



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

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CONTENTS

Page

GENERAL NOTICES

No. 147	Communications Regulatory Authority of Namibia: Notice in terms of Section 93(3) of the Communications Act, 2009	1
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General Notices

COMMUNICATIONS REGULATORY AUTHORITY OF NAMIBIA

No. 147

2021

NOTICE IN TERMS OF SECTION 93(3) OF THE COMMUNICATIONS ACT, 2009

The Communications Regulatory Authority of Namibia in terms of Section 93(3) of the Communications Act, 2009 (Act No. 8 of 2009), read together with General Notice No. 327, of Government Gazette No. 7431, dated 31 December 2020, hereby gives notice that it intends to issue a Public Broadcasting Service License to **Namibian Broadcasting Corporation**. The draft license conditions are attached to this notice marked as “**Annexure A**”.

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 *Gazette*.

The Namibian Broadcasting Corporation 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;
- (4) By facsimile to the following facsimile number: +264 61 222790; or
- (5) By fax to e-mail to: 088642748.

**E. NGHIKEMBUA
CHIEF EXECUTIVE OFFICER
COMMUNICATIONS REGULATORY AUTHORITY OF NAMIBIA**

PUBLIC BROADCASTING SERVICE LICENSE

GRANTED BY THE

COMMUNICATIONS REGULATORY AUTHORITY OF NAMIBIA

TO

NAMIBIAN BROADCASTING CORPORATION

PART I: THE LICENCE

- 1.1 Pursuant to section 93(1) of the Communications Act, 2009 (Act No. 8 of 2009), and by notice in Government Gazette No. 7431, General Notice No. 327, dated 31 December 2020, the Minister of Information and Communications Technology determined that as from 31 December 2020, Namibian Broadcasting Corporation (“NBC” alternatively “the Licensee”) require a License to provide public broadcasting services in Namibia.
- 1.2 On 31 October 2018, pursuant to section 93(2), and in line with section 89 of the Communications Act, 2009, a Broadcasting Code for Broadcasting Licensees was put into effect by official publication in the *Gazette* (General Notice No. 602, Government Gazette No. 6750, dated 31 October 2018).
- 1.3 On XX, the Authority, in exercise of its powers under section 93(3) of the Communications Act, 2009 issued this Licence to NBC for the provision of public broadcasting services in Namibia.

PART II: LICENSE CONDITIONS

Condition 1: Commencement and Duration of License

- 1.1 The Public Broadcasting Service License (“the License”) shall come into effect on the date on which the decision to issue the license is published in the *Gazette*.
- 1.2 The License is issued for a period of ten (10) years in respect of radio and television broadcasting.

Condition 2: Renewal of License

- 2.1 The License may be renewed upon the Licensee's application to the Authority, which application shall be submitted not earlier than six months and not later than 60 days before the date of expiry of the License.
- 2.2 The Authority may, when considering an application for the renewal of the License, require new or additional information as it may deem necessary to make a decision.
- 2.3 The Authority shall renew the License on substantially the same terms and conditions as those applicable to the Licensee during the preceding licence period, considering the Licensee's compliance with the License conditions, and the objects of the Communications Act, 2009.
- 2.4 The License shall terminate automatically on the date of expiry if an application for renewal is not submitted to the Authority in line with 2.1 above.

Condition 3: Provision of Services

- 3.1 The Licensee shall provide public broadcasting services from date of issue of the License.
- 3.2 The Licensee shall not be required to provide services where in the Authority's view it is not reasonable to require the Licensee to provide the services, including, but not limited to the following circumstances:
 - 3.2.1 where it is beyond the Licensee's control;
 - 3.2.2 where it would expose any person engaged in provision of the services to undue risk;
or
 - 3.2.3 Where it is not reasonably practicable.
- 3.3 The Licensee shall provide signal distribution services in line with the relevant conditions set out in the Regulations Regarding Licence Conditions for Class Comprehensive Multiplex and Signal Distribution Service Licences, Multiplex Licences and Signal Distribution Service Licences, General Notice No. 329, Government Gazette No. 5269, 19 August 2013.

Condition 4: Ownership and Corporate Obligations

- 4.1 The Licensee may not change its ownership and control structure without prior approval by the Authority.
- 4.2 The Licensee must notify the Authority of any joint venture into which it enters with any other person or entity holding a license issued by the Authority.

Condition 5: Anti-competitive Practices

- 5.1 Any practice or activity that has the object or effect of preventing, restricting or distorting competition in a market for the supply of broadcasting services or any product or service used in connection with these services is prohibited.
- 5.2 Any abuse of individual or collective dominant position by one or more persons in a market for the supply of broadcasting services or any product used in connection with these services is prohibited.

- 5.3 The Authority may review any proposed acquisition of an interest conferring control in competing providers of broadcasting services, and any proposed major transaction between such providers and their affiliates for conformance with the Communications Act, 2009 and to ensure that the transaction will result in no reduction in competitive markets not offset by sufficient benefits to the public (as measured by the objects of the Communications Act, 2009).
- 5.4 The Authority may impose conditions before or after such acquisitions or transactions to maintain competitive broadcasting markets.
- 5.5 Any agreements determined by the Authority to be anti-competitive will be automatically null and void.
- 5.6 Any restrictive practice or activity whose pro-competitive effects outweigh its anti-competitive effects is deemed not to infringe the provisions of this section.
- 5.7 Sharing of directors and officers among otherwise unaffiliated providers of broadcasting services without the approval of the Authority is prohibited.

Condition 6: Complaint Handling Procedures

- 6.1 The Licensee shall ensure that details of how to make a complaint regarding the Licensee's services, including the physical and electronic addresses to which complaints may be sent are prominently displayed at every broadcasting office and/or on the Licensee's website:
- 6.2 The Licensee must have written procedures in place describing its procedures for handling customer complaints and the maximum time for each step in the procedure.
- 6.3 The Licensee must maintain records of all complaints received in writing and the steps that it has taken to resolve them.
- 6.4 In the event that the Licensee is unable to resolve a written complaint to the satisfaction of the complainant within the time set out in its complaint handling procedure, the complainant shall have the right to escalate the complaint to the Authority.
- 6.5 The Authority's decision regarding complaints that are escalated to it shall be final and the Licensee must implement any remedy determined by the Authority.

Condition 7: Quality of service

- 7.1 The Licensee shall maintain the minimum quality of service standards set out in the Regulations Prescribing Quality of Service Standards, General Notice No. 153, Government Gazette No. 5713.
- 7.2 The Authority may publish quality of service performance indicators in any form or format that it deems reasonably appropriate.
- 7.3 The Authority may conduct surveys or other studies to assess customer satisfaction with the quality of service provided by the Licensee.
- 7.4 The Authority may audit some or all of the quality of service data submitted by the Licensee.
- 7.5 The Authority may investigate quality of service measurement, reporting and record-keeping of the Licensee.

- 7.6 The Licensee shall submit any additional information requested by the Authority to verify or clarify quality of service measurements including time periods and geographical areas within 30 days from receiving the request from the Authority.
- 7.7 The Licensee shall retain all quality of service data, including all measurements and related records for a minimum period of 5 years after the end of the reporting period, or for a time period as may be directed by the Authority.
- 7.8 The Authority may require independent testing and validation of Licensee's actual quality of service based on a methodology and frequency agreed between the Authority and the Licensee, such agreement not to be unreasonably withheld. Where such independent testing and validation is agreed the associated costs shall be borne by the Licensee.

Condition 8: National Security

- 8.1 During the continuance of a declared war in which Namibia is engaged or during a state of emergency declared under Article 26 of the Namibian Constitution, the President may if in his or her opinion it is necessary for the national defence and security, direct that such communications as may be essential to the national defence and security will have preference or priority with the Licensee.
- 8.2 The President may give instructions to the Licensee for such time as the state of emergency lasts as may be reasonably related to a direction given under 8.1 above.

Condition 9: Infrastructure Sharing

- 9.1 The Licensee shall consider all reasonable requests for infrastructure sharing from existing or prospecting operators and shall attempt to agree terms with the applicant within 30 days of the request being made.
- 9.2 Infrastructure sharing agreement prices shall be based on a fair allocation of costs that reflect the Licensee's own costs in the infrastructure to be shared.
- 9.3 The Licensee must not unduly discriminate between applicants seeking infrastructure sharing or show undue preference to certain applicants.
- 9.4 If the Licensee and the applicant fail to reach an agreement within 30 days the Authority may, on the request of the applicant, determine terms which shall be binding on both parties.
- 9.5 Any party may request the Authority to convene a hearing in order to determine reasonable terms relating to the duties referred to in this condition.
- 9.6 If the Licensee agrees to share infrastructure as contemplated in this condition, the charges and all other material terms of that agreement must be contained in a written agreement.
- 9.7 All infrastructure sharing agreements must be submitted to the Authority for approval:
- 9.7.1 Within 90 days of the effective date, in the case of agreements concluded before the effective date; and
- 9.7.2 Within 30 days from the concluding of the agreement in the case of agreements concluded after the effective date.
- 9.8 Unless the parties agree on a later date, an infrastructure sharing agreement comes into operation on the date on which it is filed with the Authority.

- 9.9 The Authority shall approve or disapprove the agreement within 120 days from the date of filing thereof and may on its own motion act to determine the matter or allow the parties such an additional period as it thinks fit to conclude an agreement, subject to such determination as it thinks fit.
- 9.10 If the parties fail to agree on terms of sharing within the additional period specified by the Authority, one or both of the parties may request that the Authority determines terms of the sharing in accordance with this condition.

Condition 10: Environmental policy

- 10.1 The Licensee shall develop an environmental policy which shall include, but not be limited to, reducing energy consumption, recycling programmes, the introduction of environmentally friendly products, using recycled material and participating in environment awareness programmes.
- 10.2 The Licensee shall develop an e-waste policy which shall include any electrical and electronic equipment that is discarded or is intended to be discarded or is required to be discarded after use, including all components, sub-assemblies, and consumables that are part of the product at the time of discarding.
- 10.3 The Licensee shall update the environmental policy and e-waste policy regularly and shall report annually to the Authority on their implementation.

Condition 11: Requirement to provide information

- 11.1 The Licensee is obliged to supply information in advance to the Authority relating to changes regarding its contact details, contact persons, change of business address, court orders made against it, or any matter that materially affects its licensed operations, but not limited thereto and as may be reasonably required to meet the objections of the Communications Act, 2009.
- 11.2 The Authority may request any information in the format as requested by the Authority and, determined by it as relevant from the Licensee for the purposes of monitoring and ensuring compliance with the Communications Act, 2009 and the regulations prescribed by the Authority, to which request the licensee shall comply in the manner set out by the Authority.
- 11.3 In addition, the Licensee must submit reports listed in the Regulations Prescribing Reporting Obligations for Licensees, as published as General Notice No. 24, in Government Gazette No. 7445, on 1 February 2021, with the frequency of reporting specified and in a format prescribed.

Condition 12: Inspection

- 12.1 The Licensee shall permit the Authority, or inspectors appointed by the Authority, to inspect its premises, facilities, files, records and other data to enable the Authority to exercise its regulatory duties.

Condition 13: Broadcasting Code

- 13.1 The Licensee must comply with all the relevant rules of the Broadcasting Code for Broadcasting Licensees, 2018.

Condition 14: Breach of licence

- 14.1 The Authority may, where it is of the opinion that the conditions of this licence have been materially breached, request the Licensee to make written representations to it regarding the alleged breach.
- 14.2 If, after consideration of the written representations, the Authority is of the opinion that the Licensee has materially breached a condition of the licence concerned, it may impose penalties in terms of the Communications Act, 2009.

Condition 15: Licence amendment

- 15.1 The Authority may amend these conditions from time to time in terms of section 86(3) and (4) of the Communications Act 8 of 2009.
- 15.2 The Authority may renew this licence at the request of the Licensee on expiration of the initial 10-year period provided the Licensee has met the terms of the licence. Any application for renewal must not be made earlier than six months and not later than 60 days before the date of expiration of the licence.
- 15.3 The Authority may order the Licence to be withdrawn in the following circumstances by causing a notice to be published in the *Gazette* containing details of such order:
- 15.3.1 If the Licensee communicates to the Authority its intention to terminate the licence
- 15.3.2 If any prescribed fees with regard to the Licence have not been paid by the Licensee on the date on which such fees are payable and remain unpaid after the expiry of a period of seven days after a written notice by the Authority to remedy the default
- 15.3.3 If the Licensee has breached a condition of the Licence that the Authority deems sufficiently serious to warrant revocation
- 15.3.4 If the Licensee is dissolved, or enters in liquidation, bankruptcy or equivalent proceedings.

Condition 16: Licence Fees

- 16.1 The Licensee shall pay the relevant fees as prescribed and published in the *Gazette*, from time to time.
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