



Republic of Namibia
Annotated Statutes

REGULATIONS

REGULATIONS MADE IN TERMS OF

Communications Act 8 of 2009
section 86

**Regulations regarding Licence Conditions for Class
Comprehensive Multiplex and Signal Distribution
Service Licences, Multiplex Licences and
Signal Distribution Service Licences**

General Notice 329 of 2013

(GG 5269)

came into force on date of publication: 19 August 2013

as amended by

General Notice 159 of 2020 (GG 7197)

came into force on date of publication: 29 April 2020

These regulations and amendments were made by the Communications Regulatory Authority of Namibia. The word "Distribution" is misspelt in the heading of the regulations in the *Government Gazette*, but has been corrected here.

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[The capitalisation of the regulation headings is reproduced here as it appears in the *Government Gazette*.]

Definitions

1. In these regulations, 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);

“Authority” means the Communications Regulatory Authority of Namibia established in terms of section 4 of the Act;

“broadcast” means to disseminate electronic communications -

- (a) by radio waves if such communications are intended to be received by the public or the subscribers to a particular service, directly or by the intermediary of relay stations; or
- (b) by any other means if such communications are intended to be received by the public or the subscribers to a particular service and the Authority has after following a rule-making procedure, by regulation prescribed that the specified services are broadcasting services;

“broadcasting service” means the service rendered by a public or private broadcaster to broadcast, and which service is conveyed by means of an electronic communications network and “broadcasting services” must be construed accordingly;

“Class Comprehensive Multiplex and Signal Distribution” means providing an electronic communications network service for signal distribution as well as operation of multiplexer equipment for the purpose of delivering broadcasting services;

“Commercial Broadcasting Service” means a broadcasting service operating for profit;

“Conditional Access” means to restrict television program access to certain groups of users either because of concerns of privacy and/or the desire to collect revenue for the services that require secure encryption of the program content and secure decryption in digital television receivers;

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“Digital Broadcasting” means the use of advanced digital techniques to encode, compress and transmit audio, text, images and video in digital format;

“Dual Illumination” means transmission of the same broadcast content in both analogue and digital technologies during the Transition Period, and “simulcast” shall have the same meaning;

“electronic communications” means any emission, transmission or reception of sound, pictures, text or any other information by wire, radio waves, optical media, electromagnetic systems or any other means of a like nature;

“electronic communications network” means any system of electronic communications facilities (excluding subscriber equipment), including without limitation -

- (a) satellite systems;
- (b) fixed systems (circuit- and packet-switched);
- (c) mobile systems;
- (d) fibre optic cables (undersea and land-based);
- (e) electricity cable systems (to the extent used for electronic communications services); and
- (f) other transmission systems, used for conveyance of electronic communications;

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

- (a) for that person’s own use for the provision of an electronic communications service or broadcasting service;
- (b) to another person for that other person’s use in the provision of an electronic communications service or broadcasting service; or
- (c) for resale to an electronic communications service licensee, broadcasting service licensee or any other service contemplated by this Act, and “network services” is construed accordingly;

“Free-to-Air” means channels and/or services accessible over the television (or other mediums of a like nature) that are free and/or don’t necessarily need a special set-top box, smartcard or any other mechanism compatible with the single receiver system;

“Licensees” for the purpose of these regulations shall mean those licensees issued with Class Comprehensive Multiplex and Signal Distribution Service Licences, Multiplex Licences and or Signal Distribution Service Licences;

“Multiplex” means the operation of multiplexer equipment for the purpose of delivering broadcasting services;

“Multiplexer” means digital broadcasting equipment that combines programme material (broadcasting content) and other data into digital form for transmission via the digital terrestrial television infrastructure;

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“Service(s)” shall mean the Class Comprehensive Multiplex and Signal Distribution Service Licences, Multiplex Licences, and Signal Distribution Service Licences respectively as indicated by the context;

“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;

[This definition is reproduced as it appears in the *Government Gazette*; there are some superfluous characters.]

“Transition Period” means the period starting from 5 December 2012 to the date when broadcasting of television services in analogue shall cease in all parts of the territory of the Republic of Namibia;

“User” means any natural or juristic person, including customers, who uses or requests a broadcasting service, whether or not such person pays for such service, and “users” must be construed accordingly;

Purpose

2. (1) The purpose of these regulations are to impose conditions, in terms of Section 86 of the Act, on the Class Comprehensive Multiplex and Signal Distribution Service Licences, Multiplex Licences and Signal Distribution Service Licences.

[There are no subregulations additional to subregulation (1) in the *Government Gazette*. The verb “are” should be “is” to be grammatically correct.]

Applicability

3. (1) These regulations shall be applicable to all licensees to whom Class Comprehensive Multiplex and Signal Distribution Service Licences, Multiplex Licences and Signal Distribution Service Licences were issued or applicants applying for such licences.

[There are no subregulations additional to subregulation (1) in the *Government Gazette*.]

Authorisation

4. (1) Class Comprehensive Multiplex and Signal Distribution Service Licences, Multiplex Licences and Signal Distribution Service Licences shall be issued in accordance with the provisions section 85 of the Act.

[The word “of” has been omitted between “provisions” and “section 85”.]

(2) All licensees, issued with a Class Comprehensive Multiplex and Signal Distribution Service Licences, Multiplex Licences and Signal Distribution Service Licences by the Authority, are herewith duly authorised to:

- (a) provide Class Comprehensive Multiplex and Signal Distribution Services, Multiplex services and Signal Distribution Services for radio and/or television broadcasting;

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- (b) operate and maintain an electronic communications network service for the purpose of delivering broadcasting services;
- (c) maintain and operate a Commercial Multiplexer as deemed by the specific licensing conditions imposed by the Authority; and
- (d) install, maintain and operate the necessary infrastructure in this regard.

(3) Licensees shall apply to the Authority in writing indicating its intentions to provide Class Comprehensive Multiplex and Signal Distribution Service Licences, Multiplex Licences, Signal Distribution Service Licences in the format and manner as prescribed by the Authority prior to providing such services, in the event it did not provide such service in the past.

Hours of Operation

5. (1) The licensee must provide the respective Service(s) in terms of these regulations for twenty four (24) hours, three hundred and sixty five (365) days per year.

[Both “twenty-four” and “sixty-five” should be written with a hyphen.]

(2) In the event that the Licensee is unable to provide the broadcasting Service due to circumstances beyond its control for an uninterrupted period of more than 12 hours, the licensee must notify the contracted party of such Service(s) forthwith and shall notify the Authority in writing of such circumstances that led up to the interruption of the service(s) within twelve (12) hours of the time such interruption took effect.

Disaster Recovery Plan

6. (1) A licensee must provide the Authority with a disaster recovery plan aimed at ensuring optimal reliability, security, interoperability and interconnectivity of, and accessibility to electronic communications networks and other infrastructure utilized in the provision of broadcasting services within 90 days from issuance of a licence to the licensee, or in the event of an existing license, within 90 days that these conditions take effect.

- (2) The disaster recovery plan must specify -
 - (a) the types of disasters the licensee should specifically plan for;
 - (b) in the event of a disaster -
 - (i) who will be in-charge (and the chain of command);
- [The phrase “in charge” should not be written with a hyphen.]**
- (ii) who will be the public relations contact (i.e., who will handle communication relations);
 - (iii) who must be informed;
 - (c) what must be done regularly (and when) to prepare for a disaster;
 - (d) what must be done when a disaster is imminent;

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- (e) what must be done during a disaster; and
- (f) what must be done after a disaster has struck.

Provision of Service(s)

7. (1) Subject to applying for and being granted a spectrum use licence(s), all licensees, issued with the respective Service licence by the Authority, are: -

- (a) duly authorised to provide the Services to a third party requesting for such Service or willing to accept the provision of such Service(s);
- (b) and to install, maintain and operate the necessary equipment and infrastructure in that regard.

(2) Subject to availability of spare capacity in the Multiplexer and in terms of an agreement concluded regarding the use of a Commercial Multiplexer, the licensee shall offer services to any licensed Commercial or Community Broadcaster desiring to have their content broadcasted over the Digital Terrestrial Television network.

(3) The licensee shall at all times provide the same quality of service for all content that it carries on its Multiplexer in delivering broadcasting services

(4) The Licensee shall provide services using Moving Pictures Experts Group (MPEG4) (AVC H.264) compression and the Digital Video Broadcasting-Terrestrial 2 (DVB-T2) family standard as a minimum on its Multiplexer provided that the Authority may from time to time review the standards on which services are provided.

Technical conditions

8. (1) The licensees shall submit transmitter parameters, antenna parameters and site coordinates for all digital Terrestrial/Satellite Television sites to the Authority as requested by the Authority.

(2) The licensees shall comply with the technical conditions as will be prescribed in terms of section 86 of the Act.

Quality of Service

9. (1) The licensee shall comply with quality of service standards as may be prescribed by the Authority from time to time and published in the Government *Gazette* in terms of the rule-making regulations with regard to network quality, equipment, infrastructure and service quality.

(2) The licensee shall not maliciously interrupt the operation of its equipment during the normal course of business or suspend any service offered in terms of its license without prior written notice to the Authority and other licensees affected by such interruption or suspension.

- (3) The provisions of sub-regulation (2) hereof shall not apply -
 - (a) if the interruption of operation or services is due to an emergency;

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- (b) in the event of force majeure;
- (c) to other circumstances beyond the control of the Signal Distribution licensee and/or
- (d) if the interruption or suspension is to a service supplied by the Signal Distributor to a person or entity whose broadcasting network is endangering the integrity of the signal distribution network.

(4) The licensee shall ensure that there is inter-operability in the digital broadcasting chain through ensuring that All Free to Air Channels are accessible without constraints to a single Set-Top Box (STB) and Integrated Digital Television (iDTV).

(5) Licensees shall ensure that all conditional access broadcasting channels are accessible through a single Set-Top Box (STB) or Integrated Digital Television (iDTV) using mechanisms such as smart cards, passwords or keys or any other mechanisms compatible with the single receiver system.

Infrastructure sharing

10. The licensee has the right and obligation to lease facilities from and to any other licensee, subject to and in accordance with the terms and conditions agreed between them, failing which the Authority may take the appropriate steps.

Rights of way

11. (1) A licensee may enter into an agreement with a local authority council as defined in Section 1 of the Local Authorities Act, No. 23 of 1992 as amended or any other relevant organization or utility for the purpose of -

- (a) constructing and maintaining a broadcasting facility upon, under, over, along or across any land, street, road, footpath, waterway or any railway and the affixing of wires, stays or any other kind of support to any building or other structure;
- (b) constructing and maintaining pipes, tunnels or tubes required for broadcasting facilities under any street, road or footpath, and the alteration or removal thereof;
- (c) the provision of an underground conduit pipe to enable the licensee to lay equipment necessary for the provision of broadcasting services;

(2) A licensee may enter into an agreement with the owner of private property for the purpose of constructing and maintaining a broadcasting facility, pipe, tunnel or tube upon, under or over such private property constructing and maintaining a broadcasting

Signal Distribution Offer

12. (1) The licensee shall file an offer for the provision of the Service(s) with the Authority within sixty (60) days from issuance of the Service license(s) by the Authority for approval.

(2) Any tariff or amendment of tariff or new tariff contained in the Offer submitted to the Authority must state the date on which the aforementioned tariff will come into operation.

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(3) If a licensee wishes to amend a tariff or use a new tariff contained in the Offer it must submit the aforementioned tariff to the Authority for approval not less than sixty (60) days prior to the operational date as stated sub-regulation in 1 above.

(4) Tariffs submitted must indicate all information with regard to charges for services inclusive of deposit, non-recurring and monthly charges.

(5) All terms and conditions applicable to offered services must be submitted to the Authority including dispute settlement mechanisms and any other information requested by the Authority pursuant to this regulation.

(6) Tariff submissions must be accompanied by all such accounting and cost information as the Authority may require.

(7) Licensees may withdraw a tariff after submission thereof but prior to the Authority's decision on the tariff.

(8) The Authority may postpone the operational date of a tariff for a period not exceeding ninety (90) days to examine the reasonableness of the tariff.

(9) The Authority may reject a tariff or part thereof if the Authority finds that-

- (a) The tariff is unreasonable;
- (b) The tariff does not conform to the licensing conditions stipulated in the licence issued to the licensee concerned;
- (d) The tariff has the effect of impairing competition; and/or
- (e) The tariff is not accompanied by such cost information and other supporting material the Authority may require in terms of sub-regulation 6 hereof.

(10) The licensee shall ensure that its aforementioned Offer is readily available to licenced Commercial and Community Broadcasters in Namibia ensuring fairness and transparency in the negotiation process.

(11) The Offer shall contain information on issues relevant to the other licensees for negotiation purposes and should deal with the following -

- (a) Obligations of the licensee;
- (b) Obligations of Commercial or Community Broadcaster licensee;
- (c) Connectivity charges and billing arrangements;
- (d) Subscriber management support;
- (e) Customer Care services;
- (f) Equipment interface arrangements;
- (g) Technical support and service level agreement;

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- (h) Penalties for outages as per agreed service levels;
- (i) Electronic program guide; and
- (j) Dispute settlement mechanisms, but not limited thereto.

(12) The Signal Distribution licensee shall ensure that its price for the Service(s) is transparent, affordable, realistic, fair and objective.

(13) Notice of filing of an Offer shall be published by the Authority in the *Government Gazette*, and after such offer has come into operation the full text of the Offer must be made available in terms of section 27 of the Act.

Transition Period from Analogue to Digital Terrestrial Television

13. The Authority may in writing require that the Service(s) licensee provides Dual Illumination or Simulcast during the Transition Period for a specific period of time and for the whole or specific geographical areas to be communicated to the Signal Distribution Licensee in writing by the Authority.

Promotion to Competition

14. (1) The licensees shall comply with the provisions of sections 33 to 35 of the Act which stipulates that:

- (a) any practice or activity that has the object or effect of preventing, restricting or distorting competition in a market for the supply of broadcasting services or any product or service used in connection with these services is prohibited.
- (b) any abuse of individual or collective dominant position by one or more persons in a market for the supply of broadcasting services or any product used in connection with these services is prohibited.
- (c) sharing of directors and officers among otherwise unaffiliated providers of broadcasting services without the approval of the Authority is prohibited.

(2) The Authority may review any proposed acquisition of an interest conferring control in competing providers of broadcasting services, and any proposed major transaction between such providers and their affiliates for conformance with the Act and to ensure that the transaction will result in no reduction in competitive markets not offset by sufficient benefits to the public (as measured by the objects of the Act).

(3) The Authority may impose conditions before or after such acquisitions or transactions to maintain competitive broadcasting markets.

(4) Any agreements determined by the Authority to be anti-competitive will be automatically null and void.

(5) Any restrictive practice or activity whose pro-competitive effects outweigh its anti-competitive effects is deemed not to infringe the provisions of section 33.

(6) Subject to an agreement the Authority must conclude in terms of section 67 of the Competition Act, 2003 (Act 2 of 2003), the Authority has jurisdiction to investigate, enforce

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and authorize any breach of the competition rules contained in section 33 of the Act, on its own initiative or upon request by any person affected by the anti-competitive action concerned.

(7) No licence may be assigned by any person, and control of any person holding such a licence may not be transferred without the prior consent of the Authority, which consent may be given if the Authority finds that the transfer or assignment would not be prejudicial to the objects of this Act.

(8) The parties to any transaction transferring an interest in (or conferring or transferring a right to appoint or dismiss a director of) any holder of a licence referred to in paragraph 13.8 must notify the Authority of that transaction within 15 days from the conclusion of that transaction whether it transfers control in the licensee or not.

(9) If the transfer has ultimately resulted in a change of control, the Authority may impose necessary measures to annul the transfer or alleviate the change of control.

Safety Measures

15. (1) Licensees shall, in respect of all masts, towers or other facilities that it owns, leases or uses, take such reasonable and necessary safety measures to safeguard life or property and limit exposure to electromagnetic emission and related risks.

(2) If the construction of masts, towers or other facilities would injuriously affect any person or property, the licensee shall not continue with such construction and shall find alternative ways to erect such construction in a manner that will remove such injurious effect.

(3) The construction of masts, towers or other facilities must be done in such a manner that it does not diminish the aesthetics of the general environment in which they are constructed.

Broadcasting code

16. (1) The Authority may make a broadcasting code in terms of sections 89 of the Act and shall enforce compliance with such code in terms of section 90 of the Act.

Payment of Fees

17. (1) All licensees shall pay the broadcasting licencing fees as prescribed by the Authority from time to time.

(2) The prescribed fees shall be payable within sixty (60) days from the date of approval of the licensee's annual financial statements.

(3) If the prescribed fees are not paid by the licensee within the sixty (60) days as per sub-regulation 3 hereof, and remain unpaid after the expiry of a period of seven days after a written notice by the Authority to the licensee to remedy the default, the Authority may declare the licence to be forfeited in terms of Section 88 of the Act.

(4) The licensees shall submit their audited annual financial statements to the Authority within 60 days after the end of the licensee's financial year in terms of section 91 of the Act.

(5) The auditing of the financial statements referred to in sub-regulation 5 hereof must be carried out by a person who is registered as an accountant and auditor in terms of the Public Accountants' and Auditors' Act, 1951 (Act No. 51 of 1951).

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(6) The Authority shall not be obliged to issue an invoice to the licence but shall issue a receipt upon payment of the verified and correct payment.

Duration of licences

18. (1) The authorisation to provide television-broadcasting services shall expire after ten (10) years, from the date of issue of the broadcasting licence by the Authority, with respect to a licensee providing signal distribution services in terms of Section 87(1)(b) of the Act.

(2) Licensees shall apply to the Authority to renew their licences prior to the expiry of the licence in terms of section 87(3) of the Act and as set out in the “Regulations Regarding Licensing Procedures for Telecommunications and Broadcasting Service Licences and Spectrum Use Licences”, published in Government *Gazette* No. 4785, General Notice No. 272 of 29 August 2011, as may be amended from time to time.

(3) In terms of section 87(7) of the Act, in the event that a licensee fails to commence the provision of the Service(s) within a period of six (6) months from the date of issue of the licence, such licence shall expire at the end of the six (6) month period, upon notice in writing to the licensee by the Authority, unless otherwise approved by the Authority in advance.

(4) The Authority may, after considering a written request from a licensee, extend, in writing, for such further periods as may be determined by the Authority and if applicable, condone the licensee’s failure to commence rendering broadcasting services timeously, in which event the licence will lapse after the expiry of such extended period.

Ownership and control

19. (1) The licensee shall comply with the provisions of Section 85 (2) of the Act in respect of ownership and control of such licence.

[There are no subregulations additional to subregulation (1) in the *Government Gazette*.]

Amendment, renewal and transfer of licence or transfer of control of licence

20. (1) In the event that the licensee wishes to amend, renew and transfer its licence or transfer the control of its licence, the licensee must comply with the “Regulations Regarding Licensing Procedures for Telecommunications and Broadcasting Service Licences and Spectrum Use Licences”, published in Government *Gazette* No. 4785, General Notice No. 272, of 29 August 2011, as may be amended from time to time.

[There are no subregulations additional to subregulation (1) in the *Government Gazette*.]

Amendment of licence conditions

21. (1) In accordance with Section 86(3) of the Act, the Authority may, in respect of any particular licence, amend any of the conditions, including by adding further conditions-

- (a) if the Authority is of the opinion that it is in the interest of orderly spectrum management;

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- (b) in order to give effect to any international treaty in relation to broadcasting to which Namibia is a party; or
- (c) at the request of the licensee.

(2) No amendment may be made to the conditions of a service licence in terms of paragraphs 21.1(a) or 21.1(b), unless the licensee concerned has been granted the opportunity to make written representations to the Authority in connection therewith.

(3) The decision by the Authority to so amend or not, is, subject to the provisions of Article 18 of the Namibian Constitution, final.

22.

[regulation 22 deleted by General Notice 159/2020]

Duty to furnish information

23. (1) The licensees are obliged to supply information in advance to the Authority relating to changes regarding its contact details, contact persons, statistics on its broadcasting services, intended change of ownership, intended change of control, change of business address, court orders made against it, or any matter that materially affects its licensed operations, but not limited thereto.

[There are no subregulations additional to subregulation (1) in the *Government Gazette*.]

Reconsideration

24. (1) The Authority may, on its own motion or on a petition filed by an aggrieved party to any proceedings, reconsider any order or decision that it has made, within 90 days from the date of making that decision or issuing that order.

[There are no subregulations additional to subregulation (1) in the *Government Gazette*.]