



# GOVERNMENT GAZETTE

## OF THE

# REPUBLIC OF NAMIBIA

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## General Notices

### COMMUNICATIONS REGULATORY AUTHORITY OF NAMIBIA

No. 342

2016

#### 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, General Notice No. 126, dated 18 May 2011, herewith gives notice that it has approved tariffs for the LTE Data Bundle tariffs as submitted by **Paratus Telecommunications**, which came into force and effect on **29 July 2016**, 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, 2009 (Act No. 8 of 2009) (hereinafter referred to as “the Act”), Paratus Telecommunications (Pty) Ltd (hereafter referred to as “Paratus Telecom”) filed for the approval of tariffs for the LTE Data Bundle tariffs on 5 February 2016.

**2. BACKGROUND**

Paratus Telecom submitted the LTE Data Bundle tariffs on 5 February 2016. On 15 February 2016 the Authority wrote a letter to Paratus Telecom requesting them to indicate which information should be regarded as confidential in terms of section 28 of the Act and also to indicate the date on which the tariff will be implemented. On 23 February 2016, Paratus Telecom responded and indicated that only the cost analysis should be treated as confidential and not the entire submission. They further indicated that the implementation date should be 5 April 2016.

On 23 March 2016 the Authority wrote a letter to Paratus Telecom indicating that the 60 days for implementation of the tariffs would only run as from 2 March 2016 since the Authority could not risk publishing confidential information and at the same time could not published a tariff that does not comply with sections 53(8), (9) and (18) of the Act. The new date of implementation would therefore be 6 May 2016.

On 31 March 2016 the Paratus Telecom LTE Data Bundle tariffs were published for public comments as General Notice No. 92 in Government Gazette No. 5980 dated 31 March 2016.

On 7 April 2016 Paratus Telecom submitted an application for correction on the LTE Data Bundle tariffs. The correction consisted of one minor change in a tariff and the addition of two terms and conditions.

On 11 April 2016 Paratus Telecom submitted another request for correction on the LTE Data Bundle tariff. The correction pertained to the connection fee.

On 12 April 2016 Paratus Telecom filed an application to withdraw the LTE Data Bundle tariffs due to taxation errors in the original application. Paratus Telecom further submitted a new application for the approval of LTE Data Bundle tariffs in terms of section 53(1) and (7) of the Act.

On 19 April 2016 the Authority wrote to Paratus Telecom indicating that the tariff application was compliant with the Act and that the implementation date was now 16 June 2016.

On 25 April 2016 the Authority submitted a letter to Paratus Telecom indicating that the LTE Data Bundle tariffs previously submitted and published as General Notice No. 92 in Government Gazette No. 5980, dated 31 March 2016 would be withdrawn.

On 16 May 2016 Paratus Telecom submitted a letter to the Authority requesting that a general addition be added to the LTE Data Bundle tariffs.

On 10 June 2016 a Notice of Withdrawal was published as General Notice No. 176 in Government Gazette No. 6032 dated 10 June 2016. On the same date the newly submitted LTE Data Bundle tariffs were published for public comment as General Notice No. 178 in Government Gazette No. 6032 dated 10 June 2016.

On 28 June 2016 the Authority informed Paratus Telecom that the LTE Data Bundle tariffs would be published in Government Gazette No. 6045, dated 28 June 2016.

### 3. PROCEDURAL COMPLIANCE

The proposed tariffs were published as General Notice No. 178 in the Government Gazette No. 6032 dated 10 June 2016 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 24 June 2016.

No public comments were received during the commenting period in respect of the tariffs published and as such no reply comments were required from Paratus Telecom.

### 4. FINANCIAL AND ECONOMIC ANALYSIS OF THE NEW LTE DATA BUNDLE TARIFFS SUBMITTED BY PARATUS TELECOMMUNICATIONS (PTY) LTD

The tariffs for LTE Data Bundle tariffs were submitted as promotional tariffs in terms of section 53(2). During the promotion the connection fee was reduced by 25%.

Paratus Telecom submitted the new tariffs for permanent approval in terms of section 53(1) and (7) of the Act.

The tariff information is as follows:

#### TARIFF INFORMATION

**Table 1: LTE Postpaid Packages**

	PT	PT	PT	PT
	LTE LITE	Ultimate	LTE Pulse	LTE FLIX
Connection Fee - N\$	345.00	345.00	440.00	440.00
Monthly Fee - N\$	345.00	975.00	440.00	485.00
Includes Wingle(CPE)	Yes	Router	Yes	Yes
Data CAP - GB	5	125	5	5
Max Clients (MAC)	1	10	1	1
Renewal period (months)	1	1	1	1
Contract Period (months)	3	24	3	3
Out of Bundle Rate - N\$ per GB	See Bundles	See Bundles	See Bundles	See Bundles
Max Speed - Mbps	50	50	50	50

- The customer has an option to subscribe to any of the 3 months Post-Paid packages for 12 months at a standard connection fee of N\$285.00, with an option to get a router at a monthly fee of N\$195.00 both excluding VAT.

**Table 2: LTE Pre-paid Packages**

	PT Prepaid	PT BYO
Connection Fee - N\$	1,350.00	150.00
Monthly Fee - N\$	-	-
Includes Wingle (CPE)	Yes	No
Data CAP – GB (Valid for 30 days)	10	2
Max Clients (MAC)	1	1
Rollover period (months)	0	0

<b>Subscription Validity (months)</b>	3	3
<b>Out of Bundle Rate - N\$ per GB</b>	See Bundles	See Bundles
<b>Max Speed – Mbps</b>	50	50

**Table 3: Data Bundles Top Up**

<b>Bundle Upgrades (Incl VAT)</b>	<b>Bundle Volume</b>	<b>Cost</b>	<b>Validity (Days)</b>
<b>Bundle 1</b>	20MB	5.00	30
<b>Bundle 2</b>	50MB	10.00	30
<b>Bundle 3</b>	150MB	20.00	30
<b>Bundle 4</b>	225MB	30.00	30
<b>Bundle 5</b>	500MB	50.00	30
<b>Bundle 6</b>	1GB	85.00	30
<b>Bundle 7</b>	2GB	120.00	30
<b>Bundle 8</b>	2.25GB	150.00	30
<b>Bundle 9</b>	3GB	180.00	30
<b>Bundle 10</b>	5GB	250.00	30
<b>Bundle 11</b>	6GB	295.00	30
<b>Bundle 12</b>	10GB	460.00	30
<b>Bundle 13</b>	25GB	865.00	30
<b>Bundle 14</b>	50GB	1,495.00	30

**Comparative Analysis****Table 4: Postpaid Packages**

<b>Data Cap</b>	<b>OPERATORS</b>			<b>N\$/MB</b>		
	<b>Paratus Telecom</b>	<b>MTC</b>	<b>Telecom Namibia</b>	<b>Paratus Telecom</b>	<b>MTC</b>	<b>Telecom Namibia</b>
5 GB	345.00			0.069		
125 GB	975.00			0.008		
6 GB		349.00			0.058	
90 GB		999.00	998.00		0.01	0.01

**Table 5: Data Bundles**

<b>Data Cap</b>	<b>OPERATORS</b>			<b>N\$/MB</b>		
	<b>Paratus Telecom (N\$)</b>	<b>MTC (N\$)</b>	<b>Telecom Namibia (N\$)</b>	<b>Paratus Telecom</b>	<b>MTC</b>	<b>Telecom Namibia</b>
20MB	5.00			0.25	0.30	0.25
40MB		12.00	10.00			
50MB	10.00			0.20		
80MB		19.00			0.24	
150MB	20.00			0.13		
225MB	30.00			0.13		
400MB		79.00			0.19	
500MB	50.00		0.1			
800MB		129.00		0.16		
1GB	85.00		139.00	0.083		0.136
1.5GB		219.00			0.146	
2GB	120.00		199.00	0.06		0.1
2.25GB	150.00			0.067		

3GB	180.00	329.00		0.11		
5GB	250.00		399.00	0.05		0.08
6GB	295.00			0.05		
10GB	460.00		849.00	0.046	0.085	
15GB		999.00			0.07	
20GB			1049.00			0.052
25GB	865.00			0.035		
50GB	1,495.00			0.03		

From Table 5 and 6 above it can be seen that it is very difficult to compare the offerings from the different operators in the market since each of them offers different packages and different speeds. However, it is clear that the packages offered by Paratus Telecom will offer the customer more choice. At the same time these packages would create more competition in the 4G LTE market.

It was therefore recommended that the Board approve the proposed tariffs.

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 effective.

All requirements in terms of section 53 of the Act that deal 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 Paratus Telecom, 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 would be 15 July 2016 which is not less than 60 days from the last day of filing, which date being 16 May 2016 on which the last request for amendment of the tariff was submitted to the Authority. A letter was drafted to Telecom Namibia on 4 July 2016 to postpone the date of commencement of the tariff with fourteen (14) days in terms of section 53(13) of the Act, in order to examine the reasonableness of the tariff to 29 July 2016.

## 5. DECISION

The Authority herewith approved the LTE Data Bundle tariffs as submitted by Paratus Telecommunications (Pty) Ltd for implementation effective from 29 July 2016.

**F. KISHI**  
**CHAIRPERSON OF THE BOARD OF DIRECTORS**  
**COMMUNICATIONS REGULATORY AUTHORITY OF NAMIBIA**

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**COMMUNICATIONS REGULATORY AUTHORITY OF NAMIBIA**

No. 343

2016

**CODE OF CONDUCT FOR BROADCASTING SERVICE LICENSEES**

The Communications Regulatory Authority of Namibia, in terms of section 89(2) of the Communications Act, 2009 (Act No. 8 of 2009) and regulation 4(3) of the Regulations Regarding Rule-Making Procedures as General Notice No. 334 of 17 December 2010 publishes this Notice of Intention to prescribe a Code of Conduct for Broadcasting Service Licensees, which contains the following:

1. Sets out the concise statement of the reasons and purpose for the price caps in Schedule I.
2. A draft of the proposed Regulations as set out in Schedule 2.

The public may also make written submissions to the Authority no later than thirty-one days from the date of publication of this Notice of Intention to Make Regulations, in the manner set out below for making written submissions.

Reply comments to written submissions may be submitted to the Authority-

- (a) no later than fifteen days after the time for the making of written submissions has lapsed;  
or
- (b) if the opportunity for the submission of reply comments is published in a subsequent *Gazette*, after the lapse of fourteen days from the date of such publication.

All written submissions must-

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

All written submissions must be sent or given in any of the following ways:

1. By hand to the head offices of the Authority, namely Communication House, No 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 fax to email to: 0886550852.

In terms of Regulation 7 of the Regulations regarding Rule-Making Procedure published in Government Gazette No. 4630, General Notice No. 334 dated 17 December 2010 herewith gives notice that it will hold a hearing regarding the proposed Code of Conduct as follows:

**DATE:** 5 September 2016  
**TIME:** 14h30 (registration commences at 14h00)  
**VENUE:** Protea Hotel Furstenhof, Windhoek

The public is invited to make comments and/or oral submissions at the hearing on the Regulations regarding the Sharing of Infrastructure.

All written comments and notice of oral submissions to be made during the hearing must be submitted to the Authority on or before **24 August 2016**.

**All written comments and notice of oral submission must be submitted to the Authority either physically or electronically -**

1. By hand to the head offices of the Authority, namely Communications House, 56 Robert Mugabe Avenue, Windhoek;
2. By post to the head offices of the Authority namely Private Bag 13309, Windhoek;
3. By electronic mail to the following address [legal@cran.na](mailto:legal@cran.na);
4. By facsimile to the following facsimile number +264 61 222 790; or
5. By fax to email to: 088642748.

**Oral submissions must -**

1. Include a statement of the name and contact details of the person making the oral submissions and the name and contact details of the person for whom the oral submission is made, if different;
2. Be clear and concise.

**F. KISHI**  
**CHAIRPERSON OF THE BOARD OF DIRECTORS**  
**COMMUNICATIONS REGULATORY AUTHORITY OF NAMIBIA**

#### **SCHEDULE 1** **CONCISE STATEMENT OF PURPOSE**

In accordance with section 89(2), the Authority hereby sets standards according to which Broadcasting Service Licensees will be monitored by the Authority in terms of section 90 and adjudicated upon subject to section 89(2) of the Act. This Code gives expression to the Act, specifically to the requirements of section 89(2) of the Act.

The purpose of the Code of Conduct is to ensure the independent regulation of broadcasting services, access to broadcasting services, and broadcasting content in the public interest. The provisions of the Code are also aimed at attaining availability of local content, commitment to public debate and discussion as well as transparency and accountability.

Additionally, the Code contains provisions that, *inter alia*, relate to:

- a) freedom of expression;
- b) protection of privacy, children and victims of sexual abuse from inappropriate or harmful broadcast communications;

- c) acknowledgement of the special susceptibilities of children and to ensure that commercial communications do not exploit these susceptibilities;
- d) the regulation of hate speech; and
- e) regulation against inequality and discrimination,

which are all essential for the provision of broadcasting services in a democratic society.

The Authority reserves the right to revise, review and amend any provision of the Code in consultations with stakeholders.

## **SCHEDULE 2**

### **DRAFT CODE OF CONDUCT FOR BROADCASTING SERVICE LICENSEES ISSUED IN TERMS OF SECTION 89(1) OF THE COMMUNICATIONS ACT, 2009 (ACT NO. 8 OF 2009)**

The Communications Regulatory Authority of Namibia, in terms of section 89(2) of the Communications Act, 2009 (Act No. 8 of 2009), intends to prescribe the Code of Conduct for Broadcasting Service Licensees.

#### **1. Definitions**

In these regulations unless the context indicates otherwise, a word or expression to which a meaning has been assigned in the Act has the meaning so assigned.

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

“advertisement” means any visual or aural communication, representation, reference or notification of any kind, which is intended to promote the sale, leasing or use of any goods or services; or which appeals for or promotes the support of any cause. Promotional content of display material, menus, labels, and packaging also fall within the definition. Editorial material is not an advertisement, unless it is editorial for which consideration has been given or received;

“audience” means both the viewers and listeners of television and radio broadcasting service licenses;

“broadcasting service licensee” means a broadcasting service licensee as set out in the Regulations Setting Out Broadcasting and Telecommunications Service License Categories published in Government Gazette No. 4714, General Notice No. 124 of 18 May 2011, as amended in Government Gazette No. 5148, GNotice No 74 of 13 March 2013;

“by-election” means an election through which a vacancy is filled as contemplated in terms of section 63(2) of the Electoral Act, 2014 (Act No. 5 of 2014);

“child” means a person under the age of 18 years and reference to children should be construed accordingly;

“current affairs” means a programme that is not a news bulletin but that focuses on and includes comment on and interpretation and analysis of issues of immediate social, political or economic relevance and matters of international, regional and local significance;

“election” means any election of the President, members of the National Assembly, any member of a regional council or local authority council, as the context may require;



“election broadcast period” means the period within which political party election broadcasts may be transmitted; ending 48 hours before polling day;

“election period” means the period within which party election broadcasts may be transmitted; commencing after nomination day and ending 48 hours before polling commences.

“local content” means a programme, which is produced -

- (a) by a broadcasting service licensee;
- (b) by a person who is a citizen of, and permanently resident in, the Republic;
- (c) by a juristic person, the majority of the directors, shareholders or members of whom are citizens of, and permanently resident in, the Republic;
- (d) In a co-production in which persons referred to in subparagraphs (a), (b) or (c) have at least a fifty percent financial interest;
- (e) by persons referred to in subparagraphs (a), (b), (c) or (d), in circumstances where the prescribed number of key personnel who are involved in the production of the television programme, are citizens of, and permanently resident in, the Republic; or
- (f) by persons referred to in subparagraphs (a), (b), (c) or (d), in circumstances where the prescribed percentage of the production costs are incurred in the Republic;

“Namibian music” if such work complies with at least two of the following criteria, namely -

- (a) If the lyrics (if any) were written by a Namibian citizen;
- (b) If the music was written by a Namibian citizen;
- (c) If the music or lyrics was or were principally performed by musicians who are Namibian citizens;
- (d) If the musical work consists of a live performance which is -
  - (aa) recorded wholly in the Republic; or
  - (bb) performed wholly in the Republic and broadcast live in the Republic.”

“NBC” means the Namibia Broadcasting Corporation established in terms of the Namibia Broadcasting Corporation Act, 1991 (Act No. 9 of 1991);

“news” means programming that is not current affairs by a broadcaster in which it reports on news events of immediate social, political or economic relevance and on matters of international, national and local significance;

“nomination day” means a day determined in terms of section 64(1)(a) of the Electoral Act, 2014 (Act No. 5 of 2014);

“polling day”, in relation to any election in question, means any day determined in terms of section 64(1)(b) for voting, or any day determined under section 119(5) for voting on a referendum;

“performance period” means the period of 126 hours in one week measured between the hours 05h00 and 23h00 each day;

“referendum” means a referendum held in terms of Article 63(2)(g) and 132(3)(a) of the Namibia Constitution;

“party election broadcast” means any programme, which is -

- (a) broadcast free of charge or for a fee determined by the licensee;
- (b) intended or calculated to advance the interests, beliefs, or objects of any political party or candidate;

- (c) pre-recorded; or
- (d) live event.

“registered political party” means a political party that is registered in terms of section 137 of the Electoral Act, 2014 (Act No. 5 of 2014);

“sexual conduct” means -

- (a) the display of genitals or of the anus;
- (b) masturbation;
- (c) sexual intercourse including anal sexual intercourse;
- (d) in the case of child pornography, the fondling or touching of breasts, genitalia or the anus;
- (e) the penetration of a vagina or anus with any object;
- (f) oral genital contact; or
- (g) oral anal contact;
- (h) the insertion (to even the slightest degree) of the penis of a person into the vagina or anus or mouth of another person; or
- (i) the insertion of any other part of the body of a person or of any part of the body of an animal or of any object into the vagina or anus of another person, except where such insertion of any part of the body (other than the penis) of a person or of any object into the vagina or anus of another person is, consistent with sound medical practices; carried out for proper medical purposes; or
- (j) cunnilingus or any other form of genital stimulation; and

“watershed period” means the period between 21h00 and 05h00 for free-to-air television broadcasting service licensees and 22h00 and 05h00 for subscription television broadcasting service licensees.

## **2. Applicability**

- (1) This code is applicable to all commercial and community broadcasting service licensees.
- (2) Pursuant to the provisions of section 93 of the Act, until a date determined by the minister, this code will not be applicable to the broadcasting services or to any broadcasting activities carried on by the NBC.
- (3) Broadcasting service licensees must ensure that relevant employees and programme-makers including those from whom they commission programmes, understand the content and significance of this code.
- (4) All broadcasting service licensees must have procedures for ensuring that programme-makers can seek from them guidance relevant to the code.
- (5) Sections 4 to 10 of this code are applicable to all broadcasting service licensees, during presidential, national assembly, regional council and local authority council elections or during a referendum.

***Principle (89(2)(a): Prescribe duties relating to the coverage of news and current affairs in order to ensure that the news coverage by broadcasters is fair, objective and impartial.***

**3. News and Current Affairs**

- (1) Subject to this section, broadcasting service licensees must:
- (a) report news in a factually accurate, impartial and non-partisan manner; and
  - (b) present current affairs in a balanced, clear, factual, accurate and impartial manner.
- (2) News must be presented in the correct context and in a fair manner, without intentional or negligent departure from the facts, whether by:
- (a) distortion, exaggeration or misrepresentation;
  - (b) material omissions; or
  - (c) summarisation.
- (3) Only that which may reasonably be true, having reasonable regard to the source of the news, may be presented as fact, and that fact must be broadcast fairly with reasonable regard to context and importance.
- (4) Where a report:
- (a) is not based on fact;
  - (b) is founded on opinion, supposition, rumours;
  - (c) or allegations,
- the report must be presented in such a manner as to clearly indicate that that is the case.
- (5) Where there is reason to doubt the correctness of the report and it is practical to verify the correctness thereof, the report must be verified. Where verification is not practical, that fact must be mentioned in the report.
- (6) Where it subsequently appears that a broadcast report was incorrect in a material respect, it must be rectified forthwith, without reservation or delay. The rectification must be presented with such degree of prominence and timing as in the circumstances may be adequate and fair so as to readily attract attention.
- (7) Unless prior valid consent from the victim concerned is obtained, the identity of:
- (a) rape victims;
  - (b) victims of gender based violence;
  - (c) other victims of sexual violence; and
  - (d) minors implicated in criminal cases;
- must not be divulged in any broadcast, whether as part of the news or not.

- (8) Broadcasting service licensees must advise viewers in advance of:
- (a) scenes or reporting of extraordinary violence, or graphic reporting on delicate subject matter such as sexual; or
  - (b) court action related to sexual crimes,

particularly during afternoon or early evening newscasts and updates.

- (9) Broadcasting service licensees must not include explicit or graphic language related to news of destruction, accidents or sexual violence, which could disturb children or sensitive audiences, except where it is in the public interest to include that material.

***Principle 89(2)(c) – Regulate the broadcasts of any matter having the purpose of promoting the interests of any political party***

**4. Party-Political Broadcasts**

- (1) No broadcasting service licensee shall permit party election broadcasts under any circumstances except during an election period.
- (2) Broadcasting service licensees who choose to broadcast a party election broadcast, for a particular party, shall afford all other political parties a similar opportunity.
- (3) Broadcasting service licensees shall not broadcast a party election broadcast until its duly authorised representative submits it on behalf of the political party.
- (4) A party election broadcast shall be wholly under the editorial control of a political party, which requests the broadcast and the broadcaster shall not be held liable for the content of the broadcast.

***Principle 89(2)(d)- Prescribe special duties for broadcasters while campaigns are being conducted for elections or referendums as will promote democracy and the fair conducting of such elections or referendums***

**5. News and current affairs during elections and referendum**

- (1) News coverage of elections shall be left to the discretion of the News Editor of the broadcast services licensee.
- (2) Proper balance and fairness shall be applied to all current affairs programmes that deal with elections.

**6. Balance and Impartiality**

- (1) Broadcasting services licensees must afford reasonable opportunities for the discussion of conflicting views and must treat all political parties equitably.
- (2) Broadcasting service licensees must ensure that they are balanced and impartial in their election reporting and that no political party or candidate shall be discriminated against in editorial coverage or the granting of access to coverage.
- (3) In the event of any criticism against a political party being leveled in a particular programme of any broadcasting service –

- (a) without that party having been afforded an opportunity to respond in the same programme; or
- (b) without the view of that political party having been reflected therein,

the broadcasting services licensee concerned must afford that political party a reasonable opportunity to respond to the criticism.

#### **7. Allocation of free airtime by the Namibian Broadcasting Corporation**

- (1) Subject to section 93(1) of the Act, where the Namibia Broadcasting Corporation offers free airtime to various political parties contesting a regional, presidential or local Authority elections, it shall do so on the basis of the respective formula set out in this Code.
- (2) Subject to section 93(1) of the Act, a political party that intends to broadcast a party election broadcast utilizing the free airtime as allocated by the NBC above.
  - (a) must submit same to the Namibia Broadcasting Corporation at least ninety six (96) hours prior to the broadcast thereof; and
  - (b) subject further to the provision of regulation 7(2), if a political party fails to deliver the party election broadcast to the NBC before the expiry of the time stipulated in subsection (2) (a) above, the political party is deemed to have forfeited its free allocated airtime.
- (3) In the event of a by-election or elections, the formulae must be submitted at least 30 days before the polling day.
- (4) In making advertising time available to political parties, no broadcasting services licensee may discriminate against any political party or make or give any preference to any political party or subject any political party to any prejudice.
- (5) In the event that a political party elects to forfeit its allocated party election broadcast airtime, then that airtime must be used by the broadcaster concerned for the purpose of broadcasting its normal programming or material.
- (6) In the event that a political party does not wish to use its allocated party election broadcast air-time, the broadcasting services licensee concerned must not, during the relevant time-slot, in any way vary the sequence or scheduling of party election broadcasts.

#### **8. Party Election Broadcasts**

- (1) A political party that intends to broadcast a party election broadcast must:
  - (a) submit same to the broadcasting service licensee at least ninety six (96) hours prior to the broadcast thereof;
  - (b) the submission must be accompanied by a written script in the English language; and
  - (c) if the Political Party wishes to use a local language, a script must also be provided in that language.
- (2) A broadcasting service licensee that is obliged, or intends to broadcast political party election broadcasts must ensure that the political party election broadcasts received conforms to the provisions of this Code and is acceptable to the Authority.

- (3) A broadcasting service licensee, to whom a political party election broadcast has been submitted by a party for broadcast, must not in any way edit or alter the content of the party election broadcast.
- (4) A licensee shall not reject the party election broadcast for any reason that is not reasonable or justifiable, and without any good cause shown.
- (5) A broadcasting service licensee that rejects a party election broadcast submitted to it by a party for broadcast must, within 24 hours of such submission:
  - (a) furnish the political party concerned with written reasons for the rejection; and
  - (b) on receipt of the written reasons contemplated in paragraph (a), the political party concerned may alter or edit the political election broadcast and resubmit it to the broadcasting service licensee concerned at least 72 hours prior to it being broadcast.
- (6) A political party that submits a political party election broadcast to a broadcasting service licensee for broadcast must ensure that the political party election broadcast does not:
  - (a) contravene the provisions of the Constitution of Namibia, the Electoral Act, or the Communications Act; and
  - (b) contain any material that is calculated, or that in the ordinary course is likely to provoke or incite any unlawful, illegal or criminal act, or that may be perceived as condoning or lending support to any such act.
- (7) A political party that submits a party election broadcast to a broadcasting service licensee for broadcast shall have no claim against the broadcasting service licensee arising from the broadcast or non broadcast of the party election broadcast.
- (8) A political party that submits a party election broadcast for broadcast to a broadcasting service licensee is deemed to have indemnified the broadcasting service licensee against incurred costs, damages, losses, and third political party claims arising from the broadcast thereof.
- (9) A broadcasting service licensee that broadcasts party election broadcast must:
  - (a) make available to political parties, every day, throughout the election period, four time-slots not exceeding two minutes each as a minimum;
  - (b) do so in accordance within and subject to the requirements prescribed by the Authority in terms of this Code ; and
  - (c) ensure that all political party election broadcasts aired by that licensee are clearly identified .
  - (d) ensure that all party election broadcasts are identified or announced in a similar manner.
- (10) A party election broadcast must not exceed five minutes in duration.
- (11) A broadcasting service licensee must not transmit a party election broadcast or political advertisement immediately before or after another party election broadcast or political advertisement.

- (12) Unless a political party makes prior arrangements with the broadcasting service licensee, political party election broadcast airtime allocated to but not used by that political party shall be forfeited.
- (13) A broadcasting services licensee or political party must not permit or engage in any interference with, or trade-offs in the sequence or scheduling of party election broadcasts.

## **9. Political Advertising**

- (1) Political advertisements shall not be broadcast 48 hours before the polling day.
- (2) A broadcasting service licensee, to whom a political advertisement has been submitted by a political party for broadcast, must not in any way edit or alter the advertisement.
- (3) A broadcasting service licensee may reject a political advertisement submitted for broadcast, provided that a licensee shall not reject the advertisement for any reason that is not reasonable or justifiable, and without any good cause shown.
- (4) A broadcasting service licensee that rejects a political advertisement submitted to it by a political party for broadcast must, within 24 hours of such submission:
  - (a) furnish the political party concerned with written reasons for the rejection and;
  - (b) on receipt of the written reasons contemplated in paragraph (a), the political party concerned may alter or edit the political advertisement and resubmit the political advertisement to the broadcasting service licensee concerned at least 72 hours prior to it being broadcast.
- (5) Where the broadcasting service licensee has rejected a political advertisement and the political party concerned has confirmed in writing to the broadcasting service licensee that it will not be re-submitting the advertisement, then the broadcasting service licensee must within 24 hours notify the Authority in writing of such rejection and must also furnish to the Authority written reasons for the rejection.
- (6) A political party, whose political advertisement has been rejected and has no intention of altering or editing the advertisement and does not accept the reasons for the rejection, may refer the matter to the Authority within 24 hours of being informed of the rejection.
- (7) A political party that submits a political advertisement to a broadcasting service licensee for broadcast must ensure that the advertisement does not:
  - (a) contravene the provisions of the Constitution of Namibia, the Electoral Act, the Communications Act, or any other relevant laws; and
  - (b) contain any material that is calculated, or that in the ordinary course is likely, to provoke or incite any unlawful, illegal or criminal act, or that may be perceived as condoning or lending support to any such act.
- (8) A political party that submits a political advertisement to a broadcasting service licensee for broadcast shall have no claim against the broadcasting service licensee arising from the broadcast of the advertisement.
- (9) A political party that submits a political advertisement for broadcast to a broadcasting service licensee is deemed to have indemnified the broadcasting service licensee against incurred costs, damages, losses, and third political party claims arising from the broadcast thereof.

**10. Prevention of broadcasting**

- (1) No broadcasting service licensee shall on polling day broadcast party election broadcast, political advertisement or any material canvassing for support of any political party or candidate.
- (2) No broadcasting service licensee shall 48 hours before polling day broadcast party election broadcast or political advertisement.
- (3) Election coverage on the date of polling shall be confined to reports and analyses on the progress of voting and information pertaining to voting schedules and location of polling stations.
- (4) No broadcasting service licensee shall broadcast election results until after the polls have been declared closed and official results are announced or published by the relevant officials of the Electoral Commission of Namibia as per the provisions of the Electoral Act, 2014 (Act No. 5 of 2014).

***Principle 89(2)(e) Regulate the broadcasting of matters of a sexual or violent nature, containing offensive or strong language or that is offensive or degrading to any portion of the Namibian public or prohibit such broadcasts under prescribed circumstances during prescribed times or prescribe conditions relating to such broadcasts or subject to the Namibian Constitution prohibit the broadcast of a prescribed class of such matter under the prescribed circumstances.***

**11. Sexual Conduct**

Broadcasting service licensees must not broadcast material which, judged within the context, contains a scene or scenes, simulated or real, of any of the following:

- (a) child pornography;
- (b) bestiality;
- (c) sexual conduct which degrades a person in the sense that it advocates a particular form of hatred based on gender and which constitutes incitement to cause harm;
- (d) explicit sexual conduct;
- (e) explicit extreme violence or the explicit effects thereof; or
- (f) explicit infliction of domestic violence.

**12. Protection of Children**

- (1) A broadcasting service licensee shall ensure that due care is exercised in order to avoid content which may disturb or be harmful to children when the licensee broadcasts programmes at times where a large number of children may be expected to be watching or listening to radio or television programmes.
- (2) Broadcasting service licensees must, in the depiction of violence in children's programming exercise particular caution, as provided below:
  - (a) in children's programming portrayed by real-life characters, violence may, whether physical, verbal or emotional, only be portrayed when it is essential to the development of a character and plot;



- (b) animated programming for children, while accepted as a stylised form of story-telling which may contain non-realistic violence, must not have violence as its central theme, and must not incite dangerous imitation;
- (c) programming for children must with reasonable care deal with themes that could threaten their sense of security when portraying, for example, domestic conflict, death, crime or the use of drugs or alcohol;
- (d) programming for children must with reasonable care deal with themes which could influence children to imitate acts which they see on screen or hear about, such as the use of plastic bags as toys, the use of matches or the use of dangerous household objects as toys;
- (e) programming for children must not contain realistic scenes of violence, which create the impression that violence is the preferred or only method to resolve conflict between individuals;
- (f) programming for children must not contain realistic scenes of violence, which minimise or gloss over the effect of violent acts;
- (g) any realistic depictions of violence must portray, in human terms, the consequences of that violence to its victims and its perpetrators;
- (h) programming for children must not contain frightening or otherwise excessive effects not required by the story line;
- (i) offensive language, including profanity and other religiously incentive material, must not be broadcast in programmes especially designed for children; and
- (j) no offensive language should be used before the watershed period on television or radio or at times when a large number of children are likely to be part of the audience on television or radio;

### **13. Violence and Hate Speech**

- (1) Broadcasting service licensees must not broadcast material which, judged within the context;
  - (a) contains violence which does not play an integral role in developing the plot, character or theme of the material as a whole; or
  - (b) sanctions, promotes or glamorises violence or unlawful conduct.
- (2) Broadcasting service licensees must not broadcast material which, judged within context, sanctions, promotes or glamorizes violence or unlawful conduct based on race, sex, sexual orientation, ethnic origin, colour, religion, creed, gender, economic or social economic status, age or mental or physical disability.
- (3) Broadcasting service licensees must not broadcast material which, judged within context, amounts to:
  - (a) propaganda for war;
  - (b) incitement of imminent violence; or
  - (c) the advocacy of hatred that is based on race, ethnicity, religion, sex, sexual orientation or gender and that constitutes incitement to cause harm.

**14. Privacy, Dignity and Reputation**

- (1) Broadcasting service licensees must exercise exceptional care and consideration in matters involving the privacy, dignity and reputation of individuals, bearing in mind that these rights may be overridden by a legitimate public interest.
- (2) In the protection of privacy, dignity and reputation of individuals, special consideration must be given to
  - (a) the applicable customary law concerning the privacy and dignity of people who are bereaved and their respect for their deceased; and
  - (b) the privacy, dignity and reputation of children, women, the elderly and the physically and mentally disabled.

**15. Audience Advisories**

- (1) To assist audiences in choosing television programmes, television broadcasting service licensees must provide advisory assistance, which, when applicable, must include guidelines as to age, where such broadcasts contain violence, sex, nudity or offensive language.
- (2) The advisory must be shown on the screen for a minimum of 30 seconds after each advertisement or other break.
- (3) Where the frequency of the subject matters, or any one or some of them, is high, a continuous advisory is mandatory, whether it is broadcast before or after the watershed period.
- (4) The following visual advisory age system must be used:
  - (a) 10;
  - (b) 13;
  - (c) 16; and
  - (d) 18.
- (5) The following symbols must be used in accordance with the relevant content:
  - (a) V = (Violence);
  - (b) L = (Language);
  - (c) N = (Nudity);
  - (d) S = (Sex); and
  - (e) PG = (Parental Guidance).
- (6) An audio advisory before the commencement of the programme must also accompany the broadcast of a film with an age restriction of 18.

**16. Controversial issues of public importance**

- (1) A broadcasting service licensee must ensure that, when reporting on controversial issues, a wide range of views and opinions is reported, either within a single programme or within a series of programmes, which shall be broadcast as soon as is reasonably possible.
- (2) A broadcasting service licensee shall endeavour to ensure that when broadcasting controversial issues of political, industrial or public importance during phone-in programmes, a wide range of views and opinions is represented.
- (3) A person or organisation whose views have been criticised on any controversial issue of political, industrial or public importance during a programme, and who makes any representations, within a reasonable time, to the licensee responsible for the programme, that he or she or the organisation is aggrieved, shall be offered an opportunity by the licensee to reply to such criticism or comment.

**17. Watershed Period**

- (1) Programming on television, which contains scenes of:
  - (a) explicit violence;
  - (b) sexual conduct;
  - (c) nudity; or
  - (d) grossly offensive language,intended for adult audiences must only be broadcast during the watershed period.
- (2) Radio and television broadcasting licensees may only broadcast promotional material and music videos which contain:
  - (a) scenes of explicit violence;
  - (b) explicit threatening violence;
  - (c) sexual conduct;
  - (d) the fondling or touching of breasts;
  - (e) genitalia or the anus;
  - (f) nudity; or
  - (g) offensive language,intended for adult audiences must only be broadcast during the watershed period.
- (3) Some programmes broadcast outside the watershed period may not be suitable for those under the age of 18 and licensees must provide sufficient information, in terms of regular scheduling patterns or audience advisories, to assist parents and *de facto* or legal guardians to make appropriate viewing or listening choices.
- (4) Television and radio broadcasting service licensees may, with the advance of the watershed period, progressively broadcast more adult material.

- (5) Broadcasting service licensees must be particularly sensitive to the likelihood that programmes which commence during the watershed period and which run beyond it may then be viewed by children.

#### **18. Competitions and Audience Participation**

- (1) Broadcasting service licensees must make known during a broadcast the full cost of a telephone call or a message service, such as an SMS, where audiences are invited on air to react to a programme or competition.
- (2) Broadcasting service licensees must specify the proportion of the cost of the call or message service, such as an SMS, as the case may be, which is intended for any specified charitable cause.
- (3) Broadcasting service licensees must ensure that audiences who are invited to compete in any competition are made aware on air of the rules of the competition. The rules must include the closing date and the manner in which the winner is determined and publicly announced.

#### ***Principle 89(2)(f) - Prescribe the duty to broadcast a prescribed class of public announcements free of charge***

#### **19. Public notices of emergencies or public disaster announcements**

A broadcast service licensee shall, without delay provide, free of charge, a public notice of emergency service or a public disaster announcement requested by any Government Ministry, Office, Agency, the Authority or any other organ of State.

#### ***Principle 89(2)(g) – Prescribe circumstances under which corrections or counter-versions must be broadcast when factually incorrect or defamatory or injurious matter or matter whose broadcast is prohibited by the code, has been broadcast***

#### **20. Comments**

- (1) Broadcasting service licensees are entitled to broadcast comment on and criticism of any actions or events of public importance.
- (2) Comment must be an honest expression of opinion and must be presented in such a manner that it appears clearly to be comment, and must be made on facts truly stated or fairly indicated and referred to.
- (3) Where a person has stated that he or she is not available for comment or that person could not reasonably be reached, that fact must be stated in the programme including the effort and methodology employed to try and reach the person.

#### **21. Counter-versions**

- (1) Where it appears that comment was incorrect or differed in a material respect, a broadcasting service licensee shall broadcast a counter-version presented by any person or body of persons affected by an assertion of fact in any programme transmitted that the assertion of fact is in fact false.
- (2) Notwithstanding subsection (1), a broadcasting service licensee shall not transmit a counter-version if:
- (a) The person or organization concerned has no direct interest in the transmission of the counter-version; or

- (b) The counter-version is not of reasonable length, and in particular, if it is substantially longer than the part of the broadcast which dealt with the false assertion of fact.
- (3) The counter-version referred to in subsection (1) shall:
- (a) be limited to a factual account;
  - (b) not contain any material, which may reasonably be anticipated to expose the licensee to legal action if that material were to be broadcast;
  - (c) be made in writing;
  - (d) specify the programme and the assertions to which the objection is raised; and
  - (e) be signed by the person affected or, in the case of an organisation, by a duly authorized representative of that organization.
- (4) The person or body of persons affected shall not be entitled to insist on the transmission of a counter-version as contemplated in subsection (1) if the counter-version is presented to the licensee holder after the expiry of a period of thirty (30) days from the date of broadcast of the false assertion of fact.
- (5) The licensee shall, subject to subsection (2) and (4):
- (a) at the first opportunity, but not later than ten days from receipt of a counter-version referred to in subsection (1), broadcast the counter-version within the same programme or programme section as the one in which the false assertion was made and at the same time of day or, should that not be possible, at time equal in value to that of the programme objected to;
  - (b) broadcast the counter-version without any omissions and interruptions; and
  - (c) broadcast the counter-version free of charge.
- (6) A broadcasting service licensee shall immediately upon receipt of the counter-version referred to in subsection (1):
- (a) inform the Authority about that fact; and
  - (b) keep and store the programme objected to and the counter-version
- until he receives a notice to the contrary from the Authority.

***Principle 89(2)(h) – require the broadcast of prescribed content produced in Namibia***

**22. Local Content**

- (1) Every broadcasting service licensee shall, through the broadcasting of local content:
- (a) encourage the development of Namibian expression by providing a wide range of programming that reflects Namibia and African attitudes, opinions, ideas, values and artistic creativity by displaying Namibian and African cultures and entertainment through music, dramas, series, news, soaps, documentaries, current affairs, movies, films and other programmes;

- (b) serve the needs and interests and reflect the circumstances and aspirations of Namibian women, men and children in a democratic Namibian society;
- (c) produce and maintain programmes of high standards and quality; and
- (d) make maximum use of Namibian and African creative and other resources in the creation and presentation of programming.

### **23. Exemptions**

The following content does not constitute local content:

- (1) Pure promotional off-air activities such as station promotion in the area (vehicles carrying station logos, outside broadcasts, etc.);
- (2) Transmission of sporting events and compilations thereof;
- (3) Teletext;
- (4) Continuity announcements;
- (5) Competitions or promotions that invite and involve listener participation from outside a station area ; and
- (6) Advertisements.

### **24. Namibia Broadcasting Cooperation (Television and Sound Broadcasting Service Licensee)**

- (1) The public television broadcasting service licensee must ensure that within three (3) years from date on which the Broadcasting Code comes into force, 45% of its programming, measured over the period of 3 years, consists of Namibian television content and that such Namibian television content is spread evenly throughout the said performance period and prime time.
- (2) In complying with its obligations, the public television broadcasting service licensee must ensure that a minimum of:
  - (a) 45% of its drama programming consists of Namibian drama;
  - (b) 45% of its current affairs programming consists of Namibian current affairs;
  - (c) 45% of its documentary programming consists of Namibian documentary programming;
  - (d) 45% of its knowledge building programming consists of Namibian knowledge building programming;
  - (e) 45% of its educational programming consists of Namibian educational programming; and
  - (f) 45% of its children's programming consists of Namibian children's programming.

### **25. Community Television & Sound Broadcasting Service Licensees**

- (1) A community television broadcasting service licensee must ensure that within 3 years of commencement of the broadcasting code, 30% of its programming, consists of Namibian

television content and that such Namibian television content is spread evenly throughout the said performance period and prime time.

- (2) In complying with its obligations, the public television broadcasting service licensee must ensure that a minimum of:
- (a) 30% of its drama programming consists of Namibian drama;
  - (b) 30% of its current affairs programming consists of Namibian current affairs;
  - (c) 30% of its documentary programming consists of Namibian documentary programming;
  - (d) 30% of its knowledge building programming consists of Namibian knowledge building programming;
  - (e) 30% of its music consists of Namibia music;
  - (f) 30% of its educational programming consists of Namibian educational programming; and
  - (g) 30% of its children's programming consists of Namibian children's programming.

**26. Commercial Television & Sound Broadcasting Service Licensees**

- (1) A community television broadcasting service licensee must ensure that within 3 years of commencement of the broadcasting code, 35% of its programming, consists of Namibian television content and that such Namibian television content is spread evenly throughout the said performance period and prime time.
- (2) In complying with its obligations, the public television broadcasting service licensee must ensure that a minimum of:
- (a) 35% of its drama programming consists of Namibian drama;
  - (b) 35% of its current affairs programming consists of Namibian current affairs;
  - (c) 35% of its documentary programming consists of Namibian documentary programming;
  - (d) 35% of its knowledge building programming consists of Namibian knowledge building programming;
  - (e) 35% of its music consists of Namibia music;
  - (f) 35% of its educational programming consists of Namibian educational programming; and
  - (g) 35% of its children's programming consists of Namibian children's programming.

**27. Subscription Television & Sound Broadcasting Service Licensee**

- (1) Subscription television broadcasting service licensees must ensure that within three (3) years from date on which the Broadcasting Code comes into force, 45% of their programming, measured over the period of 3 years, consists of Namibian television content and that such Namibian television content is spread evenly throughout the said performance period and prime time.

- (2) In complying with its obligations, subscription television broadcasting service licensees must ensure that a minimum of:
- (a) 40% of its drama programming consists of Namibian drama;
  - (b) 40% of its current affairs programming consists of Namibian current affairs;
  - (c) 40% of its documentary programming consists of Namibian documentary programming;
  - (d) 40% of its music consists of Namibia music;
  - (e) 40% of its knowledge building programming consists of Namibian knowledge building programming;
  - (f) 40% of its educational programming consists of Namibian educational programming; and
  - (g) 40% of its children's programming consists of Namibian children's programming.
- (3) A subscription broadcasting service licensee that acquires channels must ensure that annually, a minimum of 15% of their channel acquisition budget is spent on Namibian content channels that are compiled from Namibia.
- (4) The broadcasting by a subscription television broadcasting service licensee of licensed free-to-air public television broadcasting services, licensed free-to-air commercial television broadcasting services and licensed community television broadcasting services will not count towards compliance for purposes of this code.
- (5) Content requirements will apply per bouquet and not per channel approach.

## **28. Formulas**

The formula for the calculation of the local content quotas prescribed above shall be calculated as follows:

- (a) The total number of hours that any form of local content has been broadcasted (over a reporting period) divided by the total number of hours of the performance period (over a reporting period) multiplied by 100 to get the total percentage.
- (b) For instance a Community broadcasting service licensee has 5 hours on music, 3 hours on current affairs, 6 hours on drama, 10 hours on children programming; and 17 hours on educational programs. The performance period has 126 hours per week. Such a licensee will have 32.5% of local content for the week in question.

## **29. Record Keeping**

- (1) All Broadcasting Service Licensees must keep and maintain logs, statistical forms and programme records in the following format:-
- (a) full particulars of all Namibian local content programming broadcast in each week, indicating each category of Namibian television or radio content;
  - (b) Full particulars of name(s) of the author(s) of the drama script indicating their nationalities or that of the adaptor if it is drawn from a literary source;



- (c) Full particulars of the name(s) of the drama director(s) indicating their nationalities;
  - (d) A list of the creative and technical personnel involved in drama production indicating their nationalities and, the roles they play; and
  - (e) Such other particulars as may be required by the Authority.
- (2) Broadcasting Service Licensees logs, statistical forms and records contemplated in (1) above must be preserved for a period of not less than 36 months after the last date of entry.
  - (3) Broadcasting Service Licensees should therefore, submit reports on the 31 January each year to the Authority detailing all the local content broadcast on a daily basis during the performance period (05h00 – 23h00) on an annual basis.
  - (4) During the year, the Authority may conduct spot checks on each station, comparing the station logs with its own data to verify compliance with the code.

***Principle 89(2)(i) – Prescribe the amount and nature of advertisements that may be broadcast and prohibit the broadcast of advertisements that are degrading or offensive***

**30. Amount of advertisements**

- (1) A licensee shall ensure that advertisements are broadcast in the allotted breaks in a programme and in the interval between the end of one programme and the beginning of another.
- (2) There shall be no more than four advertising breaks per hour in the case of television and radio broadcasts.
- (3) The advertising content of any programme shall not exceed:
  - (a) thirty seconds, in a programme lasting five minutes;
  - (b) two minutes, in a programme lasting ten minutes;
  - (c) three minutes, in a programme lasting fifteen minutes; and
  - (d) five minutes, in a programme lasting thirty-five minutes.
- (4) In a period of programming lasting for sixty consecutive minutes, an advertisement shall last for not more than twelve minutes, except where:
  - (a) a licensee broadcasts the programme as a public service; or
  - (b) there is a national broadcast which interrupts a scheduled programme and results in the loss of advertising time.
- (5) A licensee shall be entitled to compensate for any loss caused by the broadcasts under subsection (4), over a period of seven (7) days following the day on which the interruption occurred, by increasing the time specified under that subsection to not more than fourteen (14) minutes.

**31. Prohibition of degrading or offensive advertisements**

- (1) A licensee shall exercise responsible judgement and due diligence when scheduling advertisements, which may be unsuitable for children during periods when large numbers of children may be expected to be watching or listening.

- (2) No advertising may offend against good taste or decency or be offensive to the public or sectoral values and sensitivities, unless the advertising is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom.
- (3) Advertisements shall not contain material that is likely to cause serious or widespread or sectoral offence.
- (4) The fact that a particular product, service or advertisement may be offensive to some is not in itself sufficient grounds for upholding an objection to an advertisement for that product or service.
- (5) In considering whether an advertisement is offensive, due regard shall be given, *inter alia*, to the context, medium, likely audience, the nature of the product or service, prevailing standards, degree of social concern, and public interest.
- (6) No advertisements shall contain content of any description that is discriminatory, unless, in the opinion of the Authority, such discrimination is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom.
- (7) Gender stereotyping or negative gender portrayal shall not be permitted in advertising, unless in the opinion of the Authority, such stereotyping or portrayal is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom.
- (8) Advertisements should not be so framed as to abuse the trust of the consumer or exploit the consumer's lack of experience, knowledge, or credibility.

## **32. Prohibition against unacceptable advertising**

- (1) Advertisements should not without justifiable reason,
  - (a) play on fear or contain anything, which might lead or lend support to acts of violence, including gender-based violence, nor should they appear to condone such acts;
  - (b) contain anything, which might lead or lend support to criminal or illegal activities, nor should they appear to condone such activities; or
  - (c) contain any statement or visual presentation, which, directly or by implication, omission, ambiguity, inaccuracy, exaggerated claim or otherwise, is likely to mislead the consumer;
- (2) Advertisements addressed to or likely to influence children should not contain any statement or visual presentation, which might result in harming them, mentally, morally, physically or emotionally.
- (3) Children should not be portrayed as sexually appealing, provocative or in any manner, which involves any form of sexual innuendo.
- (4) No advertisement of alcoholic beverages or tobacco products shall be transmitted in connection with any programs intended for reception by persons under the age of 18 years. Any such advertisements must expressly indicate that the alcoholic beverages or tobacco products are not for sale to persons under the age of 18.
- (5) Advertisements for tobacco products must be in conformity with the requirements set out in the Tobacco Products Control Act, 2010 (Act No. 1 of 2010).

- (6) Value judgments, matters of opinion or subjective assessments are permissible provided that,
- (a) it is clear what is being expressed is an opinion; and
  - (b) there is no likelihood of the opinion or the way it is expressed, misleading consumers about any aspect of a product or service, which is capable of being objectively assessed in the light of generally, accepted standards.

**33. Supervision by the Authority**

The Authority shall supervise compliance with these conditions in terms of section 90 of the Act.

**FRIEDA KISHI**

**CHAIRPERSON: BOARD OF DIRECTORS**

**COMMUNICATIONS REGULATORY AUTHORITY OF NAMIBIA**

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