



SMILE FM

ANNUAL

COMPLIANCE REPORT

MARCH 2025

2023/2024 ANNUAL COMPLIANCE REPORT

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

Licence Period: 25 May 2022 – 24 May 2032

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 Act¹ (ICASA Act), the Electronic Communications Act² (ECA) and the Broadcasting Act³ to regulate broadcasting activities in South Africa, in the public interest. Among the responsibilities of the Authority is 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, for the 2023/24 financial year. Aspects of compliance that are measured comprise the service licence conditions of Geographic Coverage Area, Broadcast Language, Format, Local Content Obligations, General Programming Obligations, and Ownership and Control Obligations.

Furthermore, 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, 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 programming mix of music and information to the City of Cape Town Metropolitan in the Western Cape Province⁴.

¹ Act No. 13 of 2000, as amended.

² Act No. 36 of 2005.

³ Act No. 4 of 1999.

⁴ Appendix A: Smile 90.4 FM’s Broadcasting Service License.

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:

<i>Videovision Entertainment (Pty) Ltd</i>	<i>70.5%</i>
<i>All Parts Cape (Pty) Ltd</i>	<i>5%</i>
<i>African Peoples Investment Company (Pty) Ltd ("APIC")</i>	<i>2.5%</i>
<i>Radio 021 FM (Pty) Ltd</i>	<i>17%</i>
<i>Smile 90.4 FM Share Incentive Scheme Trust</i>	<i>5%</i>

The Licensee did not submit any notices to the Authority informing it that there have been any changes to the information contained in clause 1 of its licence. Further, when asked by the Broadcasting Compliance Unit, the Licensee confirmed that no changes took place.

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 2022.

2.2 The licence shall expire on: 24 May 2032."

The licence is valid until 24 May 2032 therefore no compliance finding needs to be made at the time of writing this report.

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 the Licensee provides its services to the geographic coverage area of City of Cape Town Metropolitan as indicated in the

coverage map attached to its radio frequency spectrum licence. Further, the Authority received no complaints or reports that the Licensee was operating outside of its prescribed coverage area.

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 through 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 Authority's performance period over a week totals one hundred and twenty-six (126) hours. A Licensee has an obligation to broadcast sixty percent (60%) music and would therefore be required to broadcast on average seventy-five (75) hours of music per week. The monitoring exercise revealed that the Licensee on average broadcasts fifty (50) hours of music per week meaning that it broadcasts less than the prescribed sixty percent (60%) of music per week. The Licensee was informed of this finding on 07 March 2025 and instructed to provide the Authority with a plan on how it will remedy the non-compliance.

The monitoring exercise found that the programming of the Licensee such as *"The Ryan O'Connor Breakfast Show"*, *"The Joy Ride with Angel Campey"*; *"The Honest Truth with Benito Vergotine"* and *"The Cook's Playground with Jenny Morris"* is entertaining, informative and education in nature. Furthermore, these programmes feature lifestyle issues and has regular phone-in segments.

The monitoring exercise found that the music broadcast by the Licensee includes the genres of South African pop, South African Afrikaans, international pop and international gold.

The Licensee partially 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 40% South African music during its daily programming.

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 found that the Licensee broadcast forty percent (40%) of South African music during its daily programming and that this music includes the genres of South African pop music, South African Afrikaans music and South African rock music. Details of South African music are further outlined in section 4.3 of this report.

The Licensee complies with clause 4.1.2 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 found that the news programming broadcast by the Licensee does not align with the percentages prescribed in the licence for local/regional, national and international news, respectively. The monitoring exercise's finding is further confirmed by the Licensee's programming submission, which shows that while local/regional news dominates its news coverage, international news is at times broadcast more frequently than national news. The Licensee was informed of this finding on 09 December 2024 and instructed to provide the Authority with a plan of action to ensure that its news broadcast aligns with the prescribed percentages in its licence.

The Licensee does comply 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 that was found during the period under review include:

- *"The National Consumer Commission has advised of a recall of the Glover 400grams Go Nuts peanut butter due to the higher than acceptable levels of aflatoxin. The recall by Glover comes after the commission recalled five peanut butter last month for the very same reason. Acting Commissioner, Thezi Mabuza, says this Glover peanut butter should be returned to stores."*
- *"Cape Town police are investigating a case of public violence after a group of men caused damage to several minibus taxis in the vicinity of Blue Route Mall yesterday. Police were cautious to link the violence to the current taxi war over routes in the area but by late yesterday afternoon, police remained on the scene and public order officials were called in to assist."*
- *"While the search continues for the missing Joslin Smith, the case has highlighted the plight of missing children in South Africa. This week on the Ryan O'Connor breakfast show, they spoke to Bianca van Aswegen, who runs Missing Children South Africa. She says more media attention should be given to all children that disappear to assist in the immediate search."*
- *"Die Johannesburg metro sukkel om inkomste in te vorder en het gister in sy aansyweringsbegroting sy verwagte inkomste vir die lopende boekjaar met meer as vier miljard rand verminder. Die munisipaliteit het aanvanklik begroot vir 'n inkomste van 85,8 miljard rand. 'n Honderd vier en tagtig raadslede het ten gunste van die aansyweringsbegroting gestem met nege en dertig lede daarteen."*
- *"ANC kabinetslid en huidige Minister van vroue, jeug en mense met gestremdhede, Nkosazana Dlamini-Zuma, het bevestig dat sy nie weer sal terugkeer parlement toe wanneer haar huidige termyn eindig nie. Gister was die laaste dag waarop politieke partye hul kandidaat lyste vir die komende verkiesing by die verkiesingskommissie kan inhandig."*

The monitoring exercise confirmed that the Licensee's news broadcast meets the required thirty minutes per day.

The News is broadcast between 06h00 and 18h00 daily with the average news bulletin having a minimum three (3) minutes duration.

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 if the news material is from a news agency/source other than itself. Some of the sources utilised by the Licensee include: ENCA, SABC, BBC, CNN, IOL, RSG, Al Jazeera, SuperSport, Netwerk24, and News24.

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 its programming originates locally except for some international news. This was confirmed during the monitoring exercise.

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 monitoring exercise found that the licensee prescribed to the percentage of fifty-five percent (55%) English programming and forty-five percent (45%) Afrikaans programming.

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 confirmed that its ownership and control that is currently held by seventy-one percent (71%) of persons from historically disadvantaged groups.

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 employs a news team specifically to produce its local news. The news team consists of six (6) employees. The employees and their roles are captured below:

- Merentia van der Vent – AM News Anchor/reporter
- Caitlin Maledo – Reporter/news reader
- Lizell Persens – Reporter/news reader
- Danielle Mentoor – PM News anchor/reporter
- Nathan Adams – Weekend news reader/reporter
- Liesl Smit – News Manager

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 12A⁵ which reports on all complaints received during each financial year.

⁵ Appendix B: ICASA Compliance Procedure Manual Regulations, 2011 as published in *Government Gazette* No. 34863 dated, 15 December 2011.

The Licensee submitted Form 12A within the prescribed timeframe.

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 Licences⁶.

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"*⁷.

The monitoring exercise found that the Licensee broadcast an average of forty percent (40%) of South African music content during the performance period, inclusive of the format factors as outlined in the Regulation.

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

Danny K "Love in the Club"; Black Coffee "I Will Drive All Night"; Deon Meiring feat. Herman Kleinhans "Laat My Skyn"; Jamali "Love Me for Me"; Brenda Fassi

⁶ Appendix C: Standard Terms and Conditions for Individual Broadcasting Services, 2010 as published in *Government Gazette* No. 33294 dated, 14 June 2010, as amended.

⁷ Appendix D: ICASA South African Music Content Regulations, 2016 as published in *Government Gazette* No.39844 dated, 23 March 2016.

"Weekend Special"; Matthew Mole "Holding On"; Lebo "I Love Music"; Freshlyground "Doo Be Doo"; Craig Lucas "Hearts Exposed".

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 Regulations⁸ 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 made its annual contribution to the MDDA on 30 March 2024 and submitted its proof of payment to the Authority.

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."*⁹

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:

⁸ Appendix E: USAF Regulations, 2011 as published in *Government Gazette* No. 34010 dated, 10 February 2011.

⁹ 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."*¹⁰

The Licensee made the required payment on 28 June 2024 and submitted the necessary proof to the Authority.

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

5. CONCLUSION

During the review period, the Licensee was found to be compliant with most of its obligations. However, the monitoring exercise revealed two specific areas where the Licensee did not meet the required standards. These areas of non-compliance pertain to the Licensee's programming format, which did not adhere to the mandated 60% music and 40% talk split and the percentages related to local and international news split outlined in the licence.

On 07 March 2025, the Licensee was formally informed of these findings and was directed to develop and submit a comprehensive plan of action to the Authority. This plan should detail the steps the Licensee intends to take to rectify the identified issues of non-compliance.

The Authority will closely monitor the progress made by the Licensee in implementing the plan of action as proposed. A determination will be made in the upcoming financial year regarding whether the Licensee should be referred to the Authority's Complaints and Compliance Committee ("CCC") for hearing, adjudication and possible sanctions.

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.

¹⁰ *Ibid.*

- 6.4 Appendix E: USAF Regulations, 2011.
- 6.5 Appendix F: General Licence Fees Regulations, 2012.