

REGULATIONS MADE IN TERMS OF

Communications Act 8 of 2009

sections 23, 38(10)(f), 42(3), 85(1), 88 and 129

Regulations regarding Administrative and

Licence Fees for Service Licences

General Notice 311 of 2012

(GG 5037)

came into force on date of publication: 13 September 2012

These regulations were made by the Board of the Communications Regulatory Authority
of Namibia. The General Notice which publishes them states that they amend the regulations in
GN 212/2007 (GG 3942), GN 213/2007 (GG 3942) and GN 108/2007 (GG 3858) insofar
as they are inconsistent with these regulations.

as amended by

General Notice 331 of 2013 **(GG 5269)**

came into force on date of publication: 19 August 2013

General Notice 181 of 2016 **(GG 6035)**

came into force on date of publication: 13 June 2018

Note that Regulation 6 was declared unconstitutional with effect from 11 June 2018
by *Communications Regulatory Authority of Namibia v Telecom Namibia Ltd & Others*

2018 NASC (11 June 2018).

ARRANGEMENT OF REGULATIONS

1. Definitions

2. Purpose

3. Administrative Fees

4. Payment of Application Fees

5. Annual Adjustments in respect of Fees

~~6. Licence Fees~~

[declared unconstitutional with effect from 11 June 2018 by *Communications Regulatory*

*Authority of Namibia v Telecom Namibia Ltd & Others* 2018 NASC (11 June 2018)]

7. Payment of Licence Fees

8. Interest and Penalties in respect of Payment of Licence Fees

**Definitions**

**1.** In these regulations, any word or expression to which a meaning is assigned in the Act, shall have the same meaning and -

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

**Purpose**

**2.** (1) These regulations set out the application fees applicable to -

(a) Telecommunications service licence applications;

(b) Broadcasting service licence applications;

(c) Licence transfer applications (for telecommunications service and broadcasting service);

(d) Licence amendment applications (for telecommunications service and broadcasting service);

[paragraph (d) amended by General Notice 331/2013]

(e) Licence renewal applications (for telecommunications service, broadcasting service and spectrum use).

[The full stop at the end should be a semicolon now that this
is no longer the last paragraph in subregulation (1).]

(f) Multiplex applications; and

[paragraph (f) inserted by General Notice 331/2013]

(g) Class Comprehensive Multiplex and Signal Distribution applications

[Paragraph (g) is inserted by General Notice 331/2013. There should be a full stop at the end.]

(2) These regulations set out the annual licence fees applicable to -

(a) Telecommunications service licences;

[paragraph (a) amended by General Notice 331/2013]

(b) Broadcasting service licences.

[The full stop at the end should be a semicolon now that this
is no longer the last paragraph in subregulation (2).]

(c) Multiplex applications; and

[paragraph (c) inserted by General Notice 331/2013]

(d) Class Comprehensive Multiplex and Signal Distribution applications

[Paragraph (d) is inserted by General Notice 331/2013. There should be a full stop at the end.]

**Administrative Fees**

**3.** The administrative fees applicable to licences are set out in the table below, in relation to each of the different licence types as set out and defined in the Regulations Setting out Broadcasting and Telecommunications Service Licence Categories, published in Government Gazette No. 4714, General Notice No. 124 dated 18 May 2011, amended from time to time.

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Licence Type** | **New Licence** | **Amendment** | **Transfer / Transfer of Control** | **Renewal** | **Annual Levy** |
| Telecommunications - Individual Comprehen- sive (ECNS and ECS) | n/a | N$ 10 000.00 | N$ 10 000.00 | N$ 10 000.00 | N$ 10 000.00 |
| Telecommunications - Class ECNS | N$ 10 000.00 | N$ 10 000.00 | N$ 10 000.00 | N$ 10 000.00 | N$ 10 000.00 |
| Telecommunications - Class ECS | N$ 10 000.00 | N$ 10 000.00 | N$ 10 000.00 | N$ 10 000.00 | N$ 10 000.00 |
| Telecommunications - Class Comprehensive (ECNS and ECS) | N$ 10 000.00 | N$ 10 000.00 | N$ 10 000.00 | N$ 10 000.00 | N$ 10 000.00 |
| Telecommunications -Network Facilities | N$ 10 000.00 | N$ 10 000.00 | N$ 10 000.00 | N$ 10 000.00 | N$ 10 000.00 |
| Telecommunications -Non-Profit ECS/ECNS  | N$ 500.00 | N$ 500.00 | N$ 500.00 | N$ 500.00 | N$ 500.00 |
| Broadcasting –Commercial | N$ 10 000.00 | N$ 10 000.00 | N$ 10 000.00 | N$ 10 000.00 | N$ 10 000.00 |
| Broadcasting - Community | N$ 500.00 | N$ 500.00 | N$ 500.00 | N$ 500.00 | N$ 500.00 |
| Broadcasting - Public | n/a | N$ 10 000.00 | N$ 10 000.00 | N$ 10 000.00 | N$ 10 000.00 |
| Broadcasting - Signal Distribution | N$ 10 000.00 | N$ 10 000.00 | N$ 10 000.00 | N$ 10 000.00 | N$ 10 000.00 |
| Broadcasting -Multiplex | N$ 10 000.00 | N$ 10 000.00 | N$ 10 000.00 | N$ 10 000.00 | N$ 10 000.00 |
| Broadcasting -Class Comprehensive Multiplex and Signal Distribution | N$ 10 000.00 | N$ 10 000.00 | N$ 10 000.00 | N$ 10 000.00 | N$ 10 000.00 |

[regulation 3 substituted by General Notice 331/2013 and by General Notice 181/2016]

**Payment of Application Fees**

**4.** (1) The application fee must be paid by way of electronic transfer or direct deposit into the Authority’s bank account.

(2) The application fee must be paid on or before the day the application is submitted to the Authority.

(3) The applicant must submit documentary proof of payment of the application fee with the submission of the application to the Authority.

(4) Application fees are non-refundable.

(5) The Authority will not process an application where the applicant fails to pay the applicable application fee or fails to submit proof thereof to the Authority.

**Annual Adjustments in respect of Fees**

**5.** The fees may be adjusted in relation to the Consumer Price Index as published by the Bank of Namibia, as determined by the Authority from time to time, and such adjustments will be published in the *Gazette.*

**~~Licence Fees~~**

**~~6.~~** ~~The annual licences fees applicable to licences are set out in the table below, in relation to each of the different licence types as set out and defined in the Regulations Setting Out Broadcasting and Telecommunications Service Licence Categories, Published in Government Gazette No. 4714, General Notice No. 124 dated 18 May 2011, amended from time to time.~~

[The word “published’ should not be capitalised.]

|  |  |
| --- | --- |
| **Licence Type** | **Annual Percentage Licence Fee** |
| Telecommunications - Individual Comprehensive (ECNS and ECS) | Levy % = Minimum (1.5%, 0. 00000000002\*Turnover) |
| Telecommunications - Class ECNS | Levy % = Minimum (1.5%, 0.00000000002\*Turnover) |
| Telecommunications - Class ECS | Levy % = Minimum (1.5%, 0.00000000002\*Turnover) |
| Telecommunications - Class Comprehensive (ECNS and ECS) | Levy % = Minimum (1.5%, 0.00000000002\*Turnover) |
| Telecommunications- Network Facilities | Levy % = Minimum (1.5%, 0.00000000002\*Turnover) |
| Telecommunications- Non-Profit ECS/ECNS | Levy % = Minimum (1.5%, 0.00000000002\*Turnover) |
| Broadcasting - Commercial | Levy % = Minimum (1.5%, 0.00000000002\*Turnover) |
| Broadcasting - Community | Levy % = Minimum (1.5%, 0.00000000002\*Turnover) |
| Broadcasting - Public | Levy % = Minimum (1.5%, 0.00000000002\*Turnover) |
| Broadcasting - Signal Distribution | Levy % = Minimum (1.5%, 0.00000000002\*Turnover) |
| Broadcasting - Multiplex | Levy % = Minimum (1.5%, 0.00000000002\*Turnover) |
| Broadcasting - Class Comprehensive Multiplex and Signal Distribution | Levy % = Minimum (1.5%, 0.00000000002\*Turnover) |

 [Regulation 6 is substituted by General Notice 331/2013 and by General Notice 181/2016.

It was declared unconstitutional with effect from 11 June 2018 by *Communications Regulatory*

*Authority of Namibia v Telecom Namibia Ltd & Others* 2018 NASC (11 June 2018).

This case also held that the regulation, during its period of validity, may not be applied retrospectively to anything which occurred before the date on which
the regulation came into force (13 September 2012).]

**Payment of Licence Fees**

**7.** (1) The licence fee must be paid by way of electronic transfer or direct deposit into the Authority’s bank account.

(2) The licence fee must be paid on or before the due date, which is six months after the licensee’s financial year end.

(3) Licence fees which are based on a percentage of turnover must be calculated based on the licensee’s audited annual financial statements, or, if the licensee is not required by law to audit its financial statements, on the annual financial statements signed and sworn by the accounting officer of the licensee.

(4) For the purposes of these regulations, turnover is turnover excluding value added tax.

(5) The licensee’s annual audited (or signed and sworn) financial statements must be submitted to the Authority on or before the due date for payment of the licence fee, which submission must be accompanied by documentary proof of payment of the licence fee.

**Interest and Penalties in respect of Payment of Licence Fees**

**8.** (1) If a licensee fails to pay its annual licence fee or fails to submit its annual audited (or signed and sworn) financial statements on or before the due date, the licensee may also pay interest on the overdue amount from the due date to the date of payment (or the dates of submission of its annual audited (or signed and sworn) financial statements), at the rate of three percent above the then current overdraft interest rate being charged by the Authority’s bankers.

(2) If a licensee fails to pay its annual licence fee or fails to submit its annual audited (or signed and sworn) financial statements within 45 days after the due date, the licensee may, in addition to paying interest as set out above, also pay a late payment penalty of 25 percent of the overdue amount.

(3) If a licensee fails to pay its annual licence fee or submit its annual audited (or signed and sworn) financial statements within 120 days after the due date, the licensee may, in addition to paying the interest set out above, must either -

(a) also pay a late payment penalty up to 50 percent of the overdue amount; or

(b) surrender its licence or licences to the Authority.

(4) If a licensee fails to pay its annual licence fee or submit its annual audited (or signed and sworn) financial statements and fails to pay interest and the late payment penalty set out above, within six months after the due date, and fails to surrender its licence or licences to the Authority, the Authority shall, after following a due process specified under regulations (6) and (7) below, declare the licence (and related spectrum use or other licences) forfeited and/or impose a fine not exceeding N$5 000 000.00.

(5) The Authority must before imposing an interest rate penalty, late payment penalty or before declaring the forfeiture of a license of a licensee as a result of the late submission of annual financial statements and late payment of its annual license and non-surrender of the licence, follow a due process as described in regulations (6) and (7) below.

(6) The Authority must, give the licensee an opportunity to be heard and shall grant a period of not less than 14 days to the licensee within which to make representations to the Authority about the matter.

(7) After consideration of the representations referred to or if no such representations have been made the Authority may determine whether to impose the interest rate penalty, late payment penalty or declare the forfeiture of the license of the licensee.