



# **POWER FM ANNUAL COMPLIANCE REPORT**

**MARCH 2023**

# **2021/2022 ANNUAL COMPLIANCE REPORT**

## **POWER FM (PTY) LTD BROADCASTING AS POWER FM**

**LICENCE PERIOD: 25 May 2012 – 24 May 2022**

### **1. PREFACE**

The Independent Communications Authority of South Africa ("Authority") has a statutory mandate in terms of the Constitution, the Independent Communications Authority of South Africa Act (ICASA Act) and the Electronic Communications Act of 2005 ("EC Act") to regulate broadcasting activities in South Africa in the public interest. One of the main tasks of the Authority is to ensure compliance by broadcasters with the terms and conditions of their licence, the Electronic Communications Act, the ICASA Act, and any relevant legislation and Regulations.

The report is intended to give an account of Power FM's compliance with the terms and conditions as set out in its licence for the 2021/2022 financial year. Aspects of compliance that are measured comprise of Geographic Coverage, Broadcasting Languages, Format, General Programming Obligations, Training and Skills Development and Community-Related Obligations.

Further, the report will measure compliance with regulations that include South African Music Content, Standard Terms and Conditions for Individual Licensees, Universal Service and Access Fund, General Licence Fees and the Code of Conduct for Broadcasters.

### **2. BACKGROUND**

In May 2012, the Authority issued a commercial broadcasting licence to Power FM (Pty) Ltd broadcasting as Power FM ("the Licensee"), to provide broadcasting service to Gauteng as indicated in its radio frequency spectrum licence.

The radio station is broadcasting from the studios situated at 79 Central Street, Houghton. The signal distribution service is conducted by Sentech (Pty) Ltd.

### 3. COMPLIANCE ASSESSMENT

#### 3.1 Control Structure

##### 3.1.1 Ownership and Control

Clause 1 of Power FM's licence stipulates that:

*"The licence is issued to:*

*1.1 Name of Company/Entity: Power FM (Pty) Ltd*

*1.2 Shareholders:*

<i>Janistone (Pty) Ltd</i>	<i>– 68.53%</i>
<i>AiH Media (Pty) Ltd</i>	<i>- 3.82%</i>
<i>MIB Radio &amp; Media Investments (Pty) Ltd</i>	<i>– 7.83%</i>
<i>Friedshelf 1136 (Pty) Ltd ("Ndalo Radio Broadcasting")</i>	<i>– 8.100%</i>
<i>Friedshelf 1125 (Pty) Ltd ("Kgalakgadi Media")</i>	<i>– 4.48%</i>
<i>Friedshelf 1134 (Pty) Ltd ("Thonga Media")</i>	<i>– 2.24%</i>
<i>Friedshelf 1135 (Pty) Ltd ("TT Media and staff")</i>	<i>– 2.77%</i>
<i>Friedshelf 1122 (Pty) Ltd ("Jacobs the 4")</i>	<i>– 2.24%".</i>

Broadcasting Compliance has noted that in recent years the Licensee refers to itself as Power 987 (Pty) Ltd. The monitoring exercise has also revealed that the Licensee broadcasts as Power 98.7 FM. The Licensee was licensed in 2012 as *Power FM 98.9 (Pty) Ltd* to broadcast as *Power FM*. In 2013, an updated licence was issued with the name *Power FM (Pty) Ltd* to broadcast as *Power FM*.

The Licensing and Compliance Division does not have any records of a name change notification from the Licensee to change the name from Power FM (Pty) Ltd to Power 987 (Pty) Ltd, or the broadcast name from Power FM to Power 98.7 FM. Furthermore, clause 1 of the Schedule to the licence states the name of the radio station as *Power 98.9 FM*. Therefore, Power 987 FM/Power 98.7 FM is not a name that is recognized by the Authority.

Licensee's share structure has also changed, and it submitted a notice of change of information in line with the Standard Terms and Conditions Regulations. The notification is still under consideration; an updated licence will be issued once the process has been concluded and/or the changes are approved.

**The Licensee did not fully comply with clause 1 of its licence.**

### **3.2 Contact Details**

Clause 2 of the schedule to Power FM's licence provides that:

*a. "The contact person for the Licensee shall be:*

*2.1.1 Name: Mr. Given Mkhari;*

*2.1.2 Tel: 010 014 9000;*

*2.1.3 Fax: 011 014 9099;*

*2.1.4 Cell: 082 561 1661*

*2.1.5 Email: [GivenM@powerfm.co.za](mailto:GivenM@powerfm.co.za)*

*[SeanokengM@powerfm.co.za](mailto:SeanokengM@powerfm.co.za)*

The Licensee has submitted a different person as its contact person, but it did not submit a notification to the Authority in line with the Processes and Procedures Regulations and as per the Standard Terms and Conditions Regulations.

**The Licensee did not comply with clause 2 of its licence.**

### **3.4 Geographic Coverage Area**

Clause 2 of the schedule to Power licence provides that:

*"Geographic coverage:*

*"Gauteng, as indicated in the attached coverage map, from time to time".*

The Authority did not receive reports suggesting the Licensee broadcasts outside the defined coverage area.

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

### **3.5 Broadcast Language**

Clause 3 of the schedule to Power FM's licence provides that:

*"Principal Language: English, however, the other common languages spoken in the area will be flexibly used in accordance with listeners".*

Power 98.7 broadcasts programmes in English as its primary language.

**The Licensee complies with clause 3 of the schedule to its licence.**

### **3.6 Format**

Clause 4 of the schedule to Power FM's licence provides that:

*"The Licensee shall be a full-service adult contemporary talk radio station with up to 70% of the airtime devoted to talk and at least 30% to music".*

The Authority's monitoring exercise found that the Licensee broadcasts a full service, which is made up of predominantly adult contemporary talk and at least 30% music, as required by the clause above. Weekday broadcasting is dominated by talk more than music, with more music being broadcast on weekends, with a mixture of talk.

**The Licensee complies with clause 3 of the schedule to its licence.**

### **3.7 Local Content Obligations**

Clause 5 of the schedule to Power FM's licence provides that:

*"The Licensee shall broadcast 35% of South African music".*

The Licensee's quarterly submissions indicate that it broadcasts, on average 45% of South African music content.

The monitoring exercise confirmed that the Licensee broadcasts more than 35% of South African music.

**The Licensee complies with clause 5 of the schedule to its licence.**

### **3.8 General Programming Obligations**

Clause 6.1 of the schedule to Power FM's licence provides that:

*"The Licensee shall primarily dedicate current affairs programmes in the morning, during its midday and afternoon show. The licensee will further broadcast programmes beyond current affairs as they will also include entrepreneurship, sports arts entertainment and lifestyle content".*

The Licensee's submissions indicate that it primarily broadcasts current affairs in the morning, during its midday and afternoon shows. It also submitted that it broadcasts

beyond current affairs with programming that includes entrepreneurship, sports, arts, entertainment and lifestyle content as per clause 6.1.

The monitoring exercise confirmed that Power FM broadcasts current affairs programmes in the morning, midday to afternoon and other programmes beyond current affairs, including on entrepreneurship, sports, arts, entertainment and lifestyle content. The Licensee broadcasts *Power Breakfast* between 06h00 and 09h00 and *Power Lunch* between 12h00 and 15h00 as part of its current affairs programming.

The Licensee also broadcast *Power Talk*, *Power Drive* and *Power Business* as part of its entrepreneurship, sports, arts, entertainment and lifestyle programmes. These shows cover a variety of topics, with inputs from analysts and experts from different fields. The topics covered are of interest and benefit to the listeners and provide platforms for robust discussions between listeners and guests.

**The Licensee complies with clause 6.1 of the schedule to its licence.**

Clause 6.2 of the schedule to Power FM's licence provides that:

*"The Licensee shall broadcast reports from correspondent reporters in various African countries on current events in their regions on Sunday mornings".*

The monitoring exercise identified reports on current affairs in different African countries on Sunday mornings, *Across the Continent*. These are some of the reports that were identified: A report by Gloria Michaels on the 'Impact of Covid-19 and Vaccination Rollout' in Tanzania; a report on the 'Shona Community Given Kenyan Citizenship' by David Owino and a report from Mozambique on the Mozambique Hidden Debt scandal.

**The Licensee complies with clause 6.2 of the schedule to its licence.**

Clause 6.3 of the schedule to Power FM's licence provides that:

*"The Licensee shall emphasize local and regional news and employ a news team specifically for the production of local news".*

The monitoring exercise confirmed that Power FM puts more emphasis on local and regional news and the licensee has confirmed that it has employed a news team specifically to produce local news, and it submitted their names.

**The Licensee complies with clause 6.3 of the schedule to its licence.**

Clause 6.4 of the schedule to Power FM's licence provides that:

*"The Licensee shall broadcast news on a regular basis for a minimum of forty-nine (49) minutes each day between 05h00 and 23h00".*

The monitoring exercise revealed that Power FM broadcasts more than seventy (70) minutes of news per day. It broadcast news bulletins every hour during the performance period, and each bulletin is approximately five minutes.

Below are some of the news items that were identified during the monitoring exercise:

- *"Officials in Phoenix say the government is working to reign the situation under control. This comes as the South African Police Force investigates a staggering fifty-two cases of attempted murder and more than 30 actual murders, as simmering racial tensions in the region burst into full-scale violence. In one case, the violence was so pronounced that a resident intentionally drove his motorcycle into another man, killing him on site. But Phoenix is just one flash point in a broader outbreak of violence that claimed 342 deaths in KwaZulu-Natal and Gauteng. The Police Minister, Bheki Cele, says the police want to figure out the driving factors for this unprecedented unrest.*
- *"Groups of all ages, especially young adults that have vaccinated, have been cautioned to remain vigilant and continue adhering to Covid-19 protocols post the jab. Officials say the uptake of vaccinations in the 18 to 34-year-old cohort has the potential of changing the country's Covid-19 trajectory. Vaccination for the cohort opened yesterday with throngs of young people streaming to vaccination sites across the country. Those remaining have been encouraged to continue streaming to various of the country's vaccination sites for a jab this weekend. The National Health Department opted to open vaccination for the group earlier than expected because of low vaccine take-up in other age groups. Chairperson of the Gauteng Premier Advisory Council and Covid-19, Dr Mary Kawonga has stressed that the country is still in the third wave and advised communities vaccinated or not, to continue adhering to Covid-19 protocols.*
- *The mother of slain Nathaniel Julies, Bridget Harris says the country's justice system is weak and it has failed them as a family. This, as today marks exactly a year since their son was shot dead by police just a few metres from his home in Eldorado Park. This happened when the 16-year-old boy was buying biscuits*

*at a local tuck shop. Today family and community members are having a memorial service in honour of Julies.*

- *The World Health Organisation has committed to ending all remaining forms of Polio in Africa. This, was after the organisation presented the Polio scorecard to track the progress towards its eradication. Since 2018, twenty-three countries in the continent have experienced outbreaks. The WHO says a substantial number of new cases increased last year due to the disruptions to Polio vaccinations. However, the WHO's Regional Director for Africa, Dr Matshidiso Moeti, says efforts are underway to eradicate the life-threatening disease."*

#### **The Licensee complies with clause 6.4 of the schedule to its licence.**

Clause 6.5 of the schedule to Power FM's licence provides that:

*"The Licensee will also broadcast breaking news as they unfold and these are likely to take over a programme being broadcast instead of being contained solely within the news bulletin".*

The monitoring exercise confirmed that Power FM broadcasts breaking news as they unfold; news which at times overlap with regular programming and are not contained solely within the news bulletins.

#### **The Licensee complies with clause 6.5 of the schedule to its licence.**

Clause 6.6 of the schedule to Power FM's licence provides that:

*"Should the Licensee source news material from a news agency/source other than itself, the source(s) thereof shall be disclosed to the Authority".*

The monitoring exercise revealed that most of Power FM's news bulletins are self-originated. However, it was confirmed that the Licensee discloses sources of news whenever it reports news obtained from other sources other than itself.

#### **The Licensee complies with clause 6.5 of the schedule to its licence.**

### **3.9 Ownership and Control Structure of the Licensee**

Clause 7 of the schedule to Power FM's licence provides that:



*"The Licensee shall for the duration of this licence maintain at least thirty per cent (30%) ownership and control of the station by persons from historically disadvantaged groups".*

The Licensee submits that 94.9% of its ownership and control is by historically disadvantaged groups. Furthermore, its B-BBEE status verification certificate states that more fifty-one percent (51%) of its ownership and control is by persons from historically disadvantaged groups.

**The Licensee complies with clause 7 of the schedule to its licence.**

### **3.10 Specific Terms and Conditions**

Clause 8 of the schedule to Power FM's licence provides that:

*"The Licensee shall broadcast a minimum of 3% African music (excluding music from South Africa) per month between 05h00 and 23h00".*

The Licensee's submissions did not indicate its compliance with this specific condition to its licence.

The monitoring exercise revealed that the Licensee broadcasts a significant amount of African music every month and complies with the minimum of 3% as required. Some of the artists that were played are *Runtown* (Nigeria), *Bhudaza* (Lesotho), *Fantcha* (Cape Verde), *340ml* (Mozambique), and *Coco Mbassi* (Cameroon).

**The Licensee complies with clause 3.10 of the schedule to its licence.**

## **4. REGULATIONS**

### **4.1 SA Music Content**

Regulation 3.2 of the ICASA Regulations on South African Music Content<sup>1</sup>, as published on 23 March 2016, stipulates that:

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<sup>1</sup> Appendix C: ICASA South African Music Content Regulations, 2016 as published in *Government Gazette* No. 39844 dated, 23 March 2016.

*"Every holder of a commercial sound broadcasting licence to which these regulations apply must ensure that a minimum of 35% 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 monitoring exercise confirmed that Power FM broadcasts a minimum of 35% of South African Music content spread reasonably evenly throughout the performance period.

Various genres were identified on the station's music line-up including Afro-Soul, Hip-Hop, Jazz, House and Kwaito. Featured South African artists included among others, *Sjava, Nombila, HHP, Letta Mbulu, Thabsie, Moneoa, Tamara Dey and Mapaputsi.*

### **The Licensee complies with its South African Music Content obligation.**

#### **4.2 Standard Terms and Conditions**

The Licensee contravened regulation 2 of the Regulations on Standard Terms and Conditions for Individual Licensees, as amended and published on 30 March 2016, which stipulates that:

*"(1) A Licensee must submit written notice to the Authority within seven (7) days of the occurrence of the following changes:*

- (a) the name of the Licensee;*
- (b) contact details including the contact person;*
- (c) shareholding;*
- (d) Physical address; and*
- (e) Financial year end."*

According to the Licensee's submissions, it has changed its contact person and this non-compliance was identified during the 2019/2020 and 2020/2021 monitoring periods and accordingly captured in the reports. This was also brought to the Licensee's attention in the workshop that was held on 21 January 2022 and it was advised to submit a notification of change of details (form L). To date, the Licensee has not submitted a notification to the Authority.

Furthermore, the Licensee's licensed name is *Power FM (Pty) Ltd* to broadcast as *Power FM*. However, Broadcasting Compliance has noted that in recent years the Licensee,

through its submissions, refers to itself as Power 987 (Pty) Ltd and the monitoring exercise has revealed that it broadcasts as Power 98.7 FM.

The Licensee did not submit a written notice to notify the Authority of the changes to its company/entity and broadcast names.

**The Licensee did not comply with the above Regulations.**

#### **4.3 Regulations in respect of the Prescribed Annual Contributions of Licensees to the 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 (USAF), as published in the Government Gazette, No. 31499 of April 2009, stipulates 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) stipulates 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".*

According to the Authority's records and confirmation from its Finance Department, the Licensee did not pay its annual contribution to the Fund for the year under review. Furthermore, the Licensee has outstanding fees due to non-payment or part-payments from the 2019/20 financial year to date.

**The Licensee did not comply with the above regulations.**

#### **4.4 General Licence Fees Regulations**

Regulation 3 (1) of the General Licence Fees Regulations provides 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 Broadcasting Licences".*

Schedule 2 of the Annual Licences Fees regulations provides for Licensees to pay an annual licence fee, in accordance with their licensed revenue and to be calculated using the set formula.

Regulation 7(a), 7(b) and 7(c) of Schedule 3 provides that Annual Licence Fees:

- a) Are due annually based on the licensee financial year;*
- b) Are due and payable within 6 months from the end of 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".*

Power FM (Pty) Ltd's financial year end is February; therefore, its annual licence fees should be paid no later than 31 August each year. According to the Authority's records and confirmation from the Finance Department, the Licensee did not pay the annual licence fees for the year under review. Furthermore, the Licensee has outstanding fees due to non-payment or part-payments from the 2020/2021 financial year to date.

**The Licensee did not comply with the above Regulations.**

#### **4.5 Complaints**

Form 12A<sup>2</sup>: Complaints Report of the Compliance Procedure Manual Regulations read with the Code of Conduct for Broadcasters require that broadcasters complete the form bi-annually in accordance with the Licensees' Financial Year.

Power FM submitted its complaints report in accordance with the Regulations regarding the Code of Conduct for Broadcasting Service Licensees, 2009<sup>3</sup>.

#### **5. CONCLUSION**

The Licensee is not compliant with some of its licence terms and conditions and Authority's Regulations, including USAF and General Licence Fees Regulations.

The Licensing and Compliance Division will advise the Licensee of its non-compliance and endeavour to assist the Licensee to comply. However, the Licensee has repeatedly been non-compliant with the requirement to submit a notification with regards to the

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<sup>2</sup> ICASA Compliance Procedure Manual Regulations, 2011 as published in *Government Gazette* No. 34863 dated, 15 December 2011.

<sup>3</sup> Code of Conduct for Broadcasting Service Licensees, 2009 as published in *Government Gazette* No. 32381 dated, 06 July 2009.

change to its information. The Licensee will be advised of the Authority's intention to refer its non-compliance to the Complaints and Compliance Committee (CCC) for hearing and adjudication.

## **6. TERMS OF REFERENCE**

Appendix A: Power 98.7 FM's broadcasting service licence

Appendix B: Power 98.7 FM frequency spectrum licence

Appendix C: SA Music Content Regulations

Appendix D: Regulations on Standard Terms and Conditions for Individual  
Licences

Appendix F: General Licence Fees Regulations

Annexure D: Standard Terms and Conditions for Individual Broadcasting Services, 2010  
No. 33294 dated, 14 June 2010 as amended;

Annexure E: USAF Regulations, 2011 as published in *Government Gazette* No. 34010  
dated, 10 February 2011;

Annexure F: Code of Conduct for Broadcasting Service Licensees, 2009 as published in  
*Government Gazette* No. 32381 dated, 06 July 2009;

Annexure G: Power FM (Pty) Ltd's Statement of Account

**END**