communications Act No, 36 of 2005

3. COMPLIANCE ASSESSMENT

3.1 Control Structure

Clause 1 of the licence stipulates that:

"The Licence is issued to:

1.1 Name of Company/Entity: Newcastle Community Radio.

1.2 Control of the Licensee: Control shall vest in the Board of Directors of Newcastle Community Radio".

There were no changes reported by the Licensee to its control structure during the period under review.

The Authority has been advised by the new station manager that the Board is dysfunctional. Nevertheless Board of Directors of Newcastle Community Radio as per the Authority's records is made up of the following people and no new information has been received in this regard:

Denky Nkabinde – Board Member;
Velanjani Zulu - Board Member;
Thandi Motloung - Board Member;
Bhekumndeni Mhlongo - Board Member;-
Xolani Khumalo - Board Member;
Philani Ndlovu – Board Member;
Martha Booysen – Board Member; and
Samukelisiwe Yende - Board Member;

The Licensee complies with clauses 1.1 and but does not comply with clause 1.2 of its licence as it has been reported that the Board is dysfunctional.

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

"Name of the radio station: Radio NN".

The name of the Licensee's radio station is Radio NN.

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 the radio station's geographic coverage area is as follows:

"Newcastle, Madadeni, Osizweni, Utrecht, Danhauser, Ncandu, Lennoxton, Fairly, Ballengeich, Mullerspas and Normandien in the Kwa-Zulu Natal Province as set out in the Licensee's radio frequency spectrum licence".

The Licensee confirms that it covers the areas stipulated in its licence.

The Licensee complies with clause 2 of the schedule to its licence.

3.3 Community

Clause 3.1 of the schedule to the licence stipulates that:

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

Newcastle Community Radio confirms that it provides its services to the geographic community residing within its coverage area.

The Licensee complies with clause 3.1 of the schedule to 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.

3.2.3 The Licensee shall hold Annual General Meetings (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 meetings with community and to submit its proof of meetings with its community on programming and programme-related matters.

Further, the Licensee has not convened the Annual General Meeting (AGM) during the period under review.

The failure to convene the AGM has resulted in Licensee being unable to provide its community with feedback on the Licensee's operational and financial performance as well as electing members of the Board of Directors as required by clause 3.2.3.3 of the schedule to its licence.

The Authority has been recently advised by the radio station newly appointed station manager that there is effectively no board at Newcastle Radio. The only people who are willing take the radio station forward are staff members, but are experiencing challenges because they do not have the support structure.

The Authority has previously assisted the radio station to comply, through two station visits where workshops were conducted. The new station manager has indicated that a station visit and workshop can assist the radio station to comply with its licence requirements.

The Licensee does not comply with clause 3.2 and its sub-clauses of the schedule to its licence.

Clause 3.3 of the schedule to the licence stipulates that:

"The Licensee shall establish and maintain a community Advisory Council and committees made up of members of the community to facilitate community participation".

The Authority does not have any proof in its possession that the Licensee has these community Advisory Council and committees in place. The new station manager could not confirm whether these structures exist.

The Licensee does not comply with clause 3.3 of the schedule to its licence.

Clause 3.4 of the schedule to the licence stipulates that:

"The Licensee shall ensure that communities from Newcastle, Madadeni, Osizweni, Utrecht, Danhauser, Ncandu, Lennoxton, Fairly, Ballengeich, Mullerspas and Normandien fully participate in the activities of the station and structures are set up to incorporate community representatives from these areas".

The Authority does not have any proof in its possession that communities from the radio station's coverage area participate in the activities of the radio station and that there are community structures in place. The new station manager could not confirm compliance in this regard.

The Licensee does not comply with Clause 3.4 of the schedule to its licence.

3.4 Programming

Clause 4.1.1 of the schedule to the licence stipulates that the Licensee shall provide format as follows:

"70% talk and 30% music".

The Licensee has failed to submit recordings to the Authority for monitoring purposes. The Licensee informed the courier service company that there were no recordings on the day of collection. Without the recordings, the Authority has, during the period under review, been unable to verify whether format is as stipulated in the licence. In addition, the Licensee has also failed to confirm whether it complies with its format.

The Licensee does not comply with clause 4.1.1 of the schedule to its licence.

Clause 4.1.2.1 of the schedule to the licence stipulates that:

"The Licensee shall broadcast a total of 65 minutes per day, which shall be broadcast in all broadcast languages".

Clause 4.1.2.2 of the schedule to the licence stipulates that:

"The Licensee shall ensure participation by members of its community in the production of community news".

Clause 4.1.3 of the schedule to the licence stipulates that:

"The Licensee shall broadcast a South African music content of 45%".

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

- (a) 70% isiZulu*
- (b) 20% English*
- (d) 10% Afrikaans*

Clause 4.1.5 of the schedule to the licence stipulates that:

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

No recordings were submitted by the Licensee to the Authority when requested, to enable the Authority to assess compliance with clauses 4.1.2.1 to 4.1.5 above.

The Licensee does not comply with the above mentioned clauses.

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 stipulates 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 Appendix D).

The monitoring exercise was could not be conducted due to the Licensee's failure to submit programme recordings.

The Licensee has failed to comply with the Regulations on South African Music Content.

4.2 Regulations Regarding Standard Terms and Conditions for Class Broadcasting Licences

During the year under review, the Authority identified non-compliance with Regulation 9 (1) (a) of the standard terms and conditions for class licences which stipulates as follows:

"The Authority may, in the course of carrying out its obligations under the Act, require a Licensee to provide information, so as to enable it to:

Monitor and enforce... compliance with licence conditions and other requirements of the Act and related legislation".

The Licensee has failed to comply with Regulation 9 (1) (a) of the standard Terms and Conditions for Class Licences.

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".*

Generally, community radio stations are of the view that they get their funding from the same body they are required to contribute USAF fees to. However, the Authority does not have the requisite authority to exempt anybody from the payment of USAF Fees to be able to exempt community Licensees, we would require an amendment of section 89 of the ECA which provides as follows:

" (1) Subject to subsection (3) every holder of the licence granted or considered to have been granted in terms of Chapter 3 must pay, in addition to any other fees contemplated in this Act or the related legislation, the prescribed annual contributions of the licensee's licensed activity to the Universal Service and Access Fund.

(2) The Authority must prescribe-

(a) The basis and manner of determination of such contribution, which must not exceed 1 per cent of the licensee's annual turnover or such other percentage of the licensee's annual turnover as may be determined by the Minister after consultation with the affected parties..."

During the period under review, the Licensee did not pay its annual contribution fee to the fund and has failed to submit its audited financial statements when requested by the Authority in order to issue invoices; in contravention of the USAF regulations read with section 89 of ECA.

5. CONCLUSION

The Licensee has failed to comply with its licence conditions, applicable regulations, section 89 of ECA. The Authority has made strides, in spite of limited budget to conduct visits, to assist the radio station to comply with its licence requirements.

The Licensee is due for renewal of its Class Sound Broadcasting licence. It is recommended that the Licensee be called for a renewal hearing, so that the Authority can decide on whether to renew a licence to this entity.

6. APPENDICES

Appendix A: Newcastle Community Radio's broadcasting service

Appendix B: Newcastle Community Radio's frequency spectrum licence

Appendix C: South African Music Content Regulations

Appendix D: Universal Service and Access Fund Regulations

Appendix E: Regulations Regarding Standard Terms and Conditions for Class Licensees