



NORTH-WEST FM ANNUAL COMPLIANCE REPORT

MARCH 2017

2007-2017 RENEWAL REPORT

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

LICENCE PERIOD: 01 AUGUST 2007- 12 AUGUST 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 2000², 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.

2. BACKGROUND

North West FM holds an Individual Commercial Sound Broadcasting Service Licence⁵, providing a service in parts of the North-West Province namely, Klerksdorp, Mmabatho, Rustenburg, Schweizer Reneke, Taung and Zeerust⁶. North West FM operates from a studio located at Unit 1, Delta Business Unit, 17 Kgwebo Avenue, Mabe Business Park, Rustenburg. The Licensee was awarded and issued a commercial sound broadcasting licence during the Authority's first round of the secondary markets licensing process in 2007.

The radio station's format was the basis and a significant consideration by the Authority when licensing North West FM, during the process of licensing broadcasters in the North West Province. It appears, at that point, there was no broadcasting service offering this format, i.e. predominantly inspirational gospel music, in its broadcasting area. There are approximately 10 varied broadcasting services in North West.

North West FM provides a predominantly inspirational and gospel music format to the Audience in the North-West Province. The radio station broadcasts mainly in Setswana 80% followed by 20% other languages including English to a largely black

¹ The Constitution No, 108 of 1996,

² The ICASA Act No, 13 of 2000,

³ The Electronic Communications Act No, 36 of 2005

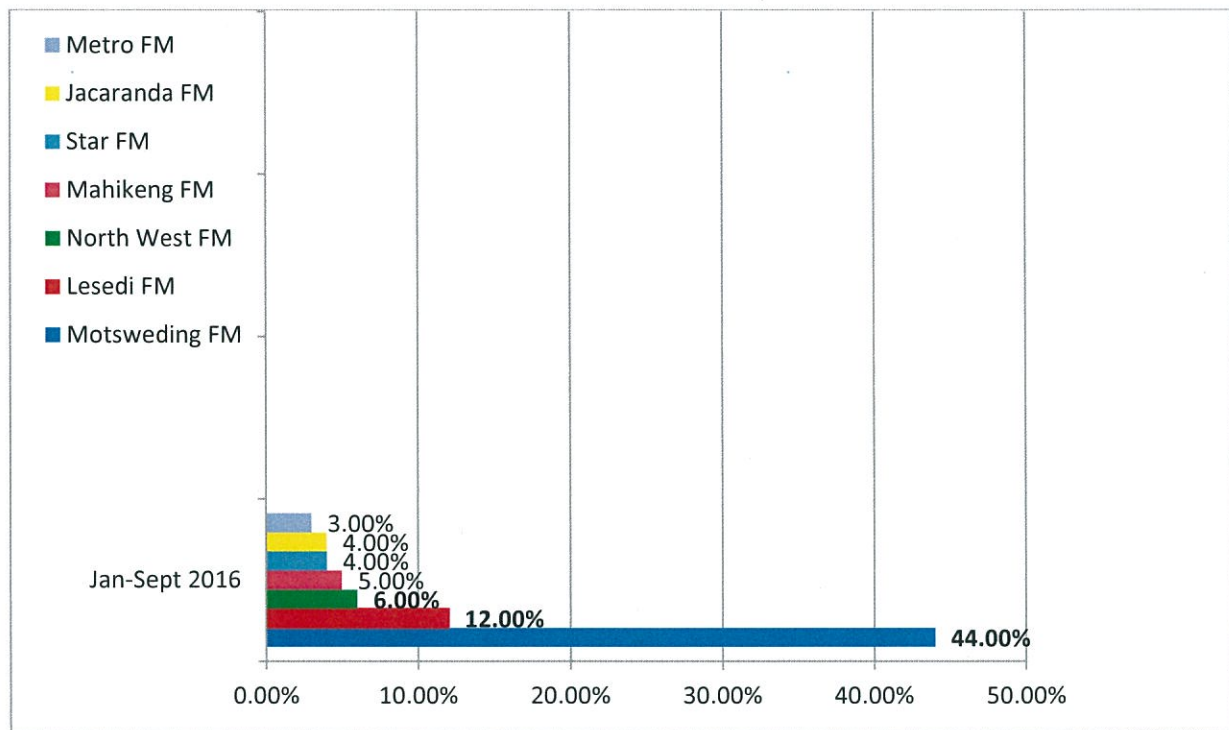
⁴ The Broadcasting Act No, 4 of 1999

⁵ Appendix A: North West FM's Service License

⁶ Appendix A: licence conditions

audience. The specific target market is the "25-49 old people within the LSM 4-8 group⁷". According to the 2016 Broadcasting Research Council (BRC) Radio Audience Measurement (RAM) figures, the radio station's listenership over the past seven days from January to June 2016 was 203 000 and June 2016 to September 2016 was 212 000 respectively. Of the 2.3 million listeners who listen to radio in North West in a week, North West FM's audience share is 6% as depicted in the BRC data below:

North West – Share of Audience Adapted from BRC Jan-Sept 2016



3. COMPLIANCE ASSESSMENT

Following from the background above, the following report provides an assessment of North West FM (Pty) Ltd's performance and compliance with the licence terms and conditions as set out in its licence as well as applicable regulations over its licence period namely 2007-2013. The Licensee is due for a renewal application in April 2017 which is 6 months before the expiry date.

Section 11(7) of the ECA empowers the Authority to "...refuse to renew a licence or may renew the licence on less favourable terms and conditions than those that were

⁷ Reasons for Decisions- Application for Commercial Sound Broadcasting Licences in the Secondary Markets, April 2007 page 107.

applicable during the preceding period of validity or renew the licence with terms and conditions that are not applicable to similar licences if the Authority determines that the licensee has materially and repeatedly failed to comply with:

- (a) The terms and conditions of the licence;*
- (b) Provisions of this Act or related legislation; or*
- (c) Any regulation made by the Authority.”*

Aspects of compliance that were 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, Universal Service and Access Fund Regulations (USAF) and General Licence Fee Regulations.

3.1 Licensee

Clause 1.1 read with 1.2 and 1.3 of the schedule to the licence stipulates that the name of the Entity is North West FM (Pty) Ltd; shareholders are-

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%”

Further, ownership held by historically disadvantaged groups = 67,4%.

As at the time of writing this renewal licence report, the name of the entity, HDG and the shareholding structure of the Licensee was as reflected above. There were however attempts by the Licensee to amend its shareholding in or around 2010 as follows:

- Direng Investment Holdings (Pty) Ltd – 21%
- Khethani Trust – 10%
- Motswere Trading (Pty) Ltd 13%
- SADTU Investments Holdings (Pty) Ltd – 16%
- 21st Venture Capital (Pty) Ltd – 20%
- 21st Venture Nominee – 20%

The Authority duly noted that the Licensee had made such changes to its control and shareholding structure without lodging same with the Authority for approval.

The Licensee referred to shareholder's resolutions 4.2, 4.4 and 5 of 10 November 2007, as well as shareholder's resolutions 4.2, 4.4, 4.5 and 5 of 23 April 2008 and board of directors' minutes of 7 September 2009.

The Licensee reported that the shareholders of North West FM concluded two resolutions which set out revisions to the shareholding in North West FM. These resolutions were said to have been previously provided to the Authority as part of the licence amendment application dated 07 May 2010.

Subsequent to the amendment application of 07 May 2010, the Authority received a letter dated 24 August 2010 requesting the Authority not to proceed with processing the Licensee's amendment application. The Authority consequently acceded to the request in its correspondence to North West FM dated 27 August 2010. There being no further communication from the Licensee on the matter, the Authority resolved to close the matter and the Licensee was duly advised of the Authority's decision on 19 November 2010 and the Licensee duly withdrew the amendment application.

In a meeting held by the Licensee on its premises in Rustenburg on 27 February 2017, the licensee confirmed that the shareholding structure remains as is. The Licensee however indicated that the Norwegian Shareholder (21st Venture Capital (Pty) Ltd) wants to sell its shares but have not found a buyer. **On the basis of this confirmation, the Licensee has complied with the above requirement.**

3.2. Geographic Coverage

As provided for in terms of clause 2 of the schedule of the service licence read with schedule B2 of the technical specifications, North West FM was licensed to provide a commercial sound broadcasting service in Klerksdorp, Mmabatho, Rustenburg, Schweizer Reneke, Taung and Zeerust.

Over the licence period, the Licensee has confirmed that its coverage areas are as stipulated in the licence. However, often, between 2015 and 2016 the Authority received concerns from members of the public that the radio station was at times off air and that the quality of audio was poor. The Post Visit Report compiled by North West FM's Compliance Officer after the introductory visit on 23 June 2008 cited that

North West FM had been experiencing technical problems since inception. According to the report, the Licensee was tasked (by the Authority's representatives) to identify the cause of the problem. In other words, whether these challenges were related to signal distribution by Sentech, landscape / topography related challenges or whether the areas that are not covered fall within the Licensee's licensed footprint. The Licensee reported that it experienced blackouts of approximately 4 hours at various areas including Brits and Rustenburg. Switch over of frequencies in Rustenburg was highlighted as one of the major challenges the station faced which affected the Licensee's business as audiences viewed it as incompetent.

It appears that these challenges were raised yet again by the Licensee on 08 July 2015 and February 2017 respectively during the visits to North West FM by the Authority's representatives. Sentech endeavoured to resolve the Licensees challenges in vain. The switch-overs or encroachments are still prevalent with Capricorn FM, Talk 702, Radio 2000 and Kaya FM being accessed in Rustenburg and overshadowing the Licensee's signal. North west FM argued that these Licensees are not even supposed to be broadcasting in Rustenburg. The only area where the Licensee is enjoying uninterrupted coverage is Klerksdop.

The Licensee was asked whether it has conducted surveys to check the quality of audio and the strength of its signal since the previous meetings held with the Authority. The Licensee conceded that it has not done bigger surveys for landscapes but are currently doing phone-ins.

A closer look at the above circumstances implicitly raises issues of viability of North West FM's service. However, when such questions were posed to the Licensee, it assured the Authority that in terms of long term and mid-term prospects, the Licensee is viable.

Based on the fact that the Licensee's challenges have throughout the licence period been beyond its control, **it cannot be said that the Licensee has not fully complied with its technical requirements.**

3.3 Broadcast Language (s)

Clause 3 of schedule 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 20% English.

The Licensee complied with clause 3 of the schedule of its licence.

3.4 Format

Clause 4 of schedule of the stipulates that:

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

Over the licence period, the Licensee has maintained that it complies with the above format. Conversely, whilst the Authority's monitoring reports compiled for the radio station have consistently confirmed that North West FM plays a variety of gospel music genres; monitoring has highlighted that the absence of the definition of what constitutes inspirational gospel music made it difficult to conclusively deduce whether there is full compliance in this regard.

Nevertheless, in a meeting held with the Licensee on 27 February 2017, the Licensee was requested to explain what inspirational gospel music means. In his own words, the Station Manager had this to say:

"Gospel music is that music that inspire hope in people and caters for one's spiritual being. Home of the best music intertwines gospel with inspiration because the intuition is the same. Tshepo Tshola's Tsoha oyi ketsetse for example, is inspirational and emotional and when a song is emotional it makes you feel better. Inspirational songs that inspire your soul could also be in a genre like Kwaito e.g. Uzoyithola Kanjani Uhlelekhoneni, which is an inspirational song on its own."

Given this explanation and having monitored the music content of the Licensee, the Authority confirms that **the Licensee has met and complied with the provisions of clause 4 of the schedule to its licence.**

3.5 Local Content

Clause 5 of the schedule of the licence require the Licensee to ensure that 35% of the music broadcast is South African music.

Throughout the licence period, the Licensee played at least 36% South African music. The Licensee featured artists such as "Mona mona" by Keke, "Wa hamba nathi" by Solly Mahlangu, "Pula" by Sello Galane and "Destiny" by Malaika.

The above songs amongst others, not only confirmed that they are indeed in line with the Licensee's format but confirmed that they are South African music as defined in section 61(c) of the ECA because they comprise and comply with at least **two** of the following:

- (i) *"if the lyrics (if any) were written by a South African citizen;*
- (ii) *if the music was written by a South African citizen;*
- (iii) *if the music or lyrics was or were principally performed by musicians who are South African citizens;*
- (iv) *if the musical work consists of a live performance which is-*
 - (aa) *recorded wholly in the Republic; or*
 - (bb) *performed wholly in the Republic and broadcast live in the Republic."*

North West FM has complied with clause 5 of the schedule to its licence.

3.6 General Programming Obligations

Clause 6.1 of the schedule of the licence required North West FM to:

"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".

Although the Licensee has not been forthcoming with information requested by the Authority most of the time for example i.e. 2014/2015 and 2015/2016 financial years where nothing was received at all from the licensee, generally, the Authority can confirm that North West FM broadcast news every hour on the hour from 06h00 until 18h00. The news bulletins lasted for 4 to 5 minutes. News headlines were broadcast every half hour from 06h30 until 17h30. In total, a minimum 55 minutes of news was monitored. The news bulletins are broadcast in eighty percent (80%) Setswana and twenty percent (20%) in English. **The languages of broadcast indicated compliance with clause 6.1 above. The switch-over in frequencies still deprives the radio station's target audience in Rustenburg of a full service by the Licensee.**

Clause 6.2 of the schedule to North West FM's licence stated as follows:

"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".

Throughout the licence period, the Licensee maintained that its current affairs programming was conducted in 80% Setswana and 20% in other official languages. The Licensee was not always forthcoming with submission of information. The 2015/2016 financial year is a practical example in this regard. No recordings were submitted by the Licensee. However, in instances where recordings and other information were submitted in terms of the Compliance Procedure Manual Regulations (CPMR), the Authority's monitoring exercise always confirmed that the Licensee broadcast current affairs programming during weekdays between 14h00 and 18h00 and 18h00 and 19h00 respectively. Examples of these programmes were 'Viewpoint' and others.

Although at face value the Licensee appears to have complied with clause 6.2 above, the Licensee was still very tardy in submission of information by the Authority. These issues were raised with the Licensee over its licence period timeously and meetings in the form of visits duly conducted.

The provisions of clause 6.3 of the schedule to the licence require the Licensee to disclose all news sources during its news broadcast if such sources are not the licensee's own sources of news.

The Authority can confirm that throughout its Licence period and as and when information was made available to the Authority, the Licensee acknowledged other sources of news.

Clause 6.4 of schedule to the licence stipulated that:

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

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

The Authority can confirm that the radio station has throughout its licence period had an hour dedicated to local and international sporting events. During news bulletins,

there were sports updates, particularly during the morning drive and afternoon drive on weekdays and on weekends.

Further, the Licensee broadcast programmes that focused on consumer, education, news and current affairs. '*Viewpoint*' is a current affairs programme broadcast on weekdays between 18h00 and 19h00. The programme focused on current affairs and information concerning the community. Furthermore, listeners would be provided with a wide variety of educational programming relevant to the Licensee's audience.

The Licensee, has, during its licence period, met the obligation of the above clauses.

4. TRAINING AND SKILLS DEVELOPMENT

4.1 Staff Training

North West FM was required in terms of clause 7.1 of the schedule of the licence to allocate, over its licence period, one hundred thousand rand (R100 000) per annum to staff training and development.

There is no indication that the Licensee has met this obligation. In its submissions to the Authority dated August 2009 and August 2011, the Licensee pointed the Authority to its Audited Financial Statements. The AFS report covering 18 months for the year ended February 2009, under expenses, indicated that the Licensee spent R 361 512.00 towards staff welfare and employee costs at R 1 149 268. In the 2011/2012 the AFS indicated staff welfare costs of R40 423.00. There was an amount of R12 718.00 spent on staff costs in the 2012/2013 financial year and R21 942 for the 2013/2014 financial year. It has never been clear, from all these AFS submissions as to what the Licensee meant by staff welfare, if these were for training and development as contemplated in clause 7.1 of the schedule. The submissions were devoid of any write up of the kinds of training and development provided to staff members. No AFS were submitted for the periods 2014/2015 and 2015/2016.

The Licensee has failed to comply with its training and development obligations.

4.2 Employment Equity

In terms of clause 7.2 of the schedule of the licence, North West FM was required to employ 50% men and 50% women in its staff complement. The Licensee was further required to appoint the majority of its staff from the North West Province.

Whereas throughout the licence period the Licensee ensured that the majority of its staff came from the North West Province as contemplated in clause 7.2 of the Schedule of its licence, the submissions made by the Licensee to the Authority in respect of gender split indicated that the Licensee did not meet this requirement. Table 1 below illustrates the Licensee's performance in this regard:

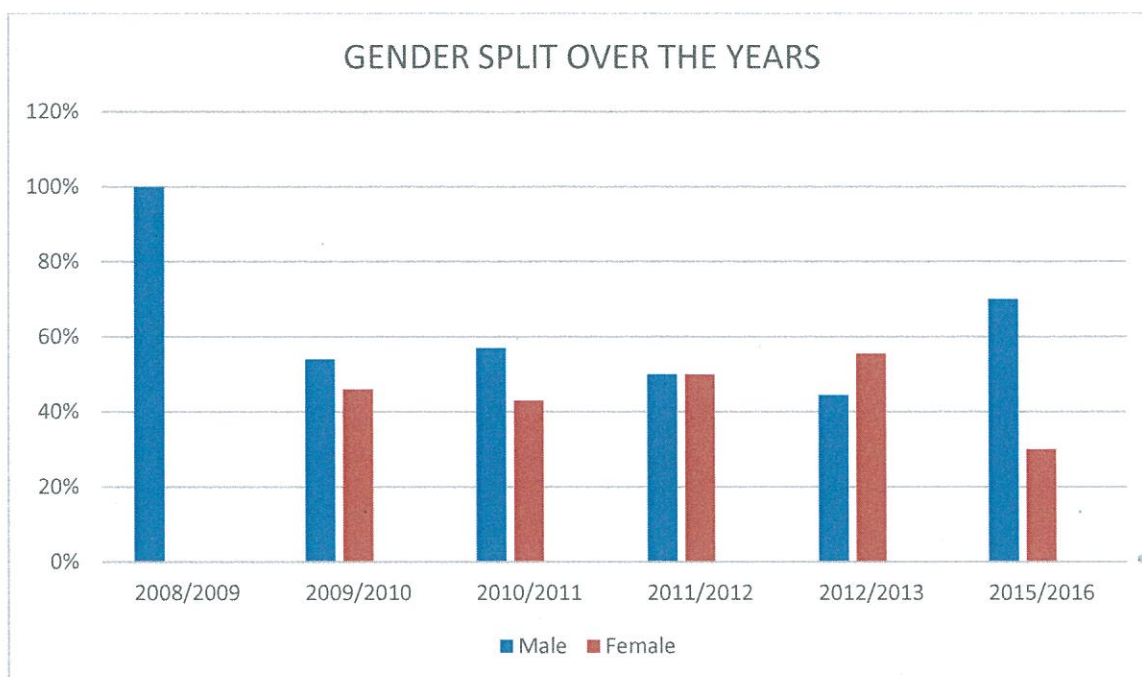
Table 1: North West FM Gender breakdown from 2008 – 2017

Financial Year	Number of Males	% Male	Number of Females	% Female
2008/09		100%⁸	-	-
2009/10	14	54%	12	46%
2010/11	17	57%	13	43%
2011/12	13	50%	13	50%
2012/13	12	44.4%	15	55.5%
2013/14	No data	No data	No data	No data
2014/15	No data	No data	No data	No data
2015/16	No formal submission but the meeting of 27 February 2017 established that the gender split is as reflected	70%		30%

Graph 1 below gives a schematic breakdown of the above details.

Graph 1: Gender Split

⁸ information extrapolated from the post visit report 23 June 2008. According to this report, the station reported that it was faced with a challenge of inadequate female representation in its programme line up and undertook to increase female DJs and gender representation at the station generally.



There is a gap of two years, 2013/2014 and 2014/2015, and this is attributed to the fact that the Licensee was not forthcoming with information requested by the Authority.

This report concludes that throughout its licence period, the licensee only met its obligations in the 2011/2012 financial year. **The Licensee has therefore failed to fully comply with clause 7.2 of the schedule to the licence.**

4.3 Staff Incentive Scheme

North West FM made an undertaking from the application process to establish a trust for the benefit of staff members. The trust would hold 5% shareholding in the Licensee. This undertaking became a promise of performance and a **licence condition - clause 7.3 of the schedule**.

It appears, from the Licensee's submission over the years that this condition was not met. The radio station went on air at 06h00 on 28 February 2008. Subsequently, on 23 June 2008, the Authority's delegation visited the radio station to workshop the management of the radio station on the requirements and procedures for commercial sound broadcasters. It became apparent in or around 2009, that there were challenges regarding this promise of performance. It was on 1 July 2010, that the Licensee reported that it was not yet in a financial position to set up and manage a staff trust (details on finances will be expanded upon under finance section). The same reason was advanced in the following financial year. In its compliance report

submitted to the Authority and dated 17 October 2012, the Licensee indicated that it would implement a staff trust by 31 January 2013 and provide the status in this regard by the quarter ending 28 February 2013. This matter was discussed in subsequent visits to the Licensee and to date this promise of performance has never been upheld. In the last meeting held between the Authority and the Licensee, per Licensee's request on 27 February 2017, the Licensee undertook to make this submission but failed to do so.

Against the backdrop of the foregoing, **the Licensee has, throughout its licence period, failed to establish a trust for the benefit of staff members as contemplated in clause 7.3 of the schedule of its licence.**

4.3 Ownership and Control Obligations

Clause 8.1 and 7.3 above are similar. **The Licensee has failed to comply with this obligation.**

Clause 8.2 of the schedule of the licence required the Licensee to have no less than 30% of ownership by one or more people from historically disadvantaged groups.

The Authority confirms that throughout its licence period, the **Licensee has maintained its HDG component at 67.4 % and thus is compliant with clause 8.2 of the schedule of the licence.**

Clause 8.3 required that the Directors of the Licensee shall retain control and responsibility for the running of the Licensee notwithstanding the provisions of any management consultancy services engaged by the Licensee.

The Licensee has maintained, throughout its licence period that this clause was adhered to. There were no complaints received by the Authority alleging that the directors were not in control of the Licensee. **On this basis, the Licensee has, throughout its licence period, complied with clause 8.3 above.**

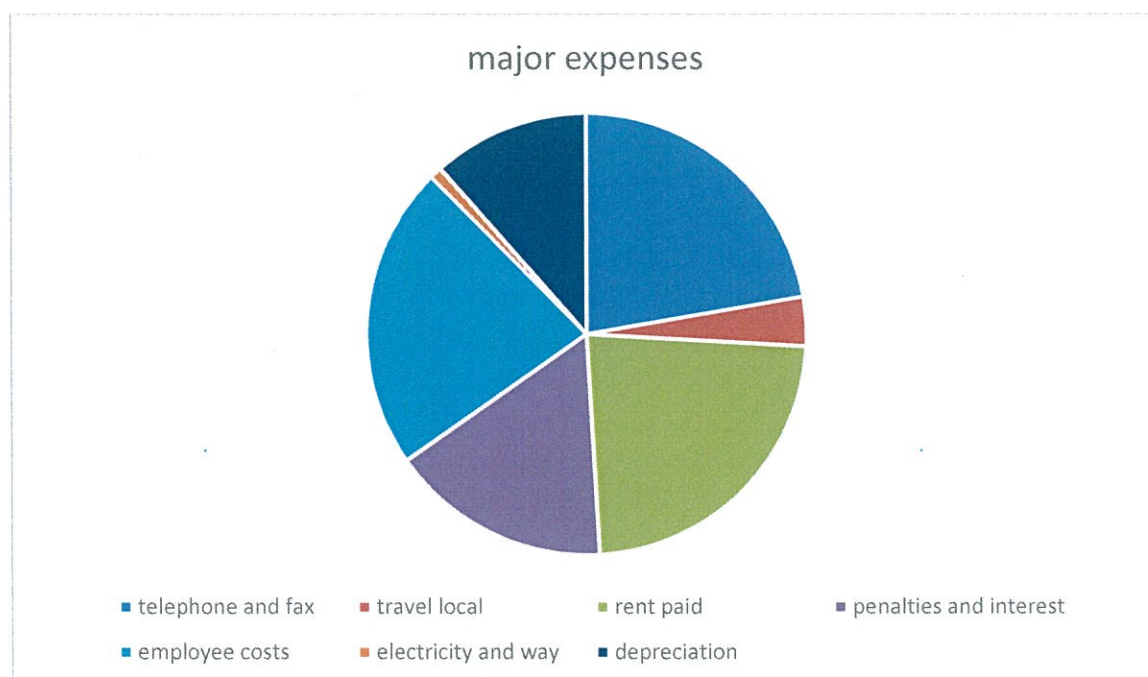
5. Finances

North West FM has not been consistent with the submission of Audited Financial Statements (AFS). However, when submitted, which was rare, the Licensee requested confidentiality. This analysis excludes the AFS for the periods 2014/15 and 15/16 respectively as these were not submitted. The AFS' in the Authority's possession indicate that the Licensee generates its revenue through advertising.

While North West FM has been accumulating total losses of (R 2 658 814) in the 2008/2009 financial year end and its liabilities had exceeded its assets by (R 1 782 814) and (R 1 358 240) in the 2012/2013 financial year end, in the 2011/2012 financial year the Licensee made profit of R1 821 529 and profit amounted to R 149 298 in the 2013/2014 financial year. Although these figures are not exhaustive, they are indicative of the fact that there is still room for improvement in terms of the Licensee's financial viability excluding its assets.

A perusal of the Licensee's expenses generally totalled R 2 981 962 in the 2011/2012 financial year, R4 645 580 in the 2012/2013 financial year and R2 949 309 in the 2013/2014 financial year. Major expenses were on telephone and fax, local travel, rent paid, penalties and interest, employee costs, electricity and water, depreciation, amortisation and impairments and bad debts amongst others. These are graphically represented below. However, no amounts are reflected as these differed over the years.

Graph 2: General Major expenses:



6. REGULATIONS

6.1 SA Music Content Regulations

Regulation 3.2 of the Regulations on South African Music Content as published on 31 January 2006 stipulates that:

"Every holder of a commercial sound broadcasting licence to which these regulations apply must ensure that a minimum of 25% 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".

North West FM consistently met this obligation and at times exceeded the minimum quota broadcasts approximately 36% South African music. The Authority did not receive any complaints alleging that the Licensee was noncompliant with the local content music quotas.

The Licensee complied with the SA Music Content Regulations.

6.2 Regulations on Standard Terms and Conditions for Individual Licences

The Authority has throughout the licensee's licence period, been satisfied that the Licensee did not contravene the regulation in respect of the Standard Terms and Conditions Regulations for Individual Licences.

6.3 Universal Service and Access Fund Regulations

Regulation 3(1) of the prescribed annual contribution of licences to USAF regulations 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".

The Licensee did not always pay the USAF contributions. USAF payment was honoured for the following financial years: 2011/2012; 2012/2013; 2013/2014. Even

so, the Licensee was late in terms of payment especially for the 2012/2013 and 2013/2014 financial years. The Authority charged the Licensee interest but same was not paid.

The Licensee did not fully meet its obligations in terms of the USAF regulations.

6.4 General Licence Fees Regulations

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 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; and*
- (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 always pay the licence fees obligation amount. In or around 2012, the Licensee submitted that according to its reading of the regulations North West FM should be exempt from the annual licence fee in terms of regulation 4(c) of the General Licence Fee regulations and the Small Business Act, in terms of which North West FM qualifies as a Small enterprise as its turnover which was less than R 30 million. The Licensee paid licence fees for the periods 2012/2013 and 2013/2014 financial years but this payment was way overdue. **The Authority charged the Licensee interest but same was not paid.**

7. The Complaints and Compliance Committee (CCC)

As evidenced in this report, there were grounds to refer the Licensee's non-compliance to the CCC, however, each time when the Authority was close to

executing this action, the Licensee would request that the Authority conducts workshops for its personnel as people left the station for other stations. This on its own raised questions of co-ordinated management and staff succession plans. Although these workshop requests were acceded to, the Authority could not understand why the station manager was not playing an active role and ensure skills transfer to the relevant personnel.

8. Conclusion

North West FM has, during its licence period, repeatedly not complied with its licence terms and conditions most of which arose out of the promise of performance. Further the Licensee did not fully comply with the relevant Regulations.

9. Specific Recommendation

Based on the nature of non-compliance by the Licensee with its licence terms and conditions as outlined in this report, it is recommended that a renewal hearing be held as this will provide the Authority an opportunity to obtain clarity from the Licensee on various outlined matters and some which are not outlined in this report.

10. TERMS OF REFERENCE

10.1 Appendix A: North West FM's Individual Service Licence.