



Independent Communications Authority of South Africa

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WITBANK FM REPORT

LICENSING AND COMPLIANCE PROGRAMME
MARCH 2013

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2011/2012 ANNUAL COMPLIANCE REPORT

WITBANK FM

LICENCE PERIOD: 12 February 2009 to 11 February 2014

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 ("ECA") to regulate broadcasting activities in South Africa in the public interest. The Authority is tasked with ensuring compliance by broadcasters with the terms and conditions of their license, the Electronic Communications Act ("ECA"), the ICASA Act, any relevant legislation and regulations.

The following report is intended to give account of Witbank FM's compliance with the terms and conditions as set out in its licence for the 2011/2012 financial year. Aspects of compliance that are measured comprise of geographic coverage, community participation, programming, format, news and information, local content obligations, language(s), South African Music Regulations, Regulations Regarding Standard Terms and Conditions and Universal Service and Access Fund (USAF).

2. BACKGROUND

Witbank FM is a Class Sound Broadcasting Service Licensee. The Licensee's language(s) of broadcast are isiZulu, SePedi, isiNdebele, English and Afrikaans. The radio station's mandate is to provide a service to the geographic areas of Emalahleni and surrounding areas in Mpumalanga Province (*See broadcasting service licence and spectrum licence attached as Appendix A*).

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

² ICASA Act No 13 of 2000, as amended

³ Electronic Communications Act No 36 of 2005

Witbank FM broadcasts from the studios situated at 5546 Hectorway Drive, Lynnville Municipal Offices in Emalahleni. The radio station has its own signal distribution licence.

The radio station commenced full broadcast on 12 April 2010.

3. COMPLIANCE ASSESSMENT

3.1 Control Structure

Clause 1 of the licence terms and conditions stipulates that:

"The Licence is issued to:

1.1 Name of Company/Entity: Witbank FM.

1.2 Control of the Licensee: Control shall vest in the Board of Director of Witbank FM".

There were no changes reported by the Licensee to its company name and control structure.

The Licensee complies with clauses 1.1 and 1.2 of its licence.

Clause 1 of the schedule to the licence stipulates as follows:

"Name of the radio station: Witbank FM".

The radio station's name is Witbank FM as stipulated in the licence. The Licensee reported that the name of the radio station is under review and it is considering changing its legal name to Emalahleni FM. The Licensee indicated that it will notify the Authority in writing when the process is concluded.

The Licensee complies with clause 1 of the schedule to its licence.

3.2 Geographic Coverage Area

Clause 2 of the schedule to the licence stipulates that Witbank FM's coverage area is as follows:

"Emalahleni and surrounding areas as set out in the Licensee's radio frequency spectrum licence".

The Licensee confirms that it covers Ogies, GaNala, Delmas, Belfast, Middleburg, Doorinkop and Verena. These are the geographic areas specified in the spectrum licence.

The Licensee complies with the clause 2 of the licence.

3.3 Community participation

Clause 3.1 of the licence stipulates that:

"The Licensee should provide services to a community residing within the geographic coverage area specified herein".

Witbank FM broadcast from Emalahleni and provide its services to the geographic community residing within its coverage area.

Clause 3.2 of the licence stipulates that:

"The Licensee shall provide for the participation of community members in the affairs of the station in the following ways:

3.2.1 "The Licensee shall hold at least two (2) meetings annually with its community on programming and programme related matters for the selection and provision of programmes;

3.2.2 "The Licensee shall furnish the Authority with proof of such meetings as well as the attendance thereof by members of the community;

Further Clause 3.2.3 stipulates that:

"The Licensee shall hold an Annual General Meeting (AGM) for the following purposes:

3.2.3.1 To provide feedback on the Licensee's compliance with licence conditions,

3.2.3.2 To provide feedback on the Licensee's operational and financial performance, and

3.2.3.3 To elect members of the controlling structure e.g. Board of Directors, Trustees etc. Subject to the licensee's founding documents.

The Licensee convened an elective Annual General Meeting (AGM) on 23 October 2010 and a Special General Meeting (SGM) on 25 February 2012. The Licensee invited the Authority to the AGM and SGM respectively. However, the Authority was unable to honour the invites due to budget constraints.

The Licensee subsequently submitted minutes of the AGM and SGM, reports that were presented at the AGM, SGM and the names of the newly elected board members as well as programme recordings that preceded the AGM and SGM.

The Licensee submitted the requested information to the Authority fourteen (14) days after the AGM.

According to the Licensee and the information submitted to the Authority, the AGM provided feedback with regards to the Licensee's compliance with licence conditions, operational and financial performance. The reports presented by the Secretary of the Board and Stations Manager were adopted by the members present at the AGM. The Audited Financial Report was also adopted at the AGM.

The AGM of 23 October 2010 elected the following members as Board of Directors:

Chairperson: Mr Lesley Ntuli;

Deputy Chairperson: Ms Sabina Mtsweni;

Secretary: Mr Isaac Mampane;

Deputy Secretary: Ms Raisibe Thomo;

Treasurer: Mr Fortune Mlotshwa; and

Additional members: Mr Themba Lephoko and Ms Trudy Nzilwana

The Licensee reported that the following resolutions and strategic objectives were adopted at the AGM, to ensure the growth and sustainability of the radio station:

- To make sure that members of the Governing Council and all Witbank FM's staff members are not involved in political leadership;
- To approve the brand and station logo;
- Attend to constitutional amendments namely the changing of the name from Witbank FM to Emalahleni FM, approve the proposed logo and to include an additional Community Audience Advisory Council.
- To invigorate programming to address the needs of advertisers and give the audience more professional and relevant programmes.
- To establish the following sub-committees: marketing and sales, disciplinary, finance and programming; and
- To increase listenership from 10 000 to 150 000 in the next three years.

The SGM mandate was to adopt the proposed Constitutional amendments, the business plan, launch the Community Advisory Audience Council (CAAC) as well as provide feedback with regards to financials. The CAAC is a formal structure

established by the Licensee to allow for community participation and development, it will comprise of persons representing the diverse perspective of the radio stations geographic coverage. It will further serve as a link between the radio station and the community.

The SGM informed the members of the resignation of the Chairperson of the Governing Council due to family commitments and the dismissal of two other members of the Governing Council due to misconduct and failure to perform the duties of their office efficiently and reported that this was done in accordance with the constitution.

The following person(s) are the current Governing Council of Witbank FM:

Chairperson: Mr Lesley Ntuli- (Resigned)

Deputy Chairperson: Ms Sabina Mtsweni

Secretary: Mr Isaac Mampane

Deputy Secretary: Mr Marothi Ramaube

Treasurer: Mr Fortune Mlotshwa- (Released)

Additional members: Mr Themba Lephoko- (Released)

Additional member: Mr Leon Ngwenya

The Governing Council nominated three (3) additional people to replace the members who have been released. The additional members are:

Ms Lebo Mpakati;

Mr Simon Tshehla; and

Mr Walter Hermans.

The Licensee complies with the obligations of clause 3 of its licence.

3.4 Programming

Clause 4.1 of the licence stipulates that:

"The Licensee shall provide programming as follows:

4.1.1 Format:

60% talk and 40% music.

The Licensee submits that it has an adult contemporary and golden oldies format. The Licensee submits that it has a 60% talk and 40% music split.

The monitoring revealed that the Licensee has a 60% talk and 40% music split.

The Licensee complies with clause 4.1.1 above.

Clause 4.1.2 stipulates that:

"The Licensee shall broadcast 60% local, 20% provincial, 10% national and 10% international news per day".

The Licensee submits that it complies with the above clause.

The monitoring exercise conducted for the period under review indicated that Witbank FM broadcasts news bulletins every hour on the hour and news headlines at the bottom of the hour. The duration of the news bulletins is two (2) to three (3) minutes.

The following were among the news stories covered for the period under review:

- *"The Congress of South African Trade Union (COSATU) is mobilising its two million members, for the mother of all protest against the act of highway robbery. They are confident that they will be joined by angry Gauteng residents and motorists who support the scrapping of the e-*

tolling system. COSATU is planning several protest, marches and night vigils at the office of the South African National Roads Agency (SANRAL)";

- *"The Mpumalanga MEC for Education was ordered to compensate the mother of a child who lost her hearing in one ear when one of the pupils used a mega-phone close to her ear. The mother of the pupil turned to the High Court of Pretoria claiming that the MEC Reginah Mhaule should be held liable because her daughter who was thirteen (13) years old at that time was in the care of teachers at the school in Secunda in February 2005. Judge President William Van der Merwe ordered that Mhaule pay the mother seventy five million rand (R75 000 000, 00) in damages. The mother claimed that the fellow pupil was given permission to use the mega-phone; she says the incident was caused by negligence of the teachers because they failed to exercise sufficient control over the use of the mega-phone. She says the daughter is now nineteen (19) years old and has permanent hearing impairments"; and*
- *"Phakama Intermediate School was the centre of attention when police visited the school in search of drugs. Police got a tip-off that Grade 9 pupils at the school were selling drugs. Students were found in possession of dagga and cocaine, which lead to four learners being taken in for questioning. When the principal was asked if he was aware of the situation, Mr Zulu said that he has heard rumours but was not sure how true the rumours were. He further said that the school is in bad shape as there is no fence at the back of the school which allows the public to gain easy entry into the school to sell drugs to the learners. Police said they will conduct more searches in the school in future".*

During the period under review, the Licensee did not comply with the requirements of this clause. The Licensee does not broadcast 60% of local news, as stipulated in the licence. Monitoring detected that the Licensee broadcast at least 10% of local news 30% of provincial news and 60% of national news. No

international news bulletins were identified during the period monitored (See *General Log sheet attached as Appendix B*).

The Licensee does not comply with clause 4.1.3 of its licence.

Clause 4.1.3 of the licence stipulates that:

"The Licensee shall broadcast 40% South African music content".

The Licensee submits that it broadcast 45% of South African music, which includes interviews with local musicians.

Monitoring exercise confirmed that the Licensee broadcast 40% of local content.

The Licensee complies with clause 4.1.3 of its licence.

Clause 4.1.4 stipulates that the Language(s) of broadcast are as follows:

"(a) 30% isiZulu

(b) 30% Sepedi

(c) 20% isiNdebele

(d) 10% English

(e) 10% Afrikaans"

The Licensee submits that it complies with the language(s) of broadcasts,

The monitoring exercise confirmed that the Licensee broadcasts in all the languages as stipulated in the licence.

The Licensee complies with clause 4.1.4 of its licence.

Clause 4.1.5 stipulates that:

"The Licensee shall broadcast for 24 hours a day".

The Licensee submits that it broadcasts for 24 hours a day.

The Monitoring exercise confirmed that the Licensee broadcast for 24 hours a day.

The Licensee complies with clause 4.1.5 of its licence.

4. REGULATIONS

4.1 South African Music Content Regulations

Regulation 3.2 of The Regulations on South African Music Content as published on 31 January 2006 stipulates that:

“Every holder of a community sound broadcasting licence to which these regulations apply must ensure that after eighteen months of the gazetting of these regulations, a minimum of 40% 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” (See Appendix C).

Witbank FM plays a significant amount of South African music. The music genres range from gospel, Kwaito, RnB, jazz, to Hip hop and house. The local music played by the radio station includes among others: Suger Spice, Nathi Nice, Simphiwe Dana, Zonke, by HHP, Loyiso Professor, Zakes Batwini, Too Fresh, Boki & Proverb, JR featuring T.P, Lira, DJ S’bu & Nhlanhla, Micasa and Theo.

On average Witbank FM plays 40% South African music on a daily basis.

Witbank FM complies with the required local music content quota, as prescribed by the South African Music Content Regulations.

4.2 Regulations Regarding Standard Terms and Conditions for Class Broadcasting Licences

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

4.3 Universal Service and Access Fund Regulations

Regulation 3 of the USAF Regulations stipulates 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 BS 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" (See USAF Regulations attached as Appendix E).*

The Licensee paid its annual contribution fee to the fund and submitted its financial statements when requested by the Authority in order to issue invoices.

The Licensee has complied with the USAF regulations.

5. CONCLUSION

Witbank FM has, for the period under review, complied with the requirements as set out in its licence and relevant legislation except for clause 4.1.2 of its licence.

6. APPENDICES

Appendix A: Witbank FM's broadcasting service and frequency spectrum licence;

Appendix B: General Log sheet;

Appendix C: South African Music Content Regulations;

Appendix D: Regulations Regarding Standard Terms and Conditions; and

Appendix E: Universal Service and Access Fund Regulations (USAF)