



# **ODM ANNUAL COMPLIANCE REPORT**

**MARCH 2019**

## **2017/2018 ANNUAL COMPLIANCE REPORT**

### **ON DIGITAL MEDIA (ODM)/ STARSAT**

**LICENCE PERIOD: 09 JULY 2008 - 08 JULY 2023**

#### **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<sup>2</sup>, the Electronic Communications Act<sup>3</sup> (ECA) and the Broadcasting Act<sup>4</sup> to regulate broadcasting activities in South Africa in the public interest. One of the main tasks of the Authority, is to monitor compliance by broadcasters with the terms and conditions of their licence, the three Acts mentioned already and any relevant legislation and Regulations.

The purpose of the report is to give an account of On Digital Media (Pty) Ltd's performance for the 2017/2018 financial year. Aspects of compliance that are measured comprise of Geographic Coverage, Encryption of signal and use of licensed Electronic Communications Network Service (ECNS), Language(s), Format, Training and Skills Development Equity, Staff Development and Employment Equity Plan, Target market, Ownership by individuals from historically disadvantaged groups, Financial Year, Regulations Regarding Standard Terms And Conditions For Individual Licensees, Must Carry Regulations, General Licence Fees Regulations, Regulations In Respect Of Prescribed Annual Contributions of Licensees to the Universal Service Access Fund, Commissioning Protocols Regulations, South African Television Content Regulations, General Licence Fee Regulations and the Code on People with Disabilities.

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<sup>1</sup> The Constitution of the Republic of South Africa Act No 108, 1996

<sup>2</sup> ICASA Act No 13, 2000 as amended

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

<sup>4</sup> Broadcasting Act No 4 of 1999

## **2. BACKGROUND**

On 9 July 2008, the Authority issued an Individual Commercial Subscription Television and Sound Broadcasting Service licence to On Digital Media (Propriety) Limited (ODM) broadcasting as Top TV. The shareholders as reflected in the licence are as follows:<sup>5</sup>

First National Media Investments Holdings Ltd	= 27.87%
Red Gold Investments	= 20%
SES Global Africa SA	= 20%
Industrial Development Corporation of South Africa Ltd	= 11.13%
First AOne Trade and Invest 12 (Pty) Ltd	= 10%
A N Moodley	= 1%
National Empowerment Fund Trust	= 10%

The Licensee's shareholding structure has changed and the current shareholders according to their compliance submissions<sup>6</sup> are:

Hantex International Company Limited	= 20%
Digital Landmark	= 28.8%
Industrial Development Corporation of South Africa Ltd	= 22%
National Empowerment Fund	= 19.48%
Diduscan (Pty) Ltd	= 9.6%
AN Moodley	= 0.123%

The Licensee was informed on the 27 September 2018 to submit a notification to update their details with the Authority (i.e. to change their physical address and their shareholding structure) and a copy of the Processes and Procedures Regulations was forwarded to the Licensee. Reminders were sent to the Licensee on the 11 November 2018, 4 December 2018 and 6 December 2018. On the 11 December 2018, the Licensee submitted an incomplete notification without a resolution and the shareholder's agreement. The Licensee was informed on 11 of December 2018 via email of the outstanding documents to the submitted notification and has to date not responded.

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<sup>5</sup> Appendix A: On Digital Media's service licence

<sup>6</sup> Appendix B: On Digital Media's Compliance Report

**Based on the above, the Licensee's shareholding structure remains as it is reflected on the licence.**

### **3. COMPLIANCE ASSESSMENT**

#### **3.1 Service Name**

Clause 1 of the schedule to the licence states that the service name is:

*"Top TV"*

The Licensee notified the Authority about the name change and the new service name is *"StarSat"*. The Licensee confirms that the service name is *"StarSat"*.<sup>7</sup>

**The Licensee complies with clause 1 of the licence.**

#### **3.2 Geographic Coverage Area**

Clause 2 of the schedule to the licence provides that:

*"The Licensee shall provide national coverage of its broadcasting services"*

The Licensee confirms that it provides national satellite subscription television broadcasting services.<sup>8</sup>

**The Licensee complies with clause 2 of the licence.**

#### **3.3 Encryption of Signal and Use of Licensed Electronic Communications Network Service.**

Clause 3.1 of the schedule to the licence states that:

*"The Licensee must ensure that the output signal of its subscription broadcasting service is encrypted"*.

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<sup>7</sup> Appendix B: On Digital Media's Compliance Report

<sup>8</sup> Appendix B: On Digital Media's Compliance Report

The Licensee confirms that the commercial subscription television broadcasting services they are providing are encrypted.

**The Licensee complies with clause 3.1 of the licence.**

Clause 3.2 of the schedule to the licence provides that:

*"The Licensee shall use the licensed electronic communications network service of a Licensee".*

The Licensee submits that StarTimes Media (SA) Pty Ltd is a licensed entity and provides On Digital Media with the relevant communication network services<sup>9</sup>.

**The Licensee complies with clause 3.2 of the licence.**

### **3.4 Language**

Clause 4 of the schedule to the licence states that ODM:

*"Has discretion to broadcast in languages of its own choice"*

The Licensee submits that its programmes are broadcast predominately in English, in local vernacular in some local content channels and in Mandarin Chinese, French and Indian languages.

**The Licensee complies with clause 4 of the licence.**

### **3.5 Format**

Clause 5 of the schedule to the licence provides that:

*"The Licensee is licensed to provide a subscription broadcasting service aimed at the general public and niche markets".*

According to the Licensee, its main target audience ranges from LSM group 6 to 9, but its broadcasting services are available to all members of the general public.

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<sup>9</sup> Appendix B: On Digital Media's Compliance Report

**The Licensee complies with clause 5 of the licence.**

### **3.6 Training and Skills Development Equity**

Clause 6.1 of the schedule to the licence states that:

*"The Licensee shall submit its workplace skills plan to the Authority within a month of issuing of this licence and thereafter by 30<sup>th</sup> of June each year".*

The Licensee submitted its workplace skills plan with its compliance submission on the 21 of November 2018. The submission was late, and the Licensee did not request an extension from the Authority in this regard.

**The Licensee did not comply with clause 6.1 of the licence.**

Clause 6.2 of the schedule to the licence provides that:

*"The Licensee shall submit its workplace skills plan and its annual training report in the format prescribed by the Authority".*

The Licensee submitted its workplace skills plan and its annual training report for the period under review<sup>10</sup>. The Licensee reported a workforce of 20 employees after a restructuring process (retrenchments) was completed. According to the submission a total of 17 employees had their services terminated by the Licensee; two (2) senior managers, eight (8) skilled technical and academically qualified workers and seven (7) temporary workers. The Licensee also reported that eight (8) employees received training; two (2) top managers and six (6) skilled technical, academically qualified workers, junior managers and supervisors.

**The Licensee complies with clause 6.2 of the licence.**

### **3.7 Staff Development and Employment Equity Plan**

Clause 7 of the schedule to the licence provides that:

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<sup>10</sup> Appendix C: On Digital Media's Training and Skills Development

*"The Licensee shall submit an annual compliance report in the format prescribed by the Authority".*

The Licensee submitted its annual compliance report (ACR) in line with the Compliance Procedure Manual Regulations. During the period under review, the Licensee recruited one senior manager and promoted one employee to a senior manager position. The Licensee notes that they did not achieve the annual objectives (numerical goals and numerical targets) as set out in the Employment Equity Plan because the organization went through a retrenchment process. It should also be noted that the Licensee has no employee with a disability in its workforce.

**The Licensee complies with clause 7 of the licence.**

### **3.8 Target market**

Clause 8 of the schedule to the licence provides that:

*"The Licensee's primary target market is viewers in the LSM 6 to 9 bracket".*

The Licensee confirms that its main target audience ranges from LSM group 6 to 9 but its broadcasting services are available to all members of the general public.

**The Licensee complies with clause 8 of the licence.**

### **3.9 Ownership by Individuals from Historically Disadvantaged Groups**

Clause 9 of the schedule to the licence provides that:

*"Ownership by individuals from historically disadvantaged groups shall be no less than 30%".*

The Licensee reported that ownership by persons from historically disadvantaged groups constitute 57.97%<sup>11</sup>. However, the Authority could not independently verify the ownership structure of ODM since the Licensee has not submitted the shareholder's agreement.

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<sup>11</sup> Appendix B: On Digital Media's Compliance Report

**Based on the above information, compliance with clause 9 of the licence is inconclusive.**

### **3.10 Financial Year**

Clause 10.1 of the schedule to the licence provides that:

*"The Licensee's financial year end shall be the end of February"*

Clause 10.2 of the schedule to the licence provides that:

*"If this date changes, the Licensee shall in writing notify the Authority thereof within seven business days of the change".*

According to the draft financial statements submitted by the Licensee (from March 2017 to February 2018)<sup>12</sup>, the end of the financial year remains the end of February.

**The Licensee complies with clauses 10.1 and 10.2 of the licence.**

## **4. REGULATIONS**

### **4.1 Complaints Received**

The Licensee is required in terms of the Compliance Procedure Manual Regulations to submit a Form 12A which reports on all complaints received during the financial year under review. ODM submitted Form 12A and attached their own comprehensive complaints report<sup>13</sup> that is in accordance with the Compliance Procedure Manual Regulations. According to the submitted complaints report, ODM received 3271 complaints for the year under review. Billing complaints such as payments not allocated, customers disputing amounts due and incorrect debit order dates made up 67% of the total number of complaints that were received. Loss of channel complaints due to no signal amounted to 17% and complaints about continuous repeats on certain channels (poor content) amounted to 6%.

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<sup>12</sup> Appendix D: On Digital Media's Draft Financial Statements

<sup>13</sup> Appendix B: On Digital Media's Compliance Report



**The Licensee complies with the Compliance Procedure Manual Regulations.**

#### **4.2 Standard Terms and Conditions for Individual Licensees Regulations**

Sub regulation 1 of the Standard Terms and Conditions for Individual Licensees states that:

*"A Licensee must submit written notice to the Authority within seven (7) days of the occurrence of the following changes:*

- a) the name of the Licensee;*
- b) contact details including contact person;*
- c) shareholding;*
- d) physical address; and*
- e) financial year end".*

During the period under review the Licensee moved to new broadcasting premises and the shareholding structure changed. The Licensee was advised numerous times to file a notification and eventually submitted an incomplete submission without a shareholder's agreement and a resolution.

**The Licensee did not comply with the Standard Terms and Conditions for Individual Licensees.**

#### **4.3 General Licence Fees Regulations**

Schedule 2 of the General Licence Fees Regulations provides for Individual Commercial Broadcasting Service Licensees to pay annually to the Authority a licence fee of between 0.15% to 0.35% of its gross profit.

Schedule 3(1) of the General Licence Fees Regulations provides for the format for submission of financial statements for the purpose of calculating licence fees.

Schedule 3(2) of the General Licence Fees Regulations provides that:

*"All licence holders must submit within six (6) months of their financial year end:*

*a) audited financial statements; or*

*b) financial statements signed by the accounting officer of the Licensee where the Licensee is not legally obliged to provide audited financial statements"*

Schedule 3(6) of the General Licence Fees Regulations provides that:

*"All payments in respect of Annual Licence Fees are due annually"*

The Licensee's financial year ends in February of each year and the Licensee has not submitted its Audited Financial Statements. The Licensee has submitted a draft of their Financial Statements and a letter to the Authority stating the reasons for the delay in signing off, of their Annual Financial Statements for the current and previous periods under review. However, the Licensee provided proof of payments of licence fees, USAF and MDDA contributions<sup>14</sup>.

**The Licensee is compliant with Schedules 2 and 3(6) of the General Licence Fees Regulations and however, failed to comply with Schedules 3(1) and 3(2) of the General Licence Fees Regulations.**

#### **4.4 Universal Service and Access Fund Regulations**

Regulation 3(1) of the New Universal Service and Access Fund (USAF) Regulations as published in the Government Gazette No. 34010 of February 2011, provides 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) further provides that:

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<sup>14</sup> Appendix E: On Digital Media's USAF & MDDA Payments

*"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 of the same financial year" (See the New USAF Regulations attached as Appendix F)*

The Licensee has paid its USAF contribution as required by Regulations 3(1) and 3(2) of the New Universal Service and Access Fund Regulation.

**The Licensee complies with Regulations 3(1) and 3(2) with respect to the prescribed annual contributions of the Universal Service and Access Fund Regulations.**

#### **4.5 Subscription Broadcasting Services Regulations**

Regulation 3.1 of the Subscription Broadcasting Services Regulations states that:

*"A subscription broadcasting service Licensee may not add a channel to its service unless the Authority, on application by the Licensee, has authorised the channel".*

ODM's channels are all approved by the Authority. Furthermore, the Licensee applies for ICASA's channel authorisation<sup>15</sup> before adding new channels on its bouquet.

**The Licensee complies with regulation 3.1 of the Subscription Broadcasting Services Regulations.**

#### **4.6 Must Carry Regulations**

Regulation 4.1 of the Must Carry Regulations as published in the Government Gazette No 31500 on 10 October 2008 provides that:

*"All subscription broadcasting service licensees must carry the channels of the public broadcasting service licensee, designated as must carry channels as part of the service offering, subject to Regulation 5".*

The Licensee has confirmed that it carries all three channels of the South African Broadcasting Corporation (SABC).

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<sup>15</sup> Appendix F: On Digital Media's ICASA's Channel Authorisations

Regulation 8 of the Must Carry Regulations provide that:

*"The subscription broadcasting service Licensee must submit a copy of agreement within thirty (30) of such agreement being concluded and signed".*

The Licensee submitted its agreement (signed in 2010) with the SABC.

**The Licensee complies with Regulations 4.1 and 8 of the Must Carry Regulations.**

#### **4.7 Commissioning Protocols Regulations**

Regulation 4 of the Regulations on Commissioning Protocols published in the *Government Gazette* No 32767 on 01 December 2009 provides that:

*"A licensee must submit an annual report to the Authority setting out its respective procurement activities in respect of independently produced South African programming from independent producers for the year preceding the date of the report. The report will include, inter alia:*

- (a) a list of the names of independent producers from whom programmes were commissioned;*
- (b) the number of programmes and episodes commissioned from Independent producers;*
- (c) the number of programmes commissioned from historically disadvantaged individuals and small and medium independent producers in the production industry;*
- (d) the total amount spent by the licensee on independently produced South African programming; and*
- (e) details of any disputes which occurred between the licensee and independent producers and the manner in which they were resolved".*

The Licensee has submitted an annual report of their Commissioning Protocols and they were approved by the Authority.

**The Licensee complies with Regulation 4 of the Regulations of the Commissioning Protocols.**

#### **4.8 South African Television Content Regulations**

Regulation 5.4 of the South African Television Content Regulations published in the Government Gazette No. 28454, on 31 January 2001<sup>16</sup> provides that:

*"A subscription broadcasting licensee must spend a minimum of 10% of its content acquisition budget on acquisition of channels with local content which are compiled and uplinked from South Africa".*

The Licensee states that it does not produce or commission the production of local or international content, content is acquired in a completed broadcast ready form and is scheduled accordingly. During the period under review, the Licensee spent R 380 634 756.38 and R 43 476 517.62 respectively on acquisition of international and local content. The Licensee spent 11.42%<sup>16</sup> of its budget on local content acquisition.

**The Licensee complies with Regulation 5.4 of the South African Television Content Regulations.**

#### **4.9 Sports Broadcasting Rights Regulations**

Regulation 9(2) of the Sports Broadcasting Rights Regulation as published in the Government Gazette, No 33079 on 7 April 2010 requires that:

*"A broadcaster, who is involved in broadcasting national sporting events, shall file the records of its broadcasts one hundred and twenty (120) days from the date of the publication of these Regulations and after every year from the date of the first filing".*

The Licensee did not broadcast any sporting events of national interest.

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<sup>16</sup> Appendix B: On Digital Media's Compliance Report

## **The Licensee complies with Sports Broadcasting Rights Regulations.**

### **4.10 Code on People with Disabilities**

Regulation 3.1(a) of the Code on People with Disabilities read with Form 7C of Compliance Procedure Manual Regulations require broadcasting service licensees to ensure that their services are made available and are accessible to people with disabilities.

ODM submitted Form 7C of the Compliance Procedure Manual Regulations stating that it has improved and/or increased subtitles, disabled viewers have access to programme support such as fact sheets, its website has been upgraded to offer a range of formats and the effectiveness of these services are monitored through conducting surveys with organisations for people with disabilities.

## **The Licensee complies with Regulation 3.1(a) of the Code on People with Disabilities.**

Regulation 3.1(c) of the Code on People with Disabilities provides that:

*"Broadcasting service licensees must monitor the effectiveness of their service through surveys as well as contact with organisations of and for people with disability and stakeholders"*

The Licensee's submission indicates that, ODM has been in correspondence with visually impaired and disability organisations such as Kaleidoscope ESA, Blind SA, National Institute for the Deaf and the South African National Council for the Blind.

## **The Licensee complies with Regulation 3.1(c) of the Code on People with Disabilities.**

## **5. CONCLUSION**

For the 2017/2018 financial year, the Licensee has complied with most of its licence terms and conditions and relevant Regulations.

The Licensee's shareholding as reflected in its licence differs from its current shareholding as the Licensee has not submitted a shareholder's agreement. The Authority is unable to process

the notice for changes with respect to Shareholding without the Shareholders Agreement. Ownership (clause 9 of the schedule) by Historically Disadvantaged Individuals could not be determined since the new ownership structure could not be scrutinized by the Authority.

The Licensee also submitted its workplace skills plan with its compliance submission and not as required by clause 6.1 of the schedule to the licence. The Licensee failed to comply with schedules 3(1) and 3(2) of the General Licence Fees Regulations regarding submission of audited financial statements.

The Licensee also did not comply with sub regulation 1 of the Standard Terms and Conditions for Individual Licensees in that it failed to file a notification regarding changes to their physical address and shareholding structure within seven (7) days of the occurrence of the changes.

## **6. TERMS OF REFERENCE**

Appendix A: On Digital Media's Service Licence;

Appendix B: On Digital Media's Compliance Report;

Appendix C: On Digital Media's Training and Skills Development;

Appendix D: On Digital Media's Financial Statements;

Appendix E: On Digital Media's USAF & MDDA Payments; and

Appendix F: On Digital Media's ICASA's Channel Authorisations.