



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

N\$4.00

WINDHOEK - 5 December 2013

No. 5356

CONTENTS

Page

GENERAL NOTICE

No. 473	Communication Regulatory Authority of Namibia: Notice of intention to amend the Regulations Regarding the Submission of Interconnection Agreements and Tariffs	1
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General Notice

COMMUNICATIONS REGULATORY AUTHORITY OF NAMIBIA

No. 473

2013

NOTICE OF INTENTION TO AMEND THE REGULATIONS REGARDING THE SUBMISSION OF INTERCONNECTION AGREEMENTS AND TARIFFS

The Communications Regulatory Authority of Namibia, in terms of section 53 of the Communications Act, 2009 (Act No. 8 of 2009) and regulation 4(3) of the Regulations Regarding Rule-Making Procedures as General Notice No. 334 of 17 December 2010 publishes this Notice of Intention to Amend the Regulations Regarding the Submission of Interconnection Agreements and Tariffs as published in General Notice No. 126 of 18 May 2011, which contains the following:

1. A draft of the proposed amendment to the regulations as set out in Schedule 1; and
2. Concise statement of purpose contained in Schedule 2.

The public may make oral submissions on the proposed regulations to the Authority, at a time, date and place notified by the Authority.

The public may also make written submissions to the Authority within thirty (30) days from the date of publication of this notice in the *Gazette*, in the manner set out below for making of written submissions.

Written reply comments may be submitted to the Authority within fourteen (14) days from the date of notification of written comments by the Authority.

All written submissions must –

- a) contain the name and contact details of the person making the written submissions and the name and contact details of the person for whom the written submission is made, if different; and
- b) be clear and concise.

All written submissions and reply comments must be made either physically or electronically:-

- a) by hand to the head offices of the Authority, namely Communication House, 56 Robert Mugabe Avenue, Windhoek;
- b) by post to the head offices of the Authority, namely Private Bag 13309, Windhoek 9000;
- c) by electronic mail to the following address: legal@cran.na; and
- d) by facsimile to the following facsimile number: +264 61 222 790.

L. N. JACOBS
CHAIRPERSON OF THE BOARD
COMMUNICATIONS REGULATORY AUTHORITY

SCHEDULE 1

AMENDMENT TO THE REGULATIONS REGARDING THE SUBMISSION OF INTERCONNECTION AGREEMENTS AND TARIFFS

The Communications Regulatory Authority of Namibia hereby publishes these Regulations Regarding the Submission of Tariffs, in terms of section 53 read with section 129 of the Communications Act, 2009 (Act. No. 8 of 2009), which regulations amend the Regulations Regarding the Submission of Interconnection Agreements and Tariffs, No. 4714 of 18 May 2011, insofar as they are inconsistent with these new regulations.

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);

“Discount” means a percentage reduction in the rate of telecommunication services;

“Interconnection cost” means the cost of linking of two telecommunications so that users of either network may communicate with users of, or utilise services provided by means of, the other network or any other telecommunication network connected to the other network;

“Investment cost” means any cost for the purchase of an asset or item, purchased with the intention that it will generate income or appreciate in the future and be sold at a higher price;

“Prior rates” means rates and tariffs which were implemented and charged by the licensee before an application for new rates or an amendment for rates, in respect of those existing rates, was made to the Authority including all discounts applicable;

“Promotion” means a temporary reduction in a rate or a temporary reduction in some part of a tariff;

“Retail” means selling of telecommunication services to the end user;

“Tariffs” means the published rates or charges and other terms and conditions under which a customer may receive telecommunications services;

“Unbundled basis” means the provision of network elements in a manner that allows requesting carriers to combine such elements in order to provide the telecommunication service concerned;

“underlying cost” means a cost associated with normal production or other business processes that can be predicted as part of the budget cycle, which excludes one-time costs or costs due to unexpected events, such as market fluctuations, sudden regulatory changes, or natural disasters;

“unit cost” means the cost incurred by a licensee to produce, store and sell one unit of a particular product. Unit costs include all fixed costs (i.e. plant and equipment) and all variable costs (labor, materials, etc.) involved in production; and

“wholesale” means any selling of telecommunication services to another licensee or another person in terms of section 51(4) who intends to resell such services.

Submission of documents to the Authority

2. In these regulations “submit in writing to the Authority” means either physically or electronically –

- (1) by hand to the head offices of the Authority, namely Communications House, 56 Robert Mugabe Avenue, Windhoek;
- (2) by post to the head offices of the Authority namely Private Bag 13309, Windhoek, 9000;
- (3) by electronic mail to the following address: economics@cran.na;
- (4) by facsimile to the following facsimile number: +264 61 222 790;
- (5) in any other manner or at alternative address set out by the Authority from time to time.

Applicability

3. (1) These regulations are applicable to the submission of tariff and amendments in terms of section 53(2) and (7) of the Act.

Tariffs Submissions

4. (1) All persons who are entitled to an individual licence or a prescribed class licence must submit in writing to the Authority a tariff or amendment as contemplated in section 53(7) of the Act within the time set out in section 53(8) of the Act.

(2) The tariff or amendment must state the date on which it will come into operation, which date may not be less than 60 days from the date of the filing of the tariff, as per section 53(8) of the Act. The 60 days will only commence once the Authority is satisfied that all the information as required in terms of these regulations is submitted.

(3) The tariff or amendment must contain all pertinent information concerning rates and charges for services as contemplated in section 53(9) of the Act.

(4) Licensees may request the Authority for an exemption from providing the information requested in 53(9) within the timeframe outlined in Regulation 4(4). The Authority will respond to the exemption request as soon as practicable, and may either grant or deny the request, in its sole discretion, based on, among other things, the nature of the information and the reasons for exemption.

(5) The tariff or amendment submission must be accompanied by the terms and conditions applicable to the provision of such telecommunication services.

(6) All tariffs or amendments submitted in terms of these regulations must be accompanied by the following cost accounting information as per section 53(18) of the Act, on the form contained Annexure A to these regulations.

- (i) Infrastructure investment cost;
- (ii) Wholesale price of the necessary inputs and other costs incurred in providing the retail service;
- (iii) Operating costs;
- (iv) Interconnection costs;
- (v) Depreciation value;
- (vi) Required return on capital;
- (vii) Unit cost of supplying the service; and
- (viii) Any other cost information that the Authority may require.

(7) The Authority may request further information or documentation regarding the tariff or amendment submission, which must be provided to the Authority in the time and manner set out by the Authority.

(8) In addition to any hard copies that are submitted, all tariff applications, explanations, calculations and any other related information must be submitted to the Authority in word or excel format as well as .pdf format.

- (9) The calculation of tariff and amendment must be based on the following principles: -
- (a) Tariffs must be sufficiently clear to enable the end user to determine the description of the service, the details relating to the nature of the service, amounts and charges payable for such service; and
 - (b) Tariffs must be non-discriminatory and must guarantee equality of treatment to all customers whether they are a subsidiary of the applicant or a competitor of the applicant.

(10) All submissions must provide accurate billing information on tariffs and usage in order for customers to verify whether or not they are billed correctly.

(11) The Authority may review tariffs or tariff structures for regulated services as it deems fit out of its own accord.

(12) All tariffs must provide a clear distinction between wholesale and retail tariffs and must also include a definition of the customers categorised as wholesale and retail.

- (13) A licensee shall inform the Authority of tariff or amendment to be charged in

response to tariffs implemented by another licensee, who provides similar services. The notification must contain all relevant information as required in terms of section 53(2), (7) and (9).

(14) In the event that a licensee can prove in advance that the tariffs are not below the cost of providing the service and adhere to all relevant sub-sections of section 53(1) of the Act, such licensee does not need the approval of the Authority.

Temporary Reduction in rates

5. (1) A licensee who intends to have a temporary reduction in rates as contemplated in section 53(2) of the Act, must inform the Authority no later than the date on which the special rates will be charged are made known to the public.

(2) The submission must contain a clear explanation on why the rate or tariff on offer should be viewed as a promotion.

(3) The temporary reduction in rates must be for a period not exceeding 3 months as per section 53(2)(a) of the Act.

(4) A licensee shall not charge its customers tariffs that have not been approved by the Authority in advance, except as stated in section 53(2) of the Act.

(5) Where the Authority does not approve the tariffs proposed by a licensee for regulated services and makes the decision that the licensee must adjust the specified tariffs, the licensee shall adjust the proposed tariff accordingly from the effective date of such a decision by the Authority.

Wholesale Tariffs

6. (1) All tariff and amendment submissions must be offered on an unbundled basis and must be sufficiently disaggregated as per sections 48(2) and 53(19)(f) of the Act.

(2) Telecommunication services must be offered for resale at a discounted rate as per section 51(2) or (3) of the Act.

(3) Where the parties are unable to negotiate a discount, they may request the Authority to convene a hearing to be held in terms of the Regulations Regarding Hearings as published in Government Gazette No. 5037, Notice No. 310, dated 13 September 2012 to determine such discount rates.

(4) The Authority must approve all discount schemes available to customers so as to ensure that they are transparent and non-discriminatory.

Tariffs submitted by dominant operators

7. (1) A dominant licensee shall not prevent market entry or distort competition by applying tariffs below the underlying cost of providing the telecommunication services as they are competing downstream with their competitors.

(2) The calculation of tariffs must be based on the following principles: -

(a) Tariffs must be objective and cost-based;

(b) Tariffs must be just and reasonable.

Publication of tariff submissions

8. (1) After the submission of a tariff or amendment, the Authority will as soon as is practicable, publish a notice of the submission in the *Gazette*.

(2) After the Authority publishes the notice referred to in regulation 8(1), the public may submit in writing to the Authority written comments within fourteen (14) days from the date of publication of the notice.

(3) A licensee who submits a tariff or amendment may submit in writing to the Authority a response to any written comments within fourteen (14) days from the lapsing of the time to submit written submissions.

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

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

(6) The Authority must maintain a register of all approved tariffs or amendments, at the head offices of the Authority and if practicable, on the Authority's website.

(7) All licensees shall ensure that they have updated information on their website that provides roaming tariffs applicable within SADC.¹

Decision of the Authority

9. (1) After considering the tariff or amendment and any further written information or documentation, the Authority must take such decision as is contemplated in sections 53(12-19) of the Act.

(2) The Authority may postpone the date of commencement of a tariff before it has come into operation, for a period not exceeding 90 days, to examine the reasonableness of the tariff as per section 53(13) of the Act. The 90-day period will start on the date after the new or amended tariff is indicated to come into operation in terms of section 53(8) of the Act.

(3) The Authority may reject a tariff or part thereof pursuant to the provisions of section 53(19) of the Act.

Reconsideration

10. (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 as per section 31 of the Act.

Confidential Information

11. (1) Any person submitting documents or making written submissions to the Authority in terms of these regulations may designate information as confidential, subject to the Regulations Regarding Confidential Information and Confidential Communications with the Authority as published in Government Gazette 5037, Notice 307, dated 13 September 2012.

¹ As per SADC Guidelines: Transparency on Roaming Services, 22 May 2013.

(2) If the Authority is of the opinion that the information is not confidential, it must inform the person that he or she may withdraw the information, agree that it will not be treated as confidential, or request a hearing on the issue of confidentiality to be conducted in terms of section 28 of the Act and regulation 5 of the Regulations Regarding Confidential Information and Confidential Communications.

(3) Any person making oral submissions may request a closed hearing on the grounds that the submissions are confidential, provided however that the tariffs are not confidential. A closed hearing will be treated as a confidential meeting in terms of section 29 of the Act, and the notice of the closed meeting required by section 29(4) must be maintained in the relevant file.

Condonation

12. (1) In the event any party is unable to comply with the times set out in these regulations, they may request from the Authority an extension of time at least seven (7) days prior to the time set out.

(2) The Authority will respond to the request for condonation within two (2) days, and may either grant or deny the request, in its sole discretion, based on, among other things, the nature of the proceeding and the reasons for non-compliance with the times set out.

***Ex parte* communications**

13. (1) A person may not communicate with the members of the Board to discuss the subject matter of a submission made in terms of these regulations, unless a request to do so is addressed to the Chairperson of the Board, has been granted, and provided that the person and the Board both must submit a report to the Authority summarizing the substance of the discussion and indicating whom was communicated with and when.

(2) A person may communicate with the CEO or staff members or, consultants to the Authority, at the official premises of the Authority, to discuss the subject matter of a submission made in terms of these regulations, provided however that minutes of such consultations be held.

Regulatory offences

14. (1) The Authority will prosecute regulatory offences and enforce these licence conditions in terms of sections 114 -116 of the Act.

Amendment

15. (1) Regulations 7, 8, and 9 of the Regulations Regarding the submission of Interconnection Agreements and Tariffs published in General Notice No. 126 of 18 May 2011, is hereby amended.

SCHEDULE 2

PROPOSED AMENDMENT TO REGULATIONS REGARDING INTERCONNECTION AGREEMENTS AND TARIFFS: COMMUNICATIONS ACT, 2009

The Communications Regulatory Authority, in terms of section 53 of the Communications Act, 2009 (Act No. 8 of 2009), amends the Regulations Regarding the submission of Interconnection Agreements and Tariffs published in General Notice No. 126 of 18 May 2011.

Due to the changes in the industry as well as a number of complaints received from stakeholders on a variety of issues such as discounts, interpretation of section 53 of the Act by the industry, the

information that needs to be submitted and the format of the submission, the Authority is of the opinion that the Regulations Regarding the submission of Interconnection Agreements and Tariffs need to be amended.

In terms of section 78 of the Act some licensees were declared dominant by the Authority, which imposes some duties in terms of rates and tariffs on dominant operators that were also captured in the amended regulations.

ANNEXURE A

BASIC INFORMATION	
Name of Licensee	
Contact Details of Licensee Telephone number: Email:	
Contact person	

TYPE OF APPLICATION (Please mark with ✓)	
New tariff	
Amendment of tariff	
Temporary reduction	
Withdrawal of tariff	

TARIFF INFORMATION	
Date on which tariff comes into operation	
Infrastructure cost investment	
Depreciation value	
Operating cost	
Wholesale price of the necessary inputs plus the other costs that are incurred in providing the retail service	
Interconnection cost	
Required return on capital	
Unit cost of supplying the service	
Description of tariff	

REQUIRED ATTACHMENTS	
Supporting documentation for all cost elements as required	
Terms and conditions including Rights and remedies available to customers in the events of unauthorized charges or other disputes.	
All information pertaining to rates and charges: Deposits Non-recurring charges Monthly charges	