



SMILE FM ANNUAL COMPLIANCE REPORT

MARCH 2017

2015/2016 ANNUAL COMPLIANCE REPORT

CAPE TOWN RADIO (PTY) LTD BROADCASTING AS SMILE 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 Constitution¹, the ICASA Act² the Electronic Communications Act³ (ECA) and the Broadcasting Act⁴ 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 ICASA Act, the ECA and the Broadcasting Act as well as specific terms and conditions of their licence, any relevant legislation and regulations.

The following report is intended to give account of Smile FM's performance for the 2015/2016 financial year. Aspects of compliance that are measured comprise of Geographic Coverage, Languages, Format, Local Content Obligations, General Programming Obligations, Training and Skills Development Obligations, Ownership and Control Obligations and the Regulations on South African Music Content, Regulations Regarding Standard Terms and Conditions, Universal Service and Access Fund Regulations , General Licence Fees Regulations and Compliance Procedure Manual (CPMR).

2. BACKGROUND

Smile FM is an Individual Sound Broadcast Service Licensee broadcasting in the City of Cape Town Metropolitan area and immediate surrounds. The radio station broadcasts from the studios situated at: 3rd Floor, Media Quarter, 2 De Smit Street, Green Point, Cape Town.

¹ The Constitution Of the Republic of South Africa No 108, 1996

² ICASA Act No 13, 2000 as amended

³ Electronic Communications Act No 36, 2005

⁴ Broadcasting Act no 4 of 1999

Smile FM provides a programming format of a mix of music and information.

3. OWNERSHIP AND CONTROL

Clause 1 of the Schedule to the licence stipulates that the licence is issued to:

"Name of Company/Entity: Cape Town Radio (Pty) Ltd".⁵

The Licensee is Cape Town Radio (Pty) Ltd as stipulated in its licence, broadcasting as Smile FM.

The Licensee complies with clause 1.1 of the Schedule to the licence.

Clause 1.2 stipulates as follows:

"Shareholders:

<i>Videovision Entertainment (Pty) Ltd -</i>	<i>40%</i>
<i>All Part Cape (Pty) Ltd -</i>	<i>18%</i>
<i>Radio 021 FM (Pty) Ltd -</i>	<i>17%</i>
<i>WDB Investment Holding -</i>	<i>10%</i>
<i>African People Investment Company (Pty) Ltd -</i>	<i>10%</i>
<i>Management and Staff Trust -</i>	<i>5%".</i>

In September 2016, the Licensee lodged a notification in terms of Form O of the Regulations Regarding Standard Terms and Conditions regarding Individual Licences of 2010, in respect of its changes to its shareholding structure. The new shareholding structure is as follows:

"Shareholders:

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

⁵ Appendix A: Broadcasting Service licence

At the time of writing this report, the matter was still being considered by the Authority.

4. COMPLIANCE ASSESSMENT

4.1. Geographic Coverage Area

Clause 2 of the Schedule to the licence stipulates that:

"City of Cape Town Metropolitan area, as indicated in the coverage map attached to the Licensee's radio frequency spectrum licence".⁶

The Licensee has confirmed that it offers a service to the areas specified in the frequency spectrum licence. There were no complaints received by the Authority against the Licensee regarding non-compliance with its technical specifications.

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

4.2. Broadcast Language

Clause 3 of the licence stipulates that:

"The Licensee shall broadcast 60% in Afrikaans and 40% in English".

Monitoring confirmed that the Licensee broadcasts in both languages interchangeably. The Licensee broadcasts in both languages and the proportional split is 50/50.

The Licensee does not fully comply with clause 3 of its licence.

4.3. Format

Clause 4 of the licence stipulates that:

⁶ Appendix B: Frequency Spectrum licence

"The Licensee shall have a programming format of 50% music and 50% talk, providing entertainment, informative and educational programmes 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".

During the period under review, artists featured included: *Micasa, Sam Smith, Freshly Ground, Zahara, Majozi, Brenda Fassie, Vicky Simpson, Beyoncé, Elton John, UB40, Boys 2 Men, Mariah Carey and Tina Turner amongst others.*

The Authority's monitoring detected that the Licensee does not broadcast 50% music and 50% talk. The Licensee's format is adult contemporary music mix. Although the Licensee broadcasts a mix of entertainment, information featuring lifestyle issues, it falls short of broadcasting 50 talk and 50 music. The Licensee broadcasts more music content than talk content.

The Licensee does not fully comply with clause 4 of its licence.

4.4. Local Content Obligations

Clause 5.1 of the Schedule to the licence provides that:

The Licensee shall adhere to the following, namely:

5.1.1 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.

5.1.2 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 detected that the Licensee does not play list seven (7) to nine (9) South African tracks hourly and therefore is unable to sustain the 50% South African music on a daily basis. However, the Licensee does play list a variety of genres including South African Pop,

South African Afrikaans and South African Rock. Monitoring also confirmed that the Licensee broadcasts 35% of South African music.

The Licensee does not fully comply with Clause 5.1 of its licence.

4.5. General Programming Obligations

Clause 6.2 of the Schedule to the licence states that:

"The Licensee shall broadcast news on a regular basis for a minimum of thirty (30) minutes each day between 06h00 and 23h00".

The monitoring exercise confirmed that the Licensee broadcasts news bulletins every hour on the hour from 06h00 to 20h00. Fifteen (15) news bulletins were identified and the duration of which was two (2) to four (4) minutes per bulletin and one (1) minute headlines. The Licensee broadcast approximately forty-five (45) minutes of news per day.

Among the news stories covered were the following excerpts from certain broadcasts:

- *"Traffic Authorities have renewed their calls for drivers to be more alert and patient on the Provinces roads. A focus awareness campaign along with strengthened enforcement will be held to create safer and alcohol free roads.";*
- *"A dedicated court dealing with drug related offences has been opened in the Bellville Magistrate Court. The Court's jurisdiction includes Delft, Cape Town International Airport, Durbanville, Bellville, Bellville South and Parow.";*
- *"The Right-to Know campaign along with other civil society groups are set to picket outside the SABC's offices in Auckland Park. The protests are against the SABC and its COO Hlaudi Motsoeneng.";*
- *"As millions of Muslims around the World prepare for the end of the holy month of Ramadan, a group of Capetonians are getting ready to feed thousands of under privileged people before Eid. Every*

charity organisations raise funds to cook over one hundred (100) pots and distribute them to under privileged on the morning of Eid-al-Fitr.”; and

- *“A Cape Town Legal Expert says the State will have tough time getting the Supreme Court of Appeal to reconsider Judge Thokozile Masipa’s six (6) year sentence given to convicted murderer Oscar Pistorius. He told News24 that he expected the sentence to be a little bit harsh but that the final sentence was not an incorrect one.”*

The Licensee broadcasts news in both English and Afrikaans, the bulletins cover local/regional, national and international news.

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

Clause 6.3 of the Schedule to the licence which states that:

“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 Licensee maintains that it uses the contracted Galloimages (News24Wire) for national and international news stories.

The Authority’s monitoring confirmed that the Licensee discloses its news sources, whenever it reports on news that has not been obtained by its own journalists. Sources include amongst others; CNN, eNCA, and News24.

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

Clause 6.4 of the Schedule to the licence which stipulates that:

“All programming will originate locally with the exception of outsourced news and content”.

The Licensee confirms that there is no syndicated or purchased content on Smile FM; all content gets sourced, produced and broadcast by a team of presenters and producers. This would include all information, interviews, entertainment as well as continuity content.

The Licensee complies with clause 6.4 of the Schedule of its licence.

4.5 Ownership and control structures of the Licensee

Clause 7 of the Schedule to the licence stipulates that:

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."

Shareholders:

<i>Videovision Entertainment (Pty) Ltd -</i>	<i>70.5%</i>
<i>All Part Cape (Pty) Ltd -</i>	<i>5%</i>
<i>Radio 021 FM (Pty) Ltd -</i>	<i>17%</i>
<i>African People Investment Company (Pty) Ltd -</i>	<i>2.5%</i>
<i>Smile 90.4 FM Share incentive Scheme Trust -</i>	<i>5%".</i>

More than 80% of the Licensee's ownership and control is vested with persons from historically disadvantaged groups.

The Licensee complies with clause 7 of the Schedule of its licence.

4.6 Specific Terms and Conditions

Clause 8 of the licence stipulates 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 confirms that the news team consists of seven members who are responsible for sourcing and producing stories for its daily news bulletins. There are five stories in every full bulletin and three stories in

every headline bulletin. The focus is on local news, as per licence conditions. The bulk of every bulletin consists of local/regional stories. The team uses the contracted Galloimages (News24Wire) for national and international news stories.

The Licensee complies with the clause 8 of the Schedule of its licence.

5. REGULATIONS

5.1. South African Local Content Music Regulations

Regulation 3.2 of the Regulations on South African Music Content, as published on 31 January 2006, stipulates 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"*⁷.

Monitoring confirmed that at least 36% of the Licensee's music content is South African music.

The following artists were identified: *Shekkinah and kyle Deutsch, The Rocketeers, Majozi, Freshly Ground, Heinz Winkler, The Luminals, Jack Parrow, Elvis Blue, PJ Powers, J' Something, Jimmy Nevis, Zahara, Micasa, Khan Morbee, Danny K, Brenda Fassie, Crazy White boy, Peanut Gallery, Muzart* amongst others.

The Licensee interviews and features a number of South African old and new artists, for the period under review, the Licensee interviewed artists such as *Twee, Valeska Muller, PJ Powers, Oh Mercy, Ross Jack* amongst others.

⁷ Appendix C: South African Music Regulations

The Licensee complies with the Regulations on South African Music Content for the period monitored.

5.2. Standard Terms and Conditions

No areas of non-compliance with the standard terms and conditions for individual licences were identified during the period under review.⁸

5.3 Universal Service and Access Fund Regulations

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."⁹

The Licensee made payment of R25 877.90 towards USAF and made such payment to the Authority on 30 June 2016.

The Licensee has complied with the USAF Regulations.

5.4 General Licence Fees

Regulation 3(1) of the General Licence Fees Regulations stipulates that:

⁸ Appendix D: Regulations Regarding Standard Terms and Conditions for Individual licences

⁹ Appendix E: Universal Service and Access Fund Regulations

"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 stipulates 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".¹⁰

The Licensee paid R43 895.09 towards its annual licence fee to the Authority on 30 June 2016.

The Licensee complies with the Licence Fee Regulations.

5.5 Code on People with Disabilities

Clause 3.1 (a) of the Code on People with Disabilities as published in the Government Gazette, no 30441, 7 November 2007, states that:

"Broadcasting service licensees must ensure that their services are made available and are accessible to people with disabilities".

Clause 3.1 (b) stipulates that:

"Options for making broadcasting services more accessible may include the following:

- i. Improve and/or increase subtitles and sign language;*
- ii. Expand knowledge on various adjustments such as induction loops, Mincom/text phones and alternatives computer software;*

¹⁰ Appendix F: General Licence Fees Regulations

- iii. *Access to programme support such as fact sheet;*
- iv. *Website to offer a range of formats (such as electronic versions, Braille and audiotape);*
- v. *Use of spoken languages where economic indicators, weather details, telephone numbers and addresses or details of goods and services are shown on-screen; and*
- vi. *Use of non-scheduled services such as access via Personal Video Digital Recorders (PVR's) and TV anytime".*

Clause 3.1 (c) states that:

"Broadcasting service licensees must monitor the effectiveness of their service through surveys as well as contact with organisations of and for people with disability and stakeholders".

The Licensee reports that it engages with the various organisations representing people with disabilities and has established links with those organisations to generate story ideas and to identify potential contributions.

Producers are encouraged to establish relationships with organisations for people with disabilities to use for content when the need arises.¹¹

The Licensee has demonstrated that it complies with the Code on People with Disabilities.

5.6 Information in accordance with Compliance Procedure Manual Regulation (CPMR)

The Licensee is required to submit the following information to the Authority in following manner:

- a) Form 1, 2 & 7C: These forms are annual submissions and are to be submitted each year by end of January;

¹¹ Appendix H: Insert on compliance with the Code on People with Disabilities

- b) Form 6B and 12A: These forms are bi –annual submissions and are to be submitted second week of June and second week of December each year;
- c) Form 9A & 9B: These are quarterly reports pertaining to general programing logs, they are to be submitted at the end of each quarter i.e. at the end of March, June, September and December of each financial year; and
- d) At least two weeks of programme recordings should be submitted on a quarterly basis.

The Licensee has submitted the above Forms in accordance with the CPMR.

5.7 Compliance Procedure Manual – Form 12A

The Licensee is required, in terms of the Compliance Procedure Manual Regulations, to submit a Form 12A¹² which reports on all complaints received in the course of each financial year. In July 2016 and January 2017, Smile FM submitted its complaints reports in accordance with the Regulations regarding the Code of Conduct for Broadcasting Service Licensees.

For the period under review, the Licensee did not received complaints.

The Licensee was found to be in compliance with the above requirement.

6. CONCLUSION

For the year in review, the Licensee has not demonstrated full compliance with its licence terms and conditions. It should be noted that the Licensee commenced broadcast in March 2013 and therefore requires time to establish itself in the broadcasting industry. The CCA division will continue to assist the Licensee comply fully with its licence terms and conditions.

¹² Appendix E: SABC Form 12A

7. TERMS OF REFERENCE

7.1 Appendix A: Individual Broadcasting Service licence and Frequency Spectrum Licence