



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

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Government Notice

OFFICE OF THE PRIME MINISTER

No. 149 2004

PROMULGATION OF ACT OF PARLIAMENT

The following Act which has been passed by the Parliament and signed by the President in terms of the Namibian Constitution is hereby published in terms of Article 56 of that Constitution.

No. 4 of 2004: Namibian Communications Commission Amendment Act, 2004.

EXPLANATORY NOTE:

_____ Words underlined with a solid line indicate insertions in existing provisions.

[] Words in bold type in square brackets indicate omissions from existing provisions.

ACT

To **amend the Namibian Communications Commission Act, 1992, so as to enable the Namibian Communications Commission to determine the procedures, fees and conditions relating to postal service licences and telecommunications service licences and to provide for incidental matters**

(Signed by the President on 13 July 2004)

BE IT ENACTED by the Parliament of the Republic of Namibia, as follows:-

Amendment of section 22A of Act 4 of 1992 inserted by section 3 of Act 1 of 1995

1. Section 22A of the Namibian Communications Commission Act, 1992 (hereinafter referred to as the "Principal Act") is hereby amended-

- (a) by the substitution for the words preceding paragraph (a) of subsection (1) of the following words:

"22A. (1) The Commission may subject to section 22B on application made to it **[in the prescribed manner and on such conditions and against payment of such fees as may be prescribed,] issue -"**

- (b) by the substitution for subsection (4) of the following subsection:

"(4) If any **[prescribed] fees with regard to a postal service licence or telecommunications service licence are not paid by the holder of such licence on the date on which such fees are payable and remain unpaid after a period of seven days after a written notice by the Commission to remedy the default, such holder shall forfeit the licence concerned."**

Insertion of section 22B in Act 4 of 1992

2. The following section is hereby inserted into the Principal Act after section 22A:

"Procedures, fees and conditions relating to postal service and telecommunications service licences

22B. (1) The Commission may subject to regulations made under subsection (2) -

- (a) determine the procedural and other requirements with which an application for the issuing or renewal of a licence referred to in section 22A(1) shall comply;
- (b) determine the application fees that shall be paid in respect of such a licence;
- (c) determine the fees that shall be paid for the issuing of such licence;

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- (d) determine the conditions subject to which such a licence is issued.
- (2) The Minister may prescribe -
 - (a) the application fees payable in respect of a prescribed class of postal service licence or telecommunications service licence;
 - (b) the fees payable for the granting of a prescribed class of postal service licence or telecommunications service licence;
 - (c) the procedure to be followed when application is made for a prescribed class of postal service licence or telecommunications service licence.
- (3) Without limiting the power to refuse an application for a telecommunications service licence when the granting of a licence is not in the public interest, the Commission may refuse to issue a licence on one or more of the following grounds-
 - (a) national defence or public security;
 - (b) technical constraints due to the limited availability of radio frequencies; or
 - (c) the lack of technical and financial capability to substantially meet the obligations arising out of the applicant's operating conditions or the fact that it does not meet prior specified selection criteria.
- (4) The Commission may take the following matters into account when it is considering the granting of a telecommunications service licence -
 - (a) the nature, characteristics, service coverage area and network extension schedule proposed by the applicant;
 - (b) the operating hours, quality and availability of the network and access conditions of the applicant;
 - (c) the condition of confidentiality and neutrality of the service with regard to the information transmitted and other customer proprietary information;
 - (d) standards and specifications for networks and services;
 - (e) relevant matters relating to national defence and public security;
 - (f) relevant matters relating to fair competition;
 - (g) the applicant's commitments to meeting universal service obligations;
 - (h) any other matter which the Commission considers relevant.
- (5) In order to determine the fees payable for the issue of a licence referred to in section 22A(1), the Commission may request tenders or may institute a system of competitive bidding which is structured in the manner determined by the Commission.
- (6) On receipt of the tenders to provide the specified services, the Commission may award such licences to any of the persons who submitted tenders to it as in its opinion will serve the purposes of this Act or it may decide to grant no licence.

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(7) The Commission is not compelled to accept the highest tender or any tender that complies with the conditions specified in the notice inviting tenders.

(8) After the process of competitive bidding is complete, the Commission shall consider all the bids received and may grant a licence to any person who submitted a bid or may refuse to grant a licence to any person who submitted a bid.

(9) The Commission may by notice in the Gazette stop a process of competitive bidding before the process has been completed.

(10) When the Commission -

- (a) grants a licence or decides to grant no licence after tenders have been received;
- (b) grants a licence or decides not to grant a licence after the process of competitive bidding is completed; or
- (c) stops a process of competitive bidding under subsection (9),

it shall by notice in the Gazette indicate the reasons for its decision.

(11) When issuing licences, the Commission may impose specific obligations and requirements on an applicant regarding-

- (a) the mandatory provision of universal service and such other services as the Commission may think fit;
- (b) the transportation of emergency calls or other forms of emergency communications free of charge and under such conditions and subject to such requirements as the Commission may determine;
- (c) the use of the radio frequency spectrum, the fees related to this use and to the costs of spectrum management and monitoring when applicable;
- (d) the allocation of individual telephone numbers or numbering ranges and any fees payable in respect thereof;
- (e) the rights and obligations of the licence holder with regard to interconnection;
- (f) the equitable treatment of users, the contractual conditions under which the service shall be provided which may include the payment of compensation to customers in case of breach of quality requirements, and the provision of specified information to customers;
- (g) the duration of the licence and the conditions and procedures for its withdrawal, renewal and modification of its terms;
- (h) relating to any matter that the Commission may consider when issuing a licence as provided in subsection (4); and
- (i) other conditions as may be required to achieve the objects of this Act.

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(12) For the purposes of this section “universal service” means services provided to under populated areas or economically neglected areas or a class of services made available to a specified class of users under specified conditions for the purpose of promoting access to telecommunications services.”

Short title and commencement

3. This Act is called the Namibian Communications Commission Amendment Act, 2004, and is deemed to have come into operation on the first of June 2003 and also applies to any matter that on the date on which this Act is promulgated is pending before the Namibian Communications Commission established by section 2 of the principal Act.
