



TOP TV ANNUAL COMPLIANCE REPORT

MARCH 2020

2018/2019 ANNUAL COMPLIANCE REPORT

ON DIGITAL MEDIA (ODM)/ STARSAT BROADCASTING AS TOP TV

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 Constitution¹, the ICASA Act², the Electronic Communications Act³ (ECA) and the Broadcasting Act⁴ 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 licences, 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 2018/2019 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 and South African Television Content Regulations.

2. BACKGROUND

On 9 July 2008, the Authority issued an Individual Commercial Subscription Television and Sound Broadcasting Service licence to On Digital Media (Propriety)

¹ The Constitution of the Republic of South Africa Act No 108, 1996

² ICASA Act No 13, 2000 as amended

³ Electronic Communications Act No 36, 2005

⁴ Broadcasting Act No 4 of 1999

Limited (ODM) broadcasting as Top TV. The shareholders as reflected in the service licence are as follows:⁵

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 One 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 the compliance submissions⁶ are:

Hantex International Company Limited	= 20%
BEE Consortium/Digital Landmark (Pty) Ltd	= 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 filed a notification application to change their shareholding structure in 2014 and subsequently withdrew that notification. The Licensee was then informed on 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 Processes and Procedures Regulations manual was forwarded to the Licensee.

A reminder was sent to the Licensee on the 11 of November 2018 and the Processes and Procedures Regulations manual was sent on the 4 of December 2018. Another reminder was sent on the 6 of December 2018. On the 11 of December 2018, the Licensee submitted an incomplete notification without a resolution and a shareholder's agreement.

⁵ Appendix A: On Digital Media's service licence

⁶ Appendix B: Shareholding - Annexure A 2019

The Licensee was notified on 11 of December 2018 via email of the outstanding documents to the submitted notification and has not responded.

On 21 October 2019, as part of the annual compliance submission, the Licensee submitted a notification dated 08 May 2014. The Authority wrote a letter to the Licensee advising them to file a transfer with the Licensing Department because of the 28.8% share that is held by the BEE Consortium which is stated as Digital Landmark (Pty) Ltd in the ODM Compliance Report April 2018 – April 2019⁷.

Based on the above, the Licensee's shareholding structure remains as it is reflected on the service licence. The Licensee is non-compliant with its responsibility to inform the Authority of changes to its shareholding structure.

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"*.⁸

The Licensee complies with clause 1 of the schedule to its 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.

The Licensee complies with clause 2 of the schedule to its licence.

⁷ Appendix C: ODM Compliance Report April 2018 – April 2019

⁸ Appendix C: ODM Compliance Report April 2018 – April 2019

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".

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

The Licensee complies with clause 3.1 of its 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 notes that StarTimes Media (SA) Pty Ltd is an ECNS Licensee and provides On Digital Media with the relevant communication network services⁹.

The Licensee complies with clause 3.2 of the schedule to its 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 notes that its programmes are broadcast predominately in English, in local vernacular in some local content channels as well as in Mandarin Chinese, French and Indian languages.

The Licensee complies with clause 4 of the schedule to its licence.

⁹ Appendix C: ODM Compliance Report April 2018 – April 2019

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.

The Licensee complies with clause 5 of its 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 30th of June each year".

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 with its compliance submission on the 21 October 2019. The Licensee resubmitted a previous 2017/18 submission as is for the period under review¹⁰. Resubmitting an old report as a current report indicates gross misconduct and dishonesty by the Licensee¹¹.

The Licensee is non-compliant with clauses 6.1 and 6.2 of the schedule to its licence.

3.7 Staff Development and Employment Equity Plan

Clause 7 of the schedule to the licence provides that:

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

¹⁰ Appendix D: Annexure 1 ODM Training & Skills Development

¹¹ Appendix E: Annexure B ODM Training & Skills Development

The Licensee resubmitted a 2017/18 staff development and EE plan report.

The Licensee is non-compliant with clause 7 of the schedule to its 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 its 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%¹². However, the Authority could not independently verify the ownership structure of ODM since the Licensee has not submitted the shareholder's agreement nor filed a notification with the Authority.

Based on the above information, compliance with clause 9 of the schedule to 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:

¹² Appendix C: ODM Compliance Report April 2018 – April 2019

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

The Licensee has not notified the Authority of any changes to its financial year end. ODM's financial year remains the end of February.

The Licensee complies with clauses 10.1 and 10.2 of the schedule to its licence.

4. REGULATIONS

4.1 Compliance Procedure Manual Regulations

The Licensee is required in terms of the Compliance Procedure Manual Regulations to submit a Form 12A¹³ which reports on all complaints received during the financial year under review. ODM submitted Form 12A and also attached their own comprehensive complaints report¹⁴ that is in accordance with the Compliance Procedure Manual Regulations. According to the submitted complaints report, ODM received 5140 complaints for the year under review. Billing complaints such as payments not allocated, customers disputing amounts due and incorrect debit order dates made up 83% of the total number of complaints that were received. Poor installation service problems amounted to 3% and complaints about technical problems (such as no signal and software upgrades) amounted to 7%.

During the period under review, the Licensee complies with the Compliance Procedure Manual Regulations.

¹³ ICASA Compliance Procedure Manual Regulations, 2011 as published in Government Gazette No. 34863 dated, 15 December 2011.

(re: submission of Form 12A: ECN/S and BS Complaints Reporting)

¹⁴ Appendix F: Annexure E Complaints Report

4.2 Standard Terms and Conditions for Individual Licensees Regulations, 2016¹⁵

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".*

Since the service licence was granted to the Licensee in 2008, the Licensee according to its submission moved to new broadcasting premises and the shareholding structure changed in 2014. 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 has been advised during the period under review to file a transfer application with the Licensing Department.

The Licensee is non-compliant with the Standard Terms and Conditions for Individual Licensees, 2016.

4.3 General Licence Fees Regulations¹⁶

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:

¹⁵ Standard Terms and Conditions for Individual Broadcasting Services, 2016 as published in Government Gazette No. 39875 dated, 30 March 2016, as amended

¹⁶ General Licence Fees Regulations, 2012 as published in Government Gazette No. 36323 b dated, 28 March 2013, as amended.

- a) *audited financial statements, or;*
- b) *financial statements signed by the accounting officer of the Licensee where the Licensee is 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 (March 2017 – February 2018) and not the period under review (March 2018 – February 2019) 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 contributions¹⁷.

The Licensee complies with Schedules 2 and 3(6) of the General Licence Fees Regulations. 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 on 10 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:

"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)

¹⁷ Appendix G: ODM USAF & MDDA Payments

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, 2006¹⁸

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 authorisation¹⁹ before adding new channels on its bouquet.

The Licensee complies with regulation 3.1 of the Subscription Broadcasting Services Regulations, 2006.

4.6 ICASA Must Carry Regulations, 2008

Regulation 4.1 of the ICASA Must Carry Regulations, 2008 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). 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".

¹⁸ Subscription Broadcasting Services Regulations, 2006 as published in Government Gazette No. 28452 dated, 31 January 2006

¹⁹ Appendix H: ODM ICASA Channel Authorisations

The Licensee submitted its agreement (signed in 2010) with the SABC²⁰.

The Licensee complies with regulations 4.1 and 8 of the ICASA Must Carry Regulations, 2008.

4.7 Regulations on the Commissioning of Independently Produced South African Programming, 2009.

Regulation 4 of the Regulations on Commissioning of Independently Produced South African Programming, 2009 as 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 not submitted its annual report of their Commissioning Protocols and notes that in its submission *"We do not produce or commission the production of local and/or international content, hence we acquire content in a completed broadcast ready form directly from channel and content providers and schedule broadcasts accordingly".*

²⁰ Appendix I: Must Carry SABC Agreement

The Licensee complies with Regulation 4 of the Regulations of the Commissioning of Independently Produced South African Programming, 2009.

4.8 South African Television Content Regulations

Regulation 5(1) of the ICASA Local Television Content Regulations published in the Government Gazette No. 39844, on 23 March 2016 provides that:

"A subscription television broadcasting licensee must ensure that within twenty four (24) months of gazetting these regulations in the case of existing licensee or within 24 months of issuing of a licence to a new licensee or within such longer period as the Authority may determine, a minimum of 15% of their annual content acquisition budget is spent on local television content programming".

The Licensee states in its submission 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 23 626 950.96 on acquisition of locally ready to broadcast content. The Licensee spent 14%²¹ of its budget on local content acquisition.

The Licensee is non-compliant with Regulation 5(1) of the ICASA Regulations on Local Television Content.

5. CONCLUSION

For the 2018/2019 financial year, the Licensee did not comply with pertinent compliance requirements and applicable Regulations. The Licensee failed to comply with sub regulation 1 of the Standard Terms and Conditions for Individual Licences in that it failed to file a notification regarding changes to their physical address, contact person and shareholding structure within seven (7) days of the occurrence of the changes. The Licensee's shareholding as reflected in its service licence differs from its current shareholding as the Licensee filed a notification in 2014 and subsequently withdrew the notification.

²¹ Appendix C: ODM Compliance Report April 2018 – April 2019

Also to be noted is the 28.8% stakeholder in On Digital Media which is referred to as “*BEE Company, Digital Landmark and BEE Consortium*” in the Licensee’s own submission. Ownership (clause 9 of the schedule) by Historically Disadvantaged Individuals could not be determined since the current ownership structure could not be scrutinized and verified by the Authority. The Licensee resubmitted its 2017/2018 workplace skills plan, staff development and Employment Equity report for the 2018/2019 financial year which is an indication of misrepresentation.

The Licensee failed to comply with schedules 3(1) and 3(2) of the General Licence Fees Regulations regarding submission of audited Annual Financial Statements and format of submission. The Licensee submitted a draft of the 2017/2018 financial statements and not the 2018/2019 financial year (the year under review). The Licensee also does not adhere to the Regulations on Commissioning Protocols and the ICASA Regulations on Local Television Content. The Broadcasting Compliance Unit will approach the Licensee for a discussion on its non-compliance, with a potential referral to the Complaints and Compliance Committee (CCC).

6. TERMS OF REFERENCE

6.1 Appendix A: On Digital Media’s Service Licence.

6.2 Appendix B: Shareholding 2019.

6.3 Appendix C: On Digital Media’s Compliance Report April 2018 – April 2019.

6.4 Appendix D: Annexure 1 ODM’s Training and Skills Development.

6.5 Appendix E: Annexure B ODM’s Training and Skills Development.

6.6 Appendix F: Annexure E Complaints Report.

6.7 Appendix G: ODM USAF and MDDA Payments

6.8 Appendix H: ODM Channel Authorisations.

6.9 Appendix I: Must Carry SABC Agreement.

6.10 Appendix J: ODM Financial Statements.

6.11 Appendix K: Standard Terms and Conditions for Individual Broadcasting Services, 2016 as published in Government Gazette No. 39875 dated, 30 March 2016, as amended.

6.12 Appendix L: ICASA Compliance Procedure Manual Regulations, 2011 as published in Government Gazette No. 34863 dated, 15 December 2011.

- 6.13** Appendix M: USAF Regulations, 2011 as published in Government Gazette No. 34010 dated, 10 February 2011.
- 6.14** Appendix N: General Licence Fees Regulations, 2012 as published in Government Gazette No. 36323 dated, 28 March 2013, as amended.
- 6.15** Appendix O: Subscription Broadcasting Services Regulations, 2006 as published in Government Gazette No. 28452 dated, 31 January 2006.
- 6.16** Appendix P: ICASA Must Carry Regulations, 2008 as published in the Government Gazette No 31500 on 10 October 2008.
- 6.17** Appendix Q: Sports Broadcasting Services Regulations, 2010 as published in the Government Gazette, no 33079 on 7 April 2010.
- 6.18** Appendix R: ICASA Local Television Content Regulations published in the Government Gazette No. 39844, on 23 March 2016.
- 6.19** Appendix S: Regulations on Commissioning of Independently Produced South African Programming, 2009 as published in the Government Gazette No 32767 on 01 December 2009.