GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

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GENERAL NOTICE

General Notice

COMMUNICATIONS REGULATORY AUTHORITY OF NAMIBIA

No. 238 2021

REGULATIONS PRESCRIBING LICENCE FEES AND REGULATORY LEVIES UNDER SECTION 129: COMMUNICATIONS ACT, 2009

The Communications Regulatory Authority of Namibia, in terms of section 129 of the Communications Act, 2009 (Act No. 8 of 2009), makes the Regulations set out in this Schedule.

H. M. GAOMAB II
CHAIRPERSON OF THE BOARD
COMMUNICATIONS REGULATORY AUTHORITY OF NAMIBIA

SCHEDULE

Definitions

1. In these Regulations, any word or expression to which a meaning is assigned in the Act, has the same meaning and unless the context indicates otherwise -

"licensee" means the holder of a licence issued under the Act;

"licence types" means the different types of licences as set out and defined, if applicable, in the Regulations Setting Out Broadcasting and Telecommunications Service Licence Categories, published in Government Gazette No. 4714 of 18 May 2011, Government Notice No. 124 of 2011;

"licence fee" means a fee set out in Annexure A;

"regulatory levy" means the levy contemplated in section 23 of the Act;

"the Act" means the Communications Act, 2009 (Act No. 8 of 2009), as amended from time to time; and

"these Regulations" means these Regulatory Levies and Licence Fees Regulations as amended from time to time.

Licence fees

2. (1) The application, issue or grant, renewal, transfer and amendment fees for the various licence types, as listed in column 1 of the table contained in Annexure A, are as set out in that Annexure.

(2) The licence fees set out in Annexure A are indicated in Namibian dollar.

(3) Unless otherwise determined by the Authority, a licence fee must be paid by means of electronic transfer or direct deposit into the Authority's bank account.

(4) The following conditions apply to a licence fee for an application as set out in column 2 of the table contained in Annexure A:

(a) The fee is not refundable;

(b) proof of payment must be attached to the application.

Regulatory levy

3. (1) The regulatory levy payable by the licensees listed in column 1 of the table contained in Annexure B is as indicated in column 2 of that table subject thereto that if the regulatory levy payable by a licensee is less than N$ 500, such licensee must pay the amount of N$ 500.

(2) The regulatory levy set out in Annexure B is indicated in Namibian dollar.

(3) Unless otherwise determined by the Authority, the regulatory levy must be paid by means of electronic transfer or direct deposit into the Authority's bank account.

(4) A licensee must annually, no later than six months after such licensee's financial year end, submit to the Authority its audited annual financial statements or signed and sworn annual financial statements, as the case may be, subject thereto that a licensee may, at least three months before the due date for such submission, apply to the Authority in writing for an extension and the Authority may grant such extension on good cause shown.

(5) The regulatory levy is paid based on a licensee's turnover as reflected in -

(a) the audited annual financial statements of a licensee where a licensee is required by law to have financial statements audited or where a licensee annually have its financial statements audited voluntary; or

(b) the annual financial statements signed and sworn by the licensee's accounting officer in the event where a licensee is not required by law to audit financial statements and does not voluntary have such financial statements audited,

subject thereto that in the event where a licensee's turnover is not accounted for separately and such licensee provides other products or services or conducts other business not regulated under the Act, the licensee must attach to the audited annual financial statements or annual financial statements, as the case may be, a separate statement which must -

(i) indicate the licensee's turnover;

(ii) indicate the methodology used to extract and determine such turnover;

(iii) contain such other information as the Authority may determine; and

(iv) be signed and sworn to by the licensee's auditor or accounting officer, as the case may be, to be a true and correct reflection of the licensee's turnover to the best of the knowledge of such auditor or accountant.

(6) For purposes of clarity -

(a) turnover is the turnover of a licensee excluding value added tax;

(b) turnover is limited to turnover derived from services or business which may be regulated under the Act and it is the duty of a licensee to ensure the reflection of the correct turnover amount in the licensee's audited annual financial statements or signed and sworn annual financial statements, as the case may be.

(7) (a) On receipt of a licensee's audited annual financial statements or signed and sworn annual financial statements, as the case may be, the Authority must issue the licensee with an invoice stating the amount of the regulatory levy payable by such licensee.

(b) Subject to subregulation (8), a licensee must pay the regulatory levy within 30 days after receipt of the invoice.

(8) (a) The Authority may, upon written application and on good cause shown by a licensee, authorise a licensee to pay the regulatory levy in equal monthly instalments of not more than six months.

(b) A licensee wishing to pay the regulatory levy in instalments must submit such written application to the Authority at least three months prior to the due date of payment of the regulatory levy.

Penalties

4. The Penalty Regulations, published in Government Gazette No. 7197 of 29 April 2020, Government Notice No. 159 of 2020, apply to any contravention of these Regulations.

Amendment of regulations

5. The regulations set out in Annexure C are hereby repealed or amended as set out in the column 3 thereof.

Transitional provision and commencement

6. (1) In the event where these Regulations commence subsequent to the start of a licensee's financial year, the regulatory levy payable by such licensee is only payable on turnover derived by a licensee as from the commencement of these Regulations.

(2) These Regulations will become effective on date of publication of thereof in the *Gazette*.

ANNEXURE A

(Regulation 2)

Column 1	**Column 2**	**Column 3**	**Column 4**	**Column 5**	**Column 6**
Licence Types	**Application Fees**	**Grant / Issue Fees**	**Renewal Fees**	**Transfer Fees**	**Amendment Fees**
Telecommunications – Individual Comprehensive (ECNS and ECS)	n/a	n/a	n/a	n/a	n/a
Telecommunications – Class ECNS	10,000	50,000	10,000	10,000	10,000
Telecommunications – Class ECS	10,000	50,000	10,000	10,000	10,000
Telecommunications – Class Comprehensive (ECNS and ECS)	10,000	50,000	10,000	10,000	10,000
Telecommunications – Network Facilities	10,000	50,000	10,000	10,000	10,000
Telecommunications – Non-profit (ECNS and ECS)	500	500	500	500	500
Broadcasting - Commercial	10,000	10,000	10,000	10,000	10,000
Broadcasting - Community	500	500	500	500	500
Broadcasting - Public	n/a	n/a	n/a	n/a	n/a
Broadcasting – Signal Distribution	10,000	10,000	10,000	10,000	10,000
Broadcasting - Multiplex	10,000	10,000	10,000	10,000	10,000
Broadcasting – Class Comprehensive	10,000	10,000	10,000	10,000	10,000
Broadcasting – Multiplex and Signal Distribution	10,000	10,000	10,000	10,000	10,000
Postal – Designated Postal Operator	n/a	n/a	n/a	n/a	n/a
Postal – Private Postal Service	10,000	50,000	10,000	10,000	10,000

ANNEXURE B

(Regulation 3)

Column 1	**Column 2**
Licence Types	**Regulatory Levy**
Telecommunications – Individual Comprehensive (ECNS and ECS)	Levy % = MAX(500,MIN(1.0%, 0.000000000010*Turnover) *Turnover)
Telecommunications – Class ECNS	Levy % = MAX(500,MIN(1.0%, 0.000000000010*Turnover) *Turnover)
Telecommunications – Class ECS	Levy % = MAX(500,MIN(1.0%, 0.000000000010*Turnover) *Turnover)
Telecommunications – Class Comprehensive (ECNS and ECS)	Levy % = MAX(500,MIN(1.0%, 0.000000000010*Turnover) *Turnover)
Telecommunications – Network Facilities	Levy % = MAX(500,MIN(1.0%, 0.000000000010*Turnover) *Turnover)
Telecommunications – Non-profit (ECNS and ECS)	Levy % = MAX(500,MIN(1.0%, 0.000000000010*Turnover) *Turnover)
Broadcasting - Commercial	Levy % = MAX(500,MIN(1.0%, 0.000000000010*Turnover) *Turnover)
Broadcasting - Community	Levy % = MAX(500,MIN(1.0%, 0.000000000010*Turnover) *Turnover)
Broadcasting - Public	Levy % = MAX(500,MIN(1.0%, 0.000000000010*Turnover) *Turnover)
Broadcasting – Signal Distribution	Levy % = MAX(500,MIN(1.0%, 0.000000000010*Turnover) *Turnover)
Broadcasting - Multiplex	Levy % = MAX(500,MIN(1.0%, 0.000000000010*Turnover) *Turnover)
Broadcasting – Class Comprehensive	Levy % = MAX(500,MIN(1.0%, 0.000000000010*Turnover) *Turnover)
Broadcasting – Multiplex and Signal Distribution	Levy % = MAX(500,MIN(1.0%, 0.000000000010*Turnover) *Turnover)
Postal – Designated Postal Operator	Levy % = MAX(500,MIN(1.0%, 0.000000000010*Turnover) *Turnover)
Postal – Private Postal Service	Levy % = MAX(500,MIN(1.0%, 0.000000000010*Turnover) *Turnover)

ANNEXURE C

(Regulation 5)

Column 1 **Government Gazette and Government Notice**	**Column 2** **Title of Regulations**	**Column 3** **Extent of Amendment/Repeal**
Government Gazette No. 7072 of 2 December 2019 Government Notice No. 506 of 2019	Regulations Prescribing Licence Categories and Licensing Procedures for Postal Service Licensees	(a) The repeal of regulations 2(1)(c), 5(4), 7(5), 10(5), 11(4), 13(4) and 14; and (b) The amendment of regulation 9 by the substitution for paragraph (e) of the following paragraph: “(e) failure by a licensee to pay any fee, levy or other amount or contribution which such licensee is obligated to pay under the Act;”.
Government Gazette No. 5269 of 19 August 2013 Government Notice No. 331 of 2013	Amendment of the Regulations Regarding Administrative and Licence Fees for Service Licences	Repealed in total
Government Gazette No. 5037 of 13 September 2012 Government Notice No. 311 of 2012	Regulations Regarding Administrative and Licence Fees for Service Licences	Repealed in total

ANNEXURE D

REVISED DISCUSSION PAPER ON LICENCE FEES AND REGULATORY LEVIES FOR COMMUNICATIONS REGULATORY AUTHORITY OF NAMIBIA

1. Introduction

In 2012 CRAN set out regulatory levy and licence fees as per section 23 of the Communications Act, Act No. 8 of 2009. The regulatory levy was contested as to its validity and constitutionality in the High Court and thereafter the Supreme Court of Namibia. On 11 June 2018, the Supreme Court of Namibia declared section 23(2)(a) of the Communications Act (Act) unconstitutional based on the fact that there were no limits on the powers granted to CRAN to set the regulatory levy. On 15 July 2020 and pursuant to the Supreme Court judgement, the Communications Amendment Act (Act No. 6 of 2020), which amends section 23 to align it to the guidance provided for in the judgment, was published. The purpose of this paper is therefore, to set the background for imposing a regulatory levy in terms of the revised section 23 of the Communications Amendment Act. The paper will also set the principles to measure the levy and fee determination against the Act and provide recommendations on the way forward. The first discussion paper was published for comments in Government *Gazette* 7356, dated 9 October 2020. This is a revised discussion paper, which takes into consideration the outcome of the consultation on the first discussion paper.

2. Current Legislation

The objectives of the Communications Act (the Act) are to guide all of CRAN's actions. The regulatory charges CRAN collects are subject to the objectives of the Act, which fit in with the general trend towards liberalisation, privatisation and increased competition in order to meet the objectives of affordability and increased penetration. Regulatory charges must be addressed within the framework of increasing competition in Namibia. CRAN must also ensure that regulatory charges are not a barrier to competition and that they allow the sector to meet universal access and efficiency objectives.

Table 1 below matches the objectives of the Act with guidance on how to set charges:

Table 1: Matching the objectives of the Act to principles for setting fees and levies	
Objectives of the Act	**Application to fees**
(a) to establish the general framework governing the opening of the telecommunication sector in Namibia to competition;	Safeguarding that fees do not limit competition and for CRAN to fulfil its mandate
(b) to provide for the regulation and control of communications activities by an independent regulatory authority;	Securing enough funding for CRAN to fulfil its mandate
(c) to promote the availability of a wide range of high quality, reliable and efficient telecommunications services to all users in the country;	Safeguarding that fees do not limit competition Safeguarding that fees are collected for UAS interventions and for CRAN to fulfil its mandate
(d) to promote technological innovation and the deployment of advanced facilities and services in order to respond to the diverse needs of commerce and industry and support the social and economic growth of Namibia;	Safeguarding that fees are technological and service neutral and for CRAN to fulfil its mandate
(e) to encourage local participation in the communications sector in Namibia;	Safeguarding that fees are not too high to limit local participation and for CRAN to fulfil its mandate
(f) to increase access to telecommunications and advanced information services to all regions of Namibia at just, reasonable and affordable prices;	Safeguarding that fees do not limit competition and for CRAN to fulfil its mandate. For CRAN to fulfil its mandate in terms of UAS.

Table 1: Matching the objectives of the Act to principles for setting fees and levies	
Objectives of the Act	**Application to fees**
(g) to ensure that the costs to customers for telecommunications services are just, reasonable and affordable;	Safeguarding that fees do not limit competition and for CRAN to fulfil its mandate
(h) to stimulate the commercial development and use of the radio frequency spectrum in the best interests of Namibia;	Safeguarding that spectrum is used efficiently, that access to spectrum is fair and transparent and in public interest and for CRAN to fulfil its mandate
(i) to encourage private investment in the telecommunications sector;	Safeguarding that fees are not too high to limit private sector participation and for CRAN to fulfil its mandate
(j) to enhance regional and global integration and cooperation in the field of communications;	Safeguarding that fees are not higher than other countries in the region, to prevent distorting investment.
(k) to ensure fair competition and consumer protection in the telecommunications sector;	Safeguarding that fees do not limit competition
(l) to advance and protect the interests of the public in the providing of communications services and the allocation of radio frequencies to the public.	Safeguarding that fees do not limit competition Safeguarding that spectrum is used efficiently, that access to spectrum is fair and transparent and in public interest

In 2012, after a rule-making process and pursuant to section 23(2)(a) of the Act, CRAN prescribed the Regulations Regarding Administrative and Licence Fees for Service Licences (Government Notice No. 311 published in Government Gazette No. 5037 dated 13 September 2012). In 2012, Telecom Namibia Limited brought an application in the High Court challenging the constitutionality of section 23(2) (a). The High Court declared the section unconstitutional and CRAN appealed the decision to the Supreme Court. The Supreme Court of Namibia on 11 June 2018 declared section 23(2)(a) unconstitutional as follows:

> “1. Section 23(2)(a) of the Communications Act, 2009 is declared unconstitutional and is hereby struck down;
>
> 2. Subject to paragraph 3 below, the order of invalidity in paragraph 1 will take effect from the date of this judgement and shall have no retrospective effect in respect of anything done pursuant thereto prior to the said date;
>
> 3. Telecom shall not be liable to pay any levy imposed covering a period before the coming into force of Item 6 of the Regulations Regarding Administrative and Licence Fees for Service Licences, published as GN 311 in GG 5037 on 13 September 2012.”

This finding by the Supreme Court that Section 23(2)(a,) is unconstitutional, meant that the section needed to be amended and new regulatory levy regulations prescribed in terms of the Amendment Act.

3. The Regulatory Levy

The amended section 23 will allow CRAN to maintain its current levy regime, but introduces limitations and guidelines subject to which the regulatory levy will be set. The amended section allows CRAN to use fixed and revenue-based licence fees and also a progression for the regulatory levy. The amended section 23 addresses the issues raised in the court ruling, by and safeguards that the current levy regime is constitutional.

Table 2 below summarises the provisions of the Amendment Act:

Table 2: Section 23 as Amended by Amendment Act, Act No 6 of 2020		
23	**Amendment Text**	**Summary**
(1)	With due regard to subsections (4) to (8), the Authority may by regulation, after having followed a rule-making procedure, impose a regulatory levy upon providers of communications services in order to defray its regulatory costs, which levy may take one or more of the following forms – (a) a percentage of the turnover of all or a prescribed class of the providers of communications services; (b) a fixed amount payable by a prescribed class of providers of communications services in respect of a prescribed period; (c) a fixed amount payable by a prescribed class of providers of communications services in respect of any customer to whom a prescribed class of service is rendered during that period; (d) as a combination of the forms referred to in paragraph(a), (b) or (c) together with provisions prescribing the circumstances under which a prescribed form of the levy is payable; (e) any other form that is not unreasonably discriminatory.	Cover regulatory cost as defined
(2)	When imposing the levy, the Authority may by regulation – (a) impose different percentages or different fixed amounts depending on – (i) the amount of turnover of the provider; (ii) the category of communications services rendered by the provider; (iii) the class of licence issued to the provider; or (iv) any other matter that is in the opinion of the Authority relevant for such an imposition; (b) impose a fixed minimum amount payable by providers of communications services irrespective of the form of the regulatory levy as set out in subsection (1); (c) impose different forms of the regulatory levy, as set out in subsection (1), depending on – (i) the amount of the turnover of the provider; (ii) the category of communications services rendered by the provider; (iii) the class or type of licence issued to the provider; or (iv) any other matter that is in the opinion of the Authority relevant for such an imposition; (d) prescribe – (i) with regard to the turnover of the providers of communications services, or with regard to their services or business, regulated by this Act, received or provided by the providers of communications services, the aspects thereof which are included or excluded for purposes of determining the regulatory levy or calculating the turnover of the provider concerned; (ii) the period during which turnover, services or business must be received or provided to be considered for the calculation of the regulatory levy; and (iii) without limiting the aforegoing, the manner in which the regulatory levy is to be calculated: Provided that the regulatory levy may not be imposed on turnover, services or business received or provided prior to the date on which the regulations imposing the relevant regulatory levy are published in the *Gazette*; (e) prescribe the periods and methods of assessment of the regulatory levy and the due date for payment thereof which may include payment in prescribed instalments: Provided that the regulatory levy may not be imposed on turnover, or services or business received or provided prior to the date on which the regulations imposing the relevant regulatory levy are published in the *Gazette*; (f) prescribe the information to be provided to the Authority for the purpose of assessing the regulatory levy payable by the providers of communications services; (g) prescribe penalties, which may include interest, for the late payment of the regulatory levy, or for providing false information or for the failure to provide information to the Authority relating to the assessment of the levy.	Allowing flexibility and options to ensure fairness and non-discrimination Determining what falls within the ambit of turnover and what not Allowing flexibility and options to ensure fairness and non-discrimination Determining what falls within ambit of turnover and what not Allowing different percentages and minimum amounts Prohibits retrospectivity Allowing how to assess levy and periods of assessment Allowing to set penalties

Table 2: Section 23 as Amended by Amendment Act, Act No 6 of 2020		
23	**Amendment Text**	**Summary**
(3)	The objectives of the regulatory levy are – (a) to ensure income for the Authority which is sufficient to defray the regulatory costs thereby enabling the Authority to provide quality regulation by means of securing adequate resources; (b) insofar as it is practicable, a fair allocation of cost among the providers of communication services; (c) to promote the objects of this Act set out in section 2 and the objects of the Authority set out in section 5.	Recover cost of regulation with cost linked to cost of regulatory processes Aims at fair cost allocation Promote objectives of the Act
(4)	The principles to be applied with relation to the imposition of the regulatory levy are – (a) that the impact of the regulatory levy on the sustainability of the business of providers of communications services is assessed and if the regulatory levy has an unreasonable negative impact on such sustainability, that the impact is mitigated, in so far as is practicable, by means of the rationalisation of the regulatory costs and the corresponding amendment of the proposed regulatory levy; (b) that predictability, fairness, equitability, transparency and accountability in the determination and imposition of the regulatory levy are ensured; (c) that the regulatory levy is aligned with regional and international best industry practices.	CRAN must reduce regulatory risk. Best practice must be used. Assess the impact of the levy and cost to the industry.
(5)	When determining the form, percentage or amount of the regulatory levy, the Authority – (a) must duly consider, in view of its regulatory costs – (i) the income it requires and the proportion of such income which should be funded from the regulatory levy in accordance with the objectives and principles set out in subsections (3) and (4) respectively, as projected over the period during which the regulatory levy will apply , and taking into consideration its relevant integrated strategic business plan and annual business and financial plans, including the operating budgets and capital budgets as set out in its annual business and financial plans, as contemplated in sections 13 and 14 of the Public Enterprises Governance Act, 2019 (Act No. 1 of 2019); (ii) income derived from any other sources; (iii) the necessity to ensure business continuity by, amongst others, providing for reasonable reserves as set out in its plans contemplated in sub-paragraph (i); (iv) the necessity to avoid, as far as is reasonably possible or predictable, the receiving of income from the regulatory levy in substantial excess of what is required to cover the regulatory costs; (v) the necessity of managing any risks in the communications industry associated with the imposition of a regulatory levy; (vi) any other fees, levies or charges which the providers of communications services are required to pay under this Act; (vii) any other matter deemed relevant by the Authority in order to ensure that income derived from the regulatory levy is sufficient to defray its regulatory costs; (b) must, in order to maintain reasonable predictability and stability, avoid, unless there is good reason to do so, an increase in the regulatory levy or the introduction of a new regulatory levy in any period of 12 consecutive months; (c) may consider any other matter the Authority deems relevant.	CRAN must consider budget as well as cash flow and reserves required when setting levy Avoid levy increase more than once every 12 months
(6)	The Authority must before the expiry of five years from the last imposition of the levy or a last review under this section, review the regulatory levy to ensure that the levy is compliant with the requirements set out in this section and that there are no continued under- or over-recoveries.	Review levies every 5 years

Table 2: Section 23 as Amended by Amendment Act, Act No 6 of 2020		
23	**Amendment Text**	**Summary**
(7)	If the Authority has received regulatory levy income in excess of its regulatory costs, the Authority may retain such over-recovery but must set it off against the projected regulatory costs used for the next regulatory levy determination and imposition.	CRAN may keep over-recovery but against future set-off
(8)	If the Authority receives income from the regulatory levy less than its regulatory costs in a period during which such regulatory levy applied, or during a specific period, received no income from the regulatory levy for whatever reason, the Authority may, when determining and imposing the next regulatory levy – (a) adjust the regulatory levy, and determine a higher regulatory levy, to recover such under-recovery during the period during which the next regulatory levy will apply; determine a once-off higher regulatory levy for the first period during which the next regulatory levy will apply in order to recover such under-recovery and for the remaining period or periods a different regulatory levy in accordance with subsection (5).	CRAN may increase levies in case of under-recovery
(9)	The Authority may, subject to subsection (5)(b), withdraw or amend the regulatory levy imposed under this section and, in so far as they are applicable, the provisions of this section apply in the same manner, with the necessary changes, to such withdrawal or amendment."	CRAN can change levies

In summary, the amended section 23 provides -

- the rationale for the regulatory levy;
- as well as the charging considerations to guide CRAN's decision making on an appropriate regulatory levy; and
- the charging principles to assist with the design, implementation and review of the regulatory levy.

When making a regulatory levy determination in terms of the amended section 23, CRAN will in addition to the principles set out therein, consider natural justice considerations aspects such as transparency, efficiency, performance, equity, simplicity and policy considerations. Regulatory charges should be consistent with the policy intent and legislative objectives.

4. Types of Licence Fees

The Communications Act provides for a number of regulatory charges as well as resource charges (spectrum fees are an example of the latter). As a type of regulatory charge, licence fees should preferably be based on cost recovery. However, the latter may not be efficient as explained elsewhere in this paper. Pricing models underlying resource charges generally aim at value-based pricing, commercial or cost recovery and are generally based on the potential value of the activity to the recipient. For regulatory activities, the only pricing model which can be used is full or partial cost recovery. As far as resource activities are concerned (such as spectrum fees), different pricing models can be used. These pricing models can be market driven or based on recovering the cost. Such pricing models will depend on the nature and objectives of the charging activity. CRAN's pricing models for spectrum and numbering are also based on cost recovery but takes into consideration scarcity and efficiency.

Licence fees and resource charges are being used by regulators for various purposes, including:

- Allocating scarce resources, to ensure that those that value it most will obtain access;
- To cover the costs of regulation;
- High enough to avoid frivolous non-serious applications
- To cover the administrative cost involved in the consideration of an application and the taking of a decision thereon; and
- To support administrative efficiency.

The Communications Act authorises CRAN to impose a number of regulatory charges, as summarised in the Table 3 below:

Table 3: Types of Charges CRAN may impose			
Fees	Application	Level	Objectives
Once-Off Licence	New Licence Licence Renewal Application Fees Transfer of licenses and transfer of control of licences Amendment of licences	• Auctions • Benchmarking • Discounted cash flows or net present value estimates	• Revenue generation • Some cost recovery for admin cost involved in considering and issuing licence • Scarce resources • Efficient use • Fair access • Transparent access • In the public interest • Supporting administrative efficiency
	Spectrum		

Annual or Recurring	Spectrum fees	Fixed fees	• To cover costs of managing the spectrum
			• Revenue generation
			• Scarce resources:
			    • Efficient use
			    • Fair access
			    • Transparent access
			    • In the public interest

	Number range and short code fees		
	Licence fees/ Regulatory levy	Revenue based fees	Revenue generation to cover cost of regulator
	Universal Access & Service fees	Revenue based fees	To fund universal service and access projects

High once-off fees for new licences may be positive or negative for an economy. Positive, if it limits market entry of those which are not qualified players in terms of capital outlay and/or technical expertise. Negative, if limited market entry leads to an uncompetitive market.

Generally, licence fees change the behaviour of market participants. Too high fees will be passed on to consumers if demand for services is inelastic. Investors may not be able to recover the paid licence fee if demand is elastic. CRAN may therefore, in line with the Communications Act, look at partial cost recovery for certain administrative / procedural type of charges. The cost of the service will then be cross-subsidised from the income derived from other regulatory charges.

4.1 Current Regulatory Charges

The regulatory charges, (now declared unconstitutional) were listed in the Government Gazette No. 5179, Notice No.110, dated 13 September 2012. The following formula to determine the regulatory levy was applied to all licensees:

Regulatory levy = Min (1.5%, 0.00000000002*revenue) * Revenue

In the previous regulations the licence fees were called administrative fees, but for clarity it is proposed that the fees be referred to as “licence fees”.

The current licence fees are given in Table 4.

Table 4: Current Licence Fees in N$					
Sector	**Licence Type**	**New Licence**	**Amendment**	**Transfer/ Transfer of Control**	**Renewal**
Telecom-munications	Individual Comprehensive (ECNS and ECS)	n/a	10,000	10,000	10,000
	Class ECS Class ECNS, Cass Comprehensive (ECNS and ECS) Network Facilities Licence	10,000	10,000	10,000	10,000
Broadcasting	Commercial Signal Distribution Class Comprehensive Multiplex Class Comprehensive Multiplex & Signal Distribution	10,000	10,000	10,000	10,000
	Community	500	500	500	500
	Broadcasting Public	n/a	10,000	10,000	10,000

Spectrum fees will not be dealt with in this document. It suffices, however, to acknowledge that spectrum fees made up close to 20% of the CRAN revenue. Spectrum fees will however in future only cover the cost of managing and administering spectrum.

A problem experienced in implementing the licence fees has been that the cost of issuing a new licence is considerable for CRAN. Expenses arise from integrating new licensees into the CRAN portal, legal drafting, issuing of licence certificates and advertisement in the Government *Gazette* to name a few. The proposal is therefore to introduce a new fee for the issuing a new licence, while keeping the fee for the application for licenses the same. This fee would not recover the total administrative cost but assist in administrative efficiency and avoid non-serious applications. The previous annual licence fee of N$ 10,000 will be removed. The proposed fee structure is given in Table 5.

Table 5: Proposed Licence Fees in N$						
Sector	**Licence Type**	**New Licence**		**Amendment**	**Transfer/ Transfer of Control**	**Renewal**
		Application	**Issue**			
Telecom-munications	Individual Comprehensive (ECNS and ECS)	n/a	n/a	n/a	n/a	n/a
	Class ECS Class ECNS, Cass Comprehensive (ECNS and ECS) Network Facilities Licence	10,000	50,000	10,000	10,000	10,000
	Non-profit Class ECS or ECNS	500	500	500	500	500
Broadcasting	Commercial Signal Distribution Class Comprehensive Multiplex Class Comprehensive Multiplex & Signal Distribution	10,000	10,000	10,000	10,000	10,000
	Community	500	500	500	500	500
	Public Broadcasting	n/a	n/a	n/a	n/a	n/a

Table 5: Proposed Licence Fees in N$						
Sector	Licence Type	New Licence		Amendment	Transfer/ Transfer of Control	Renewal
		Application	Issue			
Postal	Designated postal operator license	n/a	n/a	n/a	n/a	n/a
	Private postal service license	10,000	50,000	10,000	10,000	10,000

4.2 *Regulatory Charges in Other Jurisdictions*

4.2.1 Regional Comparisons

Generally, when comparing licence fees and regulatory levies across other jurisdictions, one ought to compare total regulatory costs in relation to revenues. This includes various types of regulatory charges such as licence fees as well as regulatory levies, spectrum, numbering and universal service fees. It should also take into consideration if the regulator in question is funded by Treasury of self-funded. This section is limited to comparing licence fees and annual regulatory levies from selected countries as per the tables below:

Table 6: Zambia - ZICTA's licence fees						
National Licence	Network		Service Licence (With Network)		Service Licence (Without Network)	
	ZMW	N$	ZMW	N$	ZMW	N$
Initial	1,200,000	1,315,930	300,000	328,984	375,000	411,229
Application	16,667	18,276	16,667	18,276	8,333	9,139
Regulatory Levy: Gross Annual Revenue	1.5%		3%		3%	
Source	https://www.zicta.zm/Downloads/New%20license%20Fee%20schedule-2017.pdf					
Independent Broadcasting Authority (IBA) - Broadcasting Fee Structure						
Broadcasting Licence Category	**Application Fee**		**Initial Licence Fee**		**Annual Operating Fee**	
	ZMW	**N$**	**ZMW**	**N$**	**ZMW**	**N$**
Public Television broadcasting (non-commercial)	3,000	1,875	10,000	6,251	10,000	6,251
Public Radio Broadcasting (non-commercial)	3,000	1,875	5,000	3,126	5,000	3,126
Public Television Broadcasting (commercial)	3,000	1,875	20,000	12,502	2% of annual turnover or 20,000 whichever is higher	
Public Radio Broadcasting (commercial)	3,000	1,875	20,000	12,502	2% of annual turnover or 20,000 whichever is higher	
Cable subscription television	3,000	1,875	20,000	12,502	2% of annual turnover or 20,000 whichever is higher	
Terrestrial Subscription Broadcasting	3,000	1,875	20,000	12,502	2% of annual turnover or 20,000 whichever is higher	

Table 6: Zambia - ZICTA's licence fees						
National Licence	**Network**		**Service Licence (With Network)**		**Service Licence (Without Network)**	
	ZMW	**N$**	**ZMW**	**N$**	**ZMW**	**N$**
Satellite Subscription Broadcasting	3,000	1,875	20,000	12,502	2% of annual turnover or 20,000 whichever is higher	
Source:	https://www.iba.org.zm/downloads/Broadcast%20Fee%20Structure.pdf					

ZICTA currently has three types of licences: 1) Network Licence, 2) Service (With Network) Licence, 3) Service (Without Network) Licence. Each of these licences has a geographic component and can be categorised as either international, national, provincial or district. Mobile operators fall into the "Holders of a Network License" category and have to pay a regulatory levy of 1.5 percent of gross annual turnover. Holders of the other service licences, such as ISPs (Internet Service Providers), are charged 3 percent. ZICTA's application and initial fees are a multiple of Namibia's fees. Broadcasting licences are also charged at higher fees than Namibia except for the application fee.

Broadcasting has a different regulator called the Independent Broadcasting Authority and 2% or turnover of ZMW 20,000 whichever is higher is charged for commercial broadcasters.

Table 7: Uganda - UCC's Fees as per Uganda Gazette General Notice No. 977 of 2017				
Services			**Fees**	**N$**
Telecommunication	Annual Licence Fee		2% of Gross Annual Revenue	2% on GAR
	Public Infrastructure Provider (PIP)	Application	USD 2,500	37,200
		Initial entry fee	USD 100,000	1,488,430
	Public Infrastructure Provider (PIP)	Application	USD 3,000	44,653
		Initial entry fee	USD 3,000	44,653
Broadcasting	Radio Station broadcasting fees	Application processing	UGX 6,240,000 (Non-Commercial Radio Stations)	24,922
			UGX 9,400,000 (Commercial Radio Stations)	37,543
		Initial entry fee	UGX 33,000,000 (National commercial Radio Tier 1	131,800
		Commercial Radio License	UGX 10,000,000 Tier1	39,939
	TV - Public Infrastructure Provider Licence	Initial Entry Fees	UGX 100,000	399
		Regulatory Levy	UGX 30,000 and 2% on GAR	120 + 2% on GAR
Source			https://businesslicences.go.ug/kcfinder/upload/files/UCC%20fees%20structure.pdf	

Tanzania also uses a minimum fee for the regulatory levy, though it is substantial larger than that of Namibia, N$ 44,653 (USD 3,000) compared to N$ 10,000. Tanzania's application, initial and renewal fees are also substantially higher than those for Namibia.

Table 8: Tanzania TCRA's Fee structure for a National License 2018		
	USD	**N$**
Application	5,000	74,421
Initial	600,000	8,930,570
Renewal	750,000	11,163,200
Royalty Fee (Gross Annual Turnover)	1% GAT or USD 3,000 whichever is greater	1% GAT or N$ 44,653 whichever is greater
Source:	https://www.tcra.go.tz/images/documents/licensing%20information/GN._57_schedule_to_the_Licensing_Regulations_2018.pdf	

Botswana also has a higher regulatory levy, 3% of net operating revenues, i.e. service revenues. It has several fixed amounts payable per annum. A mobile operator would for example have to pay for the fixed fees for mobile and international services. Broadcasting is charged at 1% of revenue.

Table 9: Botswana - BOCRA's license fee structure			
Telecommunications	**Pula**	**N$**	
Services & Applications Licence	3% of Net Operating Revenue		
Application fee	10,000	13,470	
Services carried on Public Fixed Networks (i.e voice/data/text)	127,421	171,641	
Services carried on Public Land Mobile Cellular Networks (voice/data/text)	127,421	171,641	
International Services (voice /data/text)	63,711	85,821	
Satellite Services	63,711	85,821	
Source	https://www.bocra.org.bw/sites/default/files/documents/Licensing%20Fee%20Structure_0.pdf		
Broadcasting	**Pula**	**N$**	**Levy**
Private Television Broadcaster	5,000 application fee 2,000 tender fee	6,463 application fee 2,585 tender fee	1% of annual net turnover
Private Radio Broadcaster	5,000 application fee 2,000 tender fee	6,463 application fee 2,585 tender fee	1% of annual net turnover 1,293 radio licence fee
Public Television Broadcaster (Commercial)	5,000 application fee	6,463 application fee	1% of annual net turnover
Public Television Broadcaster	5,000 application fee	6,463 application fee	1% of annual net turnover
Public Radio Broadcaster (Commercial)	5,000 application fee	6,463 application fee	1% of annual net turnover 1,293 radio licence fee
Public Radio Broadcaster	5,000 application fee	6,463 application fee	1,293 radio licence fee
Community Radio Broadcaster	1,000 application fee	1,293 application fee	1,293 radio licence fee
Foreign Public Broadcaster	5,000 application fee 2,000 tender fee	6,463 application fee 2,585 tender fee	1,293 radio licence fee 18,484,500 industry development fees
Source:	https://www.bocra.org.bw/sites/default/files/documents/Broadcasting%20%28Fees%29%20Regulations.pdf		

Zimbabwe's fees are much higher than Namibia's, in particular, to obtain a licence an initial licence fee of N$1.5 billion has to be paid and the minimum regulatory levy is N$ 900,000. Zimbabwe also has a separate regulator for broadcasting called the Broadcasting Authority of Zimbabwe.

Table 10: Zimbabwe 's license fee structure		
Telecommunications	**USD**	**N$**
Initial licence fee	US$100,000,000	1,493,350,000
Regulatory Levy	annual fee of US$60 000 or 3% of the audited annual gross turnover plus VAT or 3%	896,010
USF	2% of monthly gross turnover plus VAT	
Sources:	http://www.potraz.gov.zw/wp-content/uploads/2015/04/STATUTORY_INSTRUMENT_11A_of_2001-Licensing_Registration_and_Certification.pdf	
Broadcasting Fee Structure		
Free to Air National Radio Broadcasting Service		
Application Fee	2,500	35,098
Basic Fee for 10 years	$15000 per annum plus 1% gross turnover or deemed turn over per annum for the license period	210,586 per annum plus 1% gross turnover or deemed turn over per annum for the license period
Broadcasting fund	A contribution of 0.5% of the audited annual gross turnover or deemed turnover payable annually	
Free to Air National Television Broadcasting Service		
Application Fee	2,500	35,098
Basic Fee for 10 years	$18000 per annum plus 1% gross turnover or deemed turn over per annum for the license period	252,703 per annum plus 1% gross turnover or deemed turn over per annum for the license period
Broadcasting fund	A contribution of 0.5% of the audited annual gross turnover or deemed turnover payable annually	
Subscription Satellite Broadcasting Service		
Application Fee	2,500	35,098
Basic Fee for 10 years	US$75,000 per annum plus 2% monthly subscription turn over or deemed turnover payable monthly in the currency the subscription is collected	1,052,930 per annum plus 2% monthly subscription turn over or deemed turnover payable monthly in the currency the subscription is collected
Broadcasting fund	A contribution of 0.5% of the audited annual gross turnover or deemed turnover payable annually	
Subscription Cable Broadcasting		
Application Fee	2,500	35,098
Basic Fee for 10 years	US$75,000 per annum plus 2% monthly subscription turn over or deemed turnover payable monthly in the currency the subscription is collected	1,052,930 per annum plus 2% monthly subscription turn over or deemed turnover payable monthly in the currency the subscription is collected
Broadcasting fund	A contribution of 0.5% of the audited annual gross turnover or deemed turnover payable annually	
Local Commercial Radio		
Application Fee	2,500	35,098
Basic Fee for 10 years	US$50 000 per annum plus 1% gross turnover or deemed turn over payable monthly	701,954 per annum plus 1% gross turnover or deemed turn over payable monthly
Broadcasting fund	A contribution of 0.5% of the audited annual gross turnover or deemed turnover payable annually	

Table 10: Zimbabwe 's license fee structure		
Telecommunications	**USD**	**N$**
Community Broadcasting License		
Application Fee	500	7,019
Basic Fee for 10 years	1,000	14,039
Source:	https://baz.co.zw/licensing-overview/fee-schedule/	

ICASA has lower regulatory levies than CRAN. Its licence fees are comparable, except for the initial application, which is set by a different process. A key difference between ICASA and CRAN is that ICASA is not funded by the levies but by the Department of Communications. CRAN, on the other hand is independently funded by the fees/levies it collects from licensees.

Table 11: South Africa - ICASA's licence fee structure		
Telecommunications		
Types		**Fees ZAR or %**
Regulatory Levies	ZAR 0 - 50 million	0.15%
	ZAR 50 million 100 million	0.2%
	ZAR 100 million 500 million	0,25%
	ZAR 500 million 1 billion	0.3%
	ZAR 1 billion -and above	0.35%
Licences for Applications Initial	Application	As specified in ITA
	Amendment	60,940
	Renewal	6,094
	Transfer	60,940
Class Licence	Application	12,187
	Amendment	6,094
	Renewal	6,094
	Transfer	6,093
Sources:	GOVERNMENT GAZETTE, 20 MARCH 2018, No. 41510 GOVERNMENT GAZETTE, 28 MARCH 2013, No 36323	
Broadcasting		
Individual Broadcasting Licence	Application	As specified in ITA
	Amendment	68,612
	Renewal	6,861
	Transfer	6,861
Community Broadcasting Licence	Application	4,118
	Amendment	1,372
	Renewal	1,372
	Transfer	4,118
Low Power Commercial Sound Broadcasting Licence Fees	Application	6,861
	Amendment	2,745
	Renewal	6,861
	Transfer	2,745
Low Power Class Sound Broadcasting Licence Fees	Application	1,372
	Amendment	1,372
	Renewal	4,118
	Transfer	1,372
Source:	https://www.icasa.org.za/pages/fees	

With the exception of ICASA, for above mentioned reasons, CRAN's regulatory levies are on par or below comparable countries in Africa.

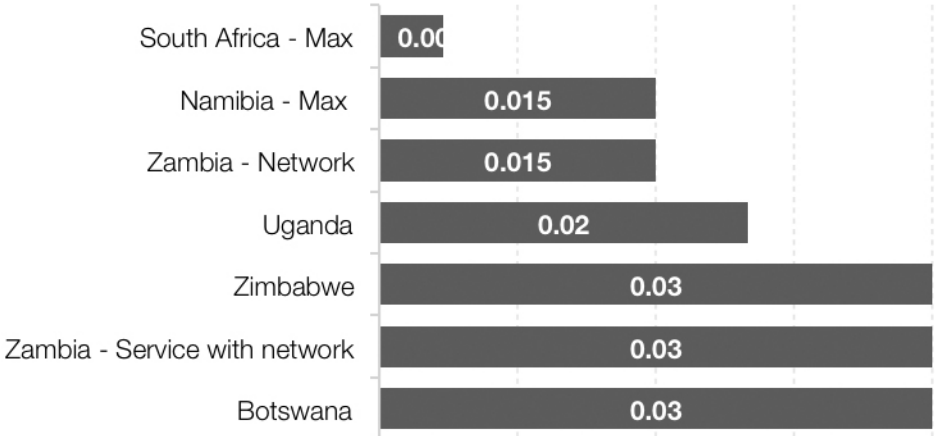

Figure 1: Regulatory Levies as % of service revenue

4.2.2 International Comparisons

Operators holding a Public Service Provider (PSP) licence and Public Infrastructure Provider (PIP) licence in Uganda are required to pay an annual licence fee and additionally an annual levy, the latter being a percentage of the gross annual revenue. The Uganda Communications Act, 2013 increased the latitude the UCC has in determining the said fee, which fee has since been increased from 1% to 2%.

In France electronic communications operators must pay to the tax authorities an annual tax of 1.3% of all turnover earned from their electronic communications activities in France which is over EUR 5 million.

CRAN's Financials

The Authority determined the licence fees and regulatory levy for the first time in 2012 and has since kept it at the same levels although the cost of regulation increased considerably since the levy was introduced, as per table 12 below.

Table 12: CRAN Financials in 'N$ million based on AFS										
FY ending		**2012**	**2013**	**2014**	**2015**	**2016**	**2017**	**2018**	**2019**	**2020**
Income Statement	Revenue	73.39	60.32	48.90	71.81	82.73	95.32	88.54	65.94	91.25
	Operational Expenses	(13.38)	(53.60)	(48.87)	(60.65)	(84.43)	(113.64)	(107.42)	(85.04)	(134.74)
	Interest Income	1.24	4.32	4.25	4.94	7.1	8.38	7.23	6.54	6.45
	Interest Expense			(0.17)						(0.63)
	Net Income	61.24	11.04	4.11	16.10	5.39	-9.95	-11.65	-12.56	37.69
Cash Flow Statement	Net cash generated from operating activities	60.21	13.58	1.94	29.63	8.53	-18.50	-6.44	-8.16	-37.88
Notes		• CRAN received N$ 37 million from NCC in 2012								

Source: Audited Financial Statements (2012-2020)

The Supreme Court ruled that the Regulator needs the funds to regulate the industry (i.e. the "regulatory scheme") and that it would not be possible to determine the exact amount required. The Supreme Court did not find fault with the amount received from the regulatory levy (irrespective whether latter would be an under- or over-recovery). The gist of the Supreme Court's fault finding was the absence of any guidelines or limitations on the size or amount of the regulatory levy.

It is a reality that the setting of a regulatory levy could lead to either over-recovery or under-recovery in certain years. After thorough consideration, the only flexible limit or guideline which would be appropriate was identified as the cost of regulation. Again, the latter would not be 100% accurate and could also result in over- or under-recoveries which then should be reconciled, in the following years. Prudent budget management by CRAN is therefore essential.

Table 13 below shows the sources of income for CRAN over the past 8 years:

Table 13: Sources of Income for CRAN in N$ million based on AFS									
FY ending	**2012**	**2013**	**2014**	**2015**	**2016**	**2017**	**2018**	**2019**	**2020**
Regulatory Levy Income	56.51	47.46	54.22	57.85	64.34	70.20	68.61	39.59	17.9
Administrative (Licence) Fees			0.17	0.25	0.22	0.61	0.69	0.54	
Spectrum fees	16.88	12.86	14.80	13.69	17.10	23.43	17.80	24.91	23.53
Penalties					0.35				
Type Approval				0.01	0.60	0.93	1.18	1.25	0.55
Numbering Fees								41.21	48.99
Other				0.01	0.11	0.29	0.25		
Total Revenue	**73.39**	**60.32**	**69.19**	**71.81**	**82.72**	**95.46**	**88.53**	**106.96**	**90.97**
Interest	1.24	4.32	4.25	4.94	7.10	8.38	7.23	6.54	6.44
Total + interest	74.63	64.64	73.44	76.75	89.82	103.84	95.77	113.5	97.41
YoY		-13.4%	13.6%	4.5%	17.0%	15.6%	-7.8%	18.5%	-14.17%

Source: Audited Financial Statements (2012-2020)

Revenue collection declined for the financial years ending in 2018 and 2020 due to MTC and Telecom Namibia not paying the regulatory levy. It increased in 2019 due to the invoicing for numbering licenses. However, due to litigation these funds will not be recovered as indicated in the AFS. The drop for the Financial Year ending 2013 was due to the irregular high revenue of N$ 37 million in Financial Year 2012, which was transferred from the Namibia Communications Commission (NCC) to CRAN.

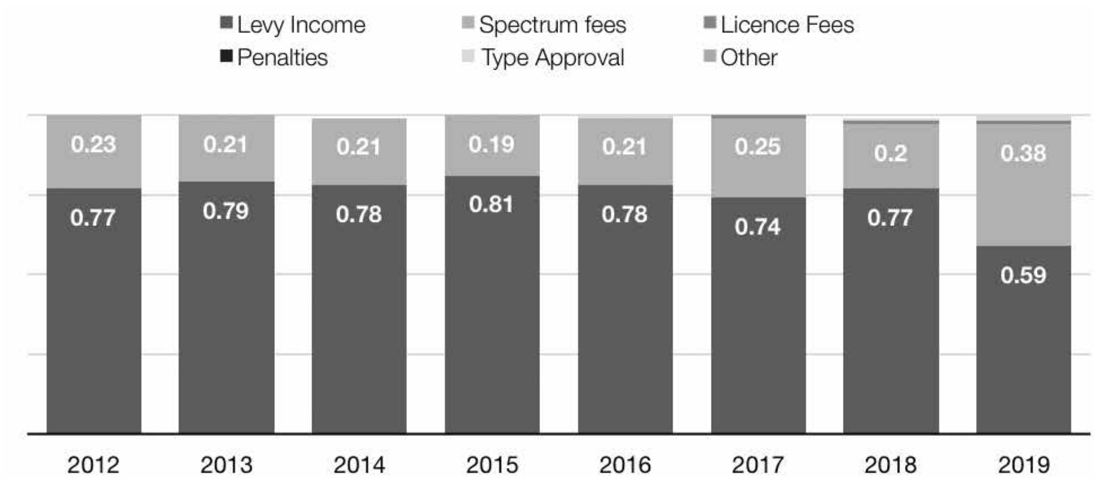

Figure 2: Distribution of CRAN revenues across revenue sources

The main source of CRAN revenues stems from the regulatory levy, typically close to 80%. The share increase of spectrum fees in 2019 is mostly due to lower regulatory levies collected.

5.1 *Regulatory Levy Projection*

The regulatory levy was set to be a maximum of 1.5% of service revenues since 2012. Some operators have not paid their levies: MTC did not pay the regulatory levy from 2017 onward and Telecom Namibia did not pay these fees since 2012 when the regulation was published. Hence, instead of basing projections on actual fees collected, this section bases them on the revenues as reflected in Audited Financial Statements of licensees – i.e. what the Authority would have collected if all licensees paid the regulatory levy. This then allows CRAN to make a projection of future growth per annum for levy calculations as per table 14 below:

Table 14: Annual Regulatory Levy revenue estimate based on AFS and max fee rate of 1.5%

FY ending		2012	2013	2014	2015	2016	2017	2018
Revenue in N$ million	TN	1,223	1,310	1,353	1,420	1,518	1,503	1,530
	MTC	1,617	1,832	2,082	2,251	2,324	2,421	2,498
	Others Telco	-	155	235	352	398	452	481
	Broadcasters							887
Licence Fee Factor	TN	1.5%	1.5%	1.5%	1.5%	1.5%	1.5%	1.5%
	MTC	1.5%	1.5%	1.5%	1.5%	1.5%	1.5%	1.5%
	Others		0.10%	0.09%	0.10%	0.11%	0.11%	0.12%
	Broadcasters							1.07%
Estimated regulatory levy revenue for CRAN in N$ million	TN	18.3	19.6	20.3	21.3	22.8	22.5	23.0
	MTC	24.3	27.5	31.2	33.8	34.9	36.3	37.5
	Others	-	0.2	0.2	0.7	0.9	1.4	1.8
	Broadcasters							9.5
	Total	**42.6**	**47.3**	**51.8**	**55.7**	**58.6**	**60.3**	**62.2**
	YoY		**11.1%**	**9.4%**	**7.6%**	**5.1%**	**3.0%**	**3.2%**

The regulatory levy based on AFS revenue increased by 3% in the financial years ending in 2017 and 2018.

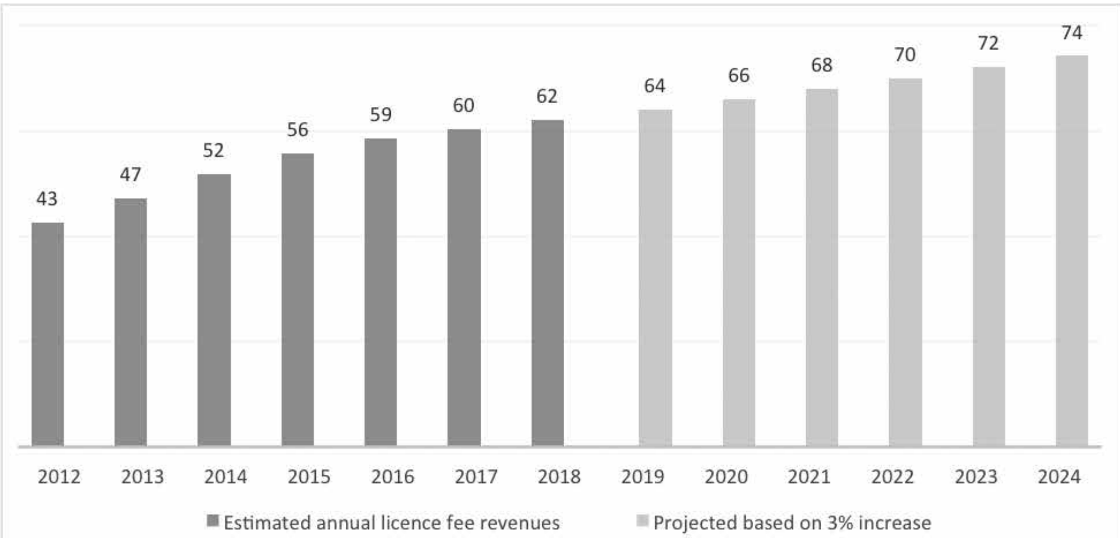

Figure 3: Estimated regulatory levy revenue based on AFS revenues and 3% increase from 2019

Figure 3 displays the expected revenue based on this trend continuing.

5.2 Budget Projection

The proposed budget of CRAN, for the next 3 years, provides for continued regulation of the ICT Industry as per its mandate.

Table 15: Forecasted Budget for 2022 – 2024 in N$ million				
FY ending	**2021**	**2022**	**2023**	**2024**
Expense forecast	86.44	85.14	88.97	92.98
CAPEX forecast	6.96	8.57	15.94	16.36
Budget requirement	**93.40**	**93.61**	**104.92**	**109.34**
Projected increase		0.22%	12%	4%
Budget Projections 2021/2022 – 2023/2024				

The 2021/2022 budget of CRAN consisted of N$ 85 million in operational expenses and N$ 8.6 million Capex resulting in a total budget of N$ 93.6 million. Some of the reasons for the budget increases are:

a) Increased mandate in terms of Postal, Type Approval, SIM Registration and Universal Access and Services;
b) Increase in staff members to effectively regulate the industry and allow for the extended mandate;
c) Additional office space and other expenses to host the additional staff members;
d) New regulations that needed drafting in line with the extended mandate;
e) High legal fees.

The main reasons for the future budget increases are:

- To provide for the projects that could not be started or finalised during the previous periods due to lack of funds.

CRAN conducted a costing exercise since the publication of the discussion document on 9 October 2020 and hosting of the public hearing on 12 November 2020 held on the proposed levies and revised the budget projection. Capital costs as well as operational costs were decreased and costs were allocated to the different revenue streams as provided for by the Act.

5.3 Projected Shortfall

Not increasing the regulatory levy but instead increasing spectrum fees to cover the budget shortfall could lead to a rebalancing exercise. Note that such “cross-subsidisation” can be done as anticipated in the amendment to section 23 and it is not legally required that each service/regulated aspect must be funded by income from a specific source. However, some activities such as numbering are specifically provided for in the Act to be charged on a cost recovery base. Notwithstanding, the aim is that, if not immediately, then eventually, the fees obtained from each revenue stream should cover the cost of providing that service e.g. the total cost of regulating spectrum should be more or less covered by the spectrum fees.

Since the 2020/2021 Financial year ended on 31 March 2021 the revenue requirement for the 2020/2021 financial year was not considered in the calculation of future levies. Table 16 shows the revenue and levy requirements over a period of 3 financial years from 2022 to 2024:

Table 16: Revenue and Levy Requirement in N$ million					
FY ending	**2020/2021**	**2021/2022**	**2022/2023**	**2023/2024**	**Total**
Budget requirement	93.4	93,71	104,92	109,34	*307.97*
Numbering fees	15.99	2	2	2	*6*
Type Approval fees	0.4	0.4	0.4	0.4	*1.2*
Spectrum Management Fees	30.42	36.3	36.3	36.3	*82.47*
Total Revenue from Other Sources	6.97	3.73	6.89	6.89	*17.51*
Short fall to be coved by Regulatory Levies	***39.62***	***51.28***	***59.33***	***63.75***	***200.79***

Table 17 below models different percentages on the gross revenue.

Table 17: Projected Revenue from Licensees based on different % for the Proposed Regulatory Levy in N$ million				
Licensees	**1%**	**1.10%**	**1.20%**	**1.30%**
Telecom Namibia Ltd	15.3	16.83	18.36	19.89
Mobile Telecommunications Limited	24.96	27.46	29.95	32.45
Others	7.95	8.74	9.53	10.33
TOTAL	**48.21**	**53.03**	**57.84**	**62.67**

After the public hearing held on 12 November 2020 pertaining to the proposed regulations, CRAN revised the budget downward to take into consideration the comments received from the licensees, primarily that the levy of 1.65% is too high. The Comments are summarised and attached hereto as **Annexure A**. At the same time, the Authority has also taken into consideration the possible collection of outstanding debt owed by Telecom Namibia and MTC. This then allows CRAN to reduce the levy to 1.0%. CRAN should be in a position to stay operational over the next 3 years and conduct most of the regulatory functions as required. It is expected that the levy income should increase with about 3% per annum based on the growth in revenue of the licensees over the past 7 years.

Table 18: Levy Revenue to be Recovered by 1.0% Levy in N$ million				
FY ending	**2021/2022**	**2022/2023**	**2023/2024**	**Total over 4 years**
Levy requirement	***51.28***	***59.33***	***63.75***	***200.79***
Levies collected at 1.0%	20.0	48.21	49.65	***117.86***
Over/Under Recovery	(31.28)	(11.12)	(14.10)	***(56.5)***

Table 19: Projected Expense and Revenue over 4-year Period				
FY ending	**2021/2022**	**2022/2023**	**2023/2024**	**Total over 4 years**
Budget requirement	***93,712,166***	***104,916,870***	***109,338,130***	***307,967,166***
Levy Income	20,000,000	53,025,331	54,616,091	127,641,421
Administrative Fees	588,642	588,642	588,642	1,765,925
Spectrum fees	36,300,000	37,752,000	39,262,080	113,314,080
Type Approval	400,000	400,000	400,000	1,200,000
Penalties	50,000	50,000	50,000	150,000
Interest	2,840,000	4,000,000	6,000,000	12,840,000
Numbering Fees	2,000,000	2,000,000	2,000,000	6,000,000
Other	250,000	250,000	250,000	750,000
Debt Collection	15,000,000	15,000,000	15,000,000	45,000,000
Total Revenue	77,428,642	113,065,972	118,166,812	308,661,426
Over/Under-recovery	(16,283,524)	8,149,102	8,828,683	694,260

Implementing a levy of 1.0% would lead to an over-recovery of N$ 700,000 over the next 3 years starting 2021/2022 provided that CRAN would be in a position to collect some of the outstanding debt owed to CRAN by Telecom Namibia and MTC. However, if the outstanding debt is not recovered, there will be an under recovery of N$ 44.3 million. Any over- or under recovery will be clawed back during the next period under review (i.e. from 2024 onwards).

Table 20: Impact of Regulatory Levy on Licensees

Licensee	Total Cost of Regulation at 1.5% Levy (%) on cost	Total Cost of Regulation at 1.0% Levy (%) on cost	Total Cost of Regulation at 1.5% Levy (%) on revenue	Total Cost of Regulation at 1.0% Levy (%) on revenue
Telecom Namibia Ltd	1.61%	1.4%	1.53%	1.33%
Mobile Telecommunications Limited	2.70%	2.35%	1.54%	1.34%
Paratus Telecommunications (Pty) Ltd	4.23%	3.16%	1.43%	1.07%
Average Other Telecommunications Licensees	1.62%	1.49%	0.92%	0.85%
MultiChoice Namibia (Pty) Ltd	9.65%	6.37%	1.51%	0.80%
Average Broadcasting Licensees	0.52%	0.52%	0.53%	0.53%

5.4 Impact of Levy on Licensees

The amended section 23 indicated that the levy should be evaluated in terms of the impact that it would have on the licensees.

Telecommunications licensees in the rest of the world pay only around 10 per cent of their revenues in the form of taxes and levies whereas in Namibia the regulatory levy amounts to about 1.3%.

For the purpose of the Table 20 above, the information from the 2018 financial statements were used. All information was kept the same except for the change in the levy to be able to make a determination on the impact of the proposed levy. The impact of the levy is calculated as a percentage of the total expense/cost and as a percentage of the total revenue of the organisation.

The reduction in the cost of regulation for some of the licensees is due to the fact that spectrum fees' contribution to the total cost of regulation is higher than the contribution of levies to the total cost of regulation.

Telecom Namibia, MTC and MultiChoice are the three largest licensees in terms of revenue and will therefore contribute the most towards the regulatory levy. The total cost of regulation as a percentage of both revenue and cost is still low compared to other countries. Spectrum has a significant impact on the total cost of regulation.

5 Proposed Regulatory Levies

For the purposes of this document and the regulations, regulatory levy would refer to the annual licence fees in the previous regulations (2012 Regulations).

The formula to determine the regulatory levy is based on a gliding scale. This means that new entrants and smaller licensees would pay less due to lower revenue than large licensees with high revenue. One of the challenges with the formula was that smaller licensees may have to pay a very small amount that is not even worth invoicing. Thus, a minimum annual fee of N$ 500 is being introduced to be applicable to licensees whose invoices are less than N$ 500.

The formula is proposed as follows:

Regulatory Levy = Max (500, (Min (1.0%, 0.000000000010*revenue) * Revenue)

It is further proposed that the levy be set at 1.0% of turnover/revenue to enable CRAN to cover the cost of regulation over the next 3 years. Fixing the amount to a maximum of 1.0% over the next 3 years will create certainty for licensees, as they know what they will be paying. At the same time, a fixed levy percentage reduces the risk to the regulator of experiencing financial shortfalls while regulating the industry.

7. Conclusion & Recommendations

The following is recommended for the purposes of this discussion document:

1. A new licence fee payable at issuing of a new licence of N$ 50,000 except for broadcasting service licensees, community broadcasting service licences and for non-profit ECS and ECNS licenses.
2. The regulatory levy should be set at 1.0% of revenues, calculated in terms of the formula as set out in the regulations.
3. Introduce a minimum payment of N$ 500 per year for non-profit licensees as a regulatory levy.
4. Introduce a minimum annual fee of N$ 500 to be applicable to licensees whose invoices are less than N$ 500.
5. That the levy be re-evaluated within three (3) years.

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ANNEXURE E

CONSOLIDATION AND CONSIDERATION OF STAKEHOLDER COMMENTS ON NOTICE OF INTENTION TO MAKE REGULATIONS PRESCRIBING LICENCE FEES AND REGULATORY LEVIES UNDER SECTION 129 OF THE COMMUNICATIONS ACT, 2009 PUBLISHED IN THE GOVERNMENT GAZETTE NO. 7356, GENERAL NOTICE NO. 416 DATED 09 OCTOBER 2020.

1. Comments by MTC Mobile Telecommunications Limited (dated 6 November 2020/ref: l138/2020/pk/Legal)

Comment	Response
The gist of MTC's comments pertains to the substituted section 23 of the Act still being unconstitutional. Thus, they argue, any regulations made under said section 23 remain unconstitutional. MTC's comments therefore lack specificity as regards the contents of the proposed Regulatory Levy Regulations.	As regards the constitutionality of the substituted section 23, CRAN responded to the MTC letter in a separate letter dated 27 November 2020. CRAN advised that the constitutionality of section 23 was a matter for the court to decide.

2. Comments by MultiChoice Namibia (dated 9 November 2020)

Comment	Response
2.1 An increase in the regulatory levy is not justified	
• MultiChoice is opposed to a turnover-based levy which bears no relation to CRAN's budgetary requirements, licensees' profitability or ability to pay. The increase in the levy does not appear to be warranted. • The amount of the levy should be cost-recovery based and relate directly to the cost incurred by CRAN in licensing and regulating various broadcasting services.	• The opposition to a turnover-based levy is noted. CRAN selected to impose the levy as a percent on turnover. Please note that the Supreme Court did not find fault with a turnover-based levy nor with the size thereof. The main reason for selecting a turnover-based levy is to ensure that all licensees contribute proportionally to the cost of regulation. • It is submitted that section 23 is clear that the regulatory levy is cost based (i.e. linked to CRAN's regulatory cost). As set out in the Discussion Paper, the proposed levy of 1.65% on turnover is solely based on CRAN's regulatory cost minus income to be derived from other sources. • Having noted the concern over the excessive levy and its potential to limit market and consumer behaviour, the Authority will take these comments into account in the revised discussion document.
2.2 Motivation why reasons provided in the Discussion Paper do not justify the proposed increase	
• MultiChoice refers to the reasons provided in the Discussion Paper for the increase of the levy from 1.5% to 1.65% and states that they do not find the reasons warrant the increase for the following reasons: • ***Established regulator in relative stable communications industry*** • The Discussion Paper does not motivate a considerable increase in regulatory cost; • There are no major changes in the communications industry warranting a <u>significant</u> levy increase; • CRAN is well established and resourced which should result in decline or stabilising of regulatory cost;	Responses are provided as follows: • ***Re-established regulator in relative stable communications industry*** • CRAN is of the opinion that the proposed 0.15% increase in the regulatory levy is not considerable but reasonable even resulting in an under-recovery and further the Discussion Paper does explain and motivate the proposed increase. Be that as it may, the excessiveness of the levy percentage has been addressed in the revised discussion paper;

• Although MultiChoice understands that CRAN contained cost due to unpaid levies, an increased levy to make up for this is akin to applying a retrospective levy which is unlawful; • The number of licensees declined which that regulatory cost should also decline. • ***CRAN's increased mandate*** • CRAN's increased mandate (postal, type approval and universal access and services) do not justify an increase in the levy; • Other fees, levies and charges received by CRAN must be taken into consideration (for example USF services and type approval are already funded by type approval fees and the USF levies); • CRAN's increased cost resulting from regulating postal services, should be paid from postal licence fees and not the regulatory levy and cost associated with such increased mandate should be paid by the relevant licensees in the new categories; • Each sector should have its apportioned cost and there should not be cross-subsidisation between sectors (this also applies to universal services regulatory cost and type approval); • The table in 5.4 of the Discussion Paper indicates a disproportionately high increase for MultiChoice. • ***CRAN's budgetary considerations*** • CRAN does not provide sufficient budgetary details to enable MultiChoice to assess regulatory costs and the subsequent size of the regulatory levy; • Information on CRAN's revenue collection and operating expenses for year end 31 March 2020 is lacking as well as actual revenue and operating expenses for the six months ending 30 September 2020. CRAN's 2020 Annual Report has not yet been released either; • As regards the fact that CRAN did not include in the Discussion Paper the 2020 financial year from the analysis and projections, MultiChoice opines that CRAN still collected revenue from other sources and incurred expenses which information is necessary to enable MultiChoice to determine whether the increase in the levy is necessary and appropriate and to ensure transparency and accountability; • The figures provided in the Discussion Paper do not correspond or mathematically tally (examples are provided by MultiChoice); • As regards CRAN budgeting for projects which could not be started earlier due to lack of funds, MultiChoice views this as imposing the levy on turnover, services or business received before the commencement of the Regulatory Levy Regulations which, in their opinion, is unlawful;	• CRAN's mandate increased significantly resulting in an increased staff component and therefore, the need for more office space. Furthermore the increased mandate meant that new regulations must be drafted which required additional funding • The cost of litigation has also increased significantly given the endless challenges in Court; • To a certain extent, we agree with Multichoice that the communications industry ought to have stabilised and that the regulator ought to be "well established and resourced and has streamlined its regulatory processes by now". It must however be understood that CRAN did not function optimally over the past 9 years because of the limited revenue, due to the Court challenge on section 23. Some of the deliverables are therefore, projects that were previously placed on hold due to a lack of funds; • The decline in operating expenses must also be viewed in the same light; due to the legal challenges, the revenue became limited (noting that levies contribute about 80 % of total revenue), which meant that the budget needed to focus only on fixed overheads. The decline is thus not because of stabilisation, but more as a means of survival. • The number of licensees have not declined but increased over the last 9 years and therefore the cost of regulation also increased. However, licencing is not the only function of the Authority and therefore a decline over two years in licences does not mean that costs will reduce. • ***Re CRAN's increased mandate*** • CRAN's increased mandate is a just and acceptable reason for an increase in regulatory charges (including the levy) and falls within the ambit of section 23 and also aligns with the Supreme Court's judgement; • Other regulatory charges received by CRAN are taken into consideration as clearly explained in the Discussion Paper (see paragraph 4 and specifically also table 13). However, levies still make up the bulk of the revenue, contributing 80%; With the new calculation of cost and fees this will reduce to about 60% • The argument that Postal services should pay for itself was not accepted by the Supreme Court (see par [83] and [84] of the judgment). Also, section 23(3) (b) requires merely a fair allocation in so far as practicable and thus there is scope for cross-subsidisation. Furthermore, Postal was not taken into consideration in the discussion document since the licence was only recently issued. NamPost will however, be obliged to pay regulatory levies and equally contribute to the cost of regulation. This will be included in the revised discussion document;

• Re the projected increase in operating expenses: (a) CRAN does not explain what factors were considered in the growth rate of operating expenses; (b) the increases cannot be linked to inflation alone (inflation rate at May 2020 was 2.1%); (c) an increase in CRAN's budget due only to inflation should be offset in the amount of the levy received from operators whose turnover is likely to have increased by inflation; (d) operating cost as per CRAN's 2019 Annual Report is at a decline and CRAN projected a decrease of 20.4% in operating expenses from 2023 to 2024 financial years; • Re CRAN's projected capital expenditures: (a) it is not reasonable for licensees to bear the full impact of capital expenditure which should be co-funded from other sources of revenue; (b) regarding costs involved in the transfer of the assets of the NCC to CRAN, MultiChoice questions why licensees should bear the burden of these costs; (c) if an increase relates to spectrum, then spectrum fees should cater for such increase (the latter fees were in any event increased in 2020 and should have been made adequate to cover this increase and has CRAN factored in spectrum fees in its budget); (d) it is unclear whether the transfer of N$ 74 million from NCC to CRAN has been received and factored into CRAN's calculations in the Discussion Paper. If increased capital expenditure relates directly to the transfer of spectrum monitoring liabilities from NCC to CRAN, then such expenditure must first be funded from the N$ 74 million prior to using regulatory levy income. • ***International benchmarking*** • Many of the fees considered by CRAN are telecommunications services fees of other regulators and it is unclear why CRAN benchmarked only the licence fees of Zambia, Botswana and Zimbabwe without consistently considering the licence fees of broadcasting service operators in those countries forming part of the benchmarking; • MultiChoice provides a list of African countries where licence fees are based on turnover and notes that a licence fee of 1% or lower is applied in the majority of the countries which is in keeping with other international territories.	• The reason why the cost is disproportionally high for MultiChoice is due to the spectrum assigned to MultiChoice and not due to the levy. • ***Re CRAN's budgetary considerations*** • The legislator has put in place sufficient controls to approve the budget. The Budget is an internal document approved by both the Ministers of ICT and Public Enterprises and therefore is not a public document that will be shared. • The comments also indicated that there is a lack of information for 31 March 2020 and 30 September 2020. Please note that this information was added to the revised discussion document, which will be made available. • MultiChoice indicated that it requires 2020 financial information in order to evaluate the appropriateness of levy increase. Please note that the information was updated in the revised with the information from the 2019/2020 AFS in order to depict a fair presentation of the Authority's financial position. • The incorrect figures under this section is "incorrect" due to rounding and the fact that the table only depicts Revenue and Operating Expenses. Interest Income was omitted from the table. The updated discussion Document will contain this information. • Regarding MultiChoice's retrospective argument, section 23(2) (d) and (e) is clear that the retrospective prohibition is on licensees' turnover, services and business, but not on the activities of the Authority. The fact that CRAN's strategic plan and budget is forward-looking and now include projects which could not previously be implemented, falls within the ambit of section 23 and cannot be seen as "retrospective" application. The Regulations are forward looking in that no licensee will be expected to pay levies on turnover generated prior to the commencement of the regulations; • – Aspects of increase in operating expenses hereof are explained on page 22 of the Government Gazette. • Increase in projected capital expenditures – (a) it is clear from the figures provided in the Discussion Paper (see paragraph 5.3 and table 19 amongst others) that such income is duly considered and reflected; (b) the funds transferred from NCC will only reflect in the 2020/2021 AFS and will be utilised to cover expenses of the Authority until such time that regulatory levies can be received. (c) spectrum fees should cover for increase in spectrum cost – spectrum fees will cover all costs associated with spectrum but it is still part of the overall expenses of CRAN.

	• The NCC funds were a once off payment and the Authority does not receive funding from Government. Indeed funding for spectrum monitoring sites may be paid from spectrum fees, but other capital expenditure will be paid from the levies. • ***Re international benchmarking*** • Inconsistent consideration of licence fees – the licence fees as contained in the discussion document were obtained from the websites of the regulatory authorities of the benchmarked countries and refers to broadcasting and telecommunications. The updated Discussion document will be updated to included specific references for broadcasting; • According to the benchmark information cited in the discussion document, lower levies can only be obtained if license fees are increased significantly as indicated by the benchmarks used in the Discussion document.
2.3 Recommendations and conclusions	
• MultiChoice strongly oppose an increase in the regulatory levy and opines that the levy be reduced from 1.5% to 1% due to: (a) an apparent decreasing trend in operating expenses; (b) the stability of the communications industry; (c) the transfer of the N$ 74 million to CRAN.	• All comments have been incorporated and the Authority will share a revised discussion document with the final decision in due course.

3. Comments by Telecom Namibia (dated 10 November 2020)

Comment	**Response**
3.1 Regulation 1 – Definition of Licence Type	
Adding “as amended” to the reference to the Regulations Setting Out Broadcasting and Telecommunications Service Licence Categories in the definition of “licence type”.	This is not a legislative drafting practice in Namibia and Telecom is referred to section 11(1) of the Interpretation of Laws Proclamation, 1920, which states that a reference to a law includes any amendments.
3.2 Regulation 3(7)	
Regarding the requirement for licensees to submit proof of payment of the regulatory levy together with the submission of their audited annual financial statements or sworn annual financial statements, Telecom submits that it is not practical in view thereof: • licensees first submit their financial statements to CRAN; • CRAN then issues an invoice for the levy before proof of payment can be provided and thus they cannot be submitted together; • the levy can only be paid 30 days after receipt of invoice (or other period agreed upon with CRAN) due to, amongst others, procurement processes some licensees are subject to under the Public Procurement Act.	The sub-regulation will be amended accordingly in line with Telecom Namibia’s proposal.

<table>
<tr><td colspan="2">3.3 Regulation 3(5)</td></tr>
<tr><td>Telecom is of the opinion that the requirement of a separate statement (to be attached to the annual financial statements) indicating separately products, services or businesses not regulated under the Communications Act will result in more auditing cost for licensees. They propose that the requirement be dealt with by means of auditors' disclosure notes on the financial statements.</td><td>This obligation is only for licensees that choose to do account separation so that they do not pay levies based on revenue from unregulated services. CRAN requires a statement from the Auditors indicating what the revenue is and how it is derived. There is no need for separate financial statements to be submitted and this is part of the auditing process. The requirement is that Auditors must sign off on the revenue and how it was derived.</td></tr>
<tr><td colspan="2">3.4 Regulation 3(8)(b)</td></tr>
<tr><td>If a licensee wants to pay the levy in instalments, application must be made at least three months prior to date of payment. Telecom is of the opinion that this is not practical because:
• the application cannot be made before the audited financial statements are signed and CRAN has invoiced the licensee;
• Financial statements can only be finalised 5 or 6 months after year end which would be too late to meet the three month deadline.
In view of the above, Telecom proposes an eight month period for such application.</td><td>Licensees are in a position to determine if they have the cash to pay the levy once off or in installments. Preliminary statements/ accounts and managements account will provide such information. Be that as it may, we will allow for the application to be made at least 1 months prior to due date of payment of the regulatory levy. It can however be earlier.</td></tr>
<tr><td colspan="2">3.5 Regulation 4 - Penalties</td></tr>
<tr><td>There may be instances where the finalisation of financial statements within the six month period may be outside the control of the licensee (especially PEG licensees). In such case a licensee should not be penalised. Telecom proposes a dispensation similar to that under the Companies Act where the Registrar of Companies/BIPA can, upon application, grant an extension.</td><td>• Under the Companies Act, a company must finalise its financial statements before the AGM. An AGM must be held within 9 months after financial year-end. A company may apply to the Registrar/BIPA for a three-month extension.
• Note that the Penalty Regulations (and especially regulation 9 pertaining to the criteria CRAN must consider when deciding on a punitive measure – for example a warning notice or a compliance notice) are sufficiently flexible to give (if not obligate) CRAN to address the concerns of Telecom Namibia in this regard.</td></tr>
<tr><td colspan="2">3.6 Regulation 6 – Transitional Provision and Commencement</td></tr>
<tr><td>Telecom requests clarity in the event where the regulatory levy commences during the financial year of a licensee as to how the levy is to be pro-rated with regard to revenue derived after such commencement.</td><td>The formulae to be used when pro-rating levies are as follows: (number of days/365 x revenue) x levy formulae. The revenue will be based on the financials issued after the commencement of the regulations.</td></tr>
<tr><td colspan="2">3.7 Annexure A – Licence Fees</td></tr>
<tr><td>Telecom is of the opinion that the grant/issue fee for licences (N$ 50,000) is too high and that it does not cost that amount to grant/issue a licence.</td><td>The rationale for the licence fees is fully explained in the Discussion Paper. Note that it is not a requirement under Namibian law that these types of administrative fees must be cost-based. Also, this is a once-off fee and the N$ 10,000 currently charged per annum will fall away. We maintain that the fee is reasonable considering the amount of work as described in the Telecom Namibia comments.</td></tr>
<tr><td colspan="2">3.8 Schedule 2 – Concise Statement of Purpose</td></tr>
<tr><td>As regards the licence fees set out in Annexure A, Telecom is of the view that:
• application, issue, renewal, transfer and amendment fees cannot be separate charges but must be a collective fee to defray CRAN's cost involved;
• CRAN is not a profit making organisation and, bearing in mind other fees and levies collected by CRAN, licence fees must be sufficient to cover the administrative cost involved.</td><td>• The argument that licence fees are collective, cannot be understood nor supported. The Communications Act is clear that these are separate fees and relate to separate actions. It is also impossible to have a collective fee for, for example, the transfer and amendment of a licence since the latter is not combined. The argument relating to cost-based fees is addressed above.</td></tr>
</table>

Telecom requests clarity on whether an issue fee would also be payable with regard to amendments and renewals of licences.	• We clarify that there is no issue fee or application fee payable as regards applications for renewal, transfer and amendment of licences – the only fee payable with regard to the latter is the fee stipulated in the relevant column. Applications fees are only payable with regard to new licence applications
3.9 The Proposed Levy of 1.65%	
• Telecom is of the opinion that the definition of "regulatory costs" includes all regulatory cost but excluding costs specified in the Communications Act namely spectrum fees, number resource fees and licence fees. The latter costs should not be included in regulatory costs since it will result in duplication. The opinion is further expressed that CRAN is pulling the amount of the levy and fees "out of thin air". An argument is again made for ring-fencing of cost to ensure that levies and fees are cost-based (called "boxed" by Telecom);	• Telecom Namibia misconstrued the concept of regulatory costs. Regulatory costs are the totality of all cost. When determining the regulatory levy, CRAN must take into consideration the income it requires and the proportion of that income to be derived from the regulatory levy (section 23(5)(a)) and the income it derives from other sources (section 23(5)(b)). This means that income derived from spectrum fees, number resource fees and licence fees must be deducted.
• **AD Regulators expenses based on the available financial statements**	
• The inclusion of N$ 23 million for bad debts and N$ 1 million for depreciation should be eliminated from the regulatory costs calculation as this is basic accounting principles. The inclusion thereof will result in an over-recovery; • The N$ 80 million in CRAN's savings is indicative thereof that CRAN receives more income than required to defray cost and the proposed regulatory levy of 1.65% is therefore not justified; • The increase of 30% in CRAN's staff cost during 2018/2019 is not justified/senseless; • The projection of CRAN's CAPEX in 2021 in one financial year instead of spreading it over years for affordability purposes will result in licensees paying inflated costs; • The regulatory levy should be a fixed amount and not a percentage which Telecom still deems a tax; • All licensees should pay the same amount for the same service; • Should a percentage based levy be retained, Telecom proposes a percentage of 0.75%.	• Bad debt is not taken into consideration in the budget. Bad debt is only taken into consideration in AFS. Depreciation is also not taken into consideration since it is a non-cash item. It is therefore not part of the projected budget and cannot be removed • As regards CRAN's N$ 80 million saving, in so far as such funds accrued prior to the commencement of the substituted section 23, it is water under the bridge. The new section 23 is forward-looking only and does not concern itself with past savings. The Authority has however, the right to make provision for future reserves, which in this instance came to aid the viability of the Regulator after some licensees refused to pay levies for 8 years. It was however not done to ensure that the levy be kept as low as possible. Provision can be made for future reasonable reserves (please see section 23(5)((a)(iii)). • The CAPEX is spread to ensure that the costs are not too high. However, some capital expenses cannot be spread over more than one year. CRAN has therefore prepared a budget for 3 years. • Other revenue streams – the discussion document clearly explains the calculation of the levy and how it was determined. All other revenue was subtracted as can be seen in Table 19. • The Supreme Court slated the tax argument and all further comments by Telecom Namibia on the tax issue were considered in light of the judgment. • The Supreme Court did not find fault with licensees paying different amounts of the regulatory levy and neither did it find fault with a regulatory levy as a percent on turnover. It is impractical and unfair for all licensees (irrespective of size) to pay the same amount. In more advanced regulatory environments (for example the UK and Australia) and even in the SADC region, the law requires regulators to ensure that licensees pay their proportion of

	regulatory cost. It is not a requirement under Namibian law and section 23(3)(b) merely requires a fair allocation insofar as practicable (i.e. not an equal nor an accurate allocation); • A proposed levy of 0.75% - The discussion document clearly shows that a levy of 0.75% is not feasible and will not allow CRAN to defray its costs. Having noted the concern over the excessive levy and its potential to limit market and consumer behavior, the Authority will take these comments into account in the revised discussion document.
TELECOM'S COMMENTS ON THE CONCISE STATEMENT OF PURPOSE – SCHEDULE 2	
3.10[1] Pages 7 and 8 – Details Pertaining the CRAN's Financials and Unreasonable Negative Impact of Levy	
• The second last bullet point on page 7 states: "Details on the Authority's financials are provided covering aspects such as revenue, operational expenses and net income as well as a budget projection and expected shortfall to be funded by the regulatory levy". Telecom notes CRAN's response that the table was updated but requests to be provided with the updated table to enable them to do a thorough assessment. Until then, Telecom reserves its right to amplify their comments on this issue; • There is no evidence in the Regulatory Levy Regulations to support that CRAN applied its mind when stating that the regulatory levy is not deemed to have an unreasonable negative impact on licensees. To the contrary, the proposed levies and licence fees suggest inflated costs which will be burdensome to licensees and enrich CRAN beyond its mandate and purpose.	CRAN is required to apply its mind to the impact of the regulatory levy on the sustainability of licensees and assess if the levy has an unreasonable negative impact thereon (section 23(4)(a)). This is done when CRAN goes through the exercise of determining the levy – "applying its mind" cannot be contained in the actual regulations – the regulations and the levy imposed therein are a result of this application of mind. The Discussion Paper reflects that this principle was considered in the determination of the proposed regulatory levy. The gist of section 23 is that the regulatory income should match CRAN's regulatory cost. This is common practice in other jurisdictions (Canada, UK and Australia for example). The Supreme Court did not find fault with the amount of the levy but the fact that there were no guidelines. Notwithstanding, the legislature, in section 23, added these types of guidelines and principles to guide CRAN when determining the levy.
TELECOM'S COMMENTS ON THE DISCUSSION PAPER – SCHEDULE 3	
3.10[1] Page 9, Paragraph 1	
• The levy is inflated and will result in an over-recovery; • CRAN is requested to disclose its approved strategic plans and budget.	• CRAN determined the proposed regulatory levy in line with the requirements set out in section 23 on the basis that the regulatory levy should realise sufficient income to cover the regulatory cost. It is denied that the regulatory levy is inflated. However, even if there is any credence that it will result in an over-recovery, section 23(7) instructs CRAN to set-off any over-recovery against the future levy; • CRAN will publish the Strategic Plan 2021 – 2023 on its website for purposes of transparency. Budgets are internal documents approved by the Ministers of Information and Communication Technology and Public Enterprises.
3.11 Page 9, Table 1, Point (c) and (d)	
CRAN must safeguard that the proposed levy prevents licensees from investing in network upgrades. Inevitably, cost will be recovered from customers. The regulatory levy is unreasonable and does not support CRAN's mandate.	Telecom's concern is noted but it is denied that the proposed levy is unreasonable or will have a negative impact on licensees and/or customers.

[1] Telecom's comments on the Concise Statement of Purpose (Schedule 2) was not numbered. In order to continue following the numbering order in Telecom's comments, there are two points 3.10 in this Response Paper.

3.12 Page 9, Table 1, Point (g)	
Telecom cautions again that high regulatory levy and licence fees will result in high costs for telecommunication services and affect customers.	Noted as above.
3.13 Page 10, Table 9, Point (j)	
• Telecom cautions that the comparisons made are not accurate since there are many factors the benchmarking should take into account and not just the actual levy of each country; • CRAN should also consider the size of each country's regulator, the population size (Namibia having a small population), the size of each country's communications industry and economies of scale which renders a mere comparison of size of levies not ideal; • The industry is frustrated with mismanagement and Telecom will strongly recommend that these matters be investigated by the relevant authorities.	Telecom Namibia's recommendation is noted. This comparison cannot be made since not all regulators have the same mandate as CRAN and therefore more than one country was used in the benchmarking exercise. This comment will however, be considered in the revised discussion document together with the others on the reasonableness of the 1.65%.
3.14 Page 12, Table 2, Point (3) and (4)	
• Telecom states that it is not clear how the Regulatory Levy Regulations address the requirement that the levy must be sufficient to cover the cost of regulation; • Without insight into CRAN's strategic plan, Telecom cannot assess the proposed regulatory levy; • In the absence of insight into CRAN's costs, CRAN should have provided a breakdown of its costs to allow for an evaluation of the proposed regulatory levy; • Telecom is of the opinion that the proposed regulatory levy does create a regulatory risks if considered together with other prescribed fees licensees have to pay and the cost of compliance with the Communications Act (i.e. putting systems in place, number portability and the USF levy to be implemented); • The regulatory levy will also create operational and strategic risks in that licensees will not be able to comply with their objectives and strategic plans.	• CRAN dealt with the first two bullets. • A calculation was made to calculate the total cost of regulation on the licensees. • The same argument holds for CRAN in not determining the correct regulatory levy will also create operational and strategic risks in that CRAN will not be able to comply with their objectives and strategic plans.
3.15 Page 13, Table 2, Point (5)	
• It is not clear to Telecom how reserves will be determined to avoid unreasonable excess income; • Telecom submits that the 1.5% regulatory levy already resulted in excess income in view thereof that CRAN only used a part of the income so derived considering that spectrum fees has also increased; • A regulatory levy of 1.65% is considered extremely excessive and will result in over-recoveries	No provision for reserves were made to ensure that the levy be kept as low as possible. However, the Act makes provision for reserves as mentioned earlier. The point that the proposed regulatory levy will result in over-recoveries have been addressed.

3.16 Page 14, Paragraph 4	
On this point, Telecom comments on the numbering administration as per section 81 which requires that numbering resource fees must not be more than necessary to pay for the management of the numbering plan (i.e. cost based). Telecom expected that details be provided as regards the scarcity of numbering resources. Telecom is of the opinion that these fees are excessive.	Numbering is discussed in a separate document in response to the Number Plan Regulations. It is suffice to say that a costing exercise was done to determine the cost of each revenue stream.
3.17 Page 16, Paragraph above Table 5	
Telecom restates that the cost of N$ 50,000 to issue a licence is excessive. They also opine that legal drafting can be done in-house by CRAN as employees' salaries are already included in regulatory costs.	This issue is responded to in item 3.7 of this Response Paper. Not all legal drafting can be done in-house since this is a very scarce skill in Namibia.
3.18 Page 18, Table 7 and the Paragraph Below Table 7	
On Table 7, Telecom poses the following questions: • Did CRAN's benchmarking reference regulatory levies or licence fees? • Does Botswana charge a regulatory levy and/or licence fees? • Re Zimbabwe, is there a reason why the numbers explained appears to be different to those depicted in the Table? • The statement regarding ICASA still does not give an indication if regulatory levy and licence fees are charged as one or combined. Clarity is sought.	• Both licence fees and levies were benchmarked because the licence fees have a direct impact on the levy. High licence fees result in lower levies and vice versa. A regulatory levy is an annual fee payable every year and a licence fee are payable either upon application or when the licence is received. • Botswana charges both. • The explanation corresponds to the table. • Both are charged as separate fees. Licence fees refers to applications, amendments, etc.
3.19 Page 21, Statement Below Figure 2	
Statement in Discussion Paper referred to states: "The main source of CRAN revenues stems from the regulatory levy, typically close to 80%. The share increase of spectrum fees in 2019 is mostly due to lower regulatory levies collected". Telecom finds it inconceivable that 80% of CRAN's income is derived from the regulatory levy bearing in mind income to be received from increased licence fees and spectrum fees. They request a breakdown of all fees received by CRAN from licensees for purposes of transparency and how those amounts generated are applied in defraying cost.	• Kindly note that Figure 2 refers to previous AFS. For the calculation of the proposed levies CRAN did a costing exercise for each revenue stream to try as far as possible to allocate the costs to the specific revenue stream. This means that Spectrum fees will cover the cost of spectrum and Numbering fees the cost of the numbering, etc. • The discussion paper clearly shows that all revenue streams are taken into consideration to defray costs. The revenue was obtained from the AFS. There is no requirement for CRAN to ringfence income and expenditures.
3.20 Page 22, Budget Projections	
CRAN's budget is subject to approval by the Minister of Public Enterprises under the Public Enterprises Governance Act. Telecom insists that the proposed law (assumed to be the Regulatory Levy Regulations) be considered against the approved budget projection rather than unapproved budget projections.	Future year budget projections are not approved by the relevant Minister under the Communications Act nor under the Public Enterprises Governance Act (i.e. there is no mechanism/procedure for this and it is not practical or will serve any purpose since these are projections and not actuals). Budgets are approved in the year they fall due. Note further that section 23(5)(a)(i) authorises CRAN to make use of projections. The latter is also linked to the re-adjustment of over- and under-recoveries which may result from such projections.
3.21 Page 22, Table 15	
Telecom objects against an increase in the regulatory levy to cover CAPEX for spectrum monitoring equipment and sites in view of the recent increase in spectrum fees and the exorbitant fees understood to cover spectrum monitoring. The latter cost should be defrayed by spectrum fees and not from the regulatory levy.	The table does not depict an increase in the regulatory levy but rather CRAN's total budgetary requirements.

3.22 Page 23, First Paragraph	
This paragraph relates to the exclusion of the 2020/2021 budget from the analysis and projections in the Discussion Paper due to no levies to be collected for this period. Telecom refers to ongoing litigation on this matter and what would happen in the Court rules in favour of Telecom and the levy becomes payable. Telecom asks how this would affect the proposed levy as it would surely result in an over-recovery.	• CRAN updated the paper and it will be published. The Court has now ruled in favour of CRAN and legally the regulatory levy imposed prior to being found unconstitutional must be paid. • Any bad debt collected will be allocated as follows: to the reserve (currently almost depleted) and the remainder will be utilised to lower the regulatory levy.
3.23 Page 23, Projected Shortfall	
The Discussion Paper states that not increasing the regulatory levy but rather increasing spectrum fees to cover the budget shortfall could lead to a rebalancing exercise. Telecom states that there is no indication as to how much it will cost or how long the alleged construction of spectrum sites will take or why it should have a permanent effect on licensees in a form of an increase in the regulatory levy.	It is mentioned in the Discussion document since the document refers to all costs of CRAN as well as all revenue streams. However, all spectrum costs will be funded through spectrum fees and not from the levy. An explanation was, however, provided for out layers on the budget.
3.24 Page 23, Paragraph Under Table 17	
Telecom reiterates that a levy of 1.65% is excessive, introduces a tax, inflates costs for defraying costs, is unreasonable, untenable, uninformed and without appreciation of adverse effects on licensees.	This reiteration is noted and is responded to above.
3.25 Page 23, Table 19	
Telecom asks why number resource fees are not included in Table 19.	Numbering fees were included in Table 19.