



# GOVERNMENT GAZETTE

## OF THE

# REPUBLIC OF NAMIBIA

N\$29.60

WINDHOEK - 17 February 2022

No. 7750

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## General Notices

### COMMUNICATIONS REGULATORY AUTHORITY OF NAMIBIA

No. 67 2022

#### REGULATIONS RELATING TO ISSUING OF LICENCES, CATEGORIES AND LICENCING PROCEDURES FOR BROADCASTING SERVICE LICENCES: COMMUNICATIONS ACT, 2009

Under section 129(1) read with section 85 of the Communications Act, 2009 (No. 8 of 2009), the Communications Regulatory Authority of Namibia has -

- (a) made the Regulations set out in the Schedule;
- (b) repealed the Regulations Regarding Licensing Procedures for Telecommunications and Broadcasting Service Licences and Spectrum Use Licences published under General Notice No. 272 of 29 August 2011;
- (c) repealed the Regulations Setting out Broadcasting Service Licence Categories published under General Notice No. 74 of 13 March 2013; and

- (d) repealed the Regulations Regarding Licence Conditions for Class Comprehensive Multiplex and Signal Distribution Service Licences, Multiplex Licences and Signal Distribution Service Licences published under General Notice No. 329 of 19 August 2013.

**H. M. GAOMAB II**

**CHAIRPERSON**

**BOARD OF COMMUNICATIONS REGULATORY AUTHORITY OF NAMIBIA**

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## PART 1

## INTRODUCTORY PROVISIONS

**Definitions**

1. In these Regulations, a word or an expression to which a meaning has been assigned in the Act has that meaning and unless the context otherwise indicates -

“class comprehensive multiplex and signal distribution” means providing an electronic communications network service for signal distribution as well as operation of multiplex equipment for the purpose of delivering broadcasting services;

“commercial broadcasting service” means a broadcasting service operating for profit from advertising revenue and is owned and controlled by private individuals, or by commercial enterprises;

“community broadcasting service” means a broadcasting service which -

(a) is fully controlled by a non-profit association and carried on for non-profit purposes registered in terms of section 21 of the Companies Act, 2004 (Act No. 28 of 2004) or, if it is not registered, is established in terms of a constitution (or other agreement) containing provisions that comply with the effect of the provisions of that section; and

(b) serves a particular community;

“licence” means a broadcasting service licence issued under regulation 6;

“licensee” means a holder of a licence;

“multiplex” means the operation of complex equipment for purpose of delivering broadcasting services;

“Namibian Broadcasting Corporation” means Namibia Broadcasting Corporation as defined by section 1 of the Namibian Broadcasting Act, 1991 (Act No. 9 of 1991);

“public broadcasting service” means -

(a) a broadcasting service provided by the Namibian Broadcasting Corporation; and

(b) an electronic communication network service providing for signal distribution as well as operation of multiplexer equipment for the purpose of delivering broadcasting services;

“signal distribution” means the electronic communications network service where the output signal of a broadcasting service is taken from the point of origin, being the point where such signal is made available in its final content format, from where it is conveyed to any broadcast target area, by means of electronic communications; and

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

**Purpose and application of regulations**

2. (1) The purpose of these regulations is to -

(a) provide for categories of licences;

- (b) regulate the issue, amendment, transfer and renewal of broadcasting service licences; and
  - (c) to provide for the application procedure and criteria of application for licences.
- (2) These regulations apply to all broadcasting service licensees and entities applying for licences.

#### **Submission of documents to Authority**

3. Any document required to be submitted in terms of these regulations is delivered to the Authority by either physical or electronic means to the following addresses -

- (a) by hand 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 by the Authority.

### PART 2

#### BROADCASTING SERVICE LICENCES

##### **Categories of licences**

4. (1) The following are categories of television broadcasting service licences -
- (a) commercial;
  - (b) community;
  - (c) signal distribution;
  - (d) class comprehensive multiplex and signal distribution; and
  - (e) multiplex.
- (2) A licence issued for any category referred to in subregulation (1) is valid for a period of 10 years.
- (3) The following are categories of radio broadcasting service licences that are valid for the duration of five years -
- (a) commercial;
  - (b) community;
  - (c) signal distribution;
  - (d) class comprehensive multiplex and signal distribution; and
  - (e) multiplex.

(4) A broadcasting service licensee in respect of the commercial, community or public broadcasting service categories may provide its own signal service distribution or enter into a contractual agreement with a signal distribution service licensee for signal service distribution.

(5) Despite subregulation (4), a broadcasting service licensee must, in addition to its licence, obtain any required radio frequency spectrum licence from the Authority.

(6) The Namibian Broadcasting Corporation may provide broadcasting services to the public for television broadcasting and radio broadcasting services.

(7) The Authority may issue a licence in terms of subregulation (6) for a period of five years for radio broadcasting or 10 years for television broadcasting service licence.

### **Disqualifications for applying and holding of licences**

5. Pursuant to section 39(6) of the Act, a person does not qualify to apply or hold a broadcasting services licence, if the person -

- (a) is a member of the Board of Directors of the Authority;
- (b) is an employee of the Authority;
- (c) is a member of management cadre of the Ministry administering matters relating to communication;
- (d) has been declared as mentally ill under any law relating to mental health; or
- (e) is an unrehabilitated insolvent.

### **Application for licence and requirements for applications**

6. (1) A person who intends to provide broadcasting service as contemplated in section 85 of the Act must apply to the Authority for a licence to provide broadcasting service.

(2) An application referred to in subregulation (1) -

- (a) is made on a form that substantially corresponds to Form CRAN 2 set out in the Regulations Prescribing Forms for Applications published under General Notice No. 328 of 19 August 2013;
- (b) is submitted to the Authority;
- (c) in addition to the requirements set out in section 85 of the Act, must indicate -
  - (i) the full and official name of the applicant, and if the applicant is a juristic person, the registration number of that person;
  - (ii) the name of a contact person responsible for liaison with the Authority on issues regarding to these Regulations and the following contact details of that person -
    - (aa) physical address;
    - (bb) postal address;

- (cc) telephone number or numbers;
- (dd) facsimile number or numbers; and
- (ee) electronic mail address or addresses.
- (iii) full details of all ownership interests in the applicant, including the identity and nationality of holders of such ownership interests and if the holder of any ownership interests is a juristic person, full details of all ownership interests in the juristic person; and
- (iv) full details regarding foreign ownership interests in the applicant, if any;
- (v) where the applicant is a company or close corporation, the registration number;
- (vi) whether the applicant intends to provide its own signal distribution service or whether it intends to contract with a signal distribution service licensee for such service;
- (vii) must indicate whether the applicant intends to use spectrum in the provision of the broadcasting service;
- (viii) must set out a proposed programme schedule with details of the daily transmission time allocated to different programme types;
- (d) is accompanied by -
  - (i) an application fee;
  - (ii) a certificate of incorporation issued by the relevant authority, if the applicant is a company or close corporation;
  - (iii) a complete, accurate and concise business plan describing the broadcasting services including any other services being provided or to be provided by the applicant;
  - (iv) a statement of accounts setting out the financial resources available to the applicant in relation to the licence applied for;
  - (v) a detailed statement of the expertise and experience of the applicant to render broadcasting services including but not limited to -
    - (aa) evidence of the financial and human resources of the applicant necessary to render broadcasting services;
    - (bb) a description of the key personnel of the applicant, including their detailed curriculum vitae; and
  - (vi) full details of any ownership interest in existing licences and other broadcasting service applications, by the applicant and if the applicant is a juristic person, by persons who hold ownership in the applicant; and
  - (vii) any other information required by the Authority or that the applicant believes might be relevant to the Authority in considering the application.

(3) A licence application is accompanied by a spectrum use licence application if the applicant intends to use spectrum in the provision of the broadcasting service.

(4) The Authority may request further information to be provided to the Authority at the time and manner determined by the Authority.

### **Evaluation criteria for applications**

7. (1) The Authority must consider an application together with the accompanying information on the merits referred to in subregulation (2).

(2) For the purposes of considering an application for a licence made under regulation 5, the Authority must, in addition to the requirements set out in section 85 of the Act, have regard to the following -

- (a) the character of the applicant or if the applicant is a corporation, the character of the directors of the corporation;
  - (b) whether the applicant has a qualification in the broadcasting industry or experience of five years in broadcasting services;
  - (c) a statement of financial resources available to the applicant which -
    - (i) must quantify the start-up capital; and
    - (ii) must establish a sustainability or profitability projection of five years.
  - (d) whether there is market dominance;
  - (e) the desirability or otherwise of allowing any person or association of persons, to have control of or a substantial interest in more than one -
    - (i) broadcasting service;
    - (ii) radio station, television station and registered newspaper with a common coverage and distribution area or significantly overlapping coverage and distribution areas;
  - (f) whether the applicant is likely to comply with the technical broadcasting standards as the Authority prescribed;
  - (g) whether the conditions of licence will unjustly benefit one licensee above another;
  - (h) the allocation of spectrum resources in such a manner as to ensure the widest possible diversity of programming and the optimal utilisation of such resources provided that priority may be given to broadcasters transmitting the maximum number of hours per day;
  - (i) the reservation of radio wave spectrum resources for future use; and
  - (j) the desirability of giving priority to community-based broadcasts.
- (3) A person is not eligible for a licence if the person -
- (a) is a member of the Board of Directors of the Authority;

- (b) is an employee at the Authority;
- (c) is a member of the Ministry administering information and communication technology;
- (d) has been declared as mentally ill under any law relating to mental health; or
- (e) is an unrehabilitated insolvent.

### **Imposition of further licence conditions**

**8.** (1) The Authority may, in addition to conditions set out in subsection (2) of section 86 of the Act, impose further conditions contemplated in subsection (3) of that section.

(2) A licence may specify performance specifications to which the broadcasting service licensee must conform.

### **Withdrawal and suspension of licences**

**9.** (1) The Authority may withdraw or suspend a licence in terms of the Act if the broadcasting service licensee -

- (a) fails to offer services within 12 months of the issue of a licence;
- (b) fails to meet any quality of service targets as may be determined by the license conditions applicable to the licence or as imposed by these regulations;
- (c) becomes insolvent or the broadcasting service licensee is liquidated in terms of any laws in Namibia or any other country;
- (d) fails to pay any fees determined by these regulations or any penalty imposed by the (a) Authority in terms of the Act;
- (e) fails to comply with a license condition;
- (f) submits false or deliberately misleading information to the Authority; or
- (g) fails to comply with the Broadcasting Code.

(2) The Authority must inform the broadcasting service licensee in writing -

- (a) at least 30 days before the intended termination or withdrawal of the licence;
- (b) that he or she may submit, before the date specified by that notice, written representation to the Authority relating to the intended termination or withdrawal of the licence.

(3) The Authority must consider the representation made by the broadcasting service licensee in terms of subregulation 2(b) and notify the licensee in writing of any decision taken.

(4) If the Authority decides to withdraw or terminate the licence under subregulation (1), the Authority must, in writing, inform the broadcasting service licensee of the withdrawal or termination and the written notice is delivered to the specified address of the licensee.



## PART 3

MODIFICATION, RENEWAL, TRANSFER, WITHDRAWAL, TERMINATION  
AND ENFORCEMENT OF LICENCES**Notices and applications for modification of licences**

**10.** (1) The Authority may initiate a licence modification proceeding as contemplated in section 42(2) of the Act by issuing a notice to a broadcasting service licensee setting out the proposed modification and the grounds for such modification.

(2) Where the Authority proposes to amend a licence, the Authority must notify the broadcasting service licensee in writing of the proposal and specify in the notice -

- (a) the proposed amendment;
- (b) the reasons for the proposed amendment; and
- (c) the date on which the Authority intends to effect the amendment, at least 30 days before, the date on which the Authority serves the notice on the licensee.

(3) Despite subregulation (1), any change to the name and contact person of a broadcasting service licensee does not require approval from the Authority, if the ownership of the licensee is not affected by such change to the name of the licensee, but the Authority must be notified in writing of the impending change at least 14 days before the effective date of that change.

(4) A broadcasting service licensee may apply to the Authority for the modification of the licence issued in terms of regulation 6 on a form determined by the Authority.

(5) An application referred to in subregulation (4) must -

- (a) set out the details of the licence and include a copy thereof;
- (b) outline the reasons for the proposed amendment; and
- (c) include any other information -
  - (i) the applicant believes might be relevant to the Authority in considering the application; or
  - (ii) the Authority may require.

(d) be accompanied by a fee payable as determined by the Authority.

(6) A licensee may submit in writing to the Authority comments within the time set out in the notice referred to in subregulation (1) and (2), which time may not be less than 30 days from the date of notice.

(7) If a licensee does not respond, the Authority may within the period required in terms of subregulation (6), modify or amend the licence in the manner specified in the notice.

(8) Where a licensee responds within the period required in terms of subregulation (6), the Authority may modify, amend or refrain from modifying or amending the licence taking into consideration the representations made by the licensee.

(9) Thereafter the Authority must publish a notice in the *Gazette* of a proposed licence modification or amendment, either as originally proposed or as modified or amended, taking into account the comments of the licensee.

(10) After the Authority publishes the notice of a proposed licence modification or amendment in the *Gazette*, the public may submit in writing to the Authority comments within the time set out in the notice which time may not be less than thirty (30) days from the date of publication.

(11) If the Authority considers it necessary, it must provide the opportunity to the licensee to respond to public comments.

(12) licensees responses to the public comments are submitted in writing to the Authority within the time set out by the Authority which time may not be less than 14 days from the submission of public comments or if the opportunity for the submission of responses is published in the subsequent *Gazette*, not less than 14 days from the date of publication.

(13) The times for submission of public comments and licensee responses are to be determined by the Authority in light of the nature of the application.

(14) The Authority may consider written submissions not timeously filed if, in its opinion, it is practicable to do so.

(15) The Authority may request further written submissions, for example, further information or clarification to be provided to the Authority in the time and manner set out by the Authority.

(16) All written submissions must -

- (a) contain the name and contact details of the person making the written submissions or the name and contact details of the person for whom the written submission is made, if different;
- (b) be clear and concise; and
- (c) conform to any further requirements determined by the Authority from time to time.

(17) After considering any written and oral submission in respect of a proposed licence modification or amendment, the Authority must either issue a modified or amended licence or decide not to issue the modified or amended licence.

(18) In the event that the Authority is unable to decide within 60 days from the date of making a decision or issuing an order, the Authority must inform the applicant of -

- (a) its inability and the reasons for such inability; and
- (b) the measures being taken to urgently address the inability.

(19) The inability contemplated in subregulation (18) must then be addressed within a further period not exceeding 60 days, unless the Authority has identified extraordinary circumstance beyond its reasonable control that makes it impossible to decide within such further period not exceeding 60 days.

**Renewal of licences**

**11.** (1) A broadcasting service licensee may apply to the Authority for the renewal of its licence by submitting in writing to the Authority an application to renew a licence in the form determined by the Authority.

(2) The application for renewal of a licence is made 60 days before the expiry of the existing licence and not more than 6 months before the expiry of the existing licence.

(3) The applicant for renewal of a licence must -

(a) provide details of the existing licence including the licence number and a copy of the licence;

(b) provide full details of the licensee, including the full and official name of the licensee, and if a natural person, the identity number of that person, and if a juristic person, the registration number of that person;

(c) provide the name of the contact person and the following contact details of that person -

(i) physical address;

(ii) postal address;

(iii) telephone number;

(iv) facsimile number; and

(v) electronic mail address.

(d) provide a complete and accurate statement detailing any action taken by the Authority in relation to any breach or alleged breach of the law by the licensee; and

(e) include any other information of the applicant that might be relevant to the Authority.

(4) The application is accompanied by the relevant application fee as determined by the Authority.

(5) The Authority may request the applicant to provide further information to be provided to the Authority in the time and manner determined by the Authority.

**Transfer of control of licences**

**12.** (1) A licence may only be used by the holder of the licence and such licence may be transferred to another person only after the Authority has approved an application for the transfer of the licence.

(2) An application for the transfer of a licence or control of a licence referred to in subregulation (1) is made on a form that substantially corresponds to Form CRAN 4 set out in the Regulations Prescribing Forms for Applications published under General Notice No. 328 of 19 August 2013.

(3) Subject to an application of transfer of a licence, the Authority must cause a notice to be published in the *Gazette* of the proposed transfer or transfer of control of licence calling on comments, in writing, from the public within 14 days from date of publication of the notice.

(4) If the authority considers it appropriate, the Authority may give the broadcasting service licensee the opportunity to respond to public comments referred to in subregulation (3).

(5) A broadcasting service licensee response to the public comments is submitted, in writing, to the Authority within the time indicated by the Authority in the notice which time may not be less than 14 days from the submission of public comments or if the opportunity for the submission of response is published in the subsequent *Gazette*, not less than 14 days from the date of publication.

(6) The Authority may request further written submissions to be provided to the Authority at the time and manner determined by the Authority.

(7) All written submissions must -

- (a) contain the name and contact details of the person making the written submissions or the name and contact details of the person for whom the written submission is made, if different;
- (b) be clear and concise; and
- (c) conform to any further requirements determined by the Authority.

(8) The Authority must be notified in writing of any transfer of ownership interests in a broadcasting service licensee not resulting in a transfer of control or a transfer of the license at least 14 days before the effective date of such transfer.

(9) The application referred to in subregulation (2) is accompanied by -

- (a) the details of the spectrum licence and a copy of the licence;
- (b) the full and official name of the applicant, and if the applicant is a juristic person, the registration number of that person;
- (c) the name of a contact person responsible for liaison with the Authority on issues regarding these regulations and the following contact details of that person -
  - (i) physical address;
  - (ii) postal address;
  - (iii) telephone number or numbers;
  - (iv) facsimile number or numbers; and
  - (v) electronic mail address or addresses.
- (d) full details of all ownership interests in the applicant, including the identity and nationality of holders of such ownership interests and if the holder of an ownership interests is a juristic person, full details of all ownership interests in the juristic person;
- (e) full details regarding foreign ownership interests in the applicant, if any;
- (f) comprehensive reasons for the transfer of the licence or control of the licence;
- (g) where the applicant is a company or close corporation, a certificate of incorporation issued by the relevant authority;

- (h) a detailed statement of the expertise and experience of the applicant to render the services for which the spectrum license was issued, in this regulation referred to as the services including but not limited to -
  - (i) evidence of the financial and human resources of the applicant necessary to render the services;
  - (ii) a description of the key personnel of the applicant including their detailed curriculum vitae; and
  - (iii) any other information required by the Authority or that the applicant believes might be relevant to the Authority in considering the application.
- (10) The application must be accompanied by an application fee as determined by the Authority.
- (11) The Authority must, after having satisfied itself that an applicant complies with subregulation (9), approve the transfer of the broadcasting license in the form determined and subject to the conditions imposed by the Authority.
- (12) If the Authority approves the transfer of spectrum licence, it must endorse on such licence the details of the new licensee having control of the licence or to whom the licence was transferred.

#### **Termination of licences on applications by licensees**

- 13.** (1) If a licensee intends to permanently discontinue providing services for which the licence was issued, the licensee must apply to the Authority for termination of the licence on a form that substantially corresponds to Form CRAN 9 set out in the Regulations Prescribing Forms for Applications published under General Notice No. 328 of 19 August 2013.
- (2) On receipt of an application for termination of a licence, the Authority must publish a notice of the proposed termination of licence in the *Gazette*.
  - (3) After the Authority publishes the notice of a proposed termination of licence in the *Gazette*, the public may submit, in writing, to the Authority comments within the time mentioned in the notice which time may not be less than 30 days from the date of publication.
  - (4) If the Authority considers appropriate, the authority may provide the licensee with the opportunity to respond to public comments.
  - (5) The licensee response to the public comments is submitted, in writing, to the Authority within the time indicated by the Authority in the notice, which time may not -
    - (a) be less than 14 days from the submission of public comments; or
    - (b) if the opportunity for the submission of response is published in the subsequent *Gazette*, not less than 14 days from the date of publication.
  - (6) The Authority may request further written submissions which must be provided to the Authority in the time and manner determined by the Authority.
  - (7) All written submissions must -
    - (a) contain the name and contact details of the person making the written submissions or the name and contact details of the person for whom the written submission is made, if different;

- (b) be clear and concise; and
- (c) conform to any further requirements determined by the Authority.
- (8) The application referred to in subsection (1) must be accompanied by -
  - (a) the details of the licence and include a copy of the licence;
  - (b) the full and official name of the applicant, and if the applicant is a juristic person, the registration number of that person;
  - (c) the name of a contact person responsible for liaison with the Authority on issues relating to these regulations and the following contact details of that person -
    - (i) physical address;
    - (ii) postal address;
    - (iii) telephone number or numbers;
    - (iv) facsimile number or numbers; and
    - (v) electronic mail address or addresses.
  - (d) a complete, accurate and concise statement of the reason or reasons for the proposed withdrawal;
  - (e) the date the licensee intends to permanently discontinue providing service which date must be at least 60 days after the date the application is submitted;
  - (f) contain -
    - (i) a migration plan for any customer of the licensee that may be affected by the withdrawal of the licence;
    - (ii) an analysis of the impact of such withdrawal on such affected customers;
    - (iii) a communication plan to affected customers.
  - (g) contain an inventory of radio apparatus employed by the licensee and an e-waste management plan;
  - (h) indicate whether the licensee has paid all fees payable to the Authority in relation to the licence; and
  - (i) include any other information the applicant believes might be relevant to the Authority in considering the application.
- (9) Before approving an application referred to in subregulation (1), the Authority may -
  - (a) request further information, which must be provided to the Authority at the time and manner determined by the Authority;
  - (b) conduct a public hearing in terms of the Act; or

- (c) following consultation with the licensee, impose reasonable conditions on the licensee with respect to the migration of customers of the licensee or end-users.

(10) Subject to subregulation (11), licence issued to a licensee automatically lapses if the licensee fails to pay the applicable fees as prescribed by the Authority by the due date indicated on the invoice issued to the licensee.

(11) Despite subregulation (10), the Authority may, upon good cause shown, condone the late payment of the applicable fees payable in terms of that subregulation, in which event the broadcasting licence continues to be valid.

#### **Withdrawing of licences on material breaches**

**14.** (1) Subject to section 90(2) of the Act, if the Authority is satisfied that a licensee has in terms of regulation 9 committed a material breach of its licence, the Authority may, by written notice to that licensee, inform the licensee that the Authority intends to withdraw such licence and, in that notice, state the grounds for that intended action.

(2) A licensee may, within 30 days from the date of receipt of a notice referred to in subregulation (1), make written representations to the Authority.

(3) On receipt of an application for withdrawal of a licence, the Authority must publish a notice of the intended withdrawal of licence in the *Gazette*.

(4) After the Authority publishes the notice of intended withdrawal of licence in the *Gazette*, the public may submit, in writing, to the Authority comments within the time mentioned in the notice which time may not be less than 30 days from the date of publication.

(5) All written submissions must -

- (a) contain the name and contact details of the person making the written submissions or the name and contact details of the person for whom the written submission is made, if different;
- (b) be clear and concise; and
- (c) conform to any further requirements determined by the Authority.

(6) After consideration of the representations referred to in subregulation (2) or, if no such representation has been made, on expiry of the period mentioned in that subregulation and the Authority is of the opinion that the licensee has material breached a condition, the Authority may issue an order to withdraw the licence.

(7) The order withdrawing the licence referred to in subregulation (6) must -

- (a) prohibit a licensee with effect from a date specified in that notice from providing services in respect of which such licence was issued; and
- (b) be published in the *Gazette*.

## PART 4

## GENERAL

**Oral hearings**

15. (1) If the Authority considers it necessary it may hear oral submissions in respect of any application made in terms of these regulations.

(2) The Authority must invite the public to make oral submissions at least 14 days before any hearing convened in terms of these regulations.

(3) Unless otherwise specified by the Authority hearings are open to the public.

(4) The format and agenda of the hearing is at the discretion of the Authority, depending on the nature of the proceeding, but a hearing should be informal in nature.

(5) All oral submissions must -

(a) include a statement indicating the name and contact details of the person making the oral submission or the name and contact details of the person for whom the oral submission is made, if different;

(b) be clear and concise; and

(c) conform to any further requirements determined by the Authority.

(6) If the Authority considers it necessary, it must provide the opportunity to a licensee or applicant to respond to oral submissions.

(7) The Authority may request further oral or written submissions, for example, further information or clarification, which is provided to the Authority in the time and the manner determined by the Authority.

(8) At the conclusion of the hearing, the authority must prepare a concise report summarising the oral submissions and place in the relevant application file.

**Time frames for decisions**

16. (1) If an applicant fails to provide all of the information required by these regulations in the time provided, the Authority may refuse to issue a licence or approve the transfer of such licence.

(2) The Authority must, in respect of any licence application or application for transfer or amendment of a licence makes a decision within 60 days from the date of the last written submissions of the applicant.

(3) In the event the Authority is unable to make a decision within 60 days of the date of an applicant's last written submissions, the Authority must inform the applicant of -

(a) its inability and the reasons for such inability; and

(b) what measures are being taken to urgently address the matter, which matter must then be addressed within a further maximum period of 60 days, unless the Authority has identified extraordinary circumstances, beyond its reasonable control that makes it impossible to make its decision within the further maximum period of 60 days.



**Confidential information**

17. If a person has designated information or documentation submitted to the Authority as confidential section 28 of the Act applies.

**Record of proceedings**

18. All documents deemed relevant by the Authority for purposes of any licence application proceedings contemplated by the Act and these regulations are maintained by the Authority separately for each application proceedings in files located at the head office of the Authority and, if practicable, may be uploaded on the website of the Authority.

**Publication of licensing decisions and licences**

19. (1) Decisions made in terms of these regulations and the relevant provisions of the Act are communicated to applicants and licensees and other relevant parties in writing, and may be published in the *Gazette*.

(2) The register of licences of the Authority maintained in terms of section 27(3) of the Act and copies of all broadcasting licences are held at the head office of the Authority and if practicable, are uploaded on the website of the Authority.

(3) Except for confidential information, a person may inspect the register of licences, examine an issued licence or review licence application proceedings files at the head offices of the Authority during normal business hours and copies may be made on payment of a fee determined by the Authority.

**Condonation**

20. (1) In the event that a person is unable to comply with any timeframe set out in these regulations, the person may request from the Authority an extension of time for at least 14 days to the deadline set out or within such other timeframe agreed by the Authority upon good cause shown.

(2) The Authority may -

(a) grant; or

(b) deny,

the request for condonation referred to in subregulation (1), if the Authority at its own discretion considers the reasons for noncompliance and nature of the proceedings by the applicant adequate or satisfactory for the condonation.

**Register of broadcasting service licences**

21. The register of telecommunications service licences maintained in terms of subsection (3) of section 27 of the Act is held at the head office of the Authority and if practicable, the Authority may upload the register on its website, subject to subsection (5) of that section.

**Manner of prosecuting regulatory offences**

22. (1) If the Authority is of the opinion that any person has committed an offence referred to in section 114 of the Act, it may issue a notice, which -

(a) state the offence that the person has allegedly committed;

- (b) contain allegations of fact which if proved will establish the offence concerned;
- (c) indicate the penalty that the Authority intends to impose for the offence concerned.

(2) Within 30 days from the date of the service of a notice referred to in subregulation (1), the accused must deliver a notice to the Authority indicating whether he or she admits or denies the commission of the offence alleged in the notice or whether he or she admits any other offence referred to in section 114 of the Act.

(3) If the accused admits the offence alleged in the notice or admits a different offence and the Authority accepts that admission, the Authority must hold a hearing within three months from the date of the admission by the accused in order to determine the appropriate sanction or penalty.

(4) After a hearing referred to in subregulation (3) the Authority, pursuant to section 115 of the Act, may -

- (a) impose a fine that does not exceed the fine which the Act determines to be the maximum fine for the offence concerned (irrespective whether the fine exceeds the fine indicated in terms of subsection (1)(c) of that section;
- (b) declare any telecommunications equipment or radio apparatus forfeited -
  - (i) that has been used by the accused in the commission of the offence concerned;
  - (ii) whose possession is prohibited by this Act or otherwise unlawful; or
  - (iii) that does not comply with standards prescribed under section 80 of the Act or that belongs to a category of telecommunications equipment for which type approval has been prescribed as contemplated in that section and that has not been approved as contemplated in subsection (3) of that section.
- (c) amend any or withdraw any licence issued to the accused under this Act.

(5) The accused may appeal against the imposition of a penalty by the Authority under this regulation in accordance with section 115 of the Act.

### **Enforcement order**

**23.** Any person against whom an order is made under subsection (1) of section 116 of the Act may appeal against such order to the High Court within a period of 14 days and subject to such procedural requirements for an appeal to the High Court against an order of a magistrate's court.

### **Pending applications**

**24.** Despite the repeal of -

- (a) the Regulations Setting out Broadcasting and Telecommunications Service License Categories published under General Notice No. 124 of 18 May 2011 as amended by General Notice No. 74 of 13 March 2013 and General Notice No. 387 of 12 August 2015;
- (b) the Regulations Regarding Licensing Procedures for Telecommunications and Broadcasting Service and Spectrum Use Licences published under General Notice No. 272 of 29 August 2011; and

- (c) the Regulations Setting out Broadcasting and Telecommunications Service Licence Categories published under General Notice No. 74 of 13 March 2013,

by these regulations, an application for a licence, renewal, modification, transfer or termination of a licence pending at the commencement of these regulations by a person or licensee under the repealed Regulations is considered by the Authority under the repealed Regulations as if these regulations have not been made.

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## COMMUNICATIONS REGULATORY AUTHORITY OF NAMIBIA

No. 68

2022

### REGULATIONS PRESCRIBING LICENCE CATEGORIES AND LICENSING PROCEDURES FOR TELECOMMUNICATIONS SERVICE LICENCES: COMMUNICATIONS ACT, 2009

Under section 129 of the Communications Act, 2009 (Act No. 8 of 2009), the Communications Regulatory Authority of Namibia has -

- (a) made the regulations set out in the Schedule;
- (b) repealed the Regulations Setting out Broadcasting and Telecommunications Service License Categories published under General Notice No. 124 of 18 May 2011 as amended by General Notice No. 74 of 13 March 2013 and General Notice No. 387 of 12 August 2015;
- (c) repealed the Regulations Regarding Licensing Procedures for Telecommunications and Broadcasting Service Licenses and Spectrum Use Licenses published under General Notice No. 272 of 29 August 2011 as amended by General Notice No. 182 of 13 June 2016; and
- (d) repealed the Regulations Regarding License Conditions for Telecommunications Service Licences published under General Notice No. 308 of 13 September 2012.

**H. M. GAOMAB II**  
**CHAIRPERSON**  
**BOARD OF THE COMMUNICATIONS REGULATORY AUTHORITY OF NAMIBIA**

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### PART 1

#### INTRODUCTORY PROVISIONS

##### **Definitions**

**1.** In these regulations, a word or an expression to which a meaning has been assigned in the Act has that meaning and unless the context otherwise indicates -

“applicant” means a person who has applied for a class of telecommunications service licence;

“class of telecommunications service licence” means a class of telecommunications service licence referred to in regulation 3;

“class: comprehensive (ECNS and ECS) licence” means a class of telecommunications service licence that is inclusive of electronic communications network and electronic communications services as contemplated in section 38 of the Act;

“class: ECS licence” means a class of telecommunications service licence that provides electronic communications service over an electronic communications network;

“class: private ECNS and ECS licence” means a class of telecommunication service licence providing an electronic communications network service and electronic communications service solely for the provider’s own use on one piece of land as contemplated in section 43(2);

“community networks licence” means a class of telecommunication service licence that provides service to a certain community or geographical area;

“ECNS” means electronic communications network service whereby a licensee makes available an electronic communications network, whether by sale, lease or otherwise -

- (a) for own use in providing the electronic communications network service;
- (b) to another person for use in the provision of an electronic communications network service by that other person; or
- (c) for resale;

“ECS” means electronic communications service provided to the public, sections of the public or the subscribers of the electronic communications service which consists wholly or mainly of the conveyance of electronic communications over an electronic communications network, but excludes broadcasting services;

“individual comprehensive (ECNS and ECS) licence” means a comprehensive licence that does not fall within the classes for which a class licence is required as contemplated in section 38 of the Act;

“licensee” means a holder of a telecommunications service licence issued under these regulations;

“network facilities licence” means a telecommunications service licence entitling the licensee to construct, maintain, own and make available one or more network elements, infrastructure or other facilities that facilitate the provision of telecommunication services, broadcasting services, electronic communications services or application services including content services;

“resale of ECNS or ECS” means acquiring, through lease or other commercial arrangement, an electronic communications network service or electronic communications service and making such electronic communications network service or electronic communications service available to subscribers for a fee;

“telecommunications service licence” means the telecommunications licence as defined in section 1 of the Act; and

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

### **Applications of regulations**

- 2. These regulations apply to -
  - (a) categories of telecommunications service licences; and
  - (b) applicants and licensees.

## PART 2

## TELECOMMUNICATIONS SERVICE LICENCES

**Classes of telecommunications service licences**

3. (1) Pursuant to section 38(1) of the Act, the following are classes of telecommunications service licences which are all technology and service neutral which allows licensee to render a comprehensive telecommunications service, including a mobile or fixed line telephony service -

- (a) individual comprehensive (ECNS and ECS) licence;
- (b) class: ECS licence;
- (c) class: community networks licence;
- (d) class: comprehensive (ECNS and ECS) licence;
- (e) class: network facilities licence; and
- (f) class: private ECNS and ECS licence.

**Classes of telecommunications services that may be provided without telecommunications service licences**

4. (1) A person may provide the following telecommunications services without a telecommunication service licence -

- (a) resale of ECNS or ECS;
- (b) amateur service;
- (c) aeronautical service;
- (d) maritime service;
- (e) navigation and radar system service;
- (f) alarm system service; and
- (g) emergency response system service.

(2) A person providing a telecommunications service without a licence as contemplated in subregulation (1) must obtain from the Authority the required radio frequency spectrum licence as required by section 101(6) and (7) of the Act.

**Disqualifications for applying and holding of classes of telecommunications services licences**

5. Pursuant to section 39(6) of the Act, a person does not qualify to apply or hold a telecommunications services licence, if the person -

- (a) is a member of the Board of Directors of the Authority;
- (b) is an employee of the Authority;

- (c) is a member of management cadre of the Ministry administering matters relating to communication;
- (d) has been declared as mentally ill under any law relating to mental health; or
- (e) is an unrehabilitated insolvent.

#### **Invitation for provision of certain classes of telecommunications services**

6. (1) Pursuant to section 41 of the Act, the Authority may, by notice in the *Gazette*, invite tenders for the provision of certain class of telecommunications service specified in the notice.

(2) Subject to these regulations, a person who intends to provide class of telecommunications services licence specified in the notice referred to in subregulation (1) must, in accordance with the tender documents made available by the Authority and that are in compliance with regulation 7, submit a bid to the Authority for a class of telecommunications services licence.

#### **Application for classes of telecommunications services licences**

7. (1) A person who intends to provide telecommunications service as contemplated in section 37 of the Act must apply to the Authority for a telecommunications service licence.

- (2) An application for a class of telecommunication service licence must -
  - (a) be made on a form that substantially corresponds to Form CRAN 1 set out in the Regulations Prescribing Forms for Applications published under General Notice No. 328 of 19 August 2013;
  - (b) specify the full names of the applicant and contact details of the applicant;
  - (c) set out the identity number of the applicant if the applicant is a natural person or the registration number of the applicant if the applicant is a juristic person;
  - (d) specify the names of the contact person, including the following contact details of the contact person -
    - (i) physical address;
    - (ii) postal address;
    - (iii) telephone number;
    - (iv) facsimile number; and
    - (v) electronic mail address.
  - (e) specify full details of all persons with ownership interests in the applicant, including the identity and nationality of such persons;
  - (f) specify full details regarding foreign ownership interests in the applicant, if any;
  - (g) if the applicant is a company or close corporation, be accompanied by a certificate of incorporation issued by the Business and Intellectual Property Authority established in terms of section 3 of the Business and Intellectual Property Authority Act, 2016 (Act No. 8 of 2016);

- (h) be accompanied by a complete, accurate and concise statement of the telecommunications services intended to be provided by the applicant, including a description and diagram of any network to be operated, constructed or used and a complete roll-out plan;
- (i) be accompanied by a statement of accounts setting out the financial resources available to the applicant in relation to the telecommunications services to be provided by the applicant;
- (j) be accompanied by a detailed statement of the expertise and experience of the applicant to render telecommunications services to be provided by the applicant, including but not limited to -
  - (i) evidence of the financial and human resources of the applicant necessary to render telecommunications services; and
  - (ii) a description of the key personnel of the applicant, including their detailed curriculum vitae.
- (k) state in full details any ownership interest in existing telecommunications services licences and other telecommunications service applications by the applicant and by persons who hold ownership in the applicant;
- (l) be accompanied by any other information and particulars that the applicant considers relevant to the application; and
- (m) proof of payment of the applicable application fee as determined by the Authority.

(3) The Authority may request the applicant to provide further information or documents the Authority considers necessary and relevant to the application for telecommunications services licence, which must be provided to the Authority at a time and manner specified by the Authority.

(4) The application for the class of telecommunications service licence contemplated in this regulation must, where applicable, be made and considered together with the application for a spectrum licence as required by section 101(8) of the Act.

### **Publication of applications for classes of telecommunications service licences**

**8.** (1) On receipt of an application for a telecommunications services licence, the Authority must -

- (a) forthwith publish a notice of the application in the *Gazette*; and
- (a) invite members of the public to make written comments on the application and submit such comments to the Authority.

(2) Comments must be made within a period specified in the notice which period may not be less than 14 days from the date of the publication of the notice.

(3) The Authority must notify the applicant of any comments made to the application and give the applicant an opportunity to respond, in writing, to the comments within a period specified in the notice, which period may not be less than 14 days from the date of notice.

(4) If a member of the public or an applicant is unable to submit comments or responses within the period contemplated in subregulation (2) or (3), the member or applicant may request the Authority for an extension of that period for a period not exceeding 14 days.



(5) The Authority may request further written submissions or responses, including any clarification or further information which must be provided to the Authority within a period and in a manner specified by the Authority.

(6) All submissions or responses must -

- (a) specify full names and contact details of the person making the submissions or responses; and
- (b) be clear and concise.

(7) In considering the application for a class of the telecommunications services licence, the Authority must take into account any submission or response made relating to the application.

#### **Evaluation criteria for applications**

9. (1) The Authority must consider the application for a class of telecommunications services licence together with the accompanying particulars and information on its merits.

(2) Pursuant to section 39 of the Act, the merits of each application for a class of telecommunications service licence is evaluated against the following -

- (a) Namibian citizenship;
- (b) shareholding in a juristic person -
  - (i) of which at least 51 percent of the shareholding is owned by Namibian citizens and not controlled directly or indirectly by a person who is not a Namibian citizen; and
  - (ii) which has its principal place of business or registered office in Namibia.
- (c) character of the applicant, or if the applicant is a juristic person, the character of its directors or members;
- (d) technical and business management capability;
- (e) financial resources available to the applicant whereby the -
  - (i) start-up capital is quantified;
  - (ii) applicant establishes a sustainability or profitability projection of five years; and
- (f) market dominance.

#### **Granting and refusal of application for classes of telecommunications service licences**

10. (1) After considering the application for telecommunications service licence, any other accompanying documents, any comments and responses and evaluation criteria, the Authority may grant or refuse the application, either in whole or in part.

(2) Subject to subregulation (3), the Authority must make a decision on the application for a class of licence for telecommunication service licence within 60 days from the last date of the submission of any response by the applicant, but if no comments were received from members of the public, within 60 days from the deadline for the submission of comments by the public.

(3) If the Authority is unable to make a decision on the application within the period referred to in subregulation (1), the Authority must -

- (a) inform the applicant that the Authority is unable to make a decision within the period referred to in that subregulation;
- (b) furnish the applicant with the reasons for the Authority's inability to decide; and
- (c) inform the applicant of the measures being taken by the Authority to address the issue,

but the Authority must make a decision within a period of 60 days from the deadline the decision was due in terms of that subregulation.

(4) If the Authority grants the application for a class of telecommunications service licence, the Authority must -

- (a) issue to the applicant the applicable class of the telecommunications service licence in the form determined by the Authority; and
- (b) publish a notice in the *Gazette* notifying that the applicant has been granted with the class of telecommunications service licence.

(5) If the application for the telecommunications service licence is refused, the Authority must notify the applicant of the refusal and provide the applicant with reasons for such refusal.

#### **Imposition of conditions on classes of telecommunication service licences**

**11.** (1) The Authority may impose conditions that the Authority considers necessary to a class of telecommunications services licence, which conditions includes but are not limited to -

- (a) hours of operation;
- (b) technical conditions;
- (c) quality of services;
- (d) publication of tariffs and fees;
- (e) competition;
- (f) consumer protection;
- (g) interconnection;
- (h) infrastructure sharing;
- (i) rights of way;
- (j) safety measures;
- (k) payment of fees;
- (l) reporting, monitoring and compliance; and
- (m) duty to furnish information.

(2) A class of telecommunications services licence issued under these regulations lapses 12 months after the date of the issue of that licence, if the licensee fails to commence with the telecommunications services authorised to be provided under that licence.

- (3) The Authority may, after considering a written request from a licensee -
- (a) condone failure by the licensee to commence with telecommunications services within a period of 12 months; and
  - (b) grant an extension to the licensee for such a further period as may be determined by the Authority,

and if the licensee fails to commence with telecommunications services within the extended period the telecommunications services licence lapses on the expiry of such extended period.

#### **Duration of classes of telecommunications service licences**

**12.** A class of telecommunications service licence issued in terms of these regulations is valid for a period of 15 years, unless otherwise renewed in accordance with regulation 13.

#### **Renewal of classes of telecommunications service licences**

**13. (1)** A licensee who intends to renew his or her class of telecommunication service licence as contemplated in section 38(9) of the Act may apply to the Authority for the renewal of his or her licence at least six months prior to the expiry of the licence.

(2) An application for the renewal of a class of telecommunications service licence must -

- (a) be made on a form that substantially corresponds to Form CRAN 8 set out in the Regulations Prescribing Forms for Applications published under General Notice No. 328 of 19 August 2013; and
- (b) specify the particulars and be accompanied by the documents referred to in regulation 6(2);
- (c) specify the details of the spectrum licence and include a copy of the spectrum licence;
- (d) be accompanied by proof of compliance with any conditions attached to the telecommunications service licence;
- (e) be accompanied by a complete and accurate statement detailing any action taken by the Authority or other entity with competent jurisdiction in relation to any breach or alleged breach by the licensee pertaining to any contravention or failure to comply with the Act, these regulations or the telecommunications services licence;
- (f) include any other information the licensee considers relevant to the application for the renewal of the telecommunications services licence; and
- (g) be accompanied by the applicable renewal fees.

(3) The Authority may, when considering an application for the renewal of a telecommunications service licence, require any additional information as it considers necessary.

(4) Regulations 7 and 9(2) and (3) apply with the necessary changes to an application for the renewal of a class of telecommunication services licence made under this regulation.

(5) If the Authority has not reached a decision in connection with the application for the renewal of a telecommunications service licence at the time when the licence expires, the licence continues to be of effect pending the decision by the Authority.

(6) A class of telecommunication service licence may be renewed for a period not exceeding 15 years, and if the Authority grants the application for the renewal of the licence, the Authority must -

- (a) issue to the licensee the renewed class of the telecommunications service licence in the form determined by the Authority; and
- (b) publish a notice in the *Gazette* notifying that the licence of the licensee has been renewed.

(7) The Authority may refuse to renew a class of telecommunication service licence if the licensee has contravened or failed to comply with the terms and conditions of the licence.

(8) If the Authority refuses to renew a licence, the Authority must notify the licensee of the refusal and provide the licensee with reasons for such refusal.

(9) The application for the renewal of a class of telecommunications service licence contemplated in this regulation must, where applicable, be made and considered together with the application for the renewal of the spectrum licence, and spectrum licence may be renewed for the same period as the class of telecommunication service licence.

### PART 3

#### MODIFICATION, TRANSFER AND CONTROL OF CLASSES OF TELECOMMUNICATION SERVICE LICENCES, TERMINATION AND WITHDRAWAL OF CLASSES OF TELECOMMUNICATIONS SERVICES LICENCES

##### **Notices and applications for modification of classes of telecommunications services licences**

**14.** (1) The Authority may modify a class of telecommunications service licence as contemplated in section 42(2) of the Act and prior to such modification notify the licensee in writing of its intent to modify the licence.

- (2) The notice referred to in subregulation (1) must -
  - (a) state the proposed modification;
  - (b) specify the reasons for the proposed modification;
  - (c) give the licensee an opportunity to make any objection on the intended modification within a period specified in the notice; and
  - (d) specify the date on which the Authority intends to effect the modifications which may not be earlier than 30 days from the deadline for the making of an objection in terms of paragraph (c).

(3) Despite subregulation (1), a licensee may, on a form that substantially corresponds to Form CRAN 7 set out in the Regulations Prescribing Forms for Applications published under General Notice No. 328 of 19 August 2013, apply to the Authority for a modification of his or her class of telecommunications service licence.

(4) A licensee who intends to change the name and other particulars of the licensee or contact person on the class of telecommunications service licence does not need to make an application for modification, but the licensee must, at least 14 days before effecting such changes, notify the Authority of the intended changes.

- (5) An application for modification referred to in subregulation (3) must -
- (a) set out the reasons for the proposed modification;
  - (b) be accompanied by a copy of the telecommunications service licence of the licensee; and
  - (c) include any other information the licensee considers relevant to the Authority in considering the application for modification.

#### **Publication of intent to modify classes of telecommunications services licences**

**15.** (1) The Authority must publish -

- (a) a notice of intent to modify the class of telecommunication service licence referred to in regulation 14(1); or
- (b) an application for modification received under regulation 14(3),

in the *Gazette* and invite the licensee to object to the modification and members of the public to make written comments on the notice or application within a period specified in the notice, which period may not be less than 14 days from the date of the publication of the notice.

(2) The Authority must notify the licensee of any comments made to the application and give the licensee an opportunity to respond, in writing, to the comments within a period specified in the notice, which period may not be less than 14 days from the date of notice.

(3) If a member of the public or the licensee is unable to object or submit comments or responses within the period referred to in subregulation (1) or (2), the member or licensee may request the Authority for an extension of that period for a period not exceeding 14 days.

(4) The Authority may request further submissions or responses, including any clarification or further information which must be provided to the Authority within a period and in a manner specified by the Authority.

- (5) All submissions and responses must -
- (a) specify the full names and contact details of the person making the submissions or responses; and
  - (b) be clear and concise.

#### **Modification of classes of telecommunications service licences**

**16.** (1) After considering any objection, comment or response made in respect of notice of the modification or an application for modification, the Authority may -

- (a) modify or refuse the modification of the class of telecommunication service licence; or

- (b) grant or refuse the application for modification, in whole or in part.
- (2) Regulation 9(2) and (3) applies with the necessary changes to an application for the modification of a class of telecommunication service licence.
- (3) If the Authority modifies or grants an application for modification, the Authority must -
  - (a) modify the class of telecommunications service licence; and
  - (b) publish a notice in the *Gazette* notifying that the class of telecommunications service has been modified and give details of the modification.
- (4) The Authority may impose conditions to the class of telecommunication service licence modified that the Authority considers necessary.
- (5) If the Authority modifies the class of telecommunication service licence or refuses an application for the modification, the Authority must notify the licensee of the refusal and provide the licensee with reasons for such refusal.

### **Transfer and control of classes of telecommunications service licences**

17. (1) Pursuant to section 35 of the Act -
- (a) a class of telecommunications service licence; or
  - (b) the acquisition of control of class of telecommunication service licence,
- may only be transferred to another person with the prior authorisation of the Authority made in accordance with that section.
- (2) An application for the transfer of a class of telecommunication service licence or control of a class of telecommunication service licence is made on a form that substantially corresponds to Form CRAN 4 set out in the Regulations Prescribing Forms for Applications published under General Notice No. 328 of 19 August 2013.
  - (3) A person who intends to transfer ownership interest in a telecommunication service licence not resulting in a transfer of control or a transfer of the licence must, in writing, notify the Authority at least 14 days prior to the effective date of such transfer.
  - (4) The application referred to in subregulation (2) must -
    - (a) specify the full names and contact details of the person making the application;
    - (b) set out the identity number of the persons making the application if the persons are natural persons or the registration numbers of the persons if the persons are juristic persons;
    - (c) specify the full names of a contact person, including the following contact details of the person -
      - (i) physical address;
      - (ii) postal address;

- (iii) telephone number;
  - (iv) facsimile number; and
  - (v) electronic mail address.
- (d) be accompanied by a copy of the class of telecommunication service licence;
- (e) specify full details of all ownership interests in the person to acquire the class of telecommunication service licence or control the licence, including the identity and nationality of holders of such ownership interests;
- (f) specify full details regarding any foreign ownership interests in the person to acquire the class of telecommunication service licence or control the licence;
- (g) be accompanied by comprehensive reasons for the transfer of the class of telecommunication service licence or control of the licence;
- (h) if the person to acquire the class of telecommunication service licence or control the licence is a company or close corporation, be accompanied by a certificate of incorporation issued by the Business and Intellectual Property Authority established in terms of section 3 of the Business and Intellectual Property Authority Act, 2016 (Act No. 8 of 2016);
- (i) be accompanied by a detailed statement of the expertise and experience of the person to acquire the class of telecommunication service licence or control the licence to render the telecommunication services for which the licence was issued, including but not limited to -
- (i) evidence of the financial and human resources of the person necessary to render the services;
  - (ii) a description of the key personnel of the person, including detailed curriculum vitae of the personnel; and
  - (iii) any other information that the person making the application considers relevant in considering the application; and
- (j) is accompanied by proof of payment of the application fee.

(5) The Authority must forthwith publish an application for the transfer of the licence or control of the licence contemplated in subregulation (2) in the *Gazette* and invite members of the public to make written comments within the period specified in the notice, which period may not be less than 14 days from the date of the publication of the notice.

(6) The Authority must notify the applicant of any comments made to the application and give the applicant an opportunity to respond, in writing, within a period specified in the notice, which period may be not less than 14 days from the date of notice.

(7) If a member of the public or the applicant is unable to submit comments or responses within the period referred to in subregulation (5) or (6), the member or applicant may request the Authority for an extension of that period for a period not exceeding 14 days.

(8) The Authority may request further submissions or responses, including any clarification or further information which is provided to the Authority within a period and in a manner specified by the Authority.

- (9) All written submissions must -
- (a) specify the full name and contact details of the person making the submissions; and
  - (b) be clear and concise.
- (10) After considering the application contemplated in subregulation (2) and any submission or response, the Authority may refuse or grant the application, in whole or in part.
- (11) If the Authority grants the application, the Authority must endorse on the licence the particulars of -
- (a) the person to whom the class of telecommunication service licence was transferred; or
  - (b) the person authorised to have control of the class of telecommunication service licence.
- (12) If the Authority grants the application, the Authority must publish a notice in the *Gazette* notifying that -
- (a) the class of telecommunication service licence has been transfer to another person and give full details of the person; or
  - (b) the control of the class of telecommunication service licence has been acquired by another person and give full details of the person.
- (13) The Authority may impose conditions to the class of telecommunication service licence transferred or to the acquisition of control of the licence as the Authority considers it necessary.
- (14) If the Authority refuses the application contemplated in subregulation (2), the Authority must notify the persons making the application of the refusal and provide the persons with reasons for such refusal.

#### **Termination of classes of telecommunications service licences by Authority**

**18.** (1) Without limiting any other grounds on which the Authority may terminate a class of telecommunications service licence in terms of the Act, the Authority may, whether specified as a licence condition or not, terminate a licence on the following grounds -

- (a) failure by the licensee to offer telecommunication services within six months of the issue of a licence;
- (b) failure by the licensee to meet any quality of service targets as may be imposed as a licence condition;
- (c) insolvency of a licensee or its liquidation in terms of the applicable laws in Namibia or any other country;
- (d) failure by a licensee to pay any fees prescribed or any contribution or any penalty imposed by the Authority in terms of the Act;
- (e) material failure to comply with a licence condition; or
- (f) submission of false or deliberately misleading information to the Authority.



(2) If the Authority is satisfied that a licensee has committed any act referred to in subregulation (1), the Authority may by written notice to the licensee inform the licensee that the Authority intends to terminate the class of telecommunications service licence.

(3) The notice referred to in subregulation (2) must -

- (a) state the grounds for the intended termination of the licence;
- (b) afford the licensee an opportunity to respond to the intended termination notice.

(4) The Authority must forthwith publish a notice of termination of licence under this regulation in the *Gazette* and invite members of the public to make written comments within the period specified in the notice, which period may not be less than 14 days from the date of the publication of the notice.

(5) The Authority must notify the licensee of any comments made by a member of the public under subregulation (4) and give the licensee an opportunity to respond, in writing, to the comments within a period specified in the notification, which period may not be less than 14 days from the date of notification.

(6) If a member of the public or the licensee is unable to submit comments or responses within the period referred to in subregulation (4) or (5), the member or licensee may request the Authority for an extension of that period for a period not exceeding 14 days.

(7) The Authority may request further written submissions or responses, including any clarification or further information which must be provided to the Authority within a period and in a manner specified by the Authority.

(8) All submissions must -

- (a) specify the full names and contact details of the person making the submissions; and
- (a) be clear and concise.

(9) After considering any submission and response made under this regulation, the Authority may terminate the class of telecommunication service licence.

(10) If the Authority terminates the licence, the Authority must publish a notice in the *Gazette* notifying that the class of telecommunication service licence of the licensee has been terminated.

#### **Termination of classes of telecommunications service licences on applications by licensees**

**19. (1)** If a licensee intends to permanently discontinue providing the telecommunication services for which the class of telecommunications service licence was issued, the licensee must apply to the Authority for the termination of the licence.

(2) The application for the withdrawal of the licence must -

- (a) be made on a form that substantially corresponds to Form CRAN 9 set out in the Regulations Prescribing Forms for Applications published under General Notice No. 328 of 19 August 2013;
- (b) be accompanied by a copy of the class of telecommunication service licence;
- (c) specify the full names of the licensee and contact details of the licensee;

- (d) set out the identity number of the licensee if the licensee is a natural person or the registration number of the licensee if the licensee is a juristic person;
- (e) specify the full names of a contact person, including the following contact details of the person -
  - (i) physical address;
  - (ii) postal address;
  - (iii) telephone number;
  - (iv) facsimile number; and
  - (v) electronic mail address.
- (f) be accompanied by a complete, accurate and concise statement of the reason for the proposed termination of the licence;
- (g) set out the date the licensee intends to discontinue providing telecommunications services which date must be at least 60 days after the date the application is submitted;
- (h) be accompanied by -
  - (i) a migration plan for any customer of the licensee that may be affected by the termination of the licence;
  - (ii) an analysis of the impact of the termination on affected customers; and
  - (iii) a communication plan to affected customers.
- (i) contain an inventory of radio apparatus employed by the licensee and an e-waste management plan;
- (j) indicate whether the licensee has paid all fees payable to the Authority in relation to the class of telecommunications service licence; and
- (k) include any other information the licensee considers relevant to the application for the termination of the licence.

(3) The Authority must forthwith publish an application for the termination of the licence referred to in subregulation (1) in the *Gazette* and invite members of the public to make written comments to the Authority within the period specified in the notice, which period may not be less than 14 days from the date of the publication of the notice.

(4) The Authority must notify the licensee of any comments made to the application and give the licensee an opportunity to respond, in writing, to the comments within a period specified in the notification, which period may not be less than 14 days from the date of notification.

(5) If a member of the public or the licensee is unable to submit comments or responses within the period referred to in subregulation (3) or (4), the member or licensee may request the Authority for an extension of that period for a period not exceeding 14 days.

(6) The Authority may request further written submissions or responses, including any clarification or further information which is provided to the Authority within a period and in a manner specified by the Authority.

(7) All submissions must -

- (a) specify the full names and contact details of the person making the submissions; and
- (b) be clear and concise.

(8) After considering the application made in terms of subregulation (1) and any submissions and response made, the Authority must grant the application for the termination of the licence effective from a specified period of not less than 30 days and not more than 90 days from the date the application was granted.

(9) If the Authority grants the application for the termination of the application, the Authority must publish a notice in the *Gazette* notifying that the class of telecommunication service licence of the licensee has been terminated with effect from a specified date.

#### PART 4

#### GENERAL PROVISIONS

##### **Submission of documents to Authority**

**20.** When document is required to be submitted or delivered to the Authority, such documents must be delivered physically or electronically -

- (a) by hand 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 [legal@cran.na](mailto:legal@cran.na); or
- (d) by facsimile faxed to +264 61 222 790.

##### **Oral hearings**

**21. (1)** If the Authority considers it necessary, it may call for any party or both parties to an application made under these regulations to appear before the Authority and give oral evidence in respect of the application.

(2) Unless otherwise specified by the Authority, a hearing referred to in subregulation (1) is open to the public.

(3) The oral hearing proceedings -

- (a) is of an informal nature; and
- (b) is conducted in a manner and in accordance with the procedure determined by the Authority.

(4) At the conclusion of the hearing, the Authority must summarise a concise report of the oral submissions made at the oral hearing and place the report in the relevant application file.

### **Record of documents regarding applications**

22. The Authority must maintain all documents considered relevant by the Authority in respect of each application for a class of telecommunications service licence at its head office, and if the documents are not considered as confidential documents in accordance with section 28 of the Act, the documents may be uploaded on the website of the Authority.

### **Register of telecommunication service licences**

23. The register of telecommunications service licences maintained in terms of subsection (3) of section 27 of the Act is held at the head office of the Authority and if practicable, the Authority may upload the register on its website, subject to subsection (5) of that section.

### **Manner of prosecuting regulatory offences**

24. (1) If the Authority is of the opinion that any person has committed an offence referred to in section 114 of the Act, it may issue a notice which -

- (a) state the offence that the person has allegedly committed;
- (b) contain allegations of fact which if proved will establish the offence concerned;
- (c) indicate the penalty that the Authority intends to impose for the offence concerned.

(2) Within 30 days from the date of the service of a notice referred to in subregulation (1), the accused must deliver a notice to the Authority indicating whether he or she admits or denies the commission of the offence alleged in the notice or whether he or she admits any other offence referred to in section 114 of the Act.

(3) If the accused admits the offence alleged in the notice or admits a different offence and the Authority accepts that admission, the Authority must hold a hearing within three months from the date of the admission by the accused in order to determine the appropriate sanction or penalty.

(4) After a hearing referred to in subregulation (3) the Authority, pursuant to section 115 of the Act, may -

- (a) impose a fine that does not exceed the fine which the Act determines to be the maximum fine for the offence concerned (irrespective whether the fine exceeds the fine indicated in terms of subsection (1)(c) of that section;
- (b) declare any telecommunications equipment or radio apparatus forfeited -
  - (i) that has been used by the accused in the commission of the offence concerned;
  - (ii) whose possession is prohibited by this Act or otherwise unlawful; or
  - (iii) that does not comply with standards prescribed under section 80 of the Act or that belongs to a category of telecommunications equipment for which type approval has been prescribed as contemplated in that section and that has not been approved as contemplated in subsection (3) of that section.
- (c) amend any or withdraw any licence issued to the accused under this Act.

(5) The accused may appeal against the imposition of a penalty by the Authority under this regulation in accordance with section 115 of the Act.

**Enforcement order**

25. Any person against whom an order is made under subsection (1) of section 116 of the Act may appeal against such order to the High Court within a period of 14 days and subject to such procedural requirements for an appeal to the High Court against an order of a magistrate's court.

**Pending applications**

26. Despite the repeal of -

- (a) the Regulations Setting out Broadcasting and Telecommunications Service License Categories published under General Notice No. 124 of 18 May 2011 as amended by General Notice No. 74 of 13 March 2013 and General Notice No. 387 of 12 August 2015;
- (b) the Regulations Regarding Licensing Procedures for Telecommunications and Broadcasting Service Licenses and Spectrum Use Licenses published under General Notice No. 272 of 29 August 2011 as amended by General Notice No. 182 of 13 June 2016; and
- (c) the Regulations Regarding License Conditions for Telecommunications Service Licences published under General Notice No. 308 of 13 September 2012,

by these regulations, an application for a licence, renewal, modification, transfer or termination of a licence pending at the commencement of these regulations by a person or licensee under the repealed Regulations is considered by the Authority under the repealed Regulations as if these regulations have not been made.

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