



SMILE 90.4 FM ANNUAL COMPLIANCE REPORT

MARCH 2021

2019/2020 ANNUAL COMPLIANCE REPORT

CAPE TOWN RADIO (PTY) LTD BROADCASTING AS SMILE 90.4 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 Independent Communications Authority of South Africa Act² (ICASA Act), 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 Cape Town Radio's compliance for the 2019/2020 financial year. Aspects of compliance that are measured comprise of Geographic Coverage, languages, Format, Local Content Obligations, General programming Obligations, Regulations Regarding Standard Terms and Conditions, Universal Service and Access Fund Regulations, General Licence Fees Regulations.

2. BACKGROUND

Cape Town Radio, broadcasting as Smile 90.4 FM ("Smile 90.4 FM") is an Individual Commercial Sound Broadcasting Service Licensee providing a programming mix of music and information to the City of Cape Town Metropolitan in the Western Cape Province⁵.

3. COMPLIANCE ASSESSMENT

3.1 Licensee

Clause 1 of the Schedule to Smile 90.4 FM's licence provides that:

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

1.2 Name of the Station: Smile 90.4 FM

Shareholders:

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: Smile 90.4 FM's Broadcasting Service License.

(a)	<i>Videovision Entertainment (Pty) Ltd</i>	<i>70.5%</i>
(b)	<i>All Part Cape (Pty) Ltd – 5%</i>	<i>5%</i>
(c)	<i>African people Investment Company (Pty) Ltd ("APIC")</i>	<i>2.5%</i>
(d)	<i>Radio 021 FM (Pty) Ltd (formerly Firefly Investments 150 (Pty) Ltd</i>	<i>17%</i>
(e)	<i>Smile 90.4 FM Share Incentive Scheme trust</i>	<i>5%</i>

The Licensee confirmed that the information contained in clause 1 of the Schedule to its licence has not changed during the period under review.

The Licensee complies with clause 1 of the Schedule to its Licence.

3.2 Licence Period

Clause 2 of the Schedule to Smile 90.4 FM's licence provides:

"2.1 The effective date of the licence: 25 May 2012

2.2 The licence shall expire on: 24 May 2022"

The Licence is of the Licensee is valid until 24 May 2022 and therefore no renewal application was needed to be lodged during the period under review.

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

3.3 Geographic Coverage Area

Clause 3 of the Schedule to Smile 90.4 FM's licence provides that:

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

The Licensee confirms that it broadcast within the geographic coverage area as indicated in the coverage map attached to the Licensee's radio frequency spectrum licence. The Authority did not receive any complaints that the licensee was broadcasting outside of its prescribed geographic coverage area.

The Licensee complies with clause 3 of the Schedule to its licence.

3.4 Programming

Clause 4.1.1 of the Schedule to Smile 90.4 FM's licence provides that:

"Format: The Licensee shall have a programming format of 60% music and 40% talk, providing entertainment, informative and educational programming 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."

The monitoring exercise as undertaken during the period under review found that the Licensee broadcast forty percent (40%) talk and sixty percent (60%) music.

The Licensee offers a variety of programming that is entertaining, informative and educational. Some of the programming that was found during the period under review include: *"Smile Comedy Break"* that features stand up comedy skits and *"The Honest Truth"* that discusses various lifestyle, social and political issues. The licensee informs its audience about relevant news, sports, traffic, weather and financial updates and allows its audience to phone-in during programmes such as *"Smile Secret Sound"*.

The music that was broadcast during the period under review were of the South African pop, South African Afrikaans music, International pop and International gold genres.

The Licensee complies with clause 4.1.1 of the Schedule to its Licence.

Clause 4.1.2 of the Schedule to Smile 90.4 FM's licence states that:

"Local Content Obligations:

4.1.2.1 The Licensee shall adhere to the following, namely:

4.1.2.1.1 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.

4.1.2.1.2 South African music on its service will include amongst other genres, South African Pop music, South African Afrikaans and South African rock."

The Licensee has been referred to the Complaints and Compliance Committee ("CCC") for non-compliance with this clause stemming from the previous Annual Compliance Report (2018/2019). At the time of writing this report, the Licensee has not yet appeared before the CCC. No changes have been made during the period under review and the Licensee is still non-compliant with the clause.

The Licensee is non-compliant with clause 4.1.2 of the Schedule to its licence.

Clause 4.1.3 of the Schedule to Smile 90.4 FM's licence provides that:

"General Programming Obligations:

4.1.3.1 The Licensee shall broadcast its news in the following manner, 65% local/regional, 20% South African national and 15% international news."

The monitoring exercise as undertaken during the period under review found that of the news broadcast by the Licensee, sixty-five percent (65%) was local news, twenty percent (20%) was national news and fifteen percent (15%) was international news.

The Licensee complies with clause 4.1.3.1 of the Schedule to its Licence.

Clause 4.1.3.2 of the Schedule to Smile 90.4 FM's licence states that:

"The Licensee shall broadcast news on a regular basis for a minimum of thirty (30) minutes per day between 05h00 and 23h00."

Some of the news that was found during the period under review include:

- *"Die Departement van Maatskaplike ontwikkeling het Kaapenaars aangemoedig om verantwoordelik te gee wanneer hulle kinderorganisasies en sy werk wil ondersteun. Dit volg op 'n waarskuwing wat aan die publiek uitgereik is oor die feit dat valse briewe van goedkeuring van die Alnoordse Kinderhuis in Kaapstad versprei word. Die woordvoerder van die departement sê die valse brief is onlangs onder hul aandag gebring."*
- *"Die Openbare Beskermer sê Minister Tito Mboweni en Bheki Cwele en die ANC voorsitter Gwede Mantashe moet aanspreeklik gehou word vir aanvalle op haar. Die reaksie volg na 'n berig oor die naweek dat Mkhwebane haar nou op die speaker beroep het om haar teen die aanvalle van politici en LPs te beskerm. Sommiges voer aan dat sy onbevoeg vir haar amp end at sy ANC faksie politiek speel."*
- *"The Department of Water and Sanitation says it is pleased to note that Capetonians has remained stable, indicating that our relationship with the precious resource has changed for good. Following good rains over the past few weeks, dams servicing the city are now nearing the sixty percent mark and consumption has consistently stayed below the 600 million litres a day level. The predictions are that the province will receive good rainfall over the next two months."*
- *"The former head of Africa's largest pensionfund manger says he was removed from his job so that politically connected people could influence the fund's investment decisions. Daniel Matjila is expected to tell a special commission of inquiry today that he was pressured to make deals that didn't fit with the public investments corporation's strategies. Speaking for the first time since November, Matjila himself will assert that he was removed deliberately."*

The monitoring exercise as undertaken during the period under review, found that news is broadcast from 06h00, with the last full news bulletin at 19h00. The average duration of a news bulletin is four (4) minutes. Including news headlines, the total news broadcast

per day is an average of fifty (50) minutes. The Licensee exceeds the requirement to broadcast thirty (30) minutes.

The Licensee complies with clause 4.1.3.2 of the Schedule to its Licence.

Clause 4.1.3.3 of the Schedule to Smile 90.4 FM's licence reads:

"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 monitoring exercise as undertaken during the period under review found that the Licensee disclosed the source of news if the news material was sourced externally.

The Licensee complies with clause 4.1.3.3 of the Schedule to its Licence.

Clause 4.1.3.4 of the Schedule to Smile 90.4 FM's licence states that:

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

The monitoring exercise as undertaken during the period under review found that the Licensee broadcast stand-up comedy from international comedians during the "Smile Comedy Break" that falls within the South African performance period.

The Licensee is non-compliant with clause 4.1.3.4 of the Schedule to its Licence.

Clause 4.4.1 of the Schedule to Smile 90.4 FM's licence states that:

"The Licensee shall broadcast 55% English and 45% Afrikaans."

The monitoring exercise as undertaken during the period under review found that the languages of broadcast are English and Afrikaans. News is broadcast in both languages as is the music. The monitoring exercise found that English made up most of the broadcast, with Afrikaans in a secondary position.

The Licensee complies with clause 4.4.1 of the Schedule to its licence.

3.5 Ownership and Control

Clause 5 of the Schedule to Smile 90.4 FM's licence reads:

"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."

The Licensee confirmed that during the period under review the minimum thirty percent (30%) of ownership and control of the station by persons from historically disadvantaged groups was maintained.

The Licensee complies with clause 5 of the Schedule to licence.

3.6 Specific Terms and Conditions

Clause 6 of the Schedule to Smile 90.4 FM's licence provides 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 during the period under review employed a news team responsible to produce local news. The news team consists of four (4) news anchors/journalists, one (1) sports and traffic presenter and two (2) weekend news readers. The news teams operate in accordance with the news policy of the station.

The Licensee complies with clause 6 of the Schedule to its service licence.

4. REGULATIONS

4.1 ICASA Compliance Procedure Manual, 2011 – 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 during each financial year.

The monitoring exercise as undertaken during the period under review found that the Licensee regularly broadcast information on how its listeners can escalate any complaints to the Broadcasting Complaints Commission of South African. Further, the Licensee complied with the requirement to submit Form 12A to the Authority.

The Licensee complies with the Compliance Procedure Manual, as stated above.

4.2 Regulations regarding Standard Terms and Conditions for Individual Broadcasting Licensees, 2010 as amended

The Authority is satisfied that during the period under review the Licensee did not contravene the regulation in respect of the Standard Terms and Conditions for Individual Licences⁶.

The Licensee complies with the Standard Terms and Conditions for Individual Broadcasting Service Licence.

⁶ Appendix B: Standard Terms and Conditions for Individual Broadcasting Services, 2010 as published in *Government Gazette* No. 33294 dated, 14 June 2010, as amended.

4.3 ICASA South African Music Content Regulations, 2016

Regulation 2 of the Regulations on South African Music Content, 2016 provides that:

*"A holder of a commercial sound broadcasting service licence must ensure that after eighteen (18) months of the 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 evenly throughout the performance period"*⁷.

The monitoring exercise as undertaken during the period under review found that the Licensee broadcast an average of forty-five (45) percent of South African music tracks during the performance period. Further, the total South African Music content of the Licensee is increased to over fifty (50) percent inclusive of the interviews held with South African musicians and the promotion of new tracks by South African musicians.

Some of the new South African music tracks that were promoted during the period under review include:

Janice "Be Your Girl"; Hanco "Hou Vas"; Alex Daneel "Say The Word"; Ameer Hendricks "Ruined"; Adolph de Beer "Life Will Go On"; Chad Nolan "Devil's Lipstick"; Dylan Red "Toxic"; Steve Umculo "Pretty Baby"

Some of the interviews that were held with South African artist during the period under review include:

Arno Carstens, Lady Litsa, Anica Kiana, Oshri, Julian Hurley, Mathew Mole, Cazz, Kerwin, Taye Brink, Craig Lucas, Elvis Blue, Janie Bay, Beatenberg, Aston Wyle, Raven Ray, Taryn Jade.

The Licensee complies with the ICASA South African Music Content Regulations, 2016.

4.4 Universal Service and Access Fund, 2011

Regulation 3 (1) of the Regulations in respect of the Prescribed Annual Contributions of Licensees to the Universal Service and Access Fund, 2011⁸ state that:

"Every holder of a licence granted in terms of Chapter 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 (USAF)." ⁹

⁷ Appendix C: ICASA South African Music Content Regulations, 2016 as published in *Government Gazette* No.39844 dated, 23 March 2016.

⁸ Published in *Government Gazette* No. 34010 dated, 10 February 2011.

⁹ Appendix D: USAF Regulations, 2011 as published in *Government Gazette* No. 34010 dated, 10 February 2011.

Further, Regulation 3 (3) states 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."

The Licensee made payment of USAF fees, on 31 July 2020 and submitted the proof thereof to the Authority.

The Licensee complies with the USAF Regulations, 2011.

4.5 General Licence Fees Regulations, 2012

Regulation 3 (1) of the General Licence Fees Regulations, 2012 state 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 Broadcasting Service licences."*¹⁰

Schedule 2 of the Annual Licences Fees regulations provide for Individual Commercial Broadcasting Services Licensees to pay an annual licence fee of 1.5% to the Authority.

Regulation 4(b) and (c) of Schedule 3 state that:

"(b) In respect of payment, such are due and payable within 6 months from 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."*¹¹

The Licensee's financial year ends in December. The payment was received on 31 July 2020 by the Authority and as such, the Licensee did not make the payment within 6 months from the end of the licensee's financial year.

Although the Licensee did make the required payment, it was late. The Licensee has attributed that, to the fact that the National State of Disaster Regulations that remains in place currently, that had put restrictions in which had an impact on its business operations.

¹⁰ Appendix E: General Licence Fees Regulations, 2012 as published in *Government Gazette* No. 36323 dated, 28 March 2013, as amended.

¹¹ *Ibid.*

5. CONCLUSION

The monitoring exercise found that Smile 90.4 FM, was compliant with most of its licence obligations as per its licence and the relevant Regulations. The areas of concern will be brought to the attention of the Licensee and the Authority will continue to monitor the steps taken by the Licensee, to remedy the areas of non-compliance as contained herein.

6. TERMS OF REFERENCE

- 6.1** Appendix A: Smile 90.4's Licence;
- 6.2** Appendix B: Standard Terms and Conditions for Individual Licensees, 2010 as amended;
- 6.3** Appendix C: ICASA South African Music Content Regulations, 2016;
- 6.4** Appendix D: USAF Regulations, 2011; and
- 6.5** Appendix E: General Licence Fees Regulations, 2012.

END

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