



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

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CONTENTS

Page

GENERAL NOTICE

No. 178	Communications Regulatory Authority of Namibia: Regulations prescribing the provision of universal service by Telecommunications Service Licensees: Communications Act, 2009	1
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General Notice

COMMUNICATIONS REGULATORY AUTHORITY OF NAMIBIA

No. 178

2018

REGULATIONS PRESCRIBING THE PROVISION OF UNIVERSAL SERVICE BY TELECOMMUNICATIONS SERVICE LICENSEES: COMMUNICATIONS ACT, 2009

The Communications Regulatory Authority, in terms of section 57 read with sections 23, 41 and 129 of the Communications Act, 2009 (Act No. 8 of 2009), provides for the making of these regulations set out in this Schedule.

F. KISHI
CHAIRPERSON
COMMUNICATIONS REGULATORY AUTHORITY OF NAMIBIA

SCHEDULE

PART 1

Definitions

1. In these regulations, unless the content indicates otherwise, any word or -expression to which a meaning is assigned in the Act, shall have the same meaning and –

“Act” means the Communications Act, 2009 (Act No. 8 of 2009)

“emergency centres” means centres that facilitate the carrying out of emergency communications to emergency organisations;

“emergency organisations” means-

- (a) any police force;
- (b) a private or public health organization rendering ambulance services;
- (c) any traffic authority;
- (d) a fire brigade;
- (e) a coast guard; or
- (f) any other organization providing assistance to the public in case of emergency;

“Fund” means the Universal Service Fund as defined in section 1 of the Act;

“health facility” means a health facility as defined in section 1 of the Hospitals and Health Facilities Act, 1994 (Act No. 36 of 1994);

“higher education institution” means any institution established by or under any law or registered as a higher education institution in terms of the Higher Education Act, 2003 (Act No. 26 of 2003);

“hospital” means a hospital as defined in section 1 of the Hospitals and Health Facilities Act, 1994 (Act No. 36 of 1994);

“ICT” means information and communications technology;

“licensee” means a person to whom a telecommunications service license has been issued in terms of section 38 of the Act or deemed to hold such licence as contemplated in terms of section 45 of the Act;

“market gap analysis” means the process of identifying and evaluating the requirements of a geographic area, market segment or target population and possible solutions to meet these requirements, and includes the identification of the true access gap zone and the smart subsidy zone;

“school” means any primary, secondary or special school as defined in the Education Act, 2001 (Act No. 16 of 2001);

“smart-subsidy zone” means a specific geographic area, a segment of the Namibian population or other segment of the telecommunications market, which is unable to use telecommunication services and may require a subsidy to mitigate commercial risks, making the area or segment, as the case may be, more attractive to commercial operators;

“status quo analysis” means an analysis of the current state of the ICT industry in a specific geographic area, a segment of the Namibian population or other segment of the telecommunications market including universal access and universal service provision;

“true access gap zone” means a specific geographic area, a segment of the Namibian population or other segment of the telecommunications market that is beyond the smart subsidy zone and commercial viability;

“universal access” means the availability, affordability and accessibility of telecommunication services to the general public through public access points in accordance with the processes and criteria set out in these regulations;

“universal service provision” means the extent of universal access to electronic communications services that are provided at affordable prices and identified by following the processes and criteria provided for in these Regulations for universal services; and

“website” means the Authority’s official website with the uniform resource locator, www.cran.na.

Submission of documents to the Authority

2. Whenever documents are required to be delivered to the Authority, such documents must be delivered physically or electronically –

- (a) hand-delivered to an employee of the Authority at its principal place of business, being Communication House, No. 56 Robert Mugabe Avenue, Windhoek;
- (b) by post mailed to Private Bag 13309, Windhoek;
- (c) by electronic mail sent to operations@cran.na;
- (d) by facsimile faxed to +264 61 222 790; or
- (e) in any other manner or to any other address specified in writing by the Authority from time to time.

Minimum telecommunications services to be made available by licensee

3. The following telecommunications services are the minimum set of services that a licensee must make available-

- (a) fixed, mobile or broadband data services; or
- (b) fixed and mobile voice services; or
- (c) any electronic communications service that the Authority determines in writing.

Telecommunications facilities and services

4. (1) A licensee must, subject to its licence conditions, and as a minimum number make the following telecommunications facilities or services available to a community with a size of not less than fifty persons:

- (a) The services referred to in regulation (3);
- (b) infrastructure and facilities for the provision of the services referred to in regulation 3;
- (c) equipment and end user devices supporting the provision of the services referred to in regulation 3; and
- (d) end-user training and skills development.

(2) Notwithstanding sub-regulation (1) but subject to the availability of money in the Fund (1), the Authority may provide subsidies to a licensee to make the services referred to in regulation 3 available in accordance with the requirements set out in these Regulations to a community with less than 50 persons but consisting of -

- (a) persons with disabilities;
- (b) elderly persons and other recipients of social grants; and
- (c) any other categories of users able to justify the need for universal service access on merit.

Telecommunications services and equipment

5. (1) A licensee must-

- (a) make the services referred to in regulation 3 available to; and
- (b) have available the equipment and end-user devices, duly type-approved by the Authority, necessary to support the provision of the services referred to in paragraph (a) in order to provide in the telecommunications needs of,

the categories of communities and customers specified by sub-regulation (2).

(2) The categories of communities and customers contemplated by sub-regulation (1) include-

- (a) small and medium enterprises and other informal business entities in both urban and rural communities;
- (b) non-governmental organizations engaged in promoting democratic participation and social welfare;
- (c) workers and communities in mines, farms, nature reserves and conservancies;
- (d) registered and recognised organisations representing persons with disabilities; and
- (e) households in both urban and rural areas.

Telecommunications services available to the public

6. (1) A licensee must make the services referred to in regulation 3 available to the general public or the category of place that serves the needs of the public or that are available for use by the public specified by sub-regulation (2).

(2) The category of place contemplated by sub-regulation (1) includes a school, higher education institution, library, hospital, clinic, health facility, or any similar public institution.

Deployment of technology

7. The Authority may within such period as the Authority deems fit require a licensee to provide periodic reports and returns regarding universal service provision and universal access and such other information concerning the implementation of these Regulations stipulated by the Authority in writing.

Administration of Fund

8. (1) The Authority must, to facilitate the administration of the Fund, open a bank account with a banking institution as defined in section 1 of the Banking Institutions Act, 1998 (Act No. 2 of 1998),

(2) The universal service levy referred to in section 56(2) of the Act and any other monies allocated for the provision of universal services must be paid into the account referred to in sub-regulation (1).

(3) The account referred to in sub-regulation (1) must be-

- (a) a separate account from the account established by the Authority for its operations;
- (b) used to defray the expenses directly relating to the administration, control and accounting of the Fund;
- (c) used to pay subsidies to licensees to subsidize universal service provision or the provision of infrastructure necessary for such service provision.

(4) The Chief Executive Officer of the Authority is responsible for the accounting of payments made to and from the Fund and for that purpose must keep or cause the keeping of proper accounts and records of the account referred to in sub-regulation (1) as are necessary to represent fairly the state of affairs of the Fund.

(5) The account referred to in sub-regulation (1) must be audited annually in the manner contemplated by section 58(2) of the Act.

Universal service department

9. (1) In order to ensure proper management and separate accounting of the Fund, and the proper management of universal access and service projects, the Authority has established a universal service department as part of its organizational structure.

(2) The universal service department must-

- (a) strive to promote the goals of universal access and universal service provision as propounded in the Universal Service Policy as published in Government Gazette No. 5169, General Notice No. 82 on 08 April 2013 and the Act;
- (b) regularly conduct research into and keep abreast of national and international ICT developments and of universal access and universal service provision initiatives;
- (c) work closely with other departments of the Authority to reach its objective in monitoring and evaluating compliance with universal access and universal service provision obligations of relevant licensees;
- (d) request from relevant licensees any information, documentation or reports, as may be necessary to perform its functions;
- (e) implement business processes including but not limited to the preparation of bid or tender documents, invitations to bid or tenders and communicating the outcomes of tender or bid processes;
- (f) conduct project management for the implementation and completion of contracts or any projects as may be approved by the Authority; or

- (g) cause the Authority to initiate legal or other proceedings in instances where licensees fail to comply with their obligations in terms of the Act, these regulations or any other applicable laws relating to universal access and service.

(3) In conducting its research and monitoring functions, the universal service department, in conjunction with other departments, must conduct the following research:

- (a) bi-annual data collections evaluating the extent to which universal service provision has been achieved;
- (b) a market gap analysis inclusive of status quo analyses able to identify the true access gap and the smart-subsidy zone, which analysis must be subjected to a public consultation process.

(4) The market gap analysis referred to in sub-regulation (3)(b) must be conducted within 6 months of publication of these Regulations, and at least once every three years thereafter.

(5) The final reports of the bi-annual data collections and market gap analysis referred to in sub-regulation (3) must be made available to the public and should be used to implement the processes necessary to address any lack of universal service provision identified therein.

(6) The Authority must review the scope of universal service provision after three years following the completion of a market gap analysis.

Implementation of Fund projects

10. The universal service department is responsible for project management of every accepted tender proposal and allocation of subsidies related to universal service provision, and particularly to –

- (a) ensure compliance by the licensee with the agreement concluded in terms of regulation 11(12) including adherence to time frames and submission of reports;
- (b) inform the Authority timeously of any instances of non-compliance;
- (c) conduct independent assessment of compliance by licensee;
- (d) regularly assess whether the implemented project has had the impact as envisaged by the strategic plan of the Authority and the universal services department.

Fund disbursements and tender procedures

11. (1) Monies from the Fund may only be disbursed-

- (a) upon approval by the Chief Executive Officer for the payment of expenses connected to the administration, control and accounting of the Fund;
- (b) upon a specific order by the Authority in terms of section 57(3) of the Act;
- (c) upon the award of a tender or bid after the Authority has invited tenders or bids by notice in the *Gazette* and after following a competitive tender process for any purpose related to universal service provision;
- (d) upon the award of a subsidy in terms of these regulations; or

- (e) for a process related to universal service provision and access to ICT if in any particular case, the Authority on good grounds deems it impracticable or inappropriate to invite tenders.
- (2) When awarding tenders and subsidies from the Fund, preference may be given to projects designed to address the smart subsidy zone.
- (3) Funds referred to in paragraphs (c) and (d) of sub-regulation (1) must be disbursed upon the completion of a competitive tender process as provided for in the Authority's Policy and Procedures Manual on Procurement Management, publicly available on the Authority's website.
- (4) The tender committee as defined and referred to in the Authority's Policy and Procedures Manual on Procurement Management is responsible for tender processes contemplated in these regulations.
- (5) In addition to the provisions contained in the Authority's Policy and Procedures Manual on Procurement Management, the tender process for the disbursement of funds from the Universal Service Fund requires the following procedures:
- (a) The Authority must publish in the *Gazette* and in at least two newspapers circulated throughout Namibia a request for tenders, including the tender requirements and information on the period within which such applications are to be made and the documents required by the universal service tender committee to select potential bidders;
- (b) If the request for tenders is made in terms of section 57(7) of the Act, such request must contain at least the following information, where applicable:
- (i) instructions to bidders for preparing tender proposals;
- (ii) technical and quality related characteristics of the goods to be procured or the services to be rendered or the nature of the rights to be acquired or granted, which may include technical specifications, plans and drawings;
- (iii) clarification on whether the pricing proposal and technical proposal must be submitted separately;
- (iv) the manner in which the proposals in response to the tender has to be submitted, as well as the place and closing date for the submission of tenders;
- (v) the period during which the tender proposals are in effect;
- (vi) tender security to be furnished and conditions for its refund; and
- (vii) public opening of bids.
- (6) The Authority may by notice in the *Gazette* stop a process of competitive bidding before the process has been completed.
- (7) The tender committee may not consider a tender proposal unless it complies with or does not materially alter or depart from all the characteristics, terms, conditions and other requirements set out in the request for tenders and the requirements set out in these regulations and the Authority's Policy and Procedures Manual on Procurement Management.

(8) The tender committee may at any time request further information from any bidder to clarify any matter related to the tender proposal, in such manner as may be determined by the committee in the examination, evaluation and comparison of tender proposals.

(9) If the bidder fails to comply with a request in terms of sub-regulation (8) or if the bidder resorted to corrupt practices to influence the committee in the selection of the tender, the committee may decide not to consider the bidder's tender proposal, provided that all the reasons for not considering a tender proposal are kept on record.

(10) All bidders must be notified in writing of the acceptance or rejection of their tender proposals and upon request must be furnished with the reasons for the tender committee's decision.

(11) All bidders must be informed of the name of the bidder whose tender proposal was accepted.

(12) Within 30 days from the date on which the bidder was notified of the acceptance of a tender proposal the Authority must conclude a written agreement with the bidder.

(13) The written agreement must include, but is not limited to, the following express requirements –

- (a) baseline information;
- (b) measurable deliverables;
- (c) timelines;
- (d) regular reporting requirements;
- (e) the conclusion of a service level agreement, where applicable;
- (f) repair and maintenance obligations, where applicable;
- (g) training services, where applicable;
- (h) payment schedules based on achievement of project deliverables;
- (i) monitoring and evaluation requirements;
- (j) penalty clauses; and
- (k) quality of service requirements, where applicable.

(14) The tender committee may withdraw the acceptance of a tender and accept the tender of another bidder or invite new tenders if the successful bidder fails to–

- (a) within 30 days after acceptance of a tender, enter into an agreement with the Authority, unless such period is extended by agreement between the Authority and the bidder, or
- (b) furnish security for the performance of the agreement, when required.

(15) After a tender award has been made upon completion of the tender process, any person may during normal business hours examine the applications and proposals received by the Authority in response to a tender request as well as the list of bidders and cost offers in respect of the tenders, and copies may be made thereof against payment of a fee determined by the Authority.

Subsidies for universal service

12. (1) Subject to the availability of money in the Fund, as well as the current projects and priorities of the Fund as determined by the Authority, only licensees are eligible to receive subsidies from the Fund, subject to the Fund's projects and priorities determined by the Authority.

(2) The awarding of subsidies by the Fund to licensees embarking on projects aimed at universal service provision and universal access to-

- (a) schools and higher education institutions;
- (b) state hospitals and state health facilities;
- (c) emergency centres;
- (d) registered and recognised organisations representing persons with disabilities;
- (e) and any other projects as determined by the Authority,

will enjoy priority.

Penalties

13. (1) Any licensee who fails to-

- (a) comply with its obligations set out in regulation 3 to 7;
- (b) submit any report, return or provide any information as required by the Authority within the period determined by the Authority in terms of these Regulations or, if such period has been extended by the Authority under regulation 14, within the extended period,

is guilty of contravening these Regulations.

(2) Where a licensee is guilty of contravening these Regulations in accordance with subregulation (1), the Authority may-

- (a) issue to a licensee a written warning and final date for submitting outstanding reports, returns or information, as the case may be;
- (b) require the licensee to implement a remedial plan within a time frame agreed with the Authority and submit additional information about the manner in which the licensee must comply with the regulations referred to in subregulation (1)(a);
- (c) impose a penalty of not more than N\$10,000.00 for each day during which a licensee fails to submit reports, returns or information as required by the Authority in accordance with subregulation (2)(b);
- (d) impose a penalty of not more than N\$500,000.00 for submitting or causing the submission of false or misleading information to the Authority;
- (e) impose a penalty not exceeding N\$1,000,000.00 for -
 - (i) each contravention of the regulations;

- (ii) each repeated contravention of the regulations,
referred to in subregulation (1)(a);
- (f) impose a penalty not exceeding N\$5,000,000.00 for failure to implement the remedial plan referred to in subregulation (2)(b); or
- (g) take any other measure the Authority regards as reasonable in the circumstances.

(3) Any amount of penalty payable in terms of paragraphs (c), (d), (e) or (f) of subregulation (2) constitutes a debt due to the Authority by the licensee concerned and may be recovered by the Authority by means of proceedings instituted in any competent court.

(4) Notwithstanding the provisions of subregulations (2) and (3), the Authority may, on good cause shown, waive the payment of a penalty or refund the whole or any part of a penalty already paid at its sole discretion.

(5) Before imposing any penalty as contemplated by paragraphs (c), (d), (e) or (f) of subregulation (2), the Authority must give an affected licensee the opportunity to be heard in accordance with the rules of natural justice, whereafter the Authority may-

- (a) decide not to impose any penalty;
- (b) impose such penalty the Authority deems fit.

Request for extension of time

14. (1) If a licensee is unable to comply with any time period set for doing any act or taking any step in connection with its obligations in these regulations, the licensee may request the Authority for an extension of time at least 7 days prior to the time set, or within such other time period agreed by the Authority upon good cause shown.

(2) The Authority will respond to the request referred to in sub-regulation (1) as soon as practicable, and may grant or deny the request, depending on the reasons for non-compliance with the time period in question.
