



**Independent Communications Authority of South Africa**

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# **NORTH WEST FM REPORT**

**LICENSING AND COMPLIANCE PROGRAMME**  
**MARCH 2013**

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# **2011/2012 ANNUAL COMPLIANCE REPORT**

## **NORTH WEST FM**

**Licence Period: 01 November 2007- 31 October 2013**

### **1. PREFACE**

The Independent Communications Authority of South Africa ("the Authority") has a statutory mandate in terms of the Constitution,<sup>1</sup> the ICASA Act of 2000,<sup>2</sup> and the Electronic Communications Act ("EC Act") of 2005<sup>3</sup> to regulate broadcasting activities in South Africa in the public interest. The Authority is tasked with ensuring compliance by broadcasters with the ICASA Act, the EC Act, the terms and conditions of their licence and any relevant legislation and regulations.

The following report provides an overview of North West FM's performance for the period 2011/2012 financial year. The report focuses on the following key areas:

Geographic Coverage, Languages, Format, Training and Skills Development Obligations, Financial Performance, Regulations regarding Standard terms and Conditions, Regulations on Prescribed Annual Contribution of Licensees to the Universal Service; Licence Fees regulations and Access Fund and SA Music Content Regulations.

### **2. BACKGROUND**

North West FM is an Individual Commercial Sound Broadcasting Service Licensee, providing a service in parts of the North-West Province including, but not limited to, Klerksdorp, Mmabatho, 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.

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<sup>1</sup> The Constitution No, 108 of 1996,

<sup>2</sup> The ICASA Act No, 13 of 2000,

<sup>3</sup> The Electronic Communications Act No, 36 of 2005

### **3. COMPLIANCE ASSESSMENT**

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

According to Schedule B2 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 Schedule B2 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%*

*21<sup>st</sup> Venture Capital (Pty) Ltd – 20%*

*Khethani Trust – 10%"*

The Authority noted that the Licensee has made changes to control and shareholding structure which were not lodged with the Authority for approval. The shareholding and control has changed as follows:

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

The Licensee made reference 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' minute 8.6 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. These resolutions are said to have been previously provided to the Authority under cover of the Licensee's compliance letter of 06 November 2008 and as part of the licence amendment application dated 07 May 2010.

It should be noted that 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 a letter sent to North West FM on 27 August 2010. The Authority, subsequent to not receiving any further instruction from the Licensee on the matter, resolved to close the matter and North West FM was notified as such on 19 November 2010.

The Licensee was made aware on 01 October 2012 of the above non-compliance, and as a result North West FM notified the Authority that the shareholders and directors are attending to the matter and that it will finally be addressed and resolved at a shareholders' meeting to be held on 07 March 2013. At the time of writing this report the shareholders' meeting had not been held.

The Licensee does not comply with clause 1 of Schedule C of its licence.

### **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 C 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 C of its licence.

### **3.4 Programming**

#### **3.4.1 General**

Clause 4 of Schedule C of the licence stipulates that:

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

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

The Authority's monitoring confirmed that the radio station has an hour dedicated to local and international sporting events. During news bulletins the Licensee broadcasts 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.

One of the programmes monitored involved an interview with Mr Paul Sebego North West MEC for Local Government and Traditional Affairs. The interview discussed the Summit which was to be held on 02 and 03 February 2012, which was meant to educate and empower Ward Councillors on executing their functions and deliverables.

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

The topic that was discussed in one of the monitored programmes included a story in one of the newspaper reports about a school in South Africa where all learners use I-Pads in place of textbooks. Listeners were encouraged to phone in and share their views on the story.

The Licensee complies with Clause 4 of Schedule C of its licence.

### **3.4.2 News**

Clause 4 of Schedule D 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) minutes. News headlines are broadcast every half hour from 06h30 until 17h30. A total of fifty two (52) 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:

- *"A media consultancy group says investors are worried about the direction Top TV is taking";*
- *"The Democratic Alliance parliamentary leader has announced the party's new shadow cabinet for 2012";*
- *"The Press Freedom Commission concluded the public hearing on the freedom of the media in Johannesburg";*
- *"Egypt's military leaders has sacked the General responsible for Media Affairs to bolster image tarnished by the killing of protesters";*
- *"Mokhuduthamaga wa matlotlo mono North West a re puso ya porofentshe yeno e tlile go thusa baithuti ba ba dikobo di magetleng fa dirile bontle mo dithutong tsa ngwaga o no tsa marematlou";*
- *"Tlhogo ya ditlhaeletsano kwa ANC a re kgotla e e ikemetseng ya boikuelo e tlile go samagana le tlolo molao ya babegadikgang"; and*
- *"Motlhankela wa South African Petroleum Retailers Association (SPRA), Peter Noke, a re bothata bo bo setseng botlhasetse dikgaolo dingwe kwa Johannesburg mmogo le Cape Town ba tlhalelo ya leokwane bo ka nne ba namella kwa dikarolong tse dingwe tsa naga".*

The Licensee complies with clause 4 of Schedule D of its licence.

### **3.4.3 Current Affairs**

Clause 5 of Schedule D 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.

The Licensee complies with clause 4 of Schedule C of its licence.

## **4. Staff Incentive Scheme**

Clause 1 of Schedule D stipulates that:

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

The Licensee reported in its compliance report dated 17 October 2012 that it will implement a staff trust by 31 January 2013 (See Appendix B). The Licensee will provide the status regarding the staff trust in its Compliance report by 28 February 2013.

It is the view of the Authority that during the period under review, the Licensee did not comply with clause 1 of Schedule D of its licence.



## **5. Employment Equity**

Clause 3 of Schedule D stipulates that:

*"Radio North West undertook to employ 50% men and 50% women in its staff complement. The licensee further undertook to appoint the majority of its staff from the North West Province".*

The Licensee has submitted its organisational chart indicating that it has a staff complement of twenty six (26) permanent people. Of this number, thirteen (13) people are women and thirteen (13) are men. From the information submitted, fifty percent (50%) is constituted of women and fifty percent (50%) is constituted of men (See Appendix C).

During the period under review, the Licensee has complied with clause 3 of Schedule D of its licence.

## **5. REGULATIONS**

### **5.1 SA Music Content Regulations**

Regulation 3.2 of the Regulations on South African Music Content as published on 31 January 2006 stipulate 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" (Regulations on South African Music Content attached as Appendix D).*

North West FM plays approximately 30% South African music. The following are some of the songs identified: "More fire" by Bongo Muffin, "Life is going on" by Brenda Fassie, "Groovers' prayer" by Thebe featuring Zonke and "These streets" by Micasa.

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

## **5.2 Standard Terms and Conditions for Individual Licences Regulations**

In terms of Regulation 2 (1)(c) of the Standard Terms and Conditions regulations contained in Government Notice 523 published in Government Gazette 33294 of 14 June 2010, a Licensee has an obligation to notify the Authority of any shareholding changes to its existing shareholding structure. Licensees are required to notify the authority of said changes within seven (7) days of the occurrence of such shareholding changes.

During the year under review, the Authority noted that North West FM did not comply with the standard terms and conditions for individual licences in that the Licensee changed its shareholding without lodging a notification with the Authority in this regard.

## **5.3 Regulations in respect of the Prescribed Annual Contributions of Licensees to the Universal Service and Access Fund**

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 make payment on the USAF for the period under review.

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

#### **5.4 General Licence Fees Regulations**

The General License 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;*

*(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 pay licence fees due to the Authority for the period under review. The licensee submits that according to its reading of the regulations North West FM should be exempt from the annual ICASA license fee in terms of regulation 4(c) of the General License Fee regulations and the Small Business Act, in terms of which NWFM qualifies as a Small enterprise with the turnover below R13 million.

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

## **6. CONCLUSION**

North West FM has not sufficiently complied with its licence terms and conditions and regulations. The following were not complied with: clause 1 of Schedule C, clause 1 of Schedule D, Regulation 2 (1) (c) of the Standard Terms and Conditions Regulations and Regulation 3 (1) and (2) of the USAF Regulations.

The Licensee has submitted request on 13 February 2013 for a meeting with the Authority to discuss areas of non-compliance.

## **7. APPENDICES**

Appendix A: North West FM's Individual Service Licence

Appendix B: Compliance Report

Appendix C: Shareholding Structure and letters on Non-compliance

Appendix D: Shareholders Resolutions

Appendix E: Letters regarding application for amendment

Appendix F: Management and Staff Structure

Appendix G: South African Music Content Regulations

Appendix H: Standard Terms and Conditions for Individual Licences

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

Appendix J: General Licence Fees Regulations

Appendix K: Audited Financial Statement