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General Notice

COMMUNICATIONS REGULATORY AUTHORITY OF NAMIBIA

No. 61 2017

NOTICE OF RECONSIDERATION IN TERMS OF SECTION 31 OF THE COMMUNICATIONS ACT (NO 8 OF 2009) AND REGULATIONS 11 AND 20 OF THE REGULATIONS REGARDING LICENSING PROCEDURES FOR TELECOMMUNICATIONS AND BROADCASTING SERVICE LICENCES AND SPECTRUM USE LICENCES

The Communications Regulatory Authority of Namibia, in terms of section 31 of the Communications Act, 2009 (Act No. 8 of 2009) read with regulations 11 and 20 of the “Regulations Regarding Licensing Procedures for Telecommunications and Broadcasting Service Licences and Spectrum Use Licence, in Government Gazette No. 4785, General Notice No. 272 dated 29 August 2011 (as amended), herewith gives notice that the Authority has approved with conditions **Mobile Telecommunications Limited**’s application for reconsideration, in respect of a decision to decline the application for a Spectrum Use Licence for (UL) 1935 MHz – 1940 MHz paired with (DL) 2125 MHz – 2130 MHz, which decision was published in Government Gazette No. 323, General Notice No. 6091, dated 10 August 2016.

THE FOLLOWING ARE THE REASONS FOR THE DECISION:**1. INTRODUCTION**

Mobile Telecommunications Limited (hereinafter referred to as “the Applicant”) Ltd submitted an application for additional spectrum use licences on 29 April 2015 as indicated below-

- (i) 925-930 MHz paired with 880-885 MHz (2 x 5 MHz);
- (ii) 1882-1892 MHz paired with 1787-1797 MHz (2 x 10 MHz); and
- (iii) 2125-2130 MHz paired with 1935-1940 MHz (2 x 5 MHz)

for consideration in terms of section 101 of the Communications Act of 2009 (hereinafter referred to as “the Act”) and in accordance with Regulations regarding Licensing Procedures for Telecommunications and Broadcasting Service Licences and Spectrum Use Licences as published in Government Gazette No. 4785, General Notice No. 272 dated 29 August 2011 (as amended).

The Authority published its final decision in respect of the aforementioned application in Government Gazette No. 6092, Notice No. 323 dated 10 August 2016 following communication of the final decision to the Applicant in writing on 8 July 2016.

The Applicant submitted an application for reconsideration to the Authority in respect of the decline of the application for 2125-2130 MHz paired with 1935-1940 MHz on 5 August 2016 in terms of section 31 of the Act.

2. PROCEDURAL COMPLIANCE

Following due process in terms of Regulations Regarding Licensing Procedures for Telecommunications and Broadcasting Service Licences and Spectrum Use Licences, the Authority published a notice in the Government Gazette 6102, Notice No 350, dated 23 August 2016, indicating that MTC requests the Authority to reconsider its decision to decline the application for 2 x 5 MHz spectrum in the 2100 MHz spectrum band, allowing fourteen (14) days for public comments from the date of publication of the Notice in the Gazette. The commenting period lapsed on 8 September 2016, and no comments were received.

3. SUBSTANTIVE ISSUES DURING THE INITIAL APPLICATION

During the initial consideration of the application, the Authority took into account the following aspects in respect of the application for spectrum in the 2100 MHz spectrum band –

- (i) The fact that the Applicant has been declared dominant in terms of section 78 of the Act;
- (ii) The fact that the Applicant already holds spectrum use licences amounting to 35% more spectrum to provide mobile services than any other telecommunications service licensee; and
- (iii) The limited amount of spectrum available in the 2100 MHz spectrum band.

3.1 Analysis of the application for spectrum in the 2100 MHz spectrum band

The Applicant already holds spectrum use licences for 2 x 15 MHz in the 2100 MHz spectrum band for providing 3G services on a national basis. The Applicant’s 3G network is deployed in major urban areas with lesser coverage provided in selected locations such as lodges and mines and smaller towns in rural areas.

The Applicant submitted a rollout plan for the addition of a fourth layer to its existing network at existing sites to increase capacity. Upon analysis of the information presented, the Authority is of the opinion that the Applicant can make more efficient use of the 15 MHz spectrum already assigned to the Applicant based on the Applicant’s presentation dated 14 August 2015 –

- i) Stating that the Applicant plans to deploy 3G in the E-GSM band should the spectrum application be approved; and
- ii) The network statistics presented.

It should be noted that the Applicant made no effort to prove efficient use in terms of ITU Recommendation: ITU-R SM.1046-2 as required by the spectrum use licence conditions applicable to this licence. The Authority therefore had to proceed with its analysis based on the aforementioned information submitted by the Applicant.

Authority is of the opinion that the Applicant can make more efficient use of the current spectrum assigned in 2100 MHz through optimisation and re-planning of its network. This can be achieved by implementing smaller cells through construction of additional base stations serving less customers per base station to improve quality of service in its 3G network whilst phasing out high site locations.

Further thereto it should be noted that the existing spectrum use licence for 2100 MHz was awarded on a national basis. To date the assigned spectrum remains unutilised in areas where no 3G services have been provided. Based on the factors considered above the Authority is of the opinion that the Applicant has failed to proof efficient use of its existing spectrum use licence of 2 x 15 MHz in the 2100 MHz spectrum band.

3.2 Other factors considered

The 2100 MHz spectrum band has very limited vacant spectrum available consisting of 2 x 5 MHz only. The current spectrum use licences awarded in this band is fairly distributed between Telecom Namibia Limited, Paratus Telecommunications (Pty) Ltd and the Applicant to provide mobile telecommunications services taking into account the cumulative amount of spectrum assigned to each licensee in the 900 MHz, 1800 MHz and 2100 MHz spectrum band.

There would be no limitation on the Applicant to use the spectrum applied for in the E-GSM band for 3G services in and around urban areas such as Windhoek, Oshakati, Walvis Bay and Swakopmund should the Authority approve the said licence application for 2 x 10 MHz in the E-GSM spectrum band to improve service quality.

Any further assignment of spectrum in this band to an existing telecommunications service licensee will act as a barrier to any new player entering the market in that the Authority will not have sufficient spectrum available for the implementation of 3G mobile services in urban areas to allow a new entrant to provide the same data speed and quality of service than current licensees.

The Authority also undertook a benchmarking exercise in respect of neighbouring countries taking into account the amount of spectrum assigned to each operator versus the population size served. The findings are shown in the Table 1 below-

South Africa		Kenya		Nigeria	
Vodacom ± 34 million customers	2 x 11 MHz 900 MHz	TK/Orange ± 4.5 million customers	2 x 7.5 MHz 900 MHz	MTN Nigeria ± 63 million customers	2 x 5 MHz 900 MHz
	2 x 12 MHz 1800 MHz		2 x 10 MHz 1800 MHz		2 x 15 MHz 1800 MHz
Total	1 x 5 & 2 x 15 MHz 2100 MHz	Total	2 x 10 MHz 2100 MHz	Total	2 x 10 MHz 2100 MHz
MTN SA ± 30 million customers	2x 38 MHz & 1x 5MHz	Safaricom ± 25.1 million customers	2x 27.5 MHz	31 million customers	2x 30 MHz
	2 x 11 MHz 900 MHz		2 x 10 MHz 900 MHz		2 x 5 MHz 900 MHz
	2 x 12 MHz 1800 MHz		2 x 10 MHz 1800 MHz		2 x 15 MHz 1800 MHz
Total	1 x 10 & 2 x 15 MHz 2100 MHz	Total	2 x 10 MHz 2100 MHz	Total	2 x 10 MHz 2100 MHz
Cell C ± 22 million customers	2x 38 MHz & 1x 10MHz	Airtel Kenya ± 7.2 million customers	2x 30 MHz	31 million customers	2x 30 MHz
	2 x 11 MHz 900 MHz		2x 10 MHz 900 MHz		2x 5 MHz 900 MHz
	2 x 12 MHz 1800 MHz		2x 10 MHz 1800 MHz		2x 15 MHz 1800 MHz
Total	1 x 5 & 2 x 15 MHz 2100 MHz	Total	2 x 10 MHz 2100 MHz	Total	2x 10 MHz 2100 MHz
Telkom SA ± 2 million customers	2x 38 MHz & 1x 5 MHz	Essar ± 1 million customers	2x 30 MHz	Etisalat ± 24 million customers	2x 30 MHz
	2x 12 MHz 1800 MHz		2x 7.5 MHz 900 MHz		2x 5 MHz 900 MHz
	2x 10 MHz 2100 MHz		2x 10 MHz 1800 MHz		2x 15 MHz 1800 MHz
Total	2x 10 MHz 2100 MHz	Total	2x 10 MHz 1800 MHz	Total	2x 10 MHz 2100 MHz
Largest town	2x 22 MHz	Total	2x 17.5 MHz	Total	2x 30 MHz
	Soweto 2.3 million		Nairobi 3.4 million		Lagos 9 million

It should be noted that the population of South Africa, Kenya and Nigeria exceed the population of Namibia by far and that each operator is assigned less than 40 MHz across the 900 MHz, 1800 MHz and 2100 MHz spectrum band to provide mobile services ensuring the efficient use of spectrum.

In contrast, the Applicant is already assigned 2 x 63 MHz to provide mobile services to Namibia's population of 2.4 million and still the Applicant has applied for more spectrum. The Applicant also already holds spectrum use licences for an equivalent amount of spectrum (2 x 15 MHz) in the 2100 MHz compared to operators in other countries as shown in Table 1. Further thereto, Windhoek, being the largest urban area served by the Applicant has ±400,000 inhabitants compared to the millions of inhabitants in a single urban area served by the operators shown in Table 1.

3.3 Decision on initial application

The CRAN Board of Directors, at the recommendation of the Legal and Technical Board Committee, resolved at the board meeting held on 30 June 2016 –

- i) That the application for 2125-2130 MHz paired with 1935-1940 MHz is declined due to the fact that the existing spectrum use licence in the same spectrum band is not efficiently utilised and that the Applicant is urged to re-plan its network to use already assigned spectrum efficiently in accordance with its spectrum use licence conditions.

4. APPLICATION FOR RECONSIDERATION

4.1 BACKGROUND

The Authority published its final decision in Government *Gazette* No. 6092, General Notice No. 323 dated 10 August 2016.

The Applicant submitted an application for reconsideration to the Authority on 5 August 2016 in terms of section 31 of the Communications Act, 2009 in respect of the decline of the spectrum use licence application submitted for 2125-2130 MHz paired with 1935-1940 MHz (2 x 5 MHz).

4.2 GROUNDS FOR RECONSIDERATION

The Applicant sets out its grounds for reconsideration as follows:

- (i) ITU-R SM.1046-2 – Although the standards document of the ITU is one amongst others, fore mostly it is not applicable to this case because the international norms and practices are different to that experienced in Namibia, as demonstrated by MTC and its technical partner Huawei in a meeting held on 14 August 2015 during which the needs and the efficiency of the band used was presented;
- (ii) It is debatable that mini-sites improve capacity and quality in the referred band however-
 - a. the Applicant has already deployed several mini sites in Windhoek;
 - b. An additional thirty (30) mini sites in Windhoek has been submitted to the local authority for authorisation for more than eighteen (18) months; and
 - c. The Applicant will roll out a number of mini sites after clearance from the relevant authorities, but that will not resolve the main capacity issue.
- (iii) The Applicant strongly disagrees that 2100 MHz spectrum is distributed fairly between licensees;
- (iv) The Authority is inconsistent in referring that the current UMTS or 3G allocation of 2100 MHz is unutilised in areas where no 3G service has been provided, which contradicts the rationale accepted with the E-GSM 900 award;

- (v) E-GSM can be used in urban areas not losing sight of technical references;
- (vi) It is unjustifiable that allocating the additional 2100 MHz spectrum for the deployment of the 4th carrier to the Applicant will act as a barrier to a new entrant based on the Applicant's reasoning that spectrum should be allocated on the basis of existing subscribers and that the reserving of spectrum for a possible new entrant contradicts Regulation 6(1) of the Regulations regarding Licensing Procedures for Telecommunications and broadcasting service licences and spectrum use licences; and
- (vii) That the Applicant detected inaccuracies in respect of the benchmarking done with other markets.

The Applicant's submission for reconsideration indicates various secondary points in support of the abovementioned grounds for reconsideration under point 3 of their application.

5. SUBSTANTIVE ISSUES ON RECONSIDERATION

In its analysis of the application for reconsideration submitted by the Applicant on 5 August 2016, the Authority will not only address the grounds for reconsideration listed by the Applicant but also the other viewpoints expressed and observations made by the Applicant.

5.1 The utilisation of ITU-R SM.1046-2 to prove efficient use of spectrum

Section 99 (2) of the Communications Act (hereinafter referred to as "the Act") provides as follows-

"(2) In controlling, planning, administering, managing and licensing the use of the radio frequency spectrum, the Authority must comply with the applicable standards and requirements of the International Telecommunication Union and its Radio Regulations, as agreed to or adopted by Namibia".

Namibia is a member state of the International Telecommunications Union (ITU). The Authority is bound by the Act to adhere to ITU standards such as the document ITU-R SM.1046-2 developed by ITU for the measurement of efficient use of spectrum and is referenced in the Regulations Setting out Licence Conditions for Spectrum Use Licences as published in Government Gazette No. 5354, General Notice No. 469 dated 2 December 2013.

The utilisation of ITU-R SM.1046-2 to measure efficient use of spectrum is applicable to Namibia, in that it ensures a consistent method of measuring efficient use of spectrum irrespective of different equipment deployed by licensees and variances in network infrastructure deployment in that measurement is based on-

- i) Service area for mobile base stations;
- ii) Spectrum or frequencies being utilised in the service;
- iii) Total population living in the service area; and
- iv) Total traffic generated within the limits of the service area.

Any request made by the Authority in respect of efficient use of spectrum in respect of existing spectrum use licences to any licensee will therefore, be measured against the same criteria when the method of measurement is based on ITU standards. The aforementioned regulations were finalised following the Authority's rulemaking procedures and the Applicant had ample opportunity to comment in respect of the non-applicability of ITU standards to Namibia during this process. All spectrum use licences are awarded subject to the same set of licence conditions and the Applicant is bound by the provisions of the said conditions.

The text of the Authority's decision as published in Government Gazette No. 6092, General Notice No.323 dated 10 August 2016 reads as follows-

"...the Applicant made no effort to prove efficient use in terms of ITU Recommendation: ITU-R SM.1046-2 as required by the spectrum use licence conditions..."

This statement is not inaccurate as alleged by the Applicant. The Authority's decision further indicates that the Authority therefore considered the Applicant's submission made on 14 August 2015 in conjunction with their equipment vendor, Huawei. This presentation was based on the Applicant's own model and did not follow the framework set in the aforementioned ITU documents. However, the Authority did not exclude the presentation made from its consideration process, giving the Applicant the benefit of submitting its own model to prove efficient use.

5.2 It is debatable that mini-sites improve capacity and quality in the referred band

The Authority advised the Applicant to optimize and re-plan its network to ensure efficient use of spectrum. The deployment of mini sites as referenced by the Applicant is in accordance with the advice given and the Applicant also states under point 4.4 of the reconsideration application that it has received some approvals from the local authorities whilst others are still pending. The Authority maintains its opinion that the implementation of the aforementioned sites will contribute to the efficient use of existing spectrum use licences.

5.3 The Authority is inconsistent in referring that the current UMTS allocation of 2100 MHz is unutilized in areas where no 3G service has been provided, which contradicts the rationale accepted with the E-GSM 900 award

The Applicant submits technical data in relation to the utilisation of its spectrum inclusive of geographical site data on a bi-annual basis. This data is utilised by the Authority to assess utilisation of spectrum on a national basis when such spectrum use licence was awarded on a national basis. Analysis of the data as submitted for the reporting period 1 August 2015 to 31 January 2017 indicates that the Applicant does not utilise its existing spectrum use licence to its full potential, also in urban areas, as defined in section 3 of the Local Authorities Act, 1992 (Act No. 23 of 1992). The Authority has also conducted quality of service drive testing from June 2016 till September 2016 that has further supported the Authority's point of view and clearly indicates coverage gaps, even in urban areas located in major towns.

The Authority is of the opinion that there exists no contradiction in respect of its consideration of the Applicant's application for additional spectrum in a lower spectrum band to provide 3G services taking into account the targets set out in the Harambee Prosperity Plan to provide broadband services to 80% of the population which may or may not be living in sparsely populated areas.

Consideration of additional spectrum use licences in the same band as existing spectrum use licences is based on the efficient use of the existing licence whilst the consideration of spectrum use licence in a spectrum band not previously applied for is based on network rollout to expand services or provision of new services. The consideration of the award of spectrum in the E-GSM band has therefore, been linked to the targets contained in Harambee Prosperity Plan and the rollout plans in respect of this spectrum band as submitted by the Applicant.

The consideration of the application for additional spectrum in the 2100 MHz spectrum band, on the other hand, was linked to a list of envisaged upgrades to existing 3G sites as submitted by the Applicant, whether or not the existing spectrum licence is utilised efficiently and whether the existing amount of spectrum assigned is sufficient for this purpose in the opinion of the Authority.

5.4 The Applicant strongly disagrees that 2100 MHz spectrum is distributed fairly between licensees

The Gazette Notice as published on 10 August 2016 states very clearly that fair distribution is based on the cumulative amount of spectrum assigned to each licensee in the 900 MHz, 1800 MHz and

2100 MHz spectrum bands, respectively. The current spectrum use licences is detailed in table 1 below.

Table 1:

Spectrum band	Mobile Telecommunications Limited (The Applicant)	Telecom Namibia Limited	Paratus Telecommunications (Pty) Ltd
E-GSM	2x 5 MHz (awarded 30 June 2016)	None	None
900 MHz	2x 13 MHz	2x 12 MHz (2x 2 MHz awarded 15 May 2016)	None
1800 MHz	2x 35 MHz	2x 20 MHz	2x 19.8 MHz
2100 MHz	2x 15 MHz	2x 10 MHz	2x 20 MHz*
Total	2x 68 MHz	2x 42 MHz	2x 39.8 MHz

*Paratus Telecommunication (Pty) Ltd submitted an application for withdrawal due to the fact that their vendor cannot provide equipment in this band. The application is under consideration.

It should be noted that the Applicant holds 39% more spectrum on a cumulative basis than any other licensee to provide mobile telecommunications services utilising 2G, 3G and 4G technologies (taking into account the latest award of 2 x 5MHz in the E-GSM spectrum band on 30 June 2016).

The Act and regulations provide for a technology and service neutral licencing regime meaning that 3G and 4G can be used in any IMT spectrum band. Both Telecom Namibia Limited and the Applicant provide 3G services whilst Paratus Telecommunications Limited intends to provide LTE-Advanced (4G) services in the 2100 MHz band. As per the technical requirements in respect of spectrum requirements for 3G and 4G services respectively, 3G services can be offered with as little as 2x 5MHz spectrum assignments whilst 4G services require 4x 5MHz spectrum, hence the difference in assignment between the licensees in the 2100 MHz spectrum band. Similarly both the Applicant and Telecom Namibia Limited were awarded 4x 5MHz spectrum for LTE services in the 1800 MHz band as was applied for at that time.

The Authority is therefore of the opinion that the Applicant's statement that spectrum is not fairly assigned has no substance. The benchmarking study undertaken by the Authority during the consideration process of the initial application has also shown that other regulators assign spectrum based on fair distribution between licensees linked to the type of services offered and not on the number of subscribers served by each licensee.

In response to the other issues raised made by the Applicant, the Authority responds as follows-

- (i) Paratus Telecommunications (Pty) Ltd was awarded 2 x 20 MHz in the 2100 MHz and 2 x 19.8 MHz in 1800 MHz spectrum for LTE services (4G) in accordance with technical requirements to provide the said services as contained in ETSI TR 136 913 v10.0.0 (2011-04) and 3GPP TR 36.913 as published in Government Gazette No. 5745, Notice No. 191 dated 29 May 2015. The Authority was not in a position to consider a further 0.2 KHz in the 1800 MHz band due to the fact that this spectrum is assigned to the Applicant to allow for a guard band between its 2G and 4G services as per technical requirement to operate 2G and 4G services in the same spectrum band.
- (ii) The spectrum use licences were fairly awarded taking into account that this was a new entrant to the mobile telecommunications market and that Telecom Namibia Limited and the Applicant already held a 2 x 40 MHz and 2 x 63 MHz to provide mobile telecommunications services in Namibia at that time.

An application for reconsideration to award 2x 30 MHz in the 2100 MHz spectrum band was subsequently declined as published in Government Gazette No. 5836, General Notice No. 440 dated 24 September 2015. The allegation on the utilisation of the spectrum allocated to Telecom Namibia Limited is noted and the Authority will engage Telecom Namibia Limited directly to monitor compliance with its license conditions in this regard. This issue however, has no bearing on the matter at hand.

Similarly Telecom Namibia Limited and the Applicant were awarded 2x 20 MHz for LTE (4G) services as per technical requirements in the 1800 MHz band when they launched these services into the market. It seems the Applicant only finds technical requirements unjustifiable when it pertains to applications of another licensee.

Neither the Applicant nor Telecom Namibia utilises the 2100 MHz band to provide LTE (4G) services but are providing 3G services instead.

As stated by the Applicant, Paratus Telecommunications (Pty) Ltd has submitted an application for withdrawal for the 2 x 20 MHz in the 2100 MHz spectrum band in compliance with regulation 10(2) of the Regulations Regarding Licensing Procedures for Telecommunications and Broadcasting Service Licences and Spectrum Use Licences as published in Government Gazette No. 4785, Notice No. 330 dated 29 August 2011. The Authority is currently considering this application for spectrum withdrawal and has published the said application for public comments in Government Gazette No. 6074, General Notice No. 258 dated 18 July 2016.

However, the Authority sees no relationship between the application for reconsideration submitted by the Applicant and the application for withdrawal submitted by Paratus Telecommunications (Pty) Ltd due to the fact that the reason for declining Applicants application was not due to a lack of spectrum in the band but the inefficient use of already assigned spectrum in the same band.

5.5 E-GSM can be used in urban areas not losing sight of technical references

From the Applicant's statements made in its application for reconsideration, it seems that the Applicant has misinterpreted the Authority's decision in respect of the utilisation of the newly awarded 2 x 5MHz spectrum awarded in urban areas.

The Authority did not give a directive to the Applicant that it must utilise the newly assigned spectrum in the E-GSM band in *lieu* of its existing spectrum use licences in the 2100 MHz band or placed any prohibition on the utilisation of the aforementioned spectrum as per the Authority's decision published in Government Gazette No. 6092, General Notice No. 323 dated 10 August 2016 that read as follows-

“that the award of spectrum use licences to Mobile Telecommunications Limited on a national basis for-

- a. 925-930 MHz paired with 880-885 MHz”*

The Authority is of the opinion that this is a business decision to be made by the Applicant and the utilisation of the aforementioned spectrum has no bearing on the Authority's decision that existing spectrum use licences in the 2100 MHz band is not efficiently utilised.

5.6 It is unjustifiable that allocating the additional 2100 MHz spectrum for the deployment of the 4th carrier to the Applicant will act as a barrier to a new entrant based on the Applicant's reasoning that spectrum should be allocated on the basis of existing subscribers and that the reserving of spectrum for a possible new entrant contradicts Regulation 6(1) of the Regulations regarding Licensing Procedures for Telecommunications and broadcasting service licences and spectrum use licences

The Authority wishes to emphasize that it does not share the same viewpoint as the Applicant that spectrum should be assigned based on the number of subscribers. The benchmark study supports the Authority's viewpoint to create a level playing field for existing and new players in the market.

The Authority is mandated with the promotion of competition in the market as per the objectives of the Act as well as all aspects related to the management of spectrum to make provision for promotion of competition in that such new licensees will require spectrum to provide electronic communications services.

Further thereto, the Authority notes that the Applicant incorrectly states the provisions of regulation 6(1) of the Regulations regarding Licensing Procedures for Telecommunications and Broadcasting Service Licences and Spectrum Use Licences implying that spectrum is to be assigned on a first come first serve basis. Such a principle will pre-empt the decision to be rendered by the Authority without an analysis and consideration of the application.

Regulation 3(3) and 6(1) of the aforementioned regulations reads as follows-

"3(3) Spectrum use licence applications, where the Authority, in its sole discretion, determines that spectrum use licences will be processed on a first come, first served basis"

And

"6(1) Any person intending to use spectrum, where the Authority, in its sole discretion, determines that spectrum use licences will be processed on a first come, first served basis, must submit to the Authority, an application for a spectrum use license in the form made available by the Authority."

The regulations therefore, clearly sets out that applications will be processed in date order as per the Authority's internal and regulatory processes, which process is concluded by the Authority's decision to award or decline in whole or in part an application, convey the decision to the Applicant. No regulation implies automatic approval of any application.

The following applications for spectrum in the 2100 MHz has been processed by the Authority-

- a) Application by MTC for 4 x 5MHz dated 17 June 2011;
- b) Application by Paratus Telecommunications for 4 x 5MHz dated 13 November 2013; and
- c) Application by MTC for 2 x 5MHz dated 29 April 2015.

The Applicant's stance that procedural compliance is a ground for reconsideration is based on an inaccurate interpretation of the regulations and without substance in that all applications were processed in order of date of submission of the application.

5.7 That the Applicant detected inaccuracies in respect of the benchmarking done with other markets

The Authority notes the Applicant's comments in respect of the spectrum holding of Safaricom and reference made to the acquisition of Essar Telecom Kenya Limited t/a yuMobile in January 2015.

As per the Communications Authority of Kenya website dated 11 October 2016 and official register of assigned spectrum to licensees neither Safaricom nor Essar holds any spectrum in the 800 MHz band. Safaricom and Essar Telecom Kenya Limited are still listed separately. Should the Authority apply the same calculation as the Applicant by adding the spectrum holdings of Safaricom and Essar Telecom Kenya Limited together it will amount to the following-

Table 2:

Spectrum band	Mobile Telecommunications Limited (The Applicant)	Safaricom and Essar Telecom (cumulative)
E-GSM	2x 5 MHz (awarded 30 June 2016)	None
900 MHz	2x 13 MHz	2x 17.5 MHz
1800 MHz	2x 35 MHz	2x 20 MHz
2100 MHz	2x 15 MHz	2x 10 MHz
Total	2x 68 MHz	2x 47.5 MHz

Both entities utilise 2100 MHz spectrum to provide 3G services at present. The Applicant further states that it is serving 7,094 subscribers per 3G sites compared to Safaricom serving 10,554 subscribers per 3G site based on Safaricom's 2016 annual report. It should be noted that Safaricom not only serves 33% more customers than MTC per 3G site but also utilises 33% less spectrum than the Applicant to do so in that Safaricom only holds 2x 10 MHz compared to the Applicant's 2x 15 MHz in the 2100 MHz spectrum band.

The Applicant further noted that in its opinion the data usage of a Safaricom subscriber is likely to be lower than that of a subscriber of the Applicant.

The Authority however, has based its benchmarking exercise on a number of network operators in different African countries, not only Kenya, and remains of the ardent view that the applicant has sufficient spectrum to provide services to its customers.

The Authority further notes the Applicants comments in respect of the role spectrum holdings played in the proposed acquisition of Neotel by Vodacom and Vodacom's LTE (4G) network and wish to state as follows-

- a) The Authority does not consider spectrum applications based on increasing the market value of a company;
- b) The application under consideration is for 3G services; and
- c) Therefore, the statements made in respect of Vodacom have no substance or bearing as grounds for reconsideration in respect of the decline of the Applicant's application for additional spectrum to provide 3G services.

Other considerations

Although the Authority, based on analysis on the grounds for reconsideration presented by the Applicant, concluded that the Applicant has failed to proof efficient use in its application for reconsideration, which was the basis for the decline of this application, the Authority also considered consumer interest and the need to put a course of action in place to ensure that the Applicant make efficient use of existing spectrum use licences.

Further consideration was given that the Applicant, as per their submission, already upgraded existing 3G sites from three (3) sectors to six (6) sector sites to increase capacity by utilising their existing spectrum use licence capacity and wish to add an additional network layer to increase throughput speed utilising the additional spectrum applied for.

Roll out obligations

It was therefore concluded to impose rollout obligations consisting of network upgrades pertaining to existing 3G sites in the 2100 MHz spectrum bands and implementation of mini sites where approval had been granted by the local authority as a pre-requisite for the award of the spectrum use licence applied for in the 2100 MHz spectrum use licence.

The Authority gave notice to the Applicant of its intention to impose rollout obligations on 28 October 2016. The aforementioned rollout obligations to ensure efficient use of spectrum by Mobile Telecommunications Limited in respect of the spectrum use licence for 1920-1935 MHz paired with 2110-2125 MHz as well as the application for 1935-1940 MHz paired with 2125-2130 MHz is listed hereunder-

- (a) Confirmation that the 21 new mini sites mentioned in their submission dated 5 August 2016 will be implemented in the 2100 MHz spectrum band and provide the site location of each of the aforementioned sites;
- (b) Implementation of the 21 new mini sites mentioned in their submission dated 5 August 2016 within six(6) months from the date of the decision of the Authority in respect of the application for reconsideration submitted by Mobile Telecommunications Limited;
- (c) Implementation of 144 site upgrades in the 2100 MHz band as listed in the network rollout plan submitted by Mobile Telecommunications Limited on 21 August 2016 via email within a period of twelve (12) months from the date of the decision of the Authority in respect of the application for reconsideration submitted by Mobile Telecommunications Limited ; and
- (d) That preference must be given to upgrading of 3G sites outside of Windhoek, Walvis Bay and Swakopmund given the fact that Mobile Telecommunications Limited is excluding the majority of its subscriber base from utilising its 4G network by providing only postpaid products for 4G customers.

MTC response to the Authority's Roll out obligations

- (a) In its letters dated the 03rd of November 2016 and the 09th of November 2016 respectively, Mobile Telecommunication Limited responded to the Authority's notice of intention to impose roll out obligations as stated in the Authority's letter dated the 28th of October 2016 as follows:
- (b) Mobile Telecommunications Limited confirmed that the 21 new mini sites mentioned in their submission dated 5 August 2016 will be implemented in the 2100MHz spectrum band. Mobile Telecommunications Limited attached a list of the mentioned 21 new mini sites as Annex I of their letter.
- (c) Mobile Telecommunications Limited stated that it should be noted that even though they has EIA, the site leases are being advertised by the Municipalities in the newspapers (Omongo & Auasblick) something which is coming as a surprise to Mobile Telecommunications Limited as it is a new requirement from their side. Mobile telecommunications limited reiterated that they remain depended even though we are eager to start building.
- (d) Mobile Telecommunications Limited confirmed that it shall adhere to this proposed obligation to be imposed as far as the site leases are agreed upon in time.
- (e) Mobile Telecommunications Limited confirmed that the Implementation of 144 site upgrades in the 2100 MHz band as listed in the network rollout plan submitted by Mobile Telecommunications Limited on 21 August 2016 via email within a period of twelve (12) months from the date of the decision of the Authority in respect of the application for reconsideration.
- (f) With regard to the condition that preference must be given to upgrading of 3G sites outside of Windhoek, Walvis Bay and Swakopmund given the fact that Mobile Telecommunications Limited is excluding the majority of its subscriber base from utilising its 4G network by providing only postpaid products for 4G customers, Mobile Telecommunications Limited

stated that the list of Namibian cites where MTC currently covers 4GLTE are Gobabis, Grootfontein, Hetiesbay, Hosea Kutako, Katima Mulilo, Keetmanshoop, Langstrand, Okahandja, Ondangwa, Ongwediva, Oshakati, Otjiwarongo, Rehoboth, Rundu, Rosh Pina, Swakopmund, Tsumeb, Outapi, Walvisbay and Windhoek.

- (f) Mobile Telecommunications Limited further stated there are limited prepaid subscribers who have LTE enabled services due to the high costs of LTE devices. Customers with LTE enabled devices will deplete their data bundles instantly and then the bill shock will generate the same issues as in the past where the Authority took public information of an investigation, rather than following what ICASA did in South Africa by suggesting that consumers not blame the operators. Mobile Telecommunications Limited finally stated that a 4G prepaid smartphone is being prepared and is will be introduced into the market within the next 6 months.
- (g) Mobile telecommunications Limited therefore accepted the Authority's position that preference must be given to upgrading of 3G sites outside Windhoek, Walvis Bay and Swakopmund and stated that it plans to expand 3G coverage to reach 60% of the population by end of the year 2017.

6. OTHER INFORMATION AND ALLEGATIONS MADE BY THE APPLICANT

The Applicant provided further information in respect of its operations as well as levying allegations against the consideration and decision making process of the Authority. These aspects of the application for reconsideration are dealt with hereunder.

6.1 Investments made by the Applicant

The Authority notes the various investments made and projects planned by the Applicant. The Authority has not in anyway-

- (i) Prohibited the Applicant from investing in the industry, but in fact encouraged such investment with the award of additional spectrum in the E-GSM band to provide 3G services in areas currently provided with 2G services or no services at all. This decision is aligned with the objects of the Act to promote local investment and the targets set out in the Harambee Prosperity Plan; or
- (ii) Prohibited the Applicant to add more sectors to its existing sites and utilise any other network implementation to optimise its network and utilise its existing spectrum use licences efficiently. This is entirely a business decision for the Applicant to make.

The Authority notes that the Applicant will implement twenty one (21) mini sites are per authorisation received from the relevant local authority and remains of the opinion that it will aid the Applicant in the efficient utilisation of spectrum resources. It was at no time stated that the implementation of small sites is the only solution but presented as an option available to the Applicant.

6.2 MTC's opinion that the Authority applied disproportionate principles to decline MTC's spectrum applications versus that of other operators

The Authority wishes to provide the following response with regards to the comparisons made with the Paratus application.

The Applicant alleged that the Authority approved the spectrum use licence application of Paratus Telecommunications (Pty) Ltd in six (6) months.

- (i) The application submitted by Paratus Telecommunications (Pty) Ltd was considered over a period of seventeen (17) months in that the application was submitted 13 November 2013 and the final notice was published in the Government Gazetted dated 29 May 2015. The aforementioned notice also reflects the date of application. The Gazette notice dated

10 November 2014 referred to by the Applicant constitute the notice in respect of public comments and does not represent the date that the applicant was submitted to the Authority.

Furthermore the Applicant may request the public inspection file at any time from the Authority's Legal Advice department should the Applicant wish to verify information in respect of any application before levying false accusations at the Authority.

The Authority also states that the same rationale was used in the consideration of this application taking into account that Paratus Telecommunications was a new entrant to the mobile services industry with the intention to provide LTE (4G) services than the rationale applied when the applicant applied for spectrum to provide mobile services prior to their launch in 1995 and subsequent launches of 3G services in the 2100 MHz band and LTE (4G) services in the 1800 MHz band. In all instances the applicants submitted applications for spectrum to launch new services not previously offered.

Further thereto the Authority also considered an application from Telecom Namibia Limited in the 900 MHz spectrum band for additional spectrum which application is similar to the application for additional spectrum in the 2100 MHz spectrum band submitted by the Applicant. Both these applications were considered based on efficient use of existing spectrum use licences in the same spectrum band applied for.

The Authority is consistent in its basis of consideration of spectrum use licences based on the purpose of the application as stated on the application by the Applicant in each instance and the supporting documentation provided.

The Authority could not consider the assignment of 20 MHz to Paratus Telecommunications (Pty) Ltd in the 1800 MHz band in that it will result in an overlap with the spectrum use licence of the Applicant in the same band resulting in possible interference and degradation of service quality. The Authority is of the opinion that the Applicant has the necessary technical expertise to make this analysis for themselves, given that they have knowledge of spectrum use licences awarded to them, and not question the decision of the Authority in this regard.

The Authority is therefore of the opinion that the allegations made by the Applicant is nothing more than an attempt to discredit the Authority and objecting to spectrum use licences being awarded to Paratus Telecommunications (Pty) Ltd although the Applicant has no objection if spectrum use licences are awarded to Telecom Namibia Limited.

6.3 The Applicant is of the opinion that CRAN is not acting in an appropriate manner that serves in the public interest and industry.

The Applicant is of the opinion that the Authority had no reservations in respect of efficient use of spectrum based on its oral submission on 14 August 2015, and that MTC agreed to rollout out conditions imposed provided that spectrum applied for in 900 MHz and 2100 MHz will be approved.

The Authority wishes to state that this is entirely the viewpoint and interpretation of the Applicant. The Authority did not make any statement at the hearing that the rollout obligations are conditional to the approval of spectrum in the 900 MHz (E-GSM) and 2100 MHz spectrum band.

The Authority does not engage in bartering with the Applicant when considering a licence application. The Authority's notice of its intention to impose rollout obligations in respect of its consideration of the application for spectrum in the 900 MHz (E-GSM) spectrum band dated 7 February 2016 bears reference.

Delays in consideration of this application was largely instituted by the Applicant themselves in submitting further correspondence to support their application at various intervals and failing to respond to correspondence from the Authority within the timelines set by the Authority. The Authority is obliged to respond the any correspondence received from the Applicant and to consider the

application as a whole from date of application to the date of the last information of correspondence received from the Applicant which date was 20 April 2016 together with a request for a further meeting with the Authority on 17 May 2016.

7. DECISION

In terms of section 31 of the Act and the Regulations regarding Licensing Procedures for Telecommunications and Broadcasting Service Licences and Spectrum Use Licences, the Authority herewith -

- (i) Reconsider its decision to decline the application for an additional 2 x 5MHz in the 2100 MHz spectrum band submitted by Mobile Telecommunications Limited based on the decision made by the CRAN Board of Directors on 30 June 2016 ;
- (ii) Award of spectrum use licences to Mobile Telecommunications Limited on a national basis for-
 - a. 1935-1940 MHz paired with 2125-2130 MHz;
- (iii) The licence is awarded subject to the Communications Act, 2009 (Act No. 8 of 2009) and the Regulations Regarding Licence Conditions for Spectrum Use Licensee as published in Government *Gazette* No. 5354, General Notice No. 469, dated 2 December 2013;
- (iv) The licence is awarded on condition that Mobile Telecommunications Limited provide confirmation that the 21 new mini sites mentioned in their application for reconsideration dated 5 August 2016 will be implemented in the 2100 MHz spectrum band and provide the site location of each of the aforementioned sites;
- (v) The licence is awarded on condition that Mobile Telecommunications Limited implement the abovementioned 21 new mini sites within six (6) months from the date of the decision of the Authority;
- (vi) The licence is awarded on condition that Mobile Telecommunications Limited implement the 144 site upgrades in the 2100 MHz spectrum band as listed in the network rollout plan submitted by Mobile Telecommunications Limited on 21 August 2016 within a period of twelve (12) months from the date of the decision by the Authority;
- (vii) The Licence shall not lapse within six (6) months from date of issuance, and Regulation 6(4) & (5) of the spectrum use licence conditions are amended in as far as it is applicable to Mobile Telecommunications Limited to read as follows;
 - a. The spectrum use licence issued to Mobile Telecommunications Limited in respect of telecommunications services shall lapse twelve (12) months after date of issuance, if the Authority is satisfied that Applicant has failed to commence to carry on services in respect of which it is licenced in accordance with the rollout obligations imposed;
- (viii) In the event that Mobile Telecommunications Limited fails to roll out the provision of telecommunications services as per the rollout obligation imposed the Authority will follow the process as contained in regulations 6(5) (6) and (7) of the Spectrum Use Licence Conditions. The Authority will enforce the licence conditions in terms of Sections 114 – 116 of the Act; and
- (ix) In the event that Mobile Telecommunications Limited do not accept the aforementioned licence conditions, the application for reconsideration is declined and the decision taken by the Authority to decline the application for 1935-1940 MHz paired with 2125-2130 MHz as taken on 30 June 2016 is upheld.

F. KISHI
CHAIRPERSON OF THE BOARD OF DIRECTORS
COMMUNICATIONS REGULATORY AUTHORITY OF NAMIBIA
