



**Independent Communications Authority of South Africa**

Pinmill Farm, 164 Katherine Street, Sandton  
Private Bag X10002, Sandton, 2146

# ULWAZI FM REPORT

**LICENSING AND COMPLIANCE PROGRAMME**  
**MARCH 2013**

Dr SS Mncube (Chairperson), NA Batyi, WH Currie, JM Leboo, N Ndhlovu, KGS Pillay, Dr MM Socikwa, WF Stucke  
(Councillors), TTC Dlamini (CEO)

# **2011/2012 ANNUAL COMPLIANCE REPORT**

## **ULWAZI FM**

**Licence Period: 8 December 2008 to 7 December 2013**

### **1. PREFACE**

The Independent Communications Authority of South Africa (“the Authority”) has a statutory mandate in terms of the Constitution,<sup>1</sup> the ICASA Act of 2000<sup>2</sup> and the Electronic Communications Act (“EC Act”) of 2005<sup>3</sup> to regulate broadcasting activities in South Africa in the public interest. The Authority is tasked with ensuring compliance by broadcasters with the ICASA Act, the EC Act, the terms and conditions of their licence and any relevant legislation and regulations.

The following report is intended to give account of Ulwazi FM’s performance for the 2011/2012 financial year. Aspects of compliance that are measured comprise of the Geographic Coverage, Community, Programming Obligations, Technical Report, South African Music Content Regulations and Regulations Regarding Standard Terms and Conditions, Regulations in Respect of Prescribed Annual Contributions of Licensees to The Universal Service and Access Fund.

### **2. BACKGROUND**

Ulwazi FM is a Class Sound Broadcasting Service Licensee. The radio station’s mandate is to provide a sound broadcasting service to the geographic community of Emthanjeni and surrounding areas in the Northern Cape Province as specified in its frequency spectrum licence (*See frequency spectrum licence attached as Appendix B*).

Ulwazi FM broadcasts from the studios situated at 1692 Street 3, Nonzwakazi in De Aar. The radio station has its own signal distribution licence.

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<sup>1</sup> The Constitution No, 108 of 1996,

<sup>2</sup> The ICASA Act No, 13 of 2000,

<sup>3</sup> The Electronic Communications Act No, 36 of 2005

### **3. COMPLIANCE ASSESSMENT**

#### **3.1. Control Structure**

Clause 1 of the licence stipulates that:

*"The Licence is issued to:*

*1.1 Name of Company/Entity: Ulwazi Communications Trust.*

*1.2 Control of the Licensee: Control shall vest in the Board of Trustees of a Trust known as Ulwazi Communications Trust".*

There were no changes reported by the Licensee to its control structure during the period under review.

The Board of Directors of Ulwazi Community Radio are as follows:

Deon Madyo – Chairperson;  
Mr Meshack Hlomela – Deputy Chairperson;  
Mr Daniel Zwedala - Treasurer;  
Gladwin Niewenheizen – Board Member;  
Ms Esmeralda Gorrah – Board Member;  
Mr Daniel Stander – Board Member;  
Ms Mariana Zwiegers – Board Member;  
Ms Babsie Wienand - Board Member; and  
Sindisile Madyo - Board Member

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: Ulwazi FM".*

The name of the radio station is Ulwazi FM as stipulated in the licence.

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 geographic coverage area is as follows:

*"Emthanjeni and surrounding areas in the Northern Cape Province as set out in the Licensee's radio frequency spectrum licence".*

According to the frequency spectrum licence, the radio station covers the De Aar in the Northern Cape (*See frequency spectrum licence attached as Appendix B*).

The Licensee confirms that its coverage area is as defined in its licence.

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

Further, clause 1 of the schedule to the frequency spectrum licence stipulates that the signal distribution of the Licensee is as follows:

*"Name of the Station: Ulwazi FM"*

The Licensee reported that its signal distribution and maintenance is conducted by Sentech. This is a contravention of the clause 1 of the schedule to the frequency spectrum licence as the Licensee did not lodge an amendment application with the Authority to its technical specifications.

The Licensee does not comply with clause 1 of the frequency spectrum licence.

### **3.3. Community**

Clause 3.1 of the schedule to the licence stipulates that:

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

The radio station confirms that it provides its services to the geographic community residing within its coverage area.

The Licensee complies with clause 3.1 of the schedule to its licence.

Clause 3.2 of the schedule to 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.*

*3.2.3 The Licensee shall hold Annual General Meetings (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 has failed to convene meetings with community. The Licensee has further failed to submit proof of meetings with its community on programming and programme-related matters for the selection and provision of programmes to the Authority; this is despite several attempts by the Authority to obtain same from the Licensee.

Furthermore, the Licensee has not convened the Annual General Meeting (AGM) during the period under review and has further failed to furnish the Authority with the minutes of the AGM for previous financial year (2010-2011) when requested.

The failure to convene the AGM by the Licensee implies that the Licensee has not provided its community members with feedback regarding the activities of the radio station including financial performance and other operational matters as contemplated in clauses 3.2.3.1, 3.2.3.2 and 3.2.3.3 of the schedule to its licence.

The Licensee has failed to comply with clause 3.2 of the schedule to its licence.

### **3.4. Programming**

Clause 4.1 of the schedule to the licence stipulates that:

*"The Licensee shall provide programming as follows:*

#### *4.1.1 Format:*

*60% talk and 40% music.*

#### *4.1.2 News and Information:*

*The Licensee shall broadcast a total of 170 minutes of news per day, of which 110 minutes shall be local, 30 minutes national and 30 minutes international news.*

#### *4.1.3 Local Content:*

*The Licensee shall broadcast a South African music content of 60%.*

#### *4.1.4 Language(s) of broadcast:*

- (a) 20% Afrikaans*
- (b) 20% English*
- (c) 60% isiXhosa.*

#### *4.1.5 Broadcast hours:*

*The Licensee shall broadcast for 24 hours a day”.*

The Licensee submits that its format is 60% talk and 40% music as stipulated in its licence. Further, the Licensee reported that it broadcasts news bulletins as required by clause 4.1.2 and South African music in line with clause 4.1.3 as well as languages as per clause 4.1.4 of the schedule its licence.

The Authority could not verify and confirm these assertions by the Licensee. This is attributed to the fact that when recordings were requested in line with section 53 (1) of the ECA, the Licensee would report that it has technical problems regarding programmes recordings. The station manager advised the Authority that these problems had been in existence since March 2010 and the board did nothing to redress the situation despite of being advised about this challenge (See Appendix C).

It is the Authority's view that the Licensee has failed to comply with clause 4.1 of its licence.

## **4. REGULATIONS**

### **4.1. South African Music Content Regulations**

Regulation 3.3 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 D).*

The monitoring exercise was not conducted due to the Licensee's technical problems with its programmes recordings.

### **4.2 Regulations Regarding Standard Terms and Conditions for Class Broadcasting Licences**

During the year under review, the Authority identified non-compliance with Regulation 9 (1) (a) of the standard terms and conditions for class licences which provides as follows:

*"The Authority may, in the course of carrying out its obligations under the Act, require a Licensee to provide information, so as to enable it to:*

*Monitor and enforce compliance with licence conditions and other requirements of the Act and related legislation".*

### 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".*

The Licensee did not pay its annual contribution fee to the fund and has failed to submit its financial statements when requested by the Authority in order to issue invoices.

Generally, community radio stations are of the view that they get their funding from the same body they are required to contribute USAF fees to. However the Authority does not have the requisite authority to exempt anybody from the payment of USAF Fees to be able to exempt community Licensees but would require an amendment of section 89 of the ECA which provides that:

- " (1) Subject to subsection (3) every holder of the licence granted or considered to have been granted in terms of Chapter 3 must pay, in addition to any other fees contemplated in this Act or the related legislation, the prescribed annual contributions of the licensee's licensed activity to the Universal Service and Access Fund.*
- (3) *The Authority must prescribe-*
  - (a) *The basis and manner of determination of such contribution, which must not exceed 1 per cent of the licensee's annual turnover or such other percentage of the licensee's annual turnover as may be determined by the Minister after consultation with the affected parties..."*

The Licensee has not complied with the of USAF regulations read with section 89 of ECA.

## **5. CONCLUSION**

The Licensee has failed to comply with its licence conditions, ICASA regulations, section 89 of ECA and its constitution. This, despite endeavours to assist the radio station adhere to its obligations, has made it difficult for the Authority to ascertain the extent to which the Licensee is serving the geographical needs of the community for which the licence was granted and issued.

The Licensee is due for renewal, in the circumstances; it is recommended that the Licensee be called for a renewal hearing, so that the Authority makes a determination on whether to renew a licence to this entity that appears not be in adherence to its licence obligations including its constitution.

## **6. APPENDICES**

Appendix A: Ulwazi FM's broadcasting service licence

Appendix B: Ulwazi FM's frequency spectrum licence

Appendix C: Correspondence from Ulwazi FM

Appendix D: South African Music Content Regulations

Appendix E: Regulations Regarding Standard Terms and Conditions for Class  
Licences

Appendix F: Regulations Regarding Universal Service and Access Fund