



NORTH WEST FM ANNUAL COMPLIANCE REPORT

MARCH 2019

2017/2018 ANNUAL COMPLIANCE REPORT

NORTH WEST FM (PTY) LTD OPERATING AS NORTH WEST FM

Licence Period: 01 November 2007- 31 October 2017

1. PREFACE

The Independent Communications Authority of South Africa (the Authority) has a statutory mandate in terms of the Constitution,¹ the ICASA Act of 2000,² the Electronic Communications Act (ECA) of 2005³ and the Broadcasting Act of 1999⁴ 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, relevant legislation and regulations.

The purpose of the report is to give account of North West FM (Pty) Ltd.'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, General Licence Fee Regulations and Universal Service and Access Fund Regulations (USAF).

2. BACKGROUND

In November 2007, the Authority issued North West FM with an Individual Commercial Sound Broadcasting Service Licence ⁵, to provide a service in parts of the North-West Province including, but not limited to, Klerksdorp, Mmabatho,

¹ The Constitution No, 108 of 1996,

² The ICASA Act No, 13 of 2000,

³ The Electronic Communications Act No, 36 of 2005

⁴ The Broadcasting Act No 4 of 1999

⁵ Appendix A: North West FM's Service Licence

Rustenburg, Schweizer Reneke, Taung and Zeerust (*See licence conditions attached as Appendix A*).

North West FM operates from a studio located at Unit 1, Delta Business Unit, 17 Kgwebo Avenue, Mabe Business Park, Rustenburg.

3. COMPLIANCE ASSESSMENT

3.1. Geographic Coverage

According to Schedule 1 of the technical specifications, the Licensee covers the following areas:

"Klerksdorp, Mmabatho, Rustenburg, Schweizer Reneke, Taung and Zeerust" (*See Appendix A*).

The Licensee has not reported any changes to its coverage.

The Licensee complies with clause 2 of Schedule 1 of its licence.

3.2 Control Structure

Clause 1 of Schedule C of the licence stipulates that:

"The control structure of the Licensee is and remains as follows:

Direng Investment Holdings (Pty) Ltd – 26%

SADTU Investment Holdings (Pty) Ltd – 24%

Motswere (Pty) Ltd (formerly Altivex 269 (Pty) Ltd) – 20%

21st Venture Capital (Pty) Ltd – 20%

Khethani Trust – 10%"

On 23 October 2017, a notification through Form O was submitted by the Applicant to Compliance and Consumer Affairs (CCA) seeking *"...to notify the Authority of the sales of shares agreement wherein 21st Venture Capital and Khethani Trust and other*

shareholders who are selling their shares held by shareholders in the Applicant to Motshwako Media Group (the Transferee).

CCA advised the Applicant that the notification could not be approved as the transaction in question amounts to a transfer of control and must be subjected to a prior approval process. The Applicant was advised to submit a transfer of control application in terms of section 13(1) of the ECA to the Licensing Division.

On 23 May 2018, the Authority received an application for the transfer of shares thus amounting to control of both its Individual Commercial Sound Broadcasting and Radio Frequency Spectrum licences to give effect and concluding the sale of shares agreement whereby the Transferee, will purchase 50% of the shares in the Applicant (North West FM).

On 28 September 2018, the Authority thus decided to approve the transfer application by the Applicant to transfer and effect the control of shares and licence to the Transferee.

3.2 Format

Clause 2 of Schedule C stipulates that:

"The Licensee shall broadcast a predominantly inspirational gospel music format."

The Authority's monitoring confirmed that North West FM plays a variety of music genres. In the absence of the definition of what constitutes inspirational gospel music; a determination on compliance could not be made.

3.3 Language (s)

Clause 3 of Schedule 1 of the licence stipulates that:

"Setswana shall be the principal broadcast language with 80% and other languages (including English) 20%."

North West FM broadcasts its programmes in approximately 80% Setswana and approximately 20% English.

The Licensee complies with clause 3 of Schedule 1 of its licence.

3.4 Programming⁶

3.4.1 General

Clause 6 of Schedule 1 of the licence stipulates that:

"The Licensee's general programming will focus on the following:

- *Sport;*
- *Culture;*
- *Consumer;*
- *Music*
- *Education; and*
- *News and Current Affairs".*

The Authority's monitoring exercise confirmed that the radio station has an hour dedicated to local and international sporting events. During news bulletins there is a sports update, particularly during the morning drive and afternoon drive on weekdays and on weekends.

In addition, the Licensee broadcasts programmes that focus on consumer, education, news and current affairs. 'Viewpoint' is a current affairs programme broadcast on weekdays between 18h00 and 19h00. The programme focuses on current affairs and information concerning the community. Furthermore, listeners are provided with a wide variety of educational programming pertinent to the Licensee's audience.

The Licensee complies with Clause 6 of Schedule 1 of its licence.

⁶ Appendix B: Compliance Reports

3.4.2 News

Clause 6 of Schedule 1 stipulates that:

"The Licensee committed to broadcasting 50 minutes of news programming per day, of which 80% will be broadcast in Setswana and 20% in other official languages".

North West FM broadcasts news every hour on the hour from 06h00 until 18h00. The news bulletins last for four (4) to five (5) minutes. News headlines are broadcast every half hour from 06h30 until 17h30. A total of fifty-five (55) minutes of news was monitored. The news bulletins are broadcast in eighty percent (80%) Setswana and twenty percent (20%) in English. The following are some of the news items monitored:

- *"The DA and the EFF in the North West have vowed to picket at the unveiling of a monument honouring President Jacob Zuma and forty five (45) other struggle activists at Groot Maricho. This morning President Zuma will officially open the heritage site and liberation heritage route where many liberation struggle fighters crossed into exile to Botswana".*
- *"Police Minister Fikile Mbalula says the killing of innocent people in our democracy is unacceptable. Earlier he announced he will send a task team to the Cape Flats to investigate the shooting of eleven (11) people at the Marikana area in Phillipi East on Friday night".*
- *"Monnasetilo wa bosetshaba wa lekoko la Economic Freedom Fighters (EFF), Advocate Dali Mpofu, o ne a le kwa Esatern Cape go ngokela lekoko la bone batlhopi. O ne a stene kopanon le maloko a lekoko le baagi kwa holong ya baagi ya Nolizwe Mpetla kwa Zwelitsha gaufi le King Williamstown";*
- *"Tonakgolo ya kwa India, Narendra Modi, o solofetswe go etela Aforika Borwa bekeng e e tlang. Loeto leno le solofetswe go tlhagolela tsela go okediwa ga dipeeletso magareng ga dinaga ka bobedi";*
- *kgotla-tshekelong ya magiseterata-wa-selegae gompieno ka ditatofatso tsa polao le kgothoso."*

The Licensee complies with clause 6 of Schedule 1 of its licence.

3.4.3 Current Affairs

Clause 6 of Schedule 1 stipulates that:

"The Licensee committed to broadcasting a current affairs programme during weekdays within the performance period. The current affairs programme will be conducted in 80% Setswana and 20% in other official languages".

The Authority's monitoring confirmed that the Licensee broadcasts current affairs programming during weekdays. 'Viewpoint' was identified as one of the current affairs programmes broadcast by the Licensee. The programme is broadcast on weekdays between 18h00 and 19h00 and deals with a variety of current affairs issues, including sports preview, update and review.

'Flight 2 to 6' is a programme broadcast on weekdays between 14h00 and 18h00 and covers cultural and environmental issues as well as the latest trends in technology.

The Licensee complies with clause 6 of Schedule 1 of its licence.

4. Staff Incentive Scheme

Clause 8.1 of Schedule 1 stipulates that:

"North West FM undertook to establish a trust for the benefit of staff members. The trust will hold 5% shareholding in the Licensee".

The Licensee has not furnished the Authority with any information regarding the above clause as required by the Compliance Procedure Manual Regulations.

During the period under review, the Licensee did not comply with clause 8.1 of Schedule 1 of its licence.

5. Employment Equity⁷

Clause 8.2 of Schedule 1 stipulates that:

"North West undertook to have no less than thirty percent (30%) ownership by one or more persons from historically disadvantaged groups for the duration of the licence".

The Licensee has not submitted any information pertaining to organisational structure and ownership patterns. The Authority has made efforts to source the information from the Licensee to no avail.

At the time of writing this report, that the Licensee did not comply with clause 8.2 of Schedule 1 of its licence for the period under review.

5. REGULATIONS

5.1 SA Music Content Regulations⁸

The Authority has on 23 March 2016 published the ICASA South African Music Contents Regulations which repealed the ICASA South African Music Content Regulations published on 31 January 2006. The Regulations were to be effective eighteen (18) months after publication i.e. 23 September 2017 which falls within the period under review. The quotas were revised from 25% to the 35% for commercial sound broadcasting services.

Regulation 3 (2) of the ICASA South African Music Contents Regulations 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

⁷ Appendix F: Management and Staff Structure

⁸ Appendix G: SA Music Content Regulations

African music and that such South African music is spread reasonably evenly throughout the said period”.

North West FM plays approximately 40% South African music. The following are some of the songs identified: “Lion of Judah” by Lebo Sekgobela, “Spirit” by Kwesta, “Akanamali” by Sun El Musician and “Point of View” by Jimmy Dlodlu.

The Licensee complies with regulation 3.2 of the Regulations on South African Music Content.

5.2 Standard Terms and Conditions for Individual Licences Regulations⁹

During the year under review, the Authority did not identify any non-compliance by the North West FM with the standard terms and conditions for individual licences.

5.3 Regulations in respect of the Prescribed Annual Contributions of Licensees to the Universal Service and Access Fund¹⁰

Regulation 3 (1) of the Prescribed Annual Contribution of Licensees to the USAF published on 10 February 2011 stipulates that:

“Every holder of the 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 the annual turnover, to the Fund”.

Regulation 3 (2) stipulates that:

“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”.

⁹ Appendix H: Standard Terms and Conditions Regulations

¹⁰ Appendix I: USAF Regulations

The Licensee did not submit proof of payment of its USAF for the period under review.

During the period under review, the Licensee did not comply with regulation 3 (1) and 3 (2) of the USAF Regulations.

5.4 General Licence Fees Regulations¹¹

The General Licence Fees Regulations came into effect on the date of publication in the Government Gazette no. 32084, on 01 April 2009. Regulation 3 (1) (a) 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 under Annual Licences Fees stipulates that:

"Individual Commercial Broadcasting Service Licensees to pay an annual licence fee of 1.5% of gross profit to the Authority".

Schedule 3 (4) (b) (c) stipulates that:

"(b) in respect of payment, such 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 did not submit proof of payment of licence fees due to the Authority for the period under review.

¹¹ Appendix J: General Licence Fees Regulations

Based on the above, the Licensee did not comply with the above requirement.

6. CONCLUSION

North West FM has partially complied with its licence terms and conditions, especially with regards to programming obligations. However the Licensee has not complied with several clauses and Regulations and they are as follows: clause 8.1 of Schedule 1, clause 8.2 of Schedule 1, regulation 3 (1) of General Licence Fees Regulations and 3 (2) of the USAF Regulations.

7. APPENDICES

Appendix A: North West FM's Individual Service Licence

Appendix B: Compliance Reports

Appendix C: South African Music Content Regulations

Appendix D: Standard Terms and Conditions for Individual Licences

Appendix E: Regulations in respect of the Prescribed Annual Contributions to the
Universal Services and Access Fund

Appendix F: General Licence Fees Regulations