



# **KAYA FM**

# **ANNUAL COMPLIANCE**

# **REPORT**

**MARCH 2024**

# **2022/23 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 ("Authority") has a statutory mandate in terms of the Constitution, the Independent Communications Authority of South Africa Act<sup>1</sup> (ICASA Act), the Electronic Communications Act<sup>2</sup> (ECA) and the Broadcasting Act<sup>3</sup> 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 purpose of the report is to give an account of the compliance status of Kaya FM with the terms and conditions of its licence for the 2022/2023 financial year. Areas of compliance in the service licence that are measured comprise of the Coverage Area, Broadcast Language (s), Format, Local Content Obligations, General Programming Obligations, Training and Skills Development, Community - related Obligations, Ownership and Control Obligations.

### **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 until 15 December 2028. The Licensee provides sound commercial broadcasting services in the Gauteng province.

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<sup>1</sup> Act No. 13 of 2000, as amended.

<sup>2</sup> Act No. 36 of 2005.

<sup>3</sup> Act No. 4 of 1999.

### **3. COMPLIANCE ASSESSMENT**

#### **3.1. Geographic Coverage Area**

Clause 3 of the schedule for 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, but listeners and presenters through their engagement do use or mix the principal language with other South Africa official languages.

**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".*

Kaya's programming format on weekdays i.e. Mondays to Thursdays from 18H00 until 22H00 is completely talk-driven which is Kaya Bizz and Point of View which are of economic, financial, financial and other informal knowledge-building content. The mid-morning to midday programme has a blend of talk and music. The morning and afternoon drive-time programmes as well as the weekend

programming, those are music-driven. The programming on Sundays focuses on adult contemporary sound, Jazz and music from the African continent and diaspora.

### **The Licensee complies with its 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 has not notified the Authority of changes to their format and that means, there were no format changes for the period under review.

### **The Licensee complies with clause 5.2 of the schedule of 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 a minimum of thirty (30) minutes each day during the South African performance period (05h00 and 23h00)".*

Kaya FM broadcasts news starting at 06h00 until 18h00 during weekdays, with weekend news from 06H00 until 12H00. The news broadcasts are an average of four minutes for an average total of fifty-nine minutes on weekdays and thirty-two minutes over the weekends.

The news items heard during the period under review, among others, were the following:

- *"EFF leader Julius Malema says he pose no threat to President Cyril Ramaphosa when he jumped onto stage during the State of the Nation address. Malema says they will never harm the President or any other member of Parliament.*
- *People are gathering outside the restaurant in Durban were AKA along with his associate Tebello Motsoane were killed. Kienan Forbes and his*

*friend who was known as Tibz were gunned down on Durban's Florida road on Friday night.*

- *The Ekurhuleni emergency services have recovered the bodies of two men who drowned at the weekend. Their bodies were found after four days of search operations in the Natal Klipspruit river."*

### **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 the African continent and identified the following:

- *"United Nations experts have called for an independent investigation into possible war crimes by government forces and Russian's Wagner Group in Mali. Mali, whose government took power in a 2021 military coup, had previously said Russian forces in the West African country were not mercenaries".*

The Licensee includes a news story from the African content on each of their bulletins.

### **The Licensee complies with clause 6.2 of the schedule of 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 does not always disclose the source of its news stories during the broadcast.

### **The Licensee did not comply with clause 6.3 of the Schedule of its service licence.**

### **3.5 Training and Skills Development Obligation**

Clause 7 of the schedule of 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 submits that it has spent four hundred and ninety thousand rands (R490 000) for training and development for the year under review.

**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".*

The Licensee submits that they have allocated airtime to promote social responsibility programmes for campaigns for Kutlwano Social Club and the Charlotte Maxeke Institute amongst others for a total value of five hundred and seventy-seven thousand rands<sup>4</sup>.

**The Licensee complies with its community-related obligations.**

### **3.7 Control**

Clause 9 of the schedule for 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 submits its directorship consists of six (6) members including two alternative directors. Over sixty-five percent (60%) of the directors are classified under historically disadvantaged groups, with an average of fifty percent of the

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<sup>4</sup> Appendix C

remuneration being HDG and finance committees made up of hundred representations of HDG. Kaya FM reports that for the year under review, profit-sharing scheme are in place to be paid out to staff members.

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

## **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 administered 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-five percent (35%) for overall local music output, but they are able to increase local content output by including interviews with artists such as Berita, Brenda Mtambo which is added through the format factor point system. Some of the South African songs featured included *Zubz – Heavy 8*, *LaSauce – I do*, *Thandi Ntuli – Nkululeko* amongst others.

**The Licensee complies with the South African Music Content Regulation.**

### **4.3 Standard Terms and Conditions**

The Authority could not find any 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".*

The Licensee made payments to the MDDA fund and submitted proof thereof.

### **The Licensee complies with the USAF Regulations.**

### **4.6 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".*

The Licensee made payments for their annual licence fees and submitted proof thereof.

**The Licensee complies with the General Licence Fees Regulations.**

## **5. CONCLUSION**

The Licensee has complied with the relevant Regulations and its licence terms and conditions for the year under review. However, Licensee does not always disclose the source of its news stories during its news broadcast. The Licensee will be required to remedy the non-compliance with clause 6.3 of service its licence.

## **6. TERMS OF REFERENCE**

Appendix A: Kaya FM's broadcasting service licence

Appendix B: Form 9 submission

Appendix C: Compliance Submission

**END**