

2011/2012 ANNUAL COMPLIANCE REPORT

Seyalemoya Communication (Pty) Ltd broadcasting as OFM

Licence Period: 17 December 2008 - 16 December 2018

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 Electronic Communications Act ("EC Act"), terms and conditions of their Licence, and any relevant legislation and regulations.

The following report is intended to give account of OFM's performance for the 2011/2012 financial year. Aspects of compliance that are measured comprise of Geographic Coverage, Languages, Format, Local Content Obligations, General Programming Obligations, Regulations Regarding Standard Terms and Conditions, Universal Service and Access Fund Regulations and General Licence Fees Regulations.

2. BACKGROUND

OFM is an Individual Commercial Sound Broadcasting Service Licensee providing an adult contemporary format, comprising a mixture of music and information to the Free State, Northern Cape and parts of North West provinces (See *broadcasting service licence and spectrum licence attached as Appendix A*).

¹ The Constitution of the Republic No 108, 1996

² ICASA Act No 13, 2000 as amended

³ Electronic Communications Act No 36, 2005

3. COMPLIANCE ASSESSMENT

3.1 Geographic Coverage

Clause 2 of the schedule to the licence states that the Licensee's geographic coverage area is:

"Free State, Northern Cape and parts of the North West, as defined in the coverage map attached to the radio frequency spectrum licence".

According to the frequency spectrum licence, the radio station covers the areas indicated above. The Licensee confirms that their coverage area(s) are as defined in the frequency spectrum licence.

The Licensee complies with clause 2 of its licence.

3.2 Broadcast Language(s)

Clause 3 of the schedule to the licence states that the languages of broadcast are as follows:

"English and Afrikaans".

The Authority's monitoring of OFM's programming content confirmed that the radio station broadcasts programmes in English and Afrikaans.

The Licensee complies with clause 3 of its licence.

3.3 Format

Clause 4 of the schedule to the licence states that:

"The Licensee shall have a programming format of music in an adult contemporary format, providing a mix of music and information (including coverage of community affairs)".

The Authority's monitoring of OFM's programming content confirmed that the radio station offers a programming format of music in an adult contemporary format and a mix of music and information.

The Licensee complies with clause 4 of its licence conditions.

3.4 Local Content Obligations

Clause 5 of the schedule to the licence conditions states that:

5.1 The Licensee shall annually adhere to a four point plan, namely:

5.1.1 supporting live music performances;

5.1.2 profiling South African composers;

5.1.3 engaging in joint promotions and competitions with record companies and advertisers; and

5.1.4 playing and promoting local music demonstration tapes or equivalent".

OFM submitted that it has once again achieved a higher than average local content quota per month. The monthly log sheets indicate that the radio station's programmes focus on interviews from within the community. Further, OFM features local artists on both its "Campus countdown" and the "SA Showcase". According to the Licensee, OFM has during the period under review, interviewed local musicians for the duration of five (5) minutes per interview.

The artists interviewed include amongst others: Anna Davel, Steve Hofmeyr, Mathys Maree, CH2, Proverb, Jamali, Khuli Chan, Lloyd Cele, Zakes Ban, Heuwels Fantasties, Kwesta, Gang of Instrumentals, Jack Parrow, Ricky Faber, Donovan Vallance, Coenie de Villiers, Frank Opperman, Liani May, Robbie Wessels, ADAM, Zebra & Giraffe, Arno Carstens, Corlea Botha, Karen Zoid,

Elzabe Zietsman, Valiant Swart, Laurika Rauch, Josse Clegg, Jan Blohm, Phelo Bala, Nondumiso Tembe, Goodluck, RJ Benjamin, Teargas and Black Coffee.

The Authority's monitoring confirmed that the Licensee broadcasts and promotes local music.

The Licensee has complied with clause 5 of its licence.

3.5 General programming obligations

Clause 6.1 of the schedule to the licence states that:

"Should the Licensee source news material from a source other than itself, the source(s) thereof shall be disclosed during the news broadcast".

The Authority's monitoring exercise revealed that the Licensee discloses its sources of news whenever it reports on news that has not been obtained by its news journalists. News sources include South African Press Association (SAPA), the Internet and sister stations (Kagiso Media and AME Group Stations).

The Licensee has complied with clause 6.1 of its licence.

Clause 6.2 of the schedule to the licence states that:

"The Licensee shall spend a minimum of R900 000 (nine hundred thousand Rand) per annum on the provision of news, including locally-based news gathering".

The Licensee submitted that over the past eleven (11) months (April 2011 to February 2012) an amount of two million, sixty five thousand and four hundred and ninety three rand (R2 065 493.00) was spent on the provision of news, which included locally-based news gathering during the period under review, thus exceeding its target by one million, one hundred and sixty five thousand, four hundred and ninety three rand (R 1 165 493.00) (See Appendix B).

The Licensee has complied with clause 6.2 of its licence.

Clause 6.3 of the schedule to the licence states that:

"The Licensee shall emphasise local news".

The monitoring exercise revealed that approximately ninety percent (90%) of OFM's news bulletins is local news.

The Licensee has complied with clause 6.3 of its licence.

Clause 6.4 of the schedule to the licence states that:

"The Licensee shall broadcast an average of at least thirty-five (35) minutes of news per day including half hourly bulletins during peak hours".

The monitoring confirmed that the Licensee broadcasts thirteen (13) news bulletins every hour on the hour and seven (7) headline news every half hour on weekdays. According to OFM, news bulletins last for approximately two and a half (2½) minutes and headline news last for thirty (30) seconds. However, according to the Authority's monitoring, the radio station's news bulletins last for approximately four and a half (4½) minutes. During the period under review, OFM broadcast fifty eight minutes and thirty seconds (58 minutes 30 seconds) of news each day during the South African performance period. News bulletins and headlines are broadcast in both English and Afrikaans. On weekends, the radio station broadcasts four (4) news bulletins which are four (4) minutes in duration.

This amounts to a total of sixteen (16) minutes of news on weekends. The following are some of the news items monitored:

- *"Selebi Appeals judgement";*
- *"President Jacob Zuma today said he would testify at the inquiry into multi-billion rand arms deal";*

- *"A Japanese politician drank a glass of water taken from puddles inside the damaged Fukushima nuclear power plant";*
- *"Fire raging in Northern Cape Schmidtsdrift Ground" ;*
- *"Probe to begin into North West Sentisim employees";*
- *"Challenges facing the gay and lesbian community of South Africa";*
- *"New Evidence in the Lee Mathews' Murder Trial";*
- *"Man Attacked by a Cheetah at Bloemfontein Zoo"; and*
- *"Anglo-American to buy Oppenheimer's family stake at De Beers".*

The Licensee has complied with the requirement of thirty-five (35) minutes news broadcast on weekdays but has failed to comply with the news requirement on weekends.

3.6 Community-Related Obligations

Clause 7 of the schedule to the licence states that:

"The Licensee shall donate any redundant equipment to community sound broadcasting services in its coverage area when it upgrades its studio equipment".

The Licensee reported that new equipment was bought and installed in a newly built studio. Therefore, information regarding donation of the redundant equipment will be reported on when the radio station upgrades its studio.

3.7 Ownership and Control Obligations

Clause 8.1 of the schedule to the licence states that:

"The Licensee shall maintain a minimum of thirty percent (30%) control of the station within the broadcasting coverage area".

The Licensee maintains that seventy percent (70%) of its Directors live within its coverage area (*See Appendix B for details*).

The Licensee has complied with clause 8.1 of its licence.

Clause 8.2 of the schedule to the licence states that:

"The Licensee shall maintain ownership and control of the station by persons from historically disadvantaged groups at a minimum of fifty percent (50%)".

The Licensee submits that ownership and control by historically disadvantaged groups (HDI/G) in African Media Entertainment (AME) is currently at 25.2%, which translates to 17.7% in the Licensee; while Kagiso Media is at 24.93%, which translates to 12.7% in the Licensee. This submission was confirmed by the Authority during its latest HDI Audit conducted on Licensees.

From the above, it is apparent that the Licensee does not comply with the minimum 50% requirement as the percentage of the above HDI constitutes 30.4%. This was also confirmed by the Licensee in its submission.

Clause 8.3 of the schedule to the licence states that:

"The Licensee shall ensure that, at all times, at least two women are on its board of directors".

OFM's Board of Directors is constituted of eleven (11) people. Of this number six (6) are women which translate to 54, 5% female and 45, 5% male. The Board members are as follows:

- Mr GS Stroebel - Chief Executive Officer (White, male)
- Me MMM Vermeulen – Chief Financial Officer (White, female)
- Mr MJ Prinsloo – Chairperson (White, male)
- Rev CD Jaftha – Deputy Chairperson (Black, male)

- Mr AJ Grobbelaar – Board Member (White, male)
- Mr MR van Zyl – Board Member (White, male)
- Me II Tlhankana – Board Member (Black, female)
- Prof W Viviers - Board Member (White, female)
- Me M Mynhardt – Board Member (White, female)
- Me NJ Mabandla – Board Member (Black, female)
- Me PP Mmope – Board Member (Black, female) (See Appendix C).

The Licensee has complied with clause 8.3 of its licence.

3.8 Training and Skills Development Obligations

Clause 9 .1 of the schedule to the licence states that:

"The Licensee shall spend a minimum of R250 000 (two hundred and fifty thousand Rand) per annum on training and skills development for persons from historically disadvantaged groups".

During the year under review, the Licensee reported that it has spent one million, five hundred and eighty eight thousand, two hundred and forty two rand (R1, 588, 242) on training and development of its staff. The Licensee submits that this amount was spent on the training for persons from historically disadvantaged groups (See Appendix B).

The Licensee has complied with clause 9.1 of its licence.

Clause 9 .2 of the schedule to the licence states that:

"The Licensee shall ensure that at least thirty percent (30%) of its total full time staff complement is Black".

The Licensee has a staff compliment of eighty three (83) people. Of this number, fifty nine (59) are white and 24 black which translates to 29% black people (See *Appendix B*).

The Licensee has, during the period under review, failed to comply with clause 9.2 of its licence.

4. REGULATIONS

4.1 Regulations Regarding Standard Terms and Conditions

During the year under review, the Authority did not identify any non-compliance by the Licensee with the standard terms and conditions for individual licensees (See *Regulations regarding Standard Terms and Conditions for Individual Licences attached as Appendix E*).

4.2 South African Music Content

Regulation 3.2 of the Regulations on South African Music Content as published on 31 January 2006 states 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".

The Authority's monitoring confirmed that OFM plays 25% of South African music and thus in compliance with clause 3.2 of the South African Music Content Regulations.

4.3 Universal Service and Access Fund

Regulation 3 (1) of the Regulations in respect of Prescribed Annual Contributions of Licensees to the Universal Service and Access Fund as published in the Government Gazette, no 31499 states that:

"Every holder of a licence granted in terms of Chapter 3 or converted in terms of Chapter 15 of the Act, must pay an annual contribution of 0.2% of the annual turnover, derived from the licensee's licence activity, to the Fund (the Fund)".

Further, Regulation 3 (3) states that:

"A broadcasting service licensee who has paid an annual contribution to the Media Development and Diversity Agency (MDDA) must set off that contribution against its prescribed annual contribution to the Fund".

The Licensee paid its annual contribution fee to the fund on 28 September 2012 and duly submitted proof of payment to the Authority (See Appendix F respectively). The amounts cannot be disclosed as the Licensee requested confidentiality to its finances.

The Licensee has, during the period under review, complied with Regulation 3(1) and 3(3) of the USAF Regulations.

4.4 General Licence Fees

Regulation 3(1) of the General Licence Fees Regulations states 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 of the Annual Licences Fees regulations provides for Individual Commercial Broadcasting Service Licensees to pay an annual licence fee of 1.5% of gross profit to the Authority.

Regulations 4 (b) and (c) of Schedule 3 states 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"

During the period under review, OFM made a payment of its licence fees. Proof was submitted to the Authority on 28 September 2012, which is within the six (6) months after its financial year end.

The Licensee has complied with regulation 3 (4) (b) (c).

5. CODE OF CONDUCT FOR BROADCASTERS AND COMPLAINTS

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"). There were no complaints in relation to the code of conduct instituted against the Licensee.

However, the Licensee submitted a table indicating generic complaints and nature of same that it dealt with during the year under review. The complaints related to presenter/s and the fact that listeners did not like the way they present a particular programme, music, content, competition, transmitter/streaming and others (*See Appendix G for further details*).

6. CONCLUSION

The Licensee has complied with most of its licence terms and conditions. However, the Licensee has not complied with the thirty five (35) minutes news requirement on weekends. It is also noted that the number of news bulletins on weekdays differ from those indicated in the submitted report. Although this is not a contravention, the licensee indicates in its report that news last for approximately two and a half (2½) minutes and monitoring detected that news

items last for four minutes (4) and at times four and a half minutes(4½). The Licensee also did not comply with the 50% percent minimum in respect of HDI in its ownership and control structure.

7. APPENDICES

Appendix A: OFM's licence conditions

Appendix B: General Programming Obligations Report

Appendix C: OFM's Ownership and Control Report

Appendix D: Information on Training

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

Appendix F: USAF Regulations

Appendix G: OFM's Complaints Report; and

Appendix H: Complaints Received