



CHAI FM ANNUAL COMPLIANCE REPORT

MARCH 2019

2017/2018 ANNUAL COMPLIANCE REPORT

CHAI FM

Licence Period: 03 August 2013 to 03 August 2018

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. 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 is intended to give account of Chai FM Community Radio's compliance with the terms and conditions as set out in its licence, for the 2017/2018 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 the Code on People with Disabilities.

2. BACKGROUND

Chai FM is a Class Sound Broadcasting Service Licensee whose mandate is to offer broadcasting services to the Jewish community of Johannesburg in the Gauteng Province.

3. COMPLIANCE ASSESSMENT

3.1 Licensee

Clause 1 of the licence⁵ stipulates that:

"The Licence is issued to:

1.1 Name of Company/Entity: Chai FM

1.2 Control of the Licensee: Control shall vest in the Board of Directors of a non-profit organisation known as Chai FM."

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

² Act No. 13 of 2000, as amended

³ Act No. 36 of 2005

⁴ Act No. 4 of 1999

⁵ Appendix A: Chai FM Service Licence

In the year under review, the Authority did not receive any notifications from the Licensee indicating a change in any of the above stated obligations. According to the compliance submissions received from Chai FM, the Authority concludes that the Licensee retains its company name and that the control of the Licensee is still vested in the Board of Directors of the entity.

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

3.2 Licence Area

Clause 3 of the licence provides that:

"The Licensee shall provide services in Johannesburg in the Gauteng Province as set out in the Licensee's radio frequency spectrum licence⁶."

Chai FM's coverage area remains as prescribed in the licence terms and conditions. In the year under review, the Authority did not receive any reports or complaints indicating that the radio station has gone beyond its licensed area.

Chai FM confirms that it covers the areas stipulated in its licence. Chai FM also alluded to their wish to expand their coverage area to the Jewish communities outside Johannesburg.

The Licensee complies with clause 2 of the licence.

3.3 Community

Clause 4.1 of the licence stipulates that:

"The Licensee shall provide services to a Jewish Community of Interest residing within the geographic coverage area as aforesaid."

In its submissions, the Licensee reports that it provides service to the Jewish community within its geographic coverage area in the Gauteng Province.

The Licensee complies with clause 4.1 of the licence.

Clause 4.2 of the licence stipulates that:

⁶ Appendix B: Chai FM Frequency Spectrum Licence

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

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

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

The Licensee failed to submit proof that it held meetings with its community on programming and programme related matters as required by the clauses above. The Licensee states that only one meeting was held however could not provide proof that such a meeting was convened.

The Licensee has failed repeatedly to comply with clause 4.2.1 of the licence.

Clause 4.2.3 of Chai FM's service licence makes further prescriptions in terms of community participation as follows:

"4.2.3 The Licensee shall hold Annual General Meetings (AGM) for the following purposes:

4.2.3.1 To provide feedback on the Licensee's compliance with licence conditions;

4.2.3.2 To provide feedback on the Licensee's operational and financial performance; and

4.2.3.3 To elect members of the controlling structure, e.g. Board of Directors, Trustees etc. subject to the Licensee's founding documents".

In response to the Authority's letter, Chai FM submitted proof that it did communicate its intention to convene an Annual General Meeting but there was no proof that this meeting materialised. The Licensee cited moving offices as the reason why they could not convene the planned Annual General Meeting. The Authority's 2013 report advised that Chai FM's 2013 AGM could not convene due to the unavailability of members. The Licensee submitted that it had to postpone the AGM but never submitted proof that the meeting was convened eventually. The patterns in terms of the Licensee's compliance with this clause are worrisome.

The Authority will take the necessary steps required in dealing with the non-compliance.

Chai FM failed to comply with clause 4.2.3 of the licence.

3.4 Programming

Clause 5.1 of the schedule to the licence stipulates that:

"The Licensee shall provide programming as follows:

3.4.1. News and Information:

5.1.1 "The Licensee shall broadcast a total of 10 and a half (10.5) minutes of local, seven and a half (7.5) of national and 12 minutes of international news per day.

The Licensee is required to broadcast at least thirty (30) minutes of news per day with the bulk of their News output being international News.

Chai FM's monthly log sheet⁷ demonstrates that the Licensee schedules at least 50% international news in its output. This is the Licensee's submission illustrating that it does comply with the provisions of clause 5.1.1.

The Authority's monitoring exercise found that Chai FM schedules at least ten (10) main news bulletins Monday and Thursday of each week and eight (8) News Bulletins on Saturdays while news broadcast was not detected on Sundays. The duration of the news bulletins is approximately four (4) minutes. The Licensee schedules an average of thirty-six (36) minutes of news per day. The monitoring exercise could not find news on Sundays and that constitutes non-compliance. The Licensee's international news output is slightly more than local and national news content; which finding is confirmed on the Licensee's monthly log sheets.

The following are some news samples detected during monitoring:

- *"Polish Senators approved a Bill overnight which would make it illegal to suggest Poland bore any responsibility for crimes against humanity, committed by Nazi Germany on its soil during World War II. The upper house of Parliament voted 57 to 23 with 2 abstentions to approve the bill. The Bill will make the use of the terms like "Polish Death Camps" punishable by up to 3 years in prison and would apply to both Polish citizens and foreigners. The Legislation will now be sent to Polish President, Andrzej Duda, to be signed into law. Duda said earlier this week that he supports the Bill and insisted that there was no institutionalised participation by Poland or its people in the holocaust."*

⁷ Appendix D: Chai FM Log Sheet sample (1month)

- *"The European Union has pledged 42.5 million euros to support Palestinians ahead of a high-level meeting in Brussels to address broken down peace talks. The talks yesterday were to bring top Israeli, Palestinian, US and Arab officials and politicians together for the first time since US President Donald Trump made the controversial decision to recognise Jerusalem as Israel's Capital in December 2017. Johannes Hahn, the EU Commissioner for European Neighbourhood Policy, said the assistance package will assist the Palestinians on their way to the establishment of their own State as of this two-state solution with Jerusalem as the Capital of both Israel and Palestine."*
- *"Charges will be laid against 31 City of Johannesburg Officials implicated in an alleged "kickback scandal" involving a Johannesburg Stationery Provider. The Officials allegedly received 2.7 million rand in kickbacks from a single service provider registered on the City's and Municipal owned entities data base. The company in the South of Johannesburg provided the Municipality with office stationery and equipment including desktop computers, lap tops, printer cartridges and toners worth around 20 million rand. The method was allegedly to inflate quotes to include their cut and this was collected via payment methods of choice that included Supermarket Money Transfers, E-Wallet Transfers, Cash Payments and transfers to individual accounts."*
and
- *"The National Prosecuting Authority has confirmed that President Jacob Zuma has made his representations to NPA Head, Shaun Abraham, on why he should not be indicted on charges of fraud and corruption. Abrahams asked the President to submit new representations on why he shouldn't face the 783 charges of fraud, money laundering and racketeering. The Supreme Court of Appeals set aside the 2009 decision by the then Prosecutions Boss, Mokotedi Mpshe, to withdraw the criminal case against Zuma. The effect of the judgement was that charges are automatically reinstated but Abrahams gave the President one last chance to argue why he should not have his day in court."*

3.4.2. Talk vs Music

5.1.3 80% talk and 20% music.

Chai FM submits that its programming format adheres to their licensed format. While monitoring Chai FM's programming profile, the Authority found that the Licensee carries more talk than music. However, this is not always the case as some weekend slots carried more music than talk. While this may be case, the Authority's calculation - averaged out

on a sample of 7 days – found that indeed Chai FM programming format is a split of 80% talk and 20% music.

The Licensee complies with clause 5.1.1 of the Licence.

3.4.4 Language(s) of Broadcast

Clause 5.1.4 of the schedule to the licence stipulates that Chai FM's languages of broadcast shall be:

5.1.4.1 English = 98%

5.1.4.2 Hebrew = 2%"

In the year under review, the Authority's monitoring exercise identified that English is a dominant language on Chai FM's programming format. Almost all programmes broadcast on Chai FM are in English except for one called "Beketzav Hayom" and which goes to air from Monday to Thursday between 22h00 and 23h00 and then again on weekends between 20h00 and 21h00. "Beketzav Hayom" is mostly a music-based show and is broadcast in Hebrew.

The Licensee complies with the provisions of clause 5.1.4 of the licence.

3.4.3. Broadcast Hours

Clause 5.1.5 of Chai FM's schedule to the licence reads:

"Due to Religious observances, the Licensee shall broadcast for the following hours:

Sunday to Thursday: 00h00 – 23h59

Friday: 00h00 – 16h30

Saturday: 20h30 – 23h59"

The Authority's monitoring exercise revealed Chai FM broadcasts for 24 hours between Sunday and Thursday in a week. Chai FM's programming breaks for twenty-eight (28) hours between Friday 16h31 and Saturday 20h29 of each week. During this break, Chai FM's programming is categorised by music and pre-recorded programmes. No on-air community participation, or news programming is identified during this 28-hour break in programming. Furthermore, Chai FM did not report to have had any technical problems that may have resulted in the radio station being off air.

The Licensee complies with the provisions of clause 5.1.5 of the licence.

3.4.4. Submission of Log Information

Clause 5.2 of Chai FM's Licence gives an obligation to the Licensee to *"keep a log of all programmes broadcast which must be submitted on a monthly basis to the Authority. The pro-forma of the logs is supplied by the Authority.*

Chai FM submits the monthly, quarterly reports as prescribed by the Compliance Procedure Manual Regulations. In instances where the Licensee has missed a submission, they always make up for it in months that follow. Chai's FM compliance with the Compliance Procedure Manual may not always be on time but the Licensee submits all information as required by the Authority.

The Licensee's complies with the provisions of clause 5.2 of the Licence.

4. REGULATIONS

4.1 ICASA South African Music Content Regulations

Regulation 3 of the ICASA South African Music Content Regulations 2016⁸ stipulates that:

"A holder of a community sound broadcasting service licence must ensure that after eighteen (18) months from the date of gazetting of these regulation, a minimum of 60%, increasing by 10% annually to reach 80% 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."

The Authority's monitoring exercise found that Chai FM plays at least forty percent (40%) South African music. The Licensee's music output mainly featured musicians of Jewish origin who are now based in South Africa; the Licensee termed their Music as South African Jewish Music. The South African Jewish Music does indeed satisfy the definition as prescribed in the South African Music Content Regulations in that it is recorded in South Africa. The following local artists were identified as enjoying airplay on Chai FM:

Adam Kadmon, Justin Jofee, Menachem Phillip, Prime Circle, Louis Carver, Eitan Katz, Kol Dodi, Ben Melech, DJ Fresh Danny K, the Moshav Band and many others.

⁸ Appendix E: ICASA South African Music Content Regulations

On the basis that the Licensee did not reach the 60% South African Music Content requirement; **Chai FM failed to comply with regulation 3 of the ICASA South African Music Content Regulations.**

4.2 Compliance Procedure Manual – Form 12A

The Licensee is required – in terms of the Compliance Procedure Manual Regulations – to submit a Form 12A which reports on all complaints received in the course of each financial year. In the year that is currently under review, Chai FM submitted its Form 12As indicating that the Licensee received no complaints.

The Licensee complies with the Compliance Procedure Manual Regulations.

4.3 Code on People with Disabilities

Clause 3.1 (a) of the Code on People with Disability of 2007 stipulates that:

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

The Licensee's programming was found to cater for people with disabilities. Furthermore, the radio station's premises are accessible to people with disabilities.

The Licensee complies with the above-mentioned regulation.

4.4 Regulations regarding Standard Terms and Conditions for Class Licensees

Regulation 2(1)(d) of the Regulations Regarding Standard Terms and Conditions for Class Licensees⁹ provides two fundamental regulations that are constantly and continuously used to measure a Licensee's compliance. The two regulations are Regulation 2(1) and the sub clauses, along with Regulation 9 in its entirety.

In terms of the provisions made by Regulation 2(1) of the Regulations Regarding Standard Terms and Conditions for Class Licensees; Chai FM has had no changes to its licence details and information in the year that is currently under review.

Furthermore, the Licensee has always been keen to assist the Authority with any information that may be required of them.

⁹Appendix F: Regulations regarding the Standard Terms and Conditions

Chai FM complies with the Regulations regarding the Standard Terms and Conditions.

5. CONCLUSION

Chai FM failed to comply with clause 4 in its entirety, clause 5.1.1 on the basis that the Authority could not find news material on Sunday and regulation 3 of the ICASA South African Music Content Regulation. The Authority is mostly concerned with the Licensee's involvement with the communities it serves as per the licenced obligations. The concern stems from the fact that this is the second time that the Authority reports on Chai FM's failure to comply with this clause. The Compliance and Consumer Affairs Division (CCA) will lodge a formal complaint against Chai FM with Compliance and Complaints Committee (CCC) and recommend that the Licensee be reprimanded for non-compliance.

Non-compliance with Programming will be addressed with the Licensee in a meeting.

6. TERMS OF REFERENCE

Appendix A: Chai FM's Broadcasting Service Licence;
Appendix B: Chai FM's Frequency Spectrum Licensees;
Appendix C: Letter to Chai FM dated 20 February 2018 August 2013;
Appendix D: Chai FM Monthly Log Sheet;
Appendix E: ICASA South African Music Content Regulations; and
Appendix F: Regulations regarding the Standard Terms and Conditions.