



KAYA FM ANNUAL COMPLIANCE REPORT

MARCH 2021

2019/20 ANNUAL COMPLIANCE REPORT

KAYA FM (PTY) LTD BROADCASTING AS KAYA FM

LICENCE PERIOD: 17 December 2018 – 16 December 2028

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 terms and conditions of their licence, and any relevant legislation and Regulations.

The following report is intended to give account of Kaya FM's compliance with the terms and conditions as set out in its licence for the 2019/2020 financial year. Aspects of compliance that are measured comprise of licence conditions pertaining to Geographic Coverage, Language (s) of broadcast, Format, General Programming Obligations, Training and Skills Development, Community-Related Obligations and Control Obligations. Furthermore, the Licensee will be measured in relation to the following regulations, the ICASA South African Music Regulations, Regulations Regarding Standard Terms and Conditions, Universal Service and Access Fund (USAF) Regulations and General Licence Fee Regulations and the Code of Conduct for Broadcasters.

2. BACKGROUND

The Authority issued a renewed commercial broadcasting licence on 04 June 2019 to Kaya FM (Pty) Ltd valid for ten (10) years from the effective date. The Licensee provides sound broadcasting services in the Gauteng province. According to the Broadcast Research Council of South Africa (BRC), the listenership figures for period ending March 2020 was 777 000⁵.

3. COMPLIANCE ASSESSMENT

3.1. Geographic Coverage Area

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 https://brcsa.org.za/brc-ram_listenership-report-apr19-mar20/

Clause 3 of the schedule to Kaya FM's service licence stipulates that:

"The coverage area is Johannesburg, as defined in the coverage map attached to the Licensee's radio frequency spectrum licence".

The coverage area is as per the coverage map on the frequency spectrum licence. The signal distribution is provided for by Sentech.

The Licensee complies with its geographic coverage area.

3.2 Broadcast Language (s)

Clause 4 of the schedule to Kaya FM's service licence stipulates that the language of broadcast shall be:

"Principal language: English".

Kaya FM's principal language of broadcast is English.

The Licensee complies with its language of broadcast.

3.3 Format

Clause 5.1 of the schedule to Kaya FM's service licence stipulates that:

"The Licensee shall have programming format as follows: Clause 5.1.1 An African-focused adult contemporary/jazz music; Clause 5.1.2 Sixty percent (60%) music and forty percent (40%) talk".

The Licensee broadcast a talk driven breakfast show and talk based content shows from 17H00 until 21H00 during weekdays. The topics of discussions on the talk format from 17H00 – 21H00 is most informal knowledge building content which includes business, health, legal matters, relationships advise amongst suitable for the intended target audience.

The mid-morning programmes until the afternoon drive time programme are predominantly music driven whilst the weekend programming is dominated by adult contemporary music from the African content and the African Diaspora supplemented by talk.

The Licensee complies with its licenced format.

Clause 5.2 of the schedule to Kaya FM's service licence stipulates that:

"The Licensee shall not change more than fifteen percent (15%) of its format between 05h00 and 23h00".

Kaya FM did not have a change in its format and no changes were found during the monitoring for the period under review.

The Licensee complies with clause 5.2 of the schedule to its service licence.

3.4 General Programming Obligations

Clause 6.1 of the schedule to Kaya FM's service licence stipulates that:

"The Licensee shall, during each day, broadcast news on a regular basis for minimum of thirty (30) minutes each day during the South African performance period (05h00 and 23h00)".

Kaya FM broadcasts news from 06h00 until 18h00 on weekdays and news bulletins from 07H00 until 13H00 over the weekend. The news broadcasts are an average of four and half (4.5) minutes for an average total of fifty-nine (59) minutes on weekdays and thirty-two (32) minutes over the weekends.

The news items the Licensee did broadcast during the period under review, are the following:

- *"Management at the Sterkfontein Psychiatric Hospital is taking action against nurses and other staff members who participated in an unprotected strike action. The Health workers down tools accusing the hospital of not properly communicating about the COVID-19 infection at that institution.*
- *The Minerals and Energy Minister Gwede Mantashe says he has ordered employers in the mining sector to withdraw their retrenchments notices.*
- *The minister says four mine companies have announced plans to retrench thousands of workers., and".*
- *The Organisation Undoing Tax Abuse (OUTA) and the SAA Pilot association has called on the NPA to take action against former SAA chairperson Dudu Myeni. This*

comes after the North Gauteng High Court declared Myeni a delinquent director for life in terms of the Companies Act.

The Licensee complies with its news obligation.

Clause 6.2 of the schedule to Kaya FM's service licence stipulates that:

"Each news bulletin shall contain news related to the African continent".

The Authority's monitoring exercise revealed that the Licensee's broadcast news related to African continent and identified the following:

- *"The World Health Organisation has again warned African countries who are easing lockdown regulations. The organisation says Covid 19 cases will start to increase rapidly as regulations are eased due to increased economic activity. A number of African countries have begun easing their lockdowns including Nigeria, Ghana and South Africa."*

The Licensee includes news from the African continent on each of their bulletins.

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

Clause 6.3 of the schedule to Kaya FM's service licence stipulates that:

"The source(s) of all news material (other than news sourced from the Licensee) shall be disclosed during the news broadcast".

The Licensee's Form 9 submission reflects the sources of news which include interviews conducted on the programming, content from press conferences, among others. The Licensee also invites listeners to call in, to its news desk with any news related stories.

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

3.5 Training and Skills Development Obligation

Clause 7 of the schedule to Kaya FM service licence stipulates that:

"The Licensee shall spend at least R 300 000 (three hundred thousand Rand) annually to human resource development".

The Licensee's submitted that it has spent just over two million rands during the year under review for training and development of its employees.

The Licensee complies with its training and skills development.

3.6 Community - related Obligations

Clause 8 of the schedule to Kaya FM's service licence stipulates that:

"The Licensee shall spend R500 000 (five hundred thousand Rand) of air-time per annum to promote corporate social responsibility initiatives such as awareness of HIV/AIDS, cancer, poverty alleviation, job creation and any other social objective".

During the period under review, the Licensee submits that it allocated airtime to promote social responsibility programmes for campaigns such as Mandela Day, Back to School and Do More Foundation to the value of six hundred and sixty thousand rand⁶ (R660 000).

The Licensee complies with its community related obligations.

3.7 Control

Clause 9 of the schedule to Kaya FM's service licence stipulates that:

"Persons from historically disadvantaged groups shall maintain operational control through management, executive, remuneration and audit committees. The Licensee must ensure that staff is involved in a profit-sharing scheme."

The Licensee's submitted that their executive management consists of eleven (11) employees, who are all from previously disadvantaged group, which some forming part of the remuneration committee and Board accordingly. The radio station however submitted that's the financial performance of the company for the year under review didn't meet the requirement for profit sharing.

The Licensee partially complies with clause 9 of the schedule to its service licence.

⁶ Appendix C

4. REGULATIONS

4.1 Code of Conduct for Broadcasters

The Licensee is a member of the National Association of Broadcasters (NAB) and complaints in relation to the Code of Conduct for Broadcasters, are dealt with by the Broadcasting Complaints Commission of South Africa (BCCSA).

4.2 South African Music Content Regulations

Regulation 3 (2) of the ICASA South African Music Contents Regulations published on 23 March 2016 stipulates that:

"Every holder of a commercial sound broadcasting licence must ensure that after eighteen (18) months from the date of 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 reasonably evenly throughout the said period".

The Licensee's local music content submission reflects an average of thirty eight percent (38%) for music played. Some of the South African artists featured included *Max Hoba*, *Mbongeni Ngema*, *Skwatta Camp*, *Nosipho*, *Black Coffee* amongst others. It also included interviews with *Marcus Harvey*, *Max Hoba* which contributes to their local music output.

The Licensee complies with the South African Music Content Regulation.

4.3 Standard Terms and Conditions

There Authority did not find instances of non-compliance by the Licensee with the Regulations regarding Standard Terms and Conditions for Individual Licences during the year under review.

4.4 Regulations in respect of the Prescribed Annual Contributions of Licensees to the Universal Service and Access Fund

Regulation 3 of the Regulations in respect of Prescribed Annual Contributions of Licensees to the Universal Service and Access Fund (USAF), published in Government Gazette, No. 34010 of 10 February 2011, 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".*

Kaya FM's financial year end is in June and they have paid their contribution to the Universal Service and Access Fund on, 30 December 2020.

The Licensee complies with the USAF Regulations.

4.5 General Licence Fees Regulations

Regulation 3 (1) of the General Licence Fees Regulations published on *Government Gazette* No. 36323 of 28 March of 2013 stipulates 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 BS Licences".

Schedule 2 provides for Licensees to pay an annual licence fee in accordance with their licensed revenue and to be calculated using the set formula.

Regulation 7(a) (b)(c) of Schedule 3 provides that Annual Licence Fees:

- a) "Are due annually based on the licensee's financial year;*
- b) 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".*

Kaya FM's financial year end is on 30 June and they have paid their licence fees on, 30 December 2020 which is within the six months after their year-end.

The Licensee complies with the General Licence Fees Regulations.

5. CONCLUSION

The Licensee has complied with the relevant regulations and its service license terms and conditions for the year under review.

6. TERMS OF REFERENCE

- 6.1** Appendix A: Kaya FM's broadcasting service licence;
- 6.2** Appendix B: Form 9 submission;
- 6.3** Appendix C: Training and Development Report;
- 6.4** Appendix D: Report on Community related obligations;
- 6.5** Appendix E: South African Music Content Regulations;
- 6.6** Appendix F: Regulations Regarding Standard Terms and Conditions; and
- 6.7** Appendix G: General Licence Fees Regulations.

END

March 2021