



# GOVERNMENT GAZETTE

## OF THE

# REPUBLIC OF NAMIBIA

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WINDHOEK - 24 December 2015

No. 5908

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## General Notices

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### COMMUNICATIONS REGULATORY AUTHORITY OF NAMIBIA

No. 565

2015

NOTICE IN TERMS OF SECTIONS 85 AND 101 OF THE COMMUNICATIONS ACT, 2009  
(ACT NO. 8 OF 2009) AND THE REGULATIONS REGARDING LICENSING PROCEDURES  
FOR TELECOMMUNICATIONS AND BROADCASTING SERVICE LICENCES AND  
SPECTRUM USE LICENCES

The Communications Regulatory Authority of Namibia, in terms of Sections 85 and 101 of the Communications Act (No. 8 of 2009) read with Regulations 5, 6 and 11 of the “Regulations Regarding Licensing Procedures for Telecommunications and Broadcasting Service Licences and Spectrum Use Licences”, in Government Gazette No. 4785, Notice No. 272, dated 29 August 2011 (as amended), herewith gives notice that the application for a Commercial Broadcasting Service License and Spectrum Use Licence for **Okati Global Trading CC** has been declined.

#### THE FOLLOWING ARE THE REASONS FOR THE DECISION:

##### INTRODUCTION

Okati Global Trading CC (hereinafter referred to as “the Applicant”) submitted applications for a commercial broadcasting service licence and spectrum use licence to provide FM broadcasting services in the geographical area of Oshakati on 12 August 2013 in accordance with sections 85 and 101 of the Communications Act, 2009 (Act No. 8 of 2009) (hereinafter referred to as the “Act”) and the Regulations regarding Licensing Procedures for Telecommunications and Broadcasting Service Licences and Spectrum Use licences as published in Government Gazette No. 4785, General Notice No. 272 of 29 August 2011, for consideration by the Authority. All licence application fees in respect of the application were paid.

##### BACKGROUND TO APPLICATION

As per documentation submitted with the application for a commercial broadcasting service licence, the Applicant is a 100% Namibian owned closed corporation. There are no foreign ownership interests in the Applicant’s board or ownership level as indicated below-

Name of Owner	Nationality of Owner
Pashukeni Johanna Shiweda	Namibian
Johannes Shigwedha	Namibian
Onni-Ndangi Iithete	Namibian

Section 101 (7) of the Communications Act, 2009 (Act No. 8 of 2009), provides as follows:

*“where a person applies for a licence to operate a network or provide telecommunications services or broadcasting services, that person must also apply for such spectrum use licences as are necessary to render the service concerned.”*

Consequently, the Applicant submitted an application for spectrum use for FM broadcasting frequency between 87 MHz and 108 MHz dated 12 August 2013 for coverage in the geographical area of Oshakati with a transmitter output power of 250W.

The Applicant is intending to provide their own signal distribution services as required by Regulation 5(2)(g) of the Regulations Regarding Licensing Procedure for Telecommunications and Broadcasting Service Licences and Spectrum Use License. Applicant will enter into a site sharing agreement with the Namibian Broadcasting Corporation to attach its antenna and transmitter to the existing infrastructure owned by the Namibian Broadcasting Corporation in Oshakati, as per documentation and coverage plot submitted to the Authority.

As required by regulation 5(2)(j) of the Regulations Regarding Licensing Procedure for Telecommunications and Broadcasting Service Licences and Spectrum Use Licence, the Applicant submitted a proposed program schedule indicating its intention to provide broadcasting services focusing on contemporary international and local music such as hip-hop, R&B and Kwaito and information services on education and current events on a 24-hour basis from Monday to Sunday.

## **REQUEST FOR INFORMATION**

### **Outstanding supporting documentation to application**

The Authority requested the Applicant on 30 September 2013 to submit outstanding information in respect of-

- i) A detailed business plan inclusive of financial projections;
- ii) Proof of technical expertise that will provide technical support to the envisaged radio station; and
- iii) The full names of the Board of Directors of the company as well as their nationality and certified copies of their identity documents.

The Applicant submitted a business case under the marketing name Radio North/North FM and indicated that Satcom (Pty) Ltd will provide technical expertise.

### **Oral Submissions**

The Authority requested the Applicant to make an oral submission in respect of its application on 13 March 2015.

At the oral hearing, the Applicant gave a brief overview of their business outlook and marketing plan, competitive differentiation, financial resources acquired from JoShi Investments, expertise and experience and intended program schedule. The Authority posed various questions to the applicant on the forecasted market growth, the community it will serve, programme content, financial resources, technical expertise and envisaged site sharing with the Namibian Broadcasting Corporation.

After the oral submission made by the Applicant the Authority requested the Applicant on 26 March 2015 to provide-

- (i) Clarity in respect of how the estimation for the income projection was arrived at;
- (ii) Amendment of the Founding Statement to reflect all members of the closed corporation;

- (iii) Changes in ownership from the original applications to the presentation delivered during the oral submission;
- (iv) Detailed breakdown of “airing costs”;
- (v) Application for a studio link;
- (vi) Site Sharing Agreement between the Namibian Broadcasting Corporation and Satcom (Pty) Ltd; and
- (vii) The transmitter equipment specification.

The Applicant submitted the aforementioned information on 8 April 2015 with the exception of the changes in ownership from the original applications to the presentation delivered during the oral submission.

The Authority submitted a second request for information to the Applicant on 18 May 2015 requesting –

- i) Identification document of Mr Onni-Ndangi Iithete;;
- ii) Bank Statements of Okati Global Trading CC; and
- iii) Bank Statements of JoShi Investment..

### **PROCEDURAL COMPLIANCE**

Following due process in terms of the Regulations Regarding Licensing Procedures for Telecommunications and Broadcasting Service Licences and Spectrum Use Licences, the Authority published a notice in the Government Gazette 5595, Notice No. 390, dated 20 October 2014, allowing fourteen (14) days for public comments from the date of publication of the Notice in the *Gazette*. The commenting period lapsed on 04 November 2014, and no comments were received.

The last day for the decision is 20 August 2015 following the last correspondence and documentation submitted by the Applicant on 19 June 2015. The Authority informed the Applicant that it will render its final decision by 14 October 2015.

### **ANALYSIS OF SUBSTANTIVE ISSUES**

#### **Application for commercial broadcasting service licence**

The Oshakati area is serviced by seven (7) commercial broadcasters (Omulunga Radio, Radio 100, Radio Kudu, Radio 99, Radiowave, Cosmos Digital Namibia, Fresh FM), three (3) community broadcasters (Media for Christ, Ohangwena Community Radio, Maroela Trust) and the Namibia Broadcasting Corporation (NBC). Please note that NBC is providing broadcasting services in nine (9) languages as well as offering a National Radio channel.

When considering the award of a broadcasting service licence, the Authority is obliged to consider the following provisions of section 85(8) of the Communications Act:

- (a) *the character of the applicant or, if the applicant is a body corporate, the character of its directors*”;**

The Authority has no reservations regarding the character of the applicant because it has not received any information that suggests that applicant or any of its members are of a bad character or that they would not be fit to run a radio station.

- “(b) *the adequacy of the expertise, experience and financial resources available to the applicant*”;**

Based on the facts presented, the Applicant intends to finance its operations *via* JoShi Investments. and submitted bank statements as proof of available financial resources. Although the Applicant

indicated that they are in negotiation with a financial institution for financial assistance during its oral submission on 13 March 2015, no proof of any application or commitment was submitted to the Authority to date.

The projected amount constitutes less than the start-up capital and operational expenses envisaged by the Applicant during its first year of operation as contained in the business case presented to the Authority.

Although the Applicant highlighted its competitors, it failed to submit an adequate strategy to attract advertising taking into account that the Applicant will only be operational within Oshakati whilst its competitors broadcast on a nationwide basis.

Analysis of the business case has shown that projected revenues for live broadcasts, promotional interviews and airing of documentaries are over stated taking into account the limited coverage area of the radio station. The cost of studio equipment and tower rental is omitted from the business case and could have a major impact on the estimated profit.

Further thereto, the projected earnings are ambitious in relation to existing broadcasting licensees profit margin of 2-3% based on their annual financial reports as submitted to the Authority on a bi-annual basis, who have built an active listener base over many years. Without the submission of a loan agreement the Authority was unable to test the interest to be paid included in the expenditure projection for accuracy.

- “(c) the desirability or otherwise allowing any person or association of persons, to have control or a substantial interest in-***
- (i) more than one broadcasting service;***
  - (ii) more than one radio station and one television station and one registered newspaper with a common coverage and distribution area or significantly overlapping coverage and distribution areas”;***

There is no evidence presented before the Authority that Applicant has a controlling or substantial interest in any broadcasting service licensee or a registered newspaper with a common coverage and distribution area.

- “(d) whether the applicant is likely to comply with such technical broadcasting standards as the Authority may prescribe”;***

The initial application submitted by the Applicant was supported by an application for site sharing of the Oshakati transmitter tower owned by the Namibian Broadcasting Corporation (NBC).

However, the Applicant submitted a rental agreement with Satcom (Pty) Ltd for access to the NBC tower to the Authority. Satcom (Pty) Ltd is not the owner of the NBC transmitter tower and no proof was submitted as to the existence of a site sharing agreement between NBC and SatCom (Pty) Ltd to support the aforementioned statement although the Authority requested the Applicant to submit the said agreement on 26 March 2015.

Although the Applicant stated in its oral submission that Satcom (Pty) Ltd will provide technical expertise, the Applicant did not submit an agreement with Satcom (Pty) Ltd for the maintenance of the transmitter equipment.

The Authority is therefore, not convinced that the Applicant has secured access to infrastructure to install its technical equipment and commence broadcasting services utilising assigned spectrum given the discrepancy between the initial application and the documentation submitted on 8 April 2015. In the opinion of the Authority the Applicant will not be able to comply with section 86(2) (q) of the Act nor provide broadcasting services within six (6) months from the date of the award of

the service licence as required by the Regulations regarding Licence Conditions for Broadcasting Service Licensees.

***“(e) whether the conditions of a broadcasting licence will unjustly benefit one licensee above another”;***

There is no indication that if awarded a licence, the conditions imposed would unjustly benefit applicant above another licensee taking into account that the service and spectrum use licence conditions are generic to all licensees.

***“(f) the allocation of spectrum in such a manner as to ensure the widest possible diversity of programming and the optimal utilization of such resources. Provided that priority may be given to broadcasters transmitting the maximum number of hours per day”;***

The Applicant has applied for a commercial broadcasting service licence. It should be noted that the programme schedule as submitted will not introduce unique content to the market expanding the current content diversity provided by existing broadcasters.

Section 101(8) places a duty on the Authority to consider the application for spectrum in conjunction with the application for a service licence and to ensure that such spectrum use licence as may be required is issued to enable the applicant to render the services for which the service licence is issued. However, it should be noted that an Applicant must have the ability to install the relevant technical equipment to facilitate the use of spectrum assigned. The Applicant has failed to provide proof of access to infrastructure to install technical equipment to utilised spectrum to provide broadcasting services or proof of available funding to acquire the necessary technical equipment.

In the opinion of the Authority the Applicant will not substantially add to available radio content nor be able to comply with the broadcasting service licence condition and spectrum use licence condition which require licensees to commence services and utilisation of spectrum within a period of six (6) months from the date of award of said licences should approval be granted by the CRAN Board of Directors.

***“(g) the reservation of radio wave spectrum resources for future use; and”***

FM broadcasting frequencies in the Oshakati area is in short supply given the high number of existing broadcasting licensees and is further compounded by the high volume of applications pending before the Authority for the area.

Given the Authority’s opinion in respect of content diversity, meeting technical requirements in respect of implementation and maintenance of equipment to provide services and the ability of the Applicant to comply with its service and spectrum use licence conditions, the Authority is of the opinion that the spectrum as identified for this application be reserved to be considered for another application.

***“(h) the desirability of giving priority to community based broadcasts.”***

Given that the Applicant did not apply for a community broadcasting service licence, this criteria thus have no bearing on the application under consideration is not applicable.

In light of the above analysis, the Authority is of the opinion:-

- i) That the Applicant will encounter sustainability challenges given the fact the Applicant did not provide proof of sufficient funding resources as required by section 85 (b);
- ii) That based on the analysis of the current projections, the Applicant will not have adequate financial resources, to sustain the station as required by section 85(8)(b) of the Communications Act;

- iii) The Applicant did not provide proof of access to the broadcasting tower owned by the Namibian Broadcasting Corporation to install broadcasting equipment to provide services, despite numerous requests from the Authority to submit proof in the regard. The Applicant will therefore, not be able to adhere to technical requirements as set out in section 85 (8)(b), (d) and (f); and
- iv) The Applicant failed to convince the Authority that it will substantially add to the diversity of radio content already provided by existing broadcasters as set out in section 85(8)(f).

After consideration of the information submitted with the application and evaluation thereof in terms of the criteria as set out in Section 85(8) (a), (b), (d) and (f) of the Communications Act, the Authority concluded to submit a recommendation to the CRAN Board of Directors to decline the service licence application for a commercial broadcasting service licence submitted by the Applicant.

#### **Application for spectrum use licence**

Pursuant to the provisions of section 101(6) of the Act, an applicant may only be issued with a spectrum use licence, where the operation of a network or the provision of broadcasting service or the use thereof entails the use of radio waves.

As indicated above, section 101(7) of the Communications Act stipulates as follows:

*“When a person applies for a licence to operate a network or provide telecommunications services or broadcasting services, that person must also apply for such spectrum licences as are necessary to render the service concerned.”*

Section 101(8) places a duty on the Authority to consider the application for spectrum in conjunction with the application for a service licence and to ensure that such spectrum use licence as may be required is issued to enable the applicant to render the services for which the service licence is issued. Read jointly, these sections suggest that if an applicant has applied for a broadcasting service licence, it must also have such spectrum use licence as is necessary to render the service concerned and further that a spectrum use licence is required in addition to a broadcasting service licence. It also indicates that a spectrum use licence cannot be issued for the provision of broadcasting services in the absence of a broadcasting service licence.

Subsequently a recommendation to decline the award of a broadcasting service licence, would naturally be accompanied by a decline of a spectrum use licence, because frequencies for FM broadcasting may only be utilised with a broadcasting service licence.

The Authority therefore recommends that the CRAN Board of Directors decline the application for a spectrum use licence submitted by the Applicant.

In light of the above, and in terms of sections 85 and 101 of the Communications Act and the Regulations Regarding Licensing Procedures for Telecommunications and Broadcasting Service Licenses and Spectrum Use Licenses, the application for a commercial broadcasting service licence submitted by Okati Global Trading CC based on the criteria as set out in Section 85(8)(b), (d) and (f) of the Act and the application for spectrum use in the geographical area of Oshakati submitted in conjunction with the service licence application is declined.

Kindly take note that section 31 of the Communications Act provides that 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.

**L.N. JACOBS**  
**CHAIRPERSON OF THE BOARD OF DIRECTORS**  
**COMMUNICATIONS REGULATORY AUTHORITY OF NAMIBIA**

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**COMMUNICATIONS REGULATORY AUTHORITY OF NAMIBIA**

No. 566

2015

NOTICE TO WITHDRAW SPECTRUM USE LICENCE IN TERMS OF REGULATIONS  
10 AND 11 OF THE REGULATIONS REGARDING LICENSING PROCEDURES FOR  
TELECOMMUNICATIONS AND BROADCASTING SERVICE LICENCES AND  
SPECTRUM USE LICENCES

**INTRODUCTION**

**One Africa Television (Pty) Ltd** was awarded spectrum use licences in **Windhoek, Walvis Bay** and **Swakopmund** to provide analogue television services on 13 September 2012 in terms of the Regulations regarding Transitional Procedures for Telecommunications and Broadcasting Service Licences and Spectrum Use Licences as published in Government Gazette No. 4737, Notice No. 171 dated 17 June 2011.

One Africa Television (Pty) Ltd (hereinafter referred to as “the Applicant”) submitted applications for the withdrawal of spectrum use licences awarded for analogue television broadcasting services in the geographical areas of Windhoek, Walvis Bay and Swakopmund on 13 April 2015 in accordance with section 101 of the Communications Act, 2009 (Act No. 8 of 2009) (hereinafter referred to as “the Act”) and the Regulations regarding Licensing Procedures for Telecommunications and Broadcasting Service Licences and Spectrum Use licences as published in Government Gazette No. 4785, General Notice No. 272 of 29 August 2011, for consideration by the Authority.

**BACKGROUND TO APPLICATION**

The migration from analogue television services to digital terrestrial television services in terms of the ITU GE06 agreement requires all broadcasting service licensees providing television broadcasting services to migrate their transmitters from analogue spectrum frequencies to the appropriate frequencies allocated to digital terrestrial television services. Namibia as an ITU member state is a signatory to the ITU GE06 agreement and subsequently implemented all necessary actions to ensure that television broadcasting services provided by broadcasting services licensees are migrated to the appropriate spectrum range.

The Applicant holds a commercial broadcasting service licence and migrated all analogue broadcasting services to the multiplex platform of the Namibian Broadcasting Corporation for distribution of its signal to provide digital terrestrial television services to its customer base. The Namibian Broadcasting Corporation was mandated by the Digital Terrestrial Television Policy Guidelines as published in Government Gazette No. 5346, Notice No. 316 dated 21 November 2013 to provide multiplex and signal distribution services to other broadcasting services licensees to provide digital terrestrial television services.

On completion of the migration process, the Applicant discontinued the provision of analogue television services. Subsequently the Applicant submitted applications for the withdrawal of spectrum use licences awarded for providing analogue television services as indicated below-

(i)	Windhoek	Gross Hertzog	960 MHz
(ii)	Windhoek	Ice Cream Cone	482 MHz
(iii)	Windhoek		786 MHz (Studio Link)
(iv)	Walvis Bay	City Centre Tower	666 MHz
(v)	Swakopmund	Tamariskia Tower	794 MHz

## PROCEDURAL COMPLIANCE

Following due process in terms of Regulations Regarding Licensing Procedures for Telecommunications and Broadcasting Service Licences and Spectrum Use Licences, the Authority published a notice in the Government Gazette 5805, Notice No. 383, dated 12 August 2015, allowing fourteen (14) days for public comments from the date of publication of the Notice in the *Gazette*. The commenting period lapsed on 29 August 2015, and no comments were received.

The last day for the decision is 29 October 2015 given that the last correspondence and documentation in respect of the licence application was received on 29 August 2015.

## ANALYSIS BY AUTHORITY

The Authority notes that the migration from analogue television services to digital terrestrial television services is in line with the Digital Terrestrial Television Policy Guidelines as published in Government Gazette No. 5346, Notice No. 316 dated 21 November 2013 as well as the international date of 17 June 2015 to switch off of all analogue television services.

The switchover from analogue television services to digital terrestrial television services was successfully concluded in the geographical areas of Windhoek, Walvis Bay and Swakopmund on 31 January 2015 and 31 March 2015 respectively. No analogue television services have been offered by any broadcasting service licensee since analogue switch off (ASO).

Regulation 10(2) of Regulations Regarding Licensing Procedures for Telecommunications and Broadcasting Service Licences and Spectrum Use Licences as published in Government *Gazette* No. 4785, Notice No. 330 dated 29 August 2011 provides as follows-

**(2) *If a licensee intends to permanently discontinue providing service in accordance with its licence, it must request the Authority to withdraw its licence....***"

Accordingly the Applicant submitted applications for withdrawal of its spectrum use licences awarded to provide analogue television services in the geographical areas of Windhoek, Walvis Bay and Swakopmund, in compliance with the provisions contained in the said Regulations.

Although Regulation 10(3)(e) requires the Applicant to set out the date of discontinuance of service at least sixty(60) days from the date of submitting the application for withdrawal, it is noted that the Applicant only submitted the application for withdrawal of its spectrum use licences on 13 April 2015, which date is after the date of analogue switch off in Windhoek, Walvis Bay and Swakopmund and the subsequent discontinuation of analogue television services.

The date of discontinuation is therefore 16 June 2015, been 60 days from 13 April 2015, (date on which the application was submitted) as contemplated in regulation 10(3)(e) of the Licensing Procedure Regulations.

It should be noted that all spectrum use licence fees relating to these licences have been paid in full until 31 December 2015, as required by Regulation 10(3)(f) of the Regulations Regarding Licensing Procedures for Telecommunications and Broadcasting Services Licences and Spectrum Use Licences. Owing to the fact that the date of discontinuation is the 16<sup>th</sup> of June 2015 and the fees for the full 2015 spectrum year have been paid, the Authority will refund Applicant the prorated fees in respect of the said spectrum use licences from date of discontinuation.

The Applicant ceased utilisation of the spectrum use licences awarded for analogue television services in the geographical areas of Windhoek, Walvis Bay and Swakopmund, after migrating its broadcasting services to the digital terrestrial television platform provided by the Namibian Broadcasting Corporation on 31 January 2015 and 31 March 2015 respectively.

The Authority therefore approved the withdrawal of the spectrum use licences for providing analogue television services by the Applicant in the geographical areas of Windhoek, Walvis Bay and Swakopmund, as was awarded on 13 September 2012 and published in Government Gazette No. 5037, Notice No. 306, effective from 16 June 2015.

## DECISION

In terms of section 101 of the Communications Act and the Regulations Regarding Licensing Procedures for Telecommunications and Broadcasting Service Licences and Spectrum Use Licences the Board of Directors herewith withdraws the spectrum use licences awarded to One Africa Television (Pty) Ltd on 13 September 2012 to provide analogue television services as set out hereunder-

a.	Windhoek	Gross Hertzog	960 MHz
b.	Windhoek	Ice Cream Cone	482 MHz
c.	Windhoek		786 MHz (Studio Link)
d.	Walvis Bay	City Centre Tower	666 MHz
e.	Swakopmund	Tamariskia Tower	794 MHz

**L.N. JACOBS**

**CHAIRPERSON OF THE BOARD OF DIRECTORS**

**COMMUNICATIONS REGULATORY AUTHORITY OF NAMIBIA**

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## COMMUNICATIONS REGULATORY AUTHORITY OF NAMIBIA

No.567

2015

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

The Communications Regulatory Authority of Namibia, in terms of section 31 of the Communications Act (No 8 of 2009) read with regulations 11 and 20 of the "Regulations Regarding Licensing Procedures for Telecommunications and Broadcasting Service Licences and Spectrum Use Licence, in Government *Gazette* No. 4785, General Notice No. 272 dated 29 August 2011 (as amended), herewith gives notice that **Hype Radio CC** has submitted an application for reconsideration, dated the 25<sup>th</sup> of September 2015, in respect of a decision by the Authority to decline the application for a commercial broadcasting service and spectrum use licence, which decision was published in Government *Gazette* No. 5908, General Notice No. 567, dated 24 December 2015. The reasons and grounds for the application for reconsideration are contained in the application that can be inspected at the offices of the Authority. The public may submit comments in writing to the Authority within a period of fourteen (14) days from the date of publication of this notice in the Government *Gazette*.

The applicant may submit written reply comments within fourteen (14) days from the due date of the written public comments.

All written submissions must 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 be clear and concise.

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

- (1) By hand to the head offices of the Authority, namely Communication 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: [legal@cran.na](mailto:legal@cran.na);
- (4) By facsimile to the following facsimile number: +264 61 222790; or
- (5) By fax to e-mail to: 0886550852.

**L.N. JACOBS**  
**CHAIRPERSON OF THE BOARD OF DIRECTORS**  
**COMMUNICATIONS REGULATORY AUTHORITY OF NAMIBIA**

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**COMMUNICATIONS REGULATORY AUTHORITY OF NAMIBIA**

No. 568

2015

NOTICE IN TERMS OF THE REGULATIONS REGARDING THE SUBMISSIONS OF  
INTERCONNECTION AGREEMENTS AND TARIFFS

The Communications Regulatory Authority of Namibia, in terms of Sections 53(2) and 53(7) of the Communications Act, 2009 (Act No. 8 of 2009) read with regulation 8(1) of the “Regulations Regarding the Submission of Interconnection Agreements and Tariffs”, in Government Gazette No. 4714, Notice No. 126, dated 18 May 2011, herewith gives notice that **Mobile Telecommunication Limited** has filed a tariff with the Authority as set out in Schedule 1 hereto.

Any person may examine copies of the tariffs submitted 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. Copies are also available at [www.cran.na](http://www.cran.na) where copies may be downloaded free of charge.

The public may submit in writing to the Authority written comments within fourteen (14) days from the date of publication of this notice in the *Gazette*.

**Mobile Telecommunication Limited** 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.

All written submissions must 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 submissions is made, if different and be clear and concise.

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

- (1) by hand to the head offices of the Authority, namely Communication 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: [legal@cran.na](mailto:legal@cran.na); and
- (4) by facsimile to the following facsimile number: +264 61 222790.
- (5) by fax to e-mail to: 0886550852.

**L.N. JACOBS**  
**CHAIRPERSON OF THE BOARD OF DIRECTORS**  
**COMMUNICATIONS REGULATORY AUTHORITY OF NAMIBIA**

**SCHEDULE 1**  
**MTC NetMan TurboBoost Tariffs**

**Package Detail**

Service Plan	NetMan 2GB TurboBoost	NetMan 6GB TurboBoost	NetMan 20GB TurboBoost	NetMan Unlimited Turbo Boost
Connection Fee	N\$ 218	N\$ 218	N\$ 218	N\$ 218
Subscription Fee	N\$ 179	N\$ 349	N\$ 549	N\$ 999
TurboBoost Fee (TB)	N\$ 59	N\$ 115	N\$ 179	N\$ 329
TB Fee Promotional 10% discount	N\$ 53	N\$ 103	N\$ 161	N\$ 296
Contract Period	24	24	24	24
Technology	4G	4G	4G	4G
Free Device	3G USB	4G USB	4G Router	4G Router
Free Data	2GB	6GB	20GB	90GB
TurboBoost Data	2GB	6GB	20GB	90GB

**TARIFFS per minute after completion of free units**

Event type	TARIFF TIME	N\$
Voice MTC -> All National Destinations (Same to Video Calls or data CS)	Peak	1.50
	Off Peak	0.85
	Off-off Peak	0.85
SMS	National	0.40
	Angola	0.40
	Neighboring ***	0.60
MMS	International	0.99
	Any	0.60
***Neighboring includes: South Africa, Botswana, Zambia, Zimbabwe, Lesotho, Malawi, Mozambique and Swaziland		

First 3 seconds free (means calls with 3s or less are not charged), after that 1st min in full, then every 6 seconds.

Free Units only valid for 1 x bill cycle and TurboBoost unused free units will carry forward limited to 60 days.

Normal Data Bundles will not be applicable to these NetMan TurboBoost packages.

International Call tariffs for all the packages are the same as Select/Contract International Tariffs.

**COMMUNICATIONS REGULATORY AUTHORITY OF NAMIBIA**

No. 569

2015

NOTICE IN TERMS OF SECTION 53 OF THE COMMUNICATIONS ACT, 2009  
(ACT NO. 8 OF 2009) READ WITH THE REGULATIONS REGARDING THE  
SUBMISSIONS OF INTERCONNECTION AGREEMENTS AND TARIFFS

The Communications Regulatory Authority of Namibia, in terms section 53 of the Communications Act read with regulation 8 of the "Regulations Regarding the Submission of Interconnection

Agreements and Tariffs”, published in Government Gazette No. 4714, General Notice No. 126, dated 18 May 2011, herewith gives notice of the following tariffs for Aweh Products as submitted by **Mobile Telecommunications Limited**, which, notwithstanding date of publication of this notice, came into force on **27 October 2015**.

#### **THE FOLLOWING ARE THE REASONS FOR THE DECISION:**

### **1. INTRODUCTION**

In terms of section 53 (1) and (7) of the Communications Act No. 8 of 2009 (hereinafter referred to as “the Act”), Mobile Telecommunications Limited (hereinafter referred to as “MTC”), filed for the approval of tariffs for AWEH PRIME, AWEH GIG, SUPER AWEH and AWEH GO products on 29 July 2015.

### **2. PROCEDURAL COMPLIANCE**

The proposed tariffs were published as General Notice No. 382 in the Government Gazette No. 5805 dated 12 August 2015 in terms of Regulation 8 of the “Regulations Regarding the Submission of Interconnection Agreements and Tariffs” published in Government Gazette No. 4714 of 18 May 2011.

Comments were invited from the public, in terms of the Notice published in the *Gazette*, within a period of fourteen (14) days from the date of publication of the Notice in the *Gazette*, which period lapsed on 27 August 2015.

No public comments were received in respect of the tariffs as published during the commenting period, and as such no reply comments were required from MTC. The date of commencement of the tariffs is 27 October 2015.

### **3. FINANCIAL AND ECONOMIC ANALYSIS OF THE MOBILE TELECOMMUNICATIONS LIMITED AWEH PACKAGES’ TARIFFS**

The tariffs for the different Aweh packages were reduced and the package was submitted as promotional tariffs in terms of section 53(2) for a period of three months. During the promotion period the bundles offered on the social media was increased.

The tariff information is as follows:

**Table 1: Proposed Tariffs**

<b>Package</b>	<b>Subscription Fee N\$ (7-Days)</b>	<b>Voice minutes</b>	<b>SMS</b>	<b>Data mega-bytes</b>	<b>SocialMedia megabytes</b>
<b>Aweh Gig</b>	N\$ 30.00	100	700	1,024	<b>500 WhatsApp</b>
<b>Aweh Go</b>	N\$ 12.00	50	150	50	<b>50 WhatsApp</b>
<b>Aweh Prime</b>	N\$ 30.00	350	700	200	<b>200 WhatsApp</b>
<b>Aweh Super</b>	N\$ 50.00	700	1,500	350	<b>700 WhatsApp and Facebook</b>

The Aweh packages are as approved and published in Government Gazette No. 5725 except that the packages now offer additional Social Media Bundles.

The tariffs are not deemed anti-competitive and are not unreasonably discriminatory in that:

1. They do not prevent, restrict or distort competition in the market for the supply of telecommunications;

2. There is no abuse of individual or collective dominant position by MTC for the supply of telecommunications in respect hereof;
3. There is no restrictive practice or activity whose anti-competitive effects outweigh its pro-competitive effective.

All requirements in terms of section 53 of the Act that deals with the approval of tariffs have been adhered to in that:

1. All pertinent information as required by section 53(7) was submitted to the Authority in that Telecom filed the tariff in the prescribed manner with the Authority for approval.
2. All pertinent information as required by section 53(9) was submitted to the Authority such as:
  - 2.1 The rates and charges for services, including all deposits, non-recurring charges and monthly charges;
  - 2.2 The terms and conditions applicable to the provision of services by MTC, including rights and remedies available to customers in the event of unauthorised charges or other disputes or claims over billing or the provision of services, and any other information requested by the Authority pursuant to this section.
3. The date of implementation is indicated as 27 October 2015 (which date is not less than 60 days from the date of the filing of the tariff) as required by section 53(8) of the Act.

Since it is a bundled package the Authority will request for cost information six months after the launch of the product to ensure that the tariff is not below cost. This same procedure was followed with all the previously approved Aweh Packages.

#### 4. **DECISION**

The Authority herewith approves the proposed tariffs for AWEH PRIME, AWH GIG, SUPER AWEH and AWEH GO as submitted by Mobile Telecommunications Limited for implementation effective from 27 October 2015.

**L.N. JACOBS**  
**CHAIRPERSON OF THE BOARD OF DIRECTORS**  
**COMMUNICATIONS REGULATORY AUTHORITY OF NAMIBIA**

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#### **COMMUNICATIONS REGULATORY AUTHORITY OF NAMIBIA**

No. 570

2015

#### **NOTICE IN TERMS OF SECTION 53 OF THE COMMUNICATIONS ACT, 2009 (ACT NO. 8 OF 2009) READ WITH THE REGULATIONS REGARDING THE SUBMISSIONS OF INTERCONNECTION AGREEMENTS AND TARIFFS**

The Communications Regulatory Authority of Namibia, in terms section 53 of the Communications Act read with regulation 8 of the “Regulations Regarding the Submission of Interconnection Agreements and Tariffs”, published in Government Gazette No. 4714, General Notice No. 126, dated 18 May 2011, herewith gives notice of the following tariffs for new 4G Broadband (Wi-Max) as submitted by **Paratus Telecommunications (Pty) Ltd**, which, notwithstanding date of publication of this notice, came into force on **27 October 2015**.

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

In terms of section 53 (1) and (7) of the Communications Act No. 8 of 2009 (hereinafter referred to as “the Act”), Paratus Telecommunications (Pty) Ltd (hereinafter referred to as “Paratus Telecom”), filed for the approval of tariffs for new 4G Broadband (Wi-Max) on 1 July 2015.

**2. PROCEDURAL COMPLIANCE**

The proposed tariffs were published as General Notice No. 360 in the Government Gazette No. 5790 dated 24 July 2015 in terms of Regulation 8 of the “Regulations Regarding the Submission of Interconnection Agreements and Tariffs” published in Government Gazette No. 4714 of 18 May 2011.

Comments were invited from the public, in terms of the Notice published in the *Gazette*, within a period of fourteen (14) days from the date of publication of the Notice in the *Gazette*, which period lapsed on 7 August 2015.

No public comments were received during the commenting period in respect of the tariffs publication and as such no reply comments were required from Paratus Telecom. However, on the 13<sup>th</sup> of August 2015, the Authority received comments in respect of these tariffs from Telecom Namibia Limited. Regulation 9(3) indicates that the Authority may consider written submissions not timeously filed, if, in its opinion it finds it practicable to do so.

In a letter dated 20 August 2015, the Authority advised Paratus Telecom that it finds it practicable to accept the late comments from Telecom Namibia Limited. Further that Paratus Telecom may respond to the comments within 14 days from date on which they receive the letter. Telecom Namibia was also advised that the comments will be considered as per the Authority’s letter dated 21 August 2015. The date of commencement of the tariffs was 1 October 2015. It was however postponed to the 16<sup>th</sup> of November 2015, to allow the Authority sufficient time to consider the reasonableness of the tariffs.

**3. SUMMARY OF TELECOM NAMIBIA COMMENTS**

Telecom Namibia Limited raised objections to the discount structures (10% and 14% for resellers for the highest bandwidth) offered by Paratus Telecommunications claiming that the proposed discount to resellers is not sufficient to enable such resellers to fairly compete with Paratus Telecom.

Telecom Namibia further indicated that the Authority has “*consistently argued with respect to Telecom Namibia’s tariffs submissions that the proposed discount structure of more than what is proposed by Paratus is not sufficient for a reseller to effectively compete against Telecom Namibia*”.

**4. RESPONSE TO TELECOM NAMIBIA COMMENTS BY PARATUS TELECOM**

Paratus Telecom provided reply comments explaining that their customers were using more bandwidth and therefore, the decision was taken to increase the bandwidth capacity limit on the existing product offering. Further that in order for the product offerings to be profitable, to make commercial sense and be comparable, Paratus Telecom is of the opinion that an increase in price to accommodate higher reseller discounts percentages would not be in the best interest of the Namibian market.

**5. SUBSTANTIVE CONSIDERATIONS OF COMMENTS AND RESPONSE BY AUTHORITY**

The Authority is of the opinion that Paratus Telecom does not own its own network but utilizes the network of Telecom Namibia and other operators in Namibia. In addition, Paratus is also not

a dominant operator as is the case for Telecom Namibia. Furthermore, Paratus does not compete upstream and downstream, as is the case for Telecom Namibia's provision of broadband services. The Authority is further of the opinion that Paratus Telecom competes with other resellers of broadband services. Therefore, the argument that higher discount should be offered as is the case for Telecom Namibia does not hold.

## 6. FINANCIAL AND ECONOMIC ANALYSIS OF THE PARATUS TELECOMMUNICATIONS (PTY) LTD TARIFFS FOR NEW 4G BROADBAND (WI-MAX) OPTIONS

The tariffs were initially submitted under section 53(2) of the Act as a promotion for a period of 90 days from 1 July 2015 – 30 September 2015. During the promotional period, the amount of GB provided under the cap was increased.

The tariff information is as follows:

**Table 1: Proposed Tariffs**

Product	Bandwidth Speeds	CAP	Monthly Fee (NAD)	Reseller Monthly Fee (NAD)
Entry Level	Up to: 4Mbps DOWN/2 Mbps UP	15 GB	299.00	270.00
Soho	Up to: 4Mbps DOWN/2 Mbps UP	30GB	550.00	500.00
Professional	Up to: 4Mbps DOWN/2 Mbps UP	50 GB	999.00	910.00
Business	Up to: 4Mbps DOWN/2 Mbps UP	100GB	1,950.00	1,680.00

\*All prices are based on a 24 month contract and exclude 15% VAT.

\* Recharge bandwidth at N\$80.00 per Gig

\* Bandwidth speeds listed indicate maximum transmission speed.

\* Pricing excludes once-off installation fee

\* Standard terms and conditions apply

**TABLE 2: COMPARISON**

PRODUCT	VOLUME GB	PARATUS TELECOM	MTC NET-MAN HOME	TN MOBILE 4G LTE	COST/GB PARATUS	COST/GB MTC
Entry Level	15GB	299.00	599.00 for 20 GB	398.00 for 10GB	20c/MB	29c/MB
Soho	30GB	550.00			18c/MB	
Professional	50GB	999.00	999.00 Unlimited	998.00 Unlimited	19c/MB	
Business	100GB	1,950			19.5c/MB	

From the above it could be seen that it is difficult to compare the new proposed tariffs to other 4G tariffs approved since the products differ. However, from the comparisons made on price (which excludes upload and download speed) it is clear that this product will be a competitor in the market and would at the same time provide more choice to customers. The price per MB is cheaper for lower volumes than MTC and TN Mobile but at higher volumes MTC and TN Mobile offer unlimited volumes.

The tariffs are not deemed anti-competitive and are not unreasonably discriminatory in that:

1. They do not prevent, restrict or distort competition in the market for the supply of telecommunications;
2. There is no abuse of individual or collective dominant position by Paratus Telecom for the supply of telecommunications in respect hereof;

3. There is no restrictive practice or activity whose anti-competitive effects outweigh its pro-competitive effects.

All requirements in terms of section 53 of the Act that deals with the approval of tariffs have been adhered to:

1. All pertinent information as required by section 53(9) was submitted to the Authority in that Telecom filed the tariff in the prescribed manner with the Authority for approval.
2. All pertinent information as required by section 53(9) was submitted to the Authority such as:
  - 2.1 The rates and charges for services, including all deposits, non-recurring charges and monthly charges as indicated above;
  - 2.2 The terms and conditions applicable to the provision of services by Paratus Telecom, including rights and remedies available to customers in the event of unauthorized charges or other disputes or claims over billing or the provision of services, and any other information requested by the Authority pursuant to this section.
3. All pertinent information as required by section 53(18) was submitted to the Authority such as: The tariff was accompanied by all such accounting and cost information.
4. The date of implementation was indicated as 1 October 2015 (which date is not less than 60 days from the date of the filing of the tariff) as required by section 53(8) of the Act.

## 7. DECISION

The CRAN Board of Directors herewith approved the proposed tariffs for new 4G Broadband (Wi-Max) options as submitted by Paratus Telecommunications (Pty) Ltd for implementation effective from 16 November 2015.

**L.N. JACOBS**

**CHAIRPERSON OF THE BOARD OF DIRECTORS**

**COMMUNICATIONS REGULATORY AUTHORITY OF NAMIBIA**

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## COMMUNICATIONS REGULATORY AUTHORITY OF NAMIBIA

No. 571

2015

NOTICE IN TERMS OF SECTIONS 85 AND 101 OF THE COMMUNICATIONS ACT, 2009  
(ACT NO. 8 OF 2009) AND THE REGULATIONS REGARDING LICENSING PROCEDURES  
FOR TELECOMMUNICATIONS AND BROADCASTING SERVICE LICENCES AND  
SPECTRUM USE LICENCES

The Communications Regulatory Authority of Namibia, in terms of Sections 85 and 101 of the Communications Act (No. 8 of 2009) read with Regulations 5, 6 and 11 of the “Regulations Regarding Licensing Procedures for Telecommunications and Broadcasting Service Licences and Spectrum Use Licences”, in Government Gazette No. 4785, Notice No. 272, dated 29 August 2011 (as amended), herewith gives notice that the application for a Commercial Broadcasting Service License and Spectrum Use Licence for **Hype Radio CC** has been declined.

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

Hype Radio CC (hereinafter referred to as “the Applicant”) submitted applications for a commercial broadcasting service licence and spectrum use licence on 31 January 2014 in accordance with sections 85 and 101 of the Communications Act, 2009 (Act No. 8 of 2009) (hereinafter referred to as the “Act”) and regulations 4 and 6 of the Regulations regarding Licensing Procedures for Telecommunications and Broadcasting Service Licences and Spectrum Use licences as published in Government *Gazette* No. 4785, General Notice No. 272 of 29 August 2011, for consideration by the Authority. All licence application fees in respect of the application were paid.

**BACKGROUND TO APPLICATION**

As per documentation submitted with the application for a commercial broadcasting service licence, the Applicant is a 100% Namibian owned closed corporation with registration no. CC/2012/10080. There are no foreign ownership interests in the Applicant and the company is owned 100% by Beata Dream Mbundu. Section 101 (7) of the Communications Act, 2009 (Act No. 8 of 2009) provides that:

*“where a person applies for a licence to operate a network or provide...broadcasting services, that person must also apply for such spectrum use licences as are necessary to render the service concerned.”*

Consequently, the Applicant submitted an application for spectrum use for FM broadcasting frequency between 87 MHz and 108 MHz dated 31 January 2014 to provide coverage in the geographical area of Oshakati and a transmitter output power of 500W.

The Applicant intends to provide their own signal distribution service in terms of Regulation 5(2) of the Regulations Regarding Licensing Procedure for Telecommunications and Broadcasting Service Licences and Spectrum Use License. The application indicates that Applicant will enter into a site sharing agreement with the Namibian Broadcasting Corporation to attach its antenna and transmitter to the existing infrastructure owned by the Namibian Broadcasting Corporation in Oshakati. As required by regulation 5(2)(j) of the Regulations Regarding Licensing Procedure for Telecommunications and Broadcasting Service Licences and Spectrum Use License, the Applicant submitted a proposed program schedule indicating its intention to provide broadcasting services on a 24-hour basis from Monday to Sunday.

**REQUEST FOR INFORMATION**

The Authority requested outstanding information relating to expertise and experience of the applicant in the broadcasting industry on 24 February 2014 in terms of Regulation 5(2)(1) of the Regulations Regarding Licensing Procedure for Telecommunications and Broadcasting Service Licences and Spectrum Use License. The applicant submitted the information to the Authority on 25 February 2014.

**Oral Submissions**

The Authority requested the Applicant to make an oral submissions in respect of its application on 9 September 2014.

At the oral hearing, the Applicant gave a brief overview of their intended target market, envisaged organizational structure, estimated capital outlay and operational expenses, financial resources and intended program schedule. The Authority posed various questions to the Applicant on the forecasted market growth, the identified market segment and existing competitors, programme content,

financial resources, technical expertise and envisaged site sharing with the Namibian Broadcasting Corporation.

After the discussion during the oral submission made by the Applicant, the Authority requested the Applicant on 24 September 2014 to provide-

- (i) A letter of intent from the Financial Service Provider to provide financial assistance to the Applicant;
- (ii) Letters from the fourteen (14) permanent advertisers that the Applicant indicated will provide monies to sustain the radio station;
- (iii) Further information pertaining to the business case and the financial position of the Applicant;
- (iv) The letter of commitment from Ms Beate Mbundu, for the investment capital
- (v) The site share agreement with the Namibian Broadcasting Corporation and related fees; and
- (vi) The maintenance and repair agreement between Satcom and the Applicant for the technical equipment.

The Applicant submitted the outstanding information at different intervals however no. site sharing agreement with the Namibian Broadcasting Corporation was submitted.

### **PROCEDURAL COMPLIANCE**

Following due process in terms of Regulations Regarding Licensing Procedures for Telecommunications and Broadcasting Service Licences and Spectrum Use Licences, the Authority published a notice in the Government Gazette 5470, Notice No 126 and 127, dated 27 May 2014, allowing fourteen (14) days for public comments from the date of publication of the Notice in the *Gazette*. The commenting period lapsed on 11 of June 2014, and no comments were received.

The last day for the decision is 10 August 2015 following the last correspondence and documentation submitted by the Applicant on 11 June 2015.

### **ANALYSIS OF SUBSTANTIVE ISSUES**

#### **Application for commercial broadcasting service licence**

The Oshakati area is serviced by seven (7) commercial broadcasters (Omulunga Radio, Radio 100, Radio Kudu, Radio 99, Radiowave, Cosmos Digital Namibia, Fresh FM), three (3) community broadcasters (Media for Christ, Ohangwena Community Radio, Maroela Trust(Ondangwa)) and the Namibia Broadcasting Corporation (NBC). Please note that NBC is broadcasting services in nine (9) languages as well as offering a National Radio channel in English. All existing broadcasters have a national footprint that presents an attractive marketing platform for businesses.

When considering the award of a broadcasting service licence, the Authority is obliged to consider the provisions of section 85(8) of the Communications Act, which provides as follows:

*“When considering an application for the issue of a broadcasting licence the Authority must have regard to-*

- (a) the character of the applicant or, if the applicant is a body corporate, the character of its directors”;*

The Authority has no reservations of the character of the applicant or its directors and has also not received any information that suggests that they have a bad character or that they would not be fit to run a radio station.

- “(b) the adequacy of the expertise, experience and financial resources available to the applicant”;*

Based on the facts presented, the Applicant intends to finance its broadcasting operations via a financing agreement between Mbundu Consultancy CC and the Applicant. Both entities are owned by the same individual. In addition, the Applicant has submitted a letter of acknowledgement from a financial service provider in respect of its request for financing.

The Applicant further submitted letters of intent by various business enterprises to advertise on the envisaged radio station amounting. The Applicant has also submitted a quotation from SatCom (Pty) Ltd for the supply of transmitter equipment, which quotation exceeds the initial capital amount. The Applicant submitted an agreement with Satcom (Pty) Ltd to provide technical support and maintenance for the transmitter equipment. The Applicant indicated in its application that it intends to make use of an existing tower owned by the Namibian Broadcasting Corporation but did not submit a site sharing agreement.

In order to evaluate the financial projection submitted by the Applicant, the Authority compared the projects with financial data collected from existing commercial broadcasters in Oshakati. The national broadcaster was not included in the comparison as it receives funding from government to carry out its obligations.

The Authority used data from the following broadcasters to compare to the financial projections submitted by the Applicant – Fresh FM, Omulunga, Radiowave, 99FM, Cosmos Digital Namibia (Pty) Ltd and Radio Kudu. It should be noted that these broadcasters provide services on a national basis and are not limiting their services to Oshakati only and therefore are able to generate advertising revenue from a national customer base.

The results of the comparison showed that on average operational expenses represent 99.2% of revenue. That implies that the profit margins for commercial broadcasters are very small.

It was noted that the Applicant envisages that it will break even within the second year of operation, being fourteen (14) months after launching commercial services. In the opinion of the Authority the expenses have been understated and no provisions are made for repayment of the financial loan in the financial forecasts submitted. The revised business case is ambitious with a forecasted growth rate of 21% in the second year, taking into account that the Applicant will only be broadcasting in Oshakati with no national advertisements whilst competing with commercial broadcasters, who are broadcasting nationally and are already earning a marginal profit. Operational expenses will constitute only 58%. The Authority is therefore of the opinion that the business case is not viable and that it is not sustainable in the long run.

- “(c) *the desirability or otherwise allowing any person or association of persons, to have control or a substantial interest in-***
- (i) *more than one broadcasting service;***
  - (ii) *more than one radio station and one television station and one registered newspaper with a common coverage and distribution area or significantly overlapping coverage and distribution areas”;***

There is no evidence presented before the Authority that Applicant has a controlling or substantial interest in any broadcasting service licensee or a registered newspaper with a common coverage and distribution area.

- “(d) *whether the applicant is likely to comply with such technical broadcasting standards as the Authority may prescribe”;***

The Applicant has only submitted an application for a spectrum use licence for a broadcasting frequency to provide FM radio services. To date the Applicant has not applied for a spectrum use licence to facilitate the implementation of a link between the studio and the transmitter site nor an agreement with a licensee for the links in respect hereof. The Applicant will therefore not be able to reach the transmitter site from its broadcasting studio to provide services. The Applicant has also

not submitted proof of a site-sharing agreement or any application in this regard with the Namibian Broadcasting Corporation to install its transmitter equipment.

As a result, the Applicant will be unable to commence with any broadcasting services or utilisation of the associated spectrum to provide the said services.

This raises concerns in terms of the technical expertise of the Applicant to set up and operate a broadcasting service also taking into account that the Applicant only submitted proof of expertise of managerial and presenter skills. The Applicant submitted an agreement with Satcom (Pty) Ltd to maintain the transmitter equipment.

***“(e) whether the conditions of a broadcasting licence will unjustly benefit one licensee above another”;***

There is no indication that if awarded a licence the conditions imposed will unjustly benefit applicant above another licensee.

***“(f) the allocation of spectrum in such a manner as to ensure the widest possible diversity of programming and the optimal utilization of such resources. Provided that priority may be given to broadcasters transmitting the maximum number of hours per day”;***

The Applicant has submitted a programme schedule to provide the Authority with an insight into the content that will be provided. The Applicant intends to broadcast in English and Oshiwambo providing news, music, traffic report and talk shows. This content will not grant the Applicant a competitive advantage or market niche in that the competing broadcasters already provide similar content within the same geographical area of services to be provided.

***“(g) the reservation of radio wave spectrum resources for future use; and”***

The FM broadcasting frequency applied for is not reserved for future use.

***“(h) the desirability of giving priority to community based broadcasts.”***

The applicant has applied for a commercial broadcasting service licence and not a community broadcaster.

In light of the above analysis, the Authority is of the opinion:-

- i) that the Applicant will encounter sustainability challenges because the Applicant will have to compete with all the aforementioned broadcasters in the area, offering a national footprint and a range of local languages in Oshakati;
- ii) that the financial resources are insufficient to support the Applicant going forward. The Applicant did not provide proof of access to the broadcasting tower owned by the Namibian Broadcasting Corporation to install broadcasting equipment to provide services, despite numerous requests from the Authority to submit proof in the regard. The Applicant will therefore not be able to adhere to technical requirement as set out in section 85 (8)(b) and (d).; and
- iii) That based on the analysis of the current projections, the Applicant will not have adequate financial resources, to sustain the station as required by section 85(8)(b) of the Communications Act.

After consideration of the information submitted with the application and evaluation thereof in terms of the criteria as set out in Section 85(8) (b)(d) and (f) of the Communications Act, the Authority concluded to submit a recommendation to the CRAN Board of Directors to decline the service licence application for a commercial broadcasting service licence submitted by the Applicant.

**Application for spectrum use licence**

Pursuant to the provisions of section 101(6) of the Act, an applicant may only be issued with a spectrum use licence, where the operation of a network or the provision of broadcasting service or the use thereof entails the use of radio waves.

As indicated above, section 101(7) of the Communications Act stipulates as follows:

*“When a person applies for a licence to operate a network or provide telecommunications services or broadcasting services, that person must also apply for such spectrum licences as are necessary to render the service concerned.”*

Section 101(8) places a duty on the Authority to consider the application for spectrum in conjunction with the application for a service licence and to ensure that such spectrum use licence as may be required is issued to enable the Applicant to render the services for which the service licence is issued.

Read jointly, these sections suggest that if an Applicant has applied for a broadcasting service licence, it must also have such spectrum use licence as is necessary to render the service concerned and further that a spectrum use licence is required in addition to a broadcasting service licence. It also indicates that a spectrum use licence cannot be issued for the provision of broadcasting services in the absence of a broadcasting service licence.

Subsequently, a recommendation to decline the award of a broadcasting service licence, would naturally be accompanied by a decline of a spectrum use licence, because frequencies for FM broadcasting may only be utilised with a broadcasting service licence.

In light of the above, and in terms of sections 85 and 101 of the Communications Act and the Regulations Regarding Licensing Procedures for Telecommunications and Broadcasting Service Licences and Spectrum Use Licences, the application for a commercial broadcasting service licence submitted by Hype Radio CC based on the criteria as set out in Section 85(8)(b), (d) and (f) of the Act and the application for spectrum use in the geographical area of Oshakati submitted in conjunction with the service licence application is declined.

Kindly take note that section 31 of the Communications Act provides that 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.

**L.N. JACOBS**

**CHAIRPERSON OF THE BOARD OF DIRECTORS**

**COMMUNICATIONS REGULATORY AUTHORITY OF NAMIBIA**

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**COMMUNICATIONS REGULATORY AUTHORITY OF NAMIBIA**

No. 572

2015

NOTICE IN TERMS OF SECTION 85 AND 101 OF THE COMMUNICATIONS ACT, 2009  
(ACT NO. 8 OF 2009) READ WITH THE REGULATIONS REGARDING THE SUBMISSIONS  
OF INTERCONNECTION AGREEMENTS AND TARIFFS

The Communications Regulatory Authority of Namibia, in terms of section 85 and 101 of the Communications Act read with regulation 11(9) of the “Regulations Regarding Licensing Procedures for Telecommunications and Broadcasting Service Licences and Spectrum Use Licences”, in Government Gazette No. 4785, Notice No. 272, dated 29 August 2011, herewith gives notice that

application for a Commercial Broadcasting Service Licence and Spectrum Use Licence for **Fimbo Media Investment CC** has been declined.

**THE FOLLOWING ARE THE REASONS FOR THE DECISION:**

**1. INTRODUCTION**

Fimbo Media Investments CC (hereinafter referred to as “the Applicant”) submitted applications for a commercial broadcasting service licence and spectrum use licence in Oshakati on 13 February 2014 in accordance with sections 85 and 101 of the Communications Act, 2009 (Act No. 8 of 2009) (hereinafter referred to as the “Act”) and the Regulations regarding Licensing Procedures for Telecommunications and Broadcasting Service Licences and Spectrum Use licences as published in Government Gazette No. 4785, General Notice No. 272 of 29 August 2011, for consideration by the Authority. All licence application fees in respect of the applications were paid.

**2. BACKGROUND TO APPLICATION**

As per documentation submitted with the application for a commercial broadcasting service licence, the Applicant is a 100% Namibian owned closed corporation. There are no foreign ownership interests in the Applicant on board or ownership level in that the owners also constitute the board of directors as indicated below-

<b>Name of Owners and Directors</b>	<b>Nationality of Owner</b>
Eliaser Vatekuleni Ndilunde	Namibian
Lot Ndimovanhu Ndawedwa Shidumifa Ndamanomhata	Namibian
Job Shipululo Amupanda	Namibian

Section 101 (7) of the Communications Act, 2009 (Act No. 8 of 2009) provides that:

*“.....where a person applies for a licence to operate a network or provide...broadcasting services, that person must also apply for such spectrum use licences as are necessary to render the service concerned.”*

Consequently the Applicant submitted an application for spectrum use licence for FM broadcasting frequency between 87 MHz and 108 MHz dated 13 February 2014 in the geographical area of Oshakati with a transmitter output power of 250W.

The Applicant is intending to provide their own signal distribution service in terms of Regulation 5(2) of the Regulations Regarding Licensing Procedure for Telecommunications and Broadcasting Service Licences and Spectrum Use License, although it will enter into a site sharing agreement with the Namibian Broadcasting Corporation to attach its antenna and transmitter to the existing infrastructure owned by the Namibian Broadcasting Corporation in Oshakati as per documentation and coverage plot submitted to the Authority on 3 July 2014.

As required by regulation 5(2)(j) of the Regulations Regarding Licensing Procedure for Telecommunications and Broadcasting Service Licences and Spectrum Use Licence, the Applicant submitted a proposed program schedule indicating its intention to provide broadcasting services focusing on news and current affairs and a diverse mix of music and speech on a 24-hour basis from Monday to Sunday. In addition thereto, the Applicant submitted the proof of expertise in the broadcasting industry as well as financial resources as required by regulation 5(2)(k) and (l) of the said Regulations.

### **3. REQUEST FOR INFORMATION**

#### **3.1 Oral Submissions**

The Authority requested the Applicant to make an oral submission in respect of its application on 14 January 2015.

At the oral hearing, the Applicant gave a brief overview of their financial resources and intended program schedule. The Authority posed various questions to the Applicant on the forecasted market growth, the targeted market segment it will serve, programme content, financial resources, technical expertise and envisaged site sharing with the Namibian Broadcasting Corporation.

After the discussion during the oral submission made by the Applicant, the Authority requested the Applicant on 13 March 2015 to provide an updated business plan containing the information as listed below-

- (i) Proof of source of funding;
- (ii) Roll out- site costs (detailed account of all costs);
- (iii) List of financiers and their undertaking to assist FIMBO herein; and
- (iv) List of different advertisers.

The Applicant did not submit the requested information by the due date being 30 April 2015. Subsequently the Authority made a further request for the outstanding information on 11 May 2015, followed by a further request dated 8 July 2015 and requested the following information in addition to the information requested on 13 March 2015-

- (i) What specifically distinguishes the Applicant from its competitors;
- (ii) The basis of Applicant's annual projected growth; and
- (iii) Furnish the Authority with Shareholding Certificates in respect of Grand Master Printing CC.

The Authority also informed the Applicant that the Authority will proceed to finalise its decision based on the documentation already submitted to the Authority since receipt of the application, should the Applicant fail to submit all information as requested on 13 March 2015 and 8 July 2015 respectively by 21 July 2015. The Applicant failed to submit the requested documentation and requested for condonation until 14 August 2015 and then requested a further extension to 28 August 2015 to submit the outstanding documentation to the Authority.

The Applicant submitted the following documentation on 28 August 2015:

- (i) A letter from a financier;
- (ii) Cash flow projection for a period of twelve (12) months; and
- (iii) A final business case inclusive of a list of companies to be targeted to advertise on the envisaged radio station.

### **4. PROCEDURAL COMPLIANCE**

Following due process in terms of Regulations Regarding Licensing Procedures for Telecommunications and Broadcasting Service Licences and Spectrum Use Licences, the Authority published a notice in the *Government Gazette* 5514, Notice No. 244, dated 25 July 2014, allowing fourteen (14) days for public comments from the date of publication of the Notice in the *Gazette*. The commenting period lapsed on 8 August 2014, and no comments were received.

The last day for the decision is 28 October 2015 taking into account that the last correspondence and documentation in respect of the licence application was received on 28 August 2015.

## 5. ANALYSIS BY THE AUTHORITY

### a. Application for community broadcasting service licence

The Oshakati area is serviced by seven (7) commercial broadcasters (Omulungu Radio, Radio 100, Radio Kudu, Radio 99, Radiowave, Cosmos Digital Namibia, Fresh FM), three (3) community broadcasters (Media for Christ, Ohangwena Community Radio, Maroela Trust) and the Namibia Broadcasting Corporation (NBC). Please note that NBC is broadcasting services in nine (9) languages as well as offering a National Radio channel.

When considering the award of a broadcasting service licence, the Authority is obliged to consider the provisions of section 85(8) of the Communications Act, which provides as follows:

*“When considering an application for the issue of a broadcasting licence the Authority must have regard to-*

(a) *the character of the applicant or, if the applicant is a body corporate, the character of its directors”;*

The Authority has no reservations on the character of the owners or directors of Applicant and has also not received any information that suggests that they have a bad character or that they would not be fit to run a radio station.

(b) *the adequacy of the expertise, experience and financial resources available to the applicant”;*

Based on the facts presented, the Applicant intends to finance its broadcasting operations with funds provided by its financier.

The Applicant submitted a third and final business plan on 28 August 2015. Analysis by the Authority concluded that-

- (i) The Applicant outlined good ideas to generate income to form a basis for sustainability. However, the business case does not provide sufficient information on how the Applicant intends to implement the strategies successfully;
- (ii) The business case did not take into account the impact of other strong competitors such as Radio Energy and Fresh FM, which have the same target market as the Applicant. The aforementioned broadcasting service licensees have over the years captured the ears of many young adults. This omission can have a very big impact on their financial performance, which is already overstated in terms of revenue;
- (iii) The geographical area of Oshakati within which the Applicant intends to provide FM broadcasting services contradicts the financial projections, based on the fact that NBC Oshiwambo Radio, which is perceived to be the most informative platform in the market, is providing broadcasting services to rural areas among the same three major towns to be served by the Applicant for over two decades and will provide a challenge for any prospective broadcaster wishing to capture listeners. In addition thereto Radio Energy and Fresh FM, whom will be direct competitors to the Applicant based on its envisaged market provide services to the same geographical area as well as on a national basis. Despite having catered for almost all operational expenses that can be linked to a radio broadcaster, their estimated revenue and profit still remains too ambitious for a new entrant in the industry taking into account that this is an area covered by many established broadcasters;
- (iv) The Applicant acknowledges NBC Oshiwambo Radio’s dominance in region. Advertisers looking for larger audiences will opt for the best services they can find as well as national coverage as provided by amongst others NBC Oshiwambo Radio, Radio Energy and Fresh FM and this will have a negative impact on the Applicant’s revenue expectations;
- (v) Based on analysis of the financial reports submitted by existing broadcasting service licensees on a bi-annual basis the average profit margin of the industry remains stagnant at 2%, the

Applicant has estimated a profit margin much higher than 2%. This figure is unrealistic considering that the Applicant will be a new entrant to the market. It becomes very unlikely that the Applicant will be able to attain the envisaged profit margin to become sustainable; and

- (vi) The identified potential advertisers such as Small and Medium Sized Businesses, Advertising Agencies and Government Institutions can also not warrant guaranteed revenue as the Applicant has not submitted any proof of the said entities intention to advertise on the Applicant's envisaged radio station. Other broadcasting service licensees are all competing in the media industry and will try to keep other broadcasters out of the market through the solicitation of advertisements and promotions

The Applicant further submitted proof of collective expertise of seven (7) years in the broadcasting industry. Satcom (Pty) Ltd will be responsible for maintenance of transmitter equipment.

The Authority is of the opinion that the Applicant will not be able to generate sufficient financial resources once the start-up capital to be supplied by its financier has been depleted to ensure sustainability of the envisaged radio station for the duration of the licensing period of five (5) years.

- “(c) the desirability or otherwise allowing any person or association of persons, to have control or a substantial interest in-**
- (i) more than one broadcasting service;**
  - (ii) more than one radio station and one television station and one registered newspaper with a common coverage and distribution area or significantly overlapping coverage and distribution areas”;**

There is no evidence presented before the Authority that Applicant has a controlling or substantial interest in any broadcasting service licensee or a registered newspaper with a common coverage and distribution area.

- “(d) whether the applicant is likely to comply with such technical broadcasting standards as the Authority may prescribe”;**

The initial application submitted by the Applicant was supported by an application for site sharing of the Oshakati transmitter tower owned by the Namibian Broadcasting Corporation (NBC) as submitted to the Authority on 3 July 2014.

The Applicant submitted an agreement with Satcom (Pty) Ltd to maintain the transmitter equipment. However, it is not clear from the application as to how the Applicant intends to establish a link between its studio and the transmitter site in Oshakati nor has the Applicant submitted a spectrum use application for a STL link to date. The Authority is of the opinion that the Applicant may not be able to comply with the Regulation 12(4) of the Regulations regarding Licence Conditions for Broadcasting Service Licence requiring that broadcasting service must commence within six (6) months from the date of award of the said licence based on the fact that the Applicant did not submit proof of a lease agreement with another licensee to provide a studio link and included the associated cost in its business plan or in the alternative applied for a spectrum use licence to construct its own studio link.

- “(e) whether the conditions of a broadcasting licence will unjustly benefit one licensee above another”;**

There is no indication that if awarded a licence the conditions imposed will unjustly benefit applicant above another licensee.

- “(f) the allocation of spectrum in such a manner as to ensure the widest possible diversity of programming and the optimal utilization of such resources. Provided**

*that priority may be given to broadcasters transmitting the maximum number of hours per day”;*

The Applicant has applied for a commercial broadcasting service licence and intends to provide broadcasting service on a 24 hour basis from Monday to Sunday focusing on news and current affairs and a diverse mixture of music and speech. The intended programming and content is not substantially different from what is offered by its competitors in the same geographical area.

**“(g) the reservation of radio wave spectrum resources for future use; and”**

FM broadcasting frequencies in the Oshakati area is in short supply given the high number of existing broadcasting service licensees. Given the fact that the Applicant failed to submit a feasible business case, the Authority recommends that the spectrum be reserved for future use to be considered should other application be received and that no spectrum use licence be issued

**“(h) the desirability of giving priority to community based broadcasts.”**

The applicant has applied for a commercial broadcasting service licence and not a community broadcasting licence. This criterion has thus no bearing on the application under consideration. In light of the above analysis, the Authority is of the opinion:-

- i) that the Applicant failed to provide proof that it will be able to generate sufficient financial resources through its operations once start-up capital has been utilised during the setup phase to fund its ongoing operations as required by section 85 (b); and
- ii) that the Applicant failed to provide proof of its ability to connect its envisaged broadcasting studio to the transmitter equipment to be installed on the NBC tower located in Oshakati and will therefore, have difficulty in providing broadcasting services. The Applicant will therefore not be able to adhere to technical requirements as set out in section 85 (8) (d).

After consideration of the information submitted with the application and evaluation thereof in terms of the criteria as set out in Section 85(8) (b) and (d) of the Communications Act, the Authority concluded to submit a recommendation to the CRAN Board of Directors to decline the Applicant’s application for a commercial broadcasting service licence as submitted to the Authority for consideration.

#### **b. Application for spectrum use licence**

Pursuant to the provisions of section 101(6) of the Act, an applicant may only be issued with a spectrum use licence, where the operation of a network or the provision of broadcasting service or the use thereof entails the use of radio waves.

As indicated above, section 101(7) of the Communications Act stipulates as follows:

*“When a person applies for a licence to operate a network or provide telecommunications services or broadcasting services, that person must also apply for such spectrum licences as are necessary to render the service concerned.”*

Section 101(8) places a duty on the Authority to consider the application for spectrum in conjunction with the application for a service licence and to ensure that such spectrum use licence as may be required is issued to enable the applicant to render the services for which the service licence is issued. Read jointly, these sections suggest that if an applicant has applied for a broadcasting service licence, it must also have such spectrum use licence as is necessary to render the service concerned and further that a spectrum use licence is required in addition to a broadcasting service licence. It also indicates that a spectrum use licence cannot be issued for the provision of broadcasting services in the absence of a broadcasting service licence.

Subsequently a recommendation to decline the award of a broadcasting service licence, would naturally be accompanied by a decline of a spectrum use licence, because frequencies for FM broadcasting may only be utilised with a broadcasting service licence.

The Authority therefore resolved to decline the application for a spectrum use licence to provide FM radio broadcasting services submitted by the Applicant.

## **6. DECISION**

In terms of sections 85 and 101 of the Communications Act and the Regulations Regarding Licensing Procedures for Telecommunications and Broadcasting Service Licences and Spectrum Use Licences, the Authority resolved to:

- (i) Decline the application for a commercial broadcasting service licence submitted by Fimbo Media Investments CC based on the criteria as set out in Section 85(8) of the Act; and
- (ii) Decline the application for spectrum use in the geographical area of Oshakati submitted in conjunction with the service licence application.

**L.N. JACOBS**  
**CHAIRPERSON OF THE BOARD OF DIRECTORS**  
**COMMUNICATIONS REGULATORY AUTHORITY OF NAMIBIA**

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## **COMMUNICATIONS REGULATORY AUTHORITY OF NAMIBIA**

No. 573

2015

### **NOTICE IN TERMS OF THE REGULATIONS REGARDING LICENSING PROCEDURES FOR TELECOMMUNICATIONS AND BROADCASTING SERVICE LICENCES AND SPECTRUM USE LICENCE**

The Communications Regulatory Authority of Namibia, in terms of section 38(10)(i) of the Communications Act read with regulation 7, 11 and 19 of the “Regulations Regarding Licensing Procedures for Telecommunications and Broadcasting Service Licences and Spectrum Use Licences”, in Government Gazette No. 4785, Notice No. 272, dated 29 August 2011, herewith gives notice that it has approved the transfer of licence and control of the Class Comprehensive Telecommunications Service Licence (ECS & ECNS) from **Schoemans Technology (Pty) Ltd** to Wi-Tel Service Provider (Pty) Ltd.

### **THE FOLLOWING ARE THE REASONS FOR THE DECISION:**

#### **1. INTRODUCTION**

In terms of section 35(2) of the Communications Act No. 8 of 2009 (hereinafter referred to as “the Act”), Schoemans Technology (Pty) Ltd (hereinafter referred to as “Schoemans”), filed for the transfer of licence and transfer of control of licences on 5 March 2015. The licences will be transferred to Wi-Tel Service Provider (Pty) Ltd.

#### **2. PROCEDURAL COMPLIANCE**

The notice of transfer was published as General Notice No. 378 in the Government Gazette No. 5805 dated 12 August 2015 in terms of Regulation 7 and 11 of the “Regulations Regarding Licensing Procedures for Telecommunications and Broadcasting Licences” published in Government Gazette No. 4785 of 29 August 2011.

Comments were invited from the public, in terms of the Notice published in the *Gazette*, within a period of fourteen (14) days from the date of publication of the Notice in the *Gazette*, which period lapsed on 27 August 2015.

No public comments were received in respect of the transfer as published during the commenting period, and as such no reply comments were required from Schoemans.

### 3. FINANCIAL AND ECONOMIC ANALYSIS

Schoemans indicated in the application that the reason for the transfer is that it finds it difficult in attracting investors to allow for network building and expansion when trading under the name of Schoemans Technology (Pty) Ltd. This is mainly due to the fact that investors want to invest in the telecommunications market and not the ICT and Security Markets which is the original niche market of Schoemans Technologies (Pty) Ltd. It is owing to the above that transferor would therefore like to transfer the licence to Wi-Tel Service Provider (Pty) Ltd.

Section 2(e) of the Communications Act 8 of 2009 states that one of the objectives of the Act is the promotion of local participation in the communications sector in Namibia. Schoemans Technology (Pty) Ltd is a 100% owned Namibian company. In turn Schoemans is the 100% shareholder of Wi-Tel Service Provider (Pty) Ltd.

The transfer of licenses will not lead to any anti-competitive practices as defined in section 33(3) of the Act and therefore, the Authority does not need to impose any conditions to maintain competition in the telecommunications sector as prescribed by section 33(4) of the Act.

Schoemans is of the opinion that the transfer of licenses would enable them to attract more investors as prescribed by section 2(i) of the Act and will increase competition as prescribed by section 2(k) of the Act.

All requirements in terms of Regulation 7 of the “Regulations Regarding Licensing Procedures for Telecommunications and Broadcasting Licenses” that deals with the transfer of licenses have been adhered to in that:

1. All pertinent information as required by Regulation 7(3) was submitted to the Authority in that Schoemans filed for the transfer of the licenses in the prescribed manner with the Authority for approval.
2. The transfer application was accompanied by the relevant application fee as required by Regulation 7(4).
3. The date of final decision (which date is within 60 days from the date of the last correspondence) as required by Regulation 11(10) is 26 October 2015.

### 4. DECISION

The Authority herewith approves the transfer of licence and transfer of control of licences from Schoemans Technology (Pty) Ltd to Wi-Tel Service Provider (Pty) Ltd of Class Comprehensive Telecommunications Service Licence (ECS & ECNS).

**L.N. JACOBS**

**CHAIRPERSON OF THE BOARD OF DIRECTORS**

**COMMUNICATIONS REGULATORY AUTHORITY OF NAMIBIA**

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**COMMUNICATIONS REGULATORY AUTHORITY OF NAMIBIA**

No. 574

2015

**NOTICE IN TERMS OF SECTION 53 OF THE COMMUNICATIONS ACT, 2009 (ACT NO. 8 OF 2009) READ WITH THE REGULATIONS REGARDING THE SUBMISSIONS OF INTERCONNECTION AGREEMENTS AND TARIFFS**

The Communications Regulatory Authority of Namibia, in terms section 53 of the Communications Act read with regulation 8 of the “Regulations Regarding the Submission of Interconnection Agreements and Tariffs”, published in Government Gazette No. 4714, General Notice No. 126, dated 18 May 2011, herewith gives notice of the following tariffs for Aweh-O-Yeah as submitted by **Mobile Telecommunications Limited**, which, notwithstanding date of publication of this notice, came into force on **13 November 2015**.

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

In terms of section 53 (1) and (7) of the Communications Act No. 8 of 2009 (hereinafter referred to as “the Act”), Mobile Telecommunications Limited (hereinafter referred to as “MTC”), filed for the approval of tariffs for Aweh-O-Yeah products on 16 June 2015.

On 1 July 2015, the Authority submitted a request for the information to Mobile Telecommunications Limited for the following information:

1. All terms and conditions of MTC applicable to the provisions of the services;
2. The rights and remedies available to customer in the event of unauthorized charges or other disputes or claims over billing or the provision of services. and
3. All accounting and cost information pertaining to the tariff and further indicate the cost and or accounting information utilized to arrive at this tariff. This is for purposes of complying with section 53(18) of the Communications Act.

On 14 July 2015 MTC replied to the Authority’s letter indicating that there were no substantial difference in the rates between this bundle and the existing Aweh Packages which have been approved by the Authority. Further that MTC does not have a cost based model linked to any specific rates or in particular to a bundle or a specific service. MTC further indicated that it is not in a position to establish an equivalent cost analysis similar to the one developed by CRAN to Telecom Namibia to determine the cost of a leased line. MTC further indicated that even if the cost model is finalized, MTC shall not be able to allocate costs to this specific bundle from the network elements since it’s not possible to predict the uptake of the product. In conclusion MTC indicated that it will only after a normal uptake be able to provide to CRAN the specific monthly usage of the customers who will use the bundle.

The Authority accepted the explanation by MTC and will request MTC to provide the information 6 months after the launch.

**2. PROCEDURAL COMPLIANCE**

The proposed tariffs were published as General Notice No. 386 in the Government Gazette No. 5805 dated 12 August 2015 in terms of Regulation 8 of the “Regulations Regarding the Submission of Interconnection Agreements and Tariffs” published in Government Gazette No. 4714 of 18 May 2011.

Comments were invited from the public, in terms of the Notice published in the *Gazette*, within a period of fourteen (14) days from the date of publication of the Notice in the *Gazette*, which period lapsed on 27 August 2015, which date was extended to 13 November 2015, to afford the Authority an opportunity to consider the reasonableness of the tariffs.

No public comments were received in respect of the tariffs as published during the commenting period, and as such no reply comments were required from MTC. The date of commencement of the tariffs is 14 September 2015, which date was extended to 13 November 2015 to afford the Authority an opportunity to consider the reasonableness of the tariffs.

### 3. FINANCIAL AND ECONOMIC ANALYSIS OF THE MOBILE TELECOMMUNICATIONS LIMITED AWEH-O-YEAH TARIFFS

The tariffs for Aweh-O-Yeah were reduced and the package was submitted as promotional tariffs in terms of section 53(2). During the promotion period a 10% discount was offered on the bundled rates for social media.

The tariff information is as follows:

**Table 1: Proposed Tariffs**

<b>Bundle Type</b>	<b>Volume / Qty</b>	<b>Bundle Cost N\$</b>
<b>Data MB</b>	<b>0</b>	<b>N\$ -</b>
Data MB	100	N\$ 2.60
Data MB	200	N\$ 5.00
Data MB	300	N\$ 7.30
Data MB	400	N\$ 9.30
Data MB	500	N\$ 11.30
Data MB	600	N\$ 13.10
Data MB	700	N\$ 14.70
Data MB	800	N\$ 16.20
Data MB	900	N\$ 17.60
Data MB	1000	N\$ 18.90
Data MB	1100	N\$ 20.00
Data MB	1200	N\$ 21.10
Data MB	1300	N\$ 22.00
Data MB	1400	N\$ 22.90
Data MB	1500	N\$ 23.70
Data MB	1600	N\$ 24.40
Data MB	1700	N\$ 25.00
Data MB	1800	N\$ 25.50
Data MB	1900	N\$ 26.00
Data MB	2000	N\$ 26.40
<b>Voice Minutes</b>	<b>0</b>	<b>N\$ -</b>
Voice Minutes	30	N\$ 4.50
Voice Minutes	60	N\$ 8.70
Voice Minutes	90	N\$ 12.60
Voice Minutes	120	N\$ 16.20
Voice Minutes	150	N\$ 19.50
Voice Minutes	180	N\$ 22.60
Voice Minutes	210	N\$ 25.40
Voice Minutes	240	N\$ 28.10

<b>Bundle Type</b>	<b>Volume / Qty</b>	<b>Bundle Cost N\$</b>
Voice Minutes	270	N\$ 30.50
Voice Minutes	300	N\$ 32.70
Voice Minutes	330	N\$ 34.70
Voice Minutes	360	N\$ 36.50
Voice Minutes	390	N\$ 38.10
Voice Minutes	420	N\$ 39.60
Voice Minutes	450	N\$ 41.00
Voice Minutes	480	N\$ 42.20
Voice Minutes	510	N\$ 43.30
Voice Minutes	540	N\$ 44.20
Voice Minutes	570	N\$ 45.00
Voice Minutes	600	N\$ 45.70
Voice Minutes	630	N\$ 46.30
Voice Minutes	660	N\$ 46.80
Voice Minutes	690	N\$ 47.30
Voice Minutes	720	N\$ 47.60
<b>SMS Qty</b>	<b>0</b>	<b>N\$ -</b>
SMS Qty	100	N\$ 0.40
SMS Qty	200	N\$ 0.80
SMS Qty	300	N\$ 1.10
SMS Qty	400	N\$ 1.40
SMS Qty	500	N\$ 1.70
SMS Qty	600	N\$ 2.00
SMS Qty	700	N\$ 2.30
SMS Qty	800	N\$ 2.50
SMS Qty	900	N\$ 2.70
SMS Qty	1000	N\$ 2.90
SMS Qty	1100	N\$ 3.10
SMS Qty	1200	N\$ 3.20
SMS Qty	1300	N\$ 3.40
SMS Qty	1400	N\$ 3.50
SMS Qty	1500	N\$ 3.60
SMS Qty	1600	N\$ 3.80
SMS Qty	1700	N\$ 3.80
SMS Qty	1800	N\$ 3.90
SMS Qty	1900	N\$ 4.00
SMS Qty	2000	N\$ 4.10
<b>SocialMedia MB</b>	<b>0</b>	<b>N\$ -</b>
SocialMedia MB	100	N\$ 1.80
SocialMedia MB	200	N\$ 3.40
SocialMedia MB	300	N\$ 5.00
SocialMedia MB	400	N\$ 6.40
SocialMedia MB	500	N\$ 7.70
SocialMedia MB	600	N\$ 8.90
SocialMedia MB	700	N\$ 10.10
SocialMedia MB	800	N\$ 11.10
SocialMedia MB	900	N\$ 12.00

<b>Bundle Type</b>	<b>Volume / Qty</b>	<b>Bundle Cost N\$</b>
SocialMedia MB	1000	N\$ 12.90
SocialMedia MB	1100	N\$ 13.70
SocialMedia MB	1200	N\$ 14.40
SocialMedia MB	1300	N\$ 15.10
SocialMedia MB	1400	N\$ 15.70
SocialMedia MB	1500	N\$ 16.20
SocialMedia MB	1600	N\$ 16.70
SocialMedia MB	1700	N\$ 17.10
SocialMedia MB	1800	N\$ 17.50
SocialMedia MB	1900	N\$ 17.80
SocialMedia MB	2000	N\$ 18.10

The subscription is valid for a period of 7 days.

The same principles are applicable to the Aweh-O-Yeah package as for the other Aweh packages except that this package offers the customers more choice. These principles include but are not limited to the subscription being valid for one week and subscription can be via the App or online. Customers have the opportunity to choose the Aweh bundle that suits their needs but the bundle should not be to an amount less than N\$ 17.00 e.g. 300MB data (N\$ 7.30) + 30 Voice minutes (N\$ 4.50) + 100 SMS (N\$ 0.40) + 300 Social Media MB (N\$ 5.00) = N\$ 17.20.

The out-of-bundle tariffs are as approved the Authority.

The tariffs are not deemed anti-competitive and are not unreasonably discriminatory in that:

1. They do not prevent, restrict or distort competition in the market for the supply of telecommunications;
2. There is no abuse of individual or collective dominant position by MTC for the supply of telecommunications in respect hereof;
3. There is no restrictive practice or activity whose anti-competitive effects outweigh its pro-competitive effective.

All requirements in terms of section 53 of the Act that deals with the approval of tariffs have been adhered to in that:

1. All pertinent information as required by section 53(7) was submitted to the Authority in that Telecom filed the tariff in the prescribed manner with the Authority for approval.
2. All pertinent information as required by section 53(9) was submitted to the Authority such as:
  - 2.1 The rates and charges for services, including all deposits, non-recurring charges and monthly charges;
  - 2.2 The terms and conditions applicable to the provision of services by MTC, including rights and remedies available to customers in the event of unauthorized charges or other disputes or claims over billing or the provision of services, and any other information requested by the Authority pursuant to this section.

The Authority postponed the date of commencement of the tariff to examine the reasonableness of the tariff to 13 November 2015.

Since it is a bundled package the Authority will request for cost information 6 months after the product is launched. This same procedure was followed with the Aweh Packages.

#### **4. NON-COMPLIANCE WITH SECTION 53 (18)**

Since it is a bundled package the Authority will request for cost information after a period of six (6) months to ensure that the tariff is not below cost. In the case of bundled products, it is not possible to have the cost information at date of submission because a long-run marginal cost (LRIC) study needs to be done to determine the cost since the number of customers who will take up the package is not known and as such information only becomes available 6 months after date of implementation of the tariffs.

It must be noted that section 53(18) of the Act however, provides that the tariff submission must be accompanied by all accounting and cost information as the Authority may require. However, owing to the fact that this is a bundled service as explained above, MTC could not provide the cost information at time of consideration by the Authority.

It must be further noted that if after 6 months of implementation of the tariffs, MTC submits the cost information and such information reveals the fact that the tariffs are below cost, then the Authority reserves the right to reject the tariff with immediate effect and investigate the reasonableness thereof as contemplated in section 53(16).

The Authority notes that section 53(19)(g) provides that the Authority may reject a tariff or part thereof if it is not accompanied by such cost information and other supporting material as required by section 53(18). Therefore owing to the fact that the Aweh packages are not accompanied by cost information, the Authority ought to reject the tariffs. However in light of the foregoing explanations pertaining to the generation of cost information for bundled packages, the Authority approved the tariffs subject to the condition that MTC submits cost information after 6 months of implementation and the Authority may then deal with such as indicated in section 53(16) and (17).

Sections 53(16) and (17) provide that at any time after a tariff has come into operation, upon receiving new evidence that there are grounds for rejecting the tariff, the Authority may investigate its reasonableness.

#### **5. DECISION**

The Authority therefore approved that:

1. The proposed tariffs for the Aweh O Yeah as submitted by Mobile Telecommunications Limited for implementation effective from date of Board approval ( which date may not be later than 13 November 2015) subject to the following conditions:
  - a) That Mobile Telecommunications Limited submits cost information pertaining for the Aweh O Yeah tariffs as contemplated in section 53(18) of the Communications Act within 6 months from date on which this decision is communicated to Mobile Telecommunications Limited; and
  - b) That the Authority will consider such cost information as contemplated in section 53(16) of the Communications Act.

**L.N. JACOBS**  
**CHAIRPERSON OF THE BOARD OF DIRECTORS**  
**COMMUNICATIONS REGULATORY AUTHORITY OF NAMIBIA**

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**COMMUNICATIONS REGULATORY AUTHORITY OF NAMIBIA**

No. 575

2015

NOTICE IN TERMS OF SECTION 53 (7) OF THE COMMUNICATIONS ACT, 2009  
(ACT NO. 8 OF 2009) READ WITH THE REGULATIONS REGARDING THE SUBMISSIONS  
OF INTERCONNECTION AGREEMENTS AND TARIFFS

The Communications Regulatory Authority of Namibia, in terms section 53(1) and (7) of the Communications Act read with regulation 8 of the “Regulations Regarding the Submission of Interconnection Agreements and Tariffs”, in Government Gazette No. 4714, Notice No. 126, dated 18 May 2011, herewith gives notice that it has approved tariffs for Jiva Package as submitted by **Telecom Namibia Limited**, which came into force and effect on **14 November 2015**, notwithstanding date of publication of the notice in the *Gazette*.

**THE FOLLOWING ARE THE REASONS FOR THE DECISION:**

**1. INTRODUCTION**

In terms of section 53 (1) and (7) of the Communications Act No. 8 of 2009 (hereinafter referred to as “the Act”), TN Mobile, filed for the approval of tariffs for Jiva Package on 10 July 2015.

**2. PROCEDURAL COMPLIANCE**

The proposed tariffs were published as General Notice No. 385 in the Government Gazette No. 5805 dated 12 August 2015 in terms of Regulation 8 of the “Regulations Regarding the Submission of Interconnection Agreements and Tariffs” published in Government Gazette No. 4714 of 18 May 2011.

Comments were invited from the public, in terms of the Notice published in the *Gazette*, within a period of fourteen (14) days from the date of publication of the Notice in the *Gazette*, which period lapsed on 27 August 2015.

No public comments were received in respect of the tariffs as published during the commenting period, and as such no reply comments were required from TN Mobile. The date of commencement of the tariffs is 14 September 2015. On the 11<sup>th</sup> of September 2015, the Authority postponed the implementation date of the tariffs for a further 14 days in order to examine the reasonableness of the tariffs for a further 30 days to 14<sup>th</sup> October 2015. On 12<sup>th</sup> October 2015, the Authority also postponed the decision for a further 30 days to 14 November 2015 in order to examine the reasonableness of the tariffs. In both instances, Telecom Namibia was permitted to extend the promotions until such time that a decision is made on the permanent tariffs.

**3. FINANCIAL AND ECONOMIC ANALYSIS OF THE TELECOM NAMIBIA LIMITED JIVA PACKAGES**

The tariff information is as follows:

**Table 1: Proposed Tariffs**

<b>Package</b>	<b>Subscription Fee N\$ (7-Days)</b>	<b>Voice minutes</b>	<b>SMS</b>	<b>Data megabytes</b>
<b>Jiva</b>	N\$ 30.00	100	700	1,024

**Table 2: Comparison**

<b>Package</b>	<b>Subscription Fee N\$ (7-Days)</b>	<b>Voice minutes</b>	<b>SMS</b>	<b>Data megabytes</b>
<b>Jiva</b>	N\$ 30.00	100	700	1,024
<b>Aweh Gig</b>	N\$ 30.00	100	700	1,024

The Jiva packages as submitted by TN Mobile are exactly the same as the Aweh GIG package offered by Mobile Telecommunications Limited (MTC). The subscription is valid for 7 days.

The tariffs are not deemed anti-competitive and are not unreasonably discriminatory in that:

1. They do not prevent, restrict or distort competition in the market for the supply of telecommunications;
2. There is no abuse of individual or collective dominant position by MTC for the supply of telecommunications in respect hereof;
3. There is no restrictive practice or activity whose anti-competitive effects outweigh its pro-competitive effective.

All requirements in terms of section 53 of the Act that deals with the approval of tariffs have been adhered to in that:

1. All pertinent information as required by section 53(7) was submitted to the Authority in that TN Mobile filed the tariff in the prescribed manner with the Authority for approval.
2. All pertinent information as required by section 53(9) was submitted to the Authority such as:
  - 2.1 The rates and charges for services, including all deposits, non-recurring charges and monthly charges;
  - 2.2 The terms and conditions applicable to the provision of services by TN Mobile, including rights and remedies available to customers in the event of unauthorised charges or other disputes or claims over billing or the provision of services, and any other information requested by the Authority pursuant to this section.
3. The date of implementation is indicated as 14 September 2015 (which date is not less than 60 days from the date of the filing of the tariff) as required by section 53(8) of the Act. The Authority postponed the date of commencement of the tariff to 13 October 2015 to examine its reasonableness in terms of section 53(13) of the Act, as per letter dated 11 September 2015.

#### 4. **NON-COMPLIANCE WITH SECTION 53(18)**

Since it is a bundled package the Authority will request for cost information after a period of six (6) months to ensure that the tariff is not below cost. In the case of bundled products, it is not possible to have the cost information at date of submission because knowledge of the uptake of the package as well as the cost should be available and such information only becomes available after date of implementation of the tariffs because Telecom Namibia will be able to provide the average revenue per user (ARPU) and minutes of use (MOU) to the Authority. If not a LRIC study needs to be conducted to calculate the cost.

It must be noted that section 53(18) of the Act however makes provides that the tariff submission must be accompanied by all accounting and cost information as the Authority may require. However

owing to the fact that this is a bundled service as explained above, Telecom Namibia could not provide the cost information at time of consideration by the Authority.

It must be further noted that if after 6 months of implementation of the tariffs, Telecom Namibia submits the cost information and such information reveals the fact that the tariffs are below cost, then the Authority reserves the right to reject the tariff with immediate effect and investigate the reasonableness thereof as contemplated in section 53(16).

The Authority notes that section 53(19)(g) provides that the Authority may reject a tariff or part thereof if it is not accompanied by such cost information and other supporting material as required by section 53(18). Therefore owing to the fact that the JIVA packages are not accompanied by cost information, the Authority ought to reject the tariffs. However in light of the foregoing explanations pertaining to the generation of cost information for bundled packages, this paper will recommend that the Board approves the tariffs subject to the condition that Telecom Namibia Limited submits cost information after 6 months of implementation and the Authority may then deal with such as indicated in section 53(16) and (17).

Sections 53(16) and (17) provide that at any time after a tariff has come into operation, upon receiving new evidence that there are grounds for rejecting the tariff, the Authority may investigate its reasonableness.

## 5. DECISION

The Authority herewith approved:

1. The proposed tariffs for the Jiva Package as submitted by Telecom Namibia for implementation effective from date of Board approval ( which date may not be later than 13 November 2015) subject to the following conditions:
  - a) That Telecom Namibia Limited submits cost information pertaining for the JIVA Packages tariffs as contemplated in section 53(18) of the Communications Act within 6 months from date on which this decision is communicated to Telecom Namibia Limited; and
  - b) That the Authority will consider such cost information as contemplated in section 53(16) of the Communications Act.

**L.N. JACOBS**  
**CHAIRPERSON OF THE BOARD OF DIRECTORS**  
**COMMUNICATIONS REGULATORY AUTHORITY OF NAMIBIA**

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## COMMUNICATIONS REGULATORY AUTHORITY OF NAMIBIA

No. 576

2015

### NOTICE IN TERMS OF THE REGULATIONS REGARDING THE SUBMISSIONS OF INTERCONNECTION AGREEMENTS AND TARIFFS

The Communications Regulatory Authority of Namibia, in terms of Section 53(10) of the Communications Act, 2009 (Act No. 8 of 2009) read with regulation 8(1) of the “Regulations Regarding the Submission of Interconnection Agreements and Tariffs”, in Government Gazette No. 4714, Notice No. 126, dated 18 May 2011, herewith gives notice that **MWireless (Pty) Ltd T/A Africa OnLine** has filed a tariff with the Authority as set out in Schedule 1.

Any person may examine copies of the tariffs submitted 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. Copies are also available at [www.cran.na](http://www.cran.na) where copies may be downloaded free of charge.

The public may submit in writing to the Authority written comments within fourteen (14) days from the date of publication of this notice in the *Gazette*.

**MWireless (Pty) Ltd T/A Africa OnLine** 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.

All written submissions must 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 submissions is made, if different and be clear and concise.

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

- (1) by hand to the head offices of the Authority, namely Communication 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: [legal@cran.na](mailto:legal@cran.na); and
- (4) by facsimile to the following facsimile number: +264 61 222790.
- (5) by fax to e-mail to: 0886550852

**L.N. JACOBS**  
**CHAIRPERSON OF THE BOARD OF DIRECTORS**  
**COMMUNICATIONS REGULATORY AUTHORITY OF NAMIBIA**

### SCHEDULE 1

#### SUBMISSION OF PROPOSED TARIFFS BY MWIRELESS (PTY) LTD T/A AFRICA ONLINE COMMUNICATIONS ACT, 2009

##### Pure Tariffs Product pricing

Product Name	Description	Retain Price N\$	Cost Price N\$
Pure 500	512k/5122k	2000	1500
Pure 1000	1024k/1024k	3800	2900
Pure 2000	2048k/2048k	7000	5000
Pure 3000	3072k/3072k	10250	7500
Pure 4000	4096k/4096k	13500	9500
Pure 5000	5120k/5120k	16750	12500
Cost of CPE once off		7250	6750
CPE lease		375	
Installation		1500	

Please note that the full tariff submission including the terms and conditions and the remedies available to the consumers can be obtained from the Authority

**COMMUNICATIONS REGULATORY AUTHORITY OF NAMIBIA**

No. 577

2015

**NOTICE OF WITHDRAWAL OF APPLICATION FOR TRANSFER OF LICENCES AND  
TRANSFER OF CONTROL OF BROADCASTING SERVICE AND SPECTRUM USE  
LICENCE**

The Communications Regulatory Authority of Namibia, herewith gives notice that the Applicant referred to in the table below has withdrawn its application for transfer of licences and transfer of control of Broadcasting Service and Spectrum Use Licence as published in the Government Gazette No. 5659, General Notice No. 26 dated 30 January 2015, effective from the date of publication of this notice in the *Gazette*.

<b>Licensee (Transferor);</b>	<b>Type of service licence;</b>	<b>Transferee and percentage of stock ;</b>	<b>Percentage of Stock owned by non-Namibian Citizens or non-Namibian Companies controlled by non-Namibian Citizens;</b>	<b>Percentage of Stock owned by Namibian citizens or Namibian Citizens or Namibian Companies controlled by Namibian Citizens</b>	<b>Reasons for the proposed transfer;</b>
One Africa Television (Pty) Ltd	Commercial Broadcasting Licence	Picture Investment Holdings (Pty) Ltd = 20.71% Times Media Group = 79.29%	79.29% <sup>1</sup>	20.71%	The transferor sold shares in the licensee to the transferees.

**L.N. JACOBS**

**CHAIRPERSON OF THE BOARD OF DIRECTORS**

**COMMUNICATIONS REGULATORY AUTHORITY OF NAMIBIA**

<sup>1</sup> Subject to authorisation by the Minister in terms of section 85(3) of the Communications Act 8 of 2009.