



# **SMILE 90.4 FM ANNUAL COMPLIANCE REPORT**

**MARCH 2023**

# **2021/2022 ANNUAL COMPLIANCE REPORT**

## **CAPE TOWN RADIO (PTY) LTD BROADCASTING AS SMILE 90.4 FM**

**Licence Period: 25 May 2012 – 24 May 2022**

### **1. PREFACE**

The Independent Communications Authority of South Africa (“the Authority”) has a statutory mandate in terms of the Constitution<sup>1</sup>, the Independent Communications Authority of South Africa Act<sup>2</sup> (ICASA Act), 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 seeks to give an account of Smile 90.4 FM’s compliance with the terms and conditions, as set out in its license, during the financial year ending March 2021. Aspects of compliance that are measured comprise of the service licence conditions of Geographic Coverage Area, Broadcast Language, Format, Local content Obligations, General Programming Obligations, and Ownership and Control Obligations.

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

### **2. BACKGROUND**

Cape Town Radio (Pty) Ltd broadcasting as Smile 90.4 FM (“Smile 90.4 FM”) is an Individual Commercial Sound Broadcasting Service Licensee providing a

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<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.

programming mix of music and information to the City of Cape Town Metropolitan in the Western Cape Province<sup>5</sup>.

### 3. COMPLIANCE ASSESSMENT

#### 3.1 Licensee

Clause 1 of the Schedule to Smile 90.4 FM's licence provides that:

*"1.1 Name of Company/Entity: Cape Town Radio (Pty) Ltd.*

*1.2 Name of the Station: Smile 90.4 FM*

*1.3 Shareholders:*

**Table 1. Outline of shareholding at Smile FM**

Shareholder's name	Percentage held
Videovision Entertainment (Pty) Ltd	70.5%
All Part Cape (Pty) Ltd – 5%	5%
African people Investment Company (Pty) Ltd ("APIC")	2.5%
Radio 021 FM (Pty) Ltd (formerly Firefly Investments 150 (Pty) Ltd	17%
Smile 90.4 FM Share Incentive Scheme Trust	5%

The Licensee confirmed through the submission of information, during the period under review, that there were no changes to the information reflected under clause 1 of the Schedule to Smile 90.4 FM's licence during the period under review.

**The Licensee complies with clause 1 of the Schedule to its Licence.**

#### 3.2 Licence Period

Clause 2 of the Schedule to Smile 90.4 FM's licence provides:

*"2.1 The effective date of the licence: 25 May 2012*

*2.2 The licence shall expire on: 24 May 2022".*

The Licensee lodged its licence renewal application on 15 November 2021 and at the time of writing this report was granted a renewed commercial sound

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<sup>5</sup> Appendix A: Smile 90.4 FM's Broadcasting Service License.

broadcasting service licence with licence number 018/RE/COMMERCIAL/R/DEC/22. The renewed licence is valid until 24 May 2032.

**The Licensee complies with clause 2 of the Schedule to its Licence.**

**3.3 Geographic Coverage Area**

Clause 3 of the Schedule to Smile 90.4 FM's licence provides that:

*"City of Cape Town Metropolitan area as indicated in the coverage map attached to the Licensee's radio frequency spectrum licence."*

The monitoring exercise confirmed that Smile 90.4 FM provides its broadcasting services to the City of Cape Town Metropolitan area as indicated in the coverage map attached to the Licensee's radio frequency spectrum licence.

**The Licensee complies with clause 3 of the Schedule to its Licence.**

**3.4 Programming**

Clause 4.1.1 of the Schedule to Smile 90.4 FM's licence provides that:

*"Format: The Licensee shall have a programming format of 60% music and 40% talk, providing entertainment, informative and educational programming by means of features on lifestyle issues and talk in the form of phone-in's and other forms of programming. The music to be broadcast will include amongst other genres, South African Pop, South African Afrikaans music, International Pop and International Gold."*

The monitoring exercise confirmed that the programming format of the Licensee is 60% music and 40% talk.

Some of the talk programming that was found during the period under review:

- "Smile Breakfast" broadcast between 06h00 and 09h00 on weekdays;
- "Smile Drive" broadcast between 15h00 and 18h00 on weekdays;
- "Home Time" broadcast between 18h00 and 20h00 on Mondays to Thursdays; and
- "The Honest Truth" broadcast between 20h00 and 22h00 on Mondays to Thursdays.

When viewed collectively, the programmes outlined above provide programming that is of an entertainment, informational and educational nature. Further, the monitoring exercise confirmed that lifestyle issues and audience phone-in segments form part of the Licensee's programming.

Regarding the music broadcast by the Licensee, the monitoring exercise confirmed that South African pop, South African Afrikaans music, International Pop and International Gold was included among the various genres.

**The Licensee complies with clause 4.1.1 of the Schedule to its Licence.**

Clause 4.1.2 of the Schedule to Smile 90.4 FM's licence states that:

*"Local Content Obligations:*

*4.1.2.1 The Licensee shall adhere to the following, namely:*

*4.1.2.1.1 Broadcast 50% South African music during its daily programming, The percentage will be sustained by the play listing of between seven (7) to nine (9) tracks in an hour.*

*4.1.2.1.2 South African music on its service will include amongst other genres, South African Pop music, South African Afrikaans and South African rock."*

The monitoring exercise confirmed that the South African music as broadcast by the Licensee includes the South African pop, South African Afrikaans and South African rock genres.

Following the previous finding of the Licensee's non-compliance regarding its licence obligation to broadcast fifty percent (50%) South African music, sustained by the playlisting of between seven (7) to nine (9) songs, during its daily programming, the Licensee advised that it would apply for an amendment of clause 4.1.2.1.1 to remedy its non-compliance. An amendment application was duly submitted by the Licensee on 26 March 2021. During the current period under review, the amendment application was not finalised and therefore the monitoring exercise confirmed that the Licensee was still non-compliant with clause 4.1.2.1.1. However, the amendment application was granted by the Authority on 11 April 2022. The latter information and the event therein, that came to the fore after the end of the period of compliance monitoring of the Licensee, i.e. 01 April 2021 to 31 March 2022.

**The licensee complies with clause 4.1.2.1.1 of the Schedule to its Licence.**

Clause 4.1.3 of the Schedule to Smile 90.4 FM's licence provides that:

*"General Programming Obligations:*

*4.1.3.1 The Licensee shall broadcast its news in the following manner, 65% local/regional, 20% South African national and 15% international news."*

The monitoring exercise confirmed that the Licensee aligns its news broadcast to its licence obligation so far as local/regional news is concerned amounts to, on average, sixty-five percent (65%) of its total news broadcast. National news on average represents twenty percent (20%) while international news represents on average fifteen percent (15%) of the total news broadcast by the Licensee.

**The Licensee complies with clause 4.1.3.1 of the Schedule to its Licence.**

Clause 4.1.3.2 of the Schedule to Smile 90.4 FM's licence states that:

*"The Licensee shall broadcast news on a regular basis for a minimum of thirty (30) minutes per day between 05h00 and 23h00."*

Some of the news items that were found during the period under review include:

- *"Russia's invasion of Ukraine will make bread in South Africa a lot more expensive, but consumers will only start to feel the pinch three months from now. An economist told Business Insider that between Russia and Ukraine, they control more than a quarter of the world's wheat export. And Russia's invasion has caused a surge in the price of essential grains."*
- *"All flights operating under Cemair have been cancelled indefinitely. The suspension of the operating licence of British Airways and Kulula comes due to major safety risks. This follows investigations of incidents such as engine failure and landing gear malfunctions."*
- *"Applications for the 2023 school year opens today. The Western Cape Education Department has encouraged parents and guardians to ensure that applications are submitted as soon as possible. The Democratic Alliance's provincial education spokesperson, Deidre Baartman, says this year the WCED received more than seventy thousand late applications."*
- *"The Western Cape Police Department says it has managed to effect several arrests since deploying additional law enforcement officers in Manenberg to*

*help curb the incidents of gang related violence. Officers from the Anti-gang Unit of the metro police as well as the traffic department also assisted in the anti-crime operations in the neighbourhood. Captain Fredrik van Wyk said that twenty-two males aged between sixteen and sixty-nine have been arrested for the possession of drugs."*

The monitoring exercise confirmed that the Licensee broadcast on average forty (40) minutes of news per day. News bulletins average around four (4) minutes in duration and is broadcast on the hour between 06h00 and 18h00.

**The Licensee complies with clause 4.1.3.2 of the Schedule to its Licence.**

Clause 4.1.3.3 of the Schedule to Smile 90.4 FM's licence reads:

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

The monitoring confirmed that the Licensee discloses the source of news material during the news broadcast in the event that the news material is from a news agency/source other than itself.

**The Licensee complies with clause 4.1.3.3 of the Schedule to its Licence.**

Clause 4.1.3.4 of the Schedule to Smile 90.4 FM's licence states that:

*"All programming will originate locally with the exception of outsourced news and content."*

The Licensee confirmed that all of its programming originates locally except for outsourced news and content.

**The Licensee complies with clause 4.1.3.4 of the Schedule to its Licence.**

Clause 4.4.1 of the Schedule to Smile 90.4 FM's licence states that:

*"The Licensee shall broadcast 55% English and 45% Afrikaans."*

The languages of broadcast of the Licensee are English and Afrikaans. The monitoring exercise confirmed that fifty-five (55) of the Licensee's programming is in English and forty-five (45) percent of the Licensee's programming is in Afrikaans.

**The Licensee complies with clause 4.4.1 of the Schedule to its licence.**

### **3.5 Ownership and Control**

Clause 5 of the Schedule to Smile 90.4 FM's licence reads:

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

The Licensee submitted the information related to the ownership and control of the station. The information confirmed that during the period under review, the minimum thirty percent (30%) of ownership and control of the station by persons from historically disadvantaged groups was maintained.

**The Licensee complies with clause 5 of the Schedule to Licence.**

### **3.6 Specific Terms and Conditions**

Clause 6 of the Schedule to Smile 90.4 FM's licence provides that:

*"Besides sourcing of news from secondary source(s), the Licensee shall employ a news team specifically for the production of its local news."*

The Licensee confirmed that it has an established news team that is responsible for the production of its local news.

**The Licensee complies with clause 6 of the Schedule to its service Licence.**

## **4. REGULATIONS**

### **4.1 ICASA Compliance Procedure Manual, 2011 – Form 12A**

The Licensee is required, in terms of the Compliance Procedure Manual Regulations, to submit a Form 12A<sup>6</sup> which reports on all complaints received during each financial year.

The Licensee submitted Form 12A within the prescribed timeframe.

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<sup>6</sup> Appendix B: ICASA Compliance Procedure Manual Regulations, 2011 as published in *Government Gazette* No. 34863 dated, 15 December 2011.

**The Licensee complies with the Compliance Procedure Manual, as stated above.**

#### **4.2 Regulations regarding Standard Terms and Conditions for Individual Broadcasting Licensees, 2010 as amended.**

The Authority is satisfied that during the period under review the Licensee did not contravene the regulation in respect of the Standard Terms and Conditions for Individual Licences<sup>7</sup>.

**The Licensee complies with the Standard Terms and Conditions for Individual Broadcasting Service Licence.**

#### **4.3 ICASA South African Music Content Regulations, 2016**

Regulation 2 of the Regulations on South African Music Content, 2016 provides that:

*"A holder of a commercial sound broadcasting service licence must ensure that after eighteen (18) months of the gazetting of these regulations, 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 evenly throughout the performance period"*<sup>8</sup>.

The monitoring exercise as undertaken during the period under review found that the Licensee broadcast an average of forty (40) percent of South African music content during the performance period.

Some of the South African music tracks that were broadcast during the period under review include:

*Jimmy Nevis "Heartboxing"; Craig Lucas "Hearts Exposed"; Liquideep "Fairytale"; Jarrad Ricketts "These Arms"; The Arrows "Lovesick"; Mango Groove "Moments Away"; Toya Delazy "Love Is In The Air"; TiMO ODV feat. Sarah Jackson "Save Me"; Johnny Clegg & Savuka "Cruel Crazy Beautiful World"; Hanco "Sunkissed".*

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<sup>7</sup> Appendix C: Standard Terms and Conditions for Individual Broadcasting Services, 2010 as published in *Government Gazette* No. 33294 dated, 14 June 2010, as amended.

<sup>8</sup> Appendix D: ICASA South African Music Content Regulations, 2016 as published in *Government Gazette* No.39844 dated, 23 March 2016.

## **The Licensee complies with the ICASA South African Music Content Regulations, 2016.**

### **4.4 Universal Service and Access Fund, 2011**

Regulation 3 of the USAF Regulations<sup>9</sup> provides 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 Broadcasting Service 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".*

The Licensee submitted its proof of payment to the Authority within the prescribed timelines.

## **The Licensee complies with the USAF Regulations, 2011.**

### **4.5 General Licence Fees Regulations, 2012**

Regulation 3 (1) of the General Licence Fees Regulations, 2012 state 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 Service licences."*<sup>10</sup>

Schedule 2 of the Annual Licences Fees regulations provide for Individual Commercial Broadcasting Services Licensees to pay an annual licence fee of 1.5% to the Authority.

Regulation 4(b) and (c) of Schedule 3 state that:

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<sup>9</sup> Appendix E: USAF Regulations, 2011 as published in *Government Gazette* No. 34010 dated, 10 February 2011.

<sup>10</sup> Appendix E: General Licence Fees Regulations, 2012 as published in *Government Gazette* No. 36323 dated, 28 March 2013, as amended.

*"(b) In respect of payment, such are due and payable within 6 months from 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."*<sup>11</sup>

The Licensee made the prescribed payment and submitted the necessary proof to the Authority.

### **The Licensee complies with the General Licence Fees Regulations, 2012.**

## **5. CONCLUSION**

The monitoring exercise as undertaken during the period under review confirmed Smile 90.4 FM's compliance its obligations. The area of non-compliance relating to the obligation to broadcast fifty percent (50%) South African music that was to be sustained by broadcasting between seven and nine songs per hour, has been addressed insofar as the Licensee taking remedial action through the submission of an amendment application. The non-compliance that was mentioned in this report, it was during the stage when the Licensee's amendment application outcome was still pending. Therefore, there is no non-compliance that remains outstanding.

## **6. TERMS OF REFERENCE:**

- 6.1 Appendix A: Smile 90.4's Service Licence.
- 6.2 Appendix B: Compliance Procedure Manual Regulations, 2011.
- 6.2 Appendix C: Standard Terms and Conditions for Individual Licensees, 2010 as amended.
- 6.3 Appendix D: ICASA South African Music Content Regulations, 2016.
- 6.4 Appendix E: USAF Regulations, 2011.
- 6.5 Appendix F: General Licence Fees Regulations, 2012.

**END**

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<sup>11</sup> *Ibid.*