

COMMUNICATIONS REGULATORY AUTHORITY OF NAMIBIA

No. 311

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**REGULATIONS REGARDING ADMINISTRATIVE
AND LICENCE FEES FOR SERVICE LICENCES****Reasons for decision**

With regards to Telecommunication Services, section 23 of the Communications Act, 2009 provides that CRAN may, after a rule making procedure, impose a regulatory levy on providers of communications services. Section 38(10)(f) provides that CRAN may impose on licensees the fees payable for the grant, management and control of a licence. Section 42(3) provides that CRAN may declare a licence to be forfeited if any fees or any other amount payable to CRAN by a licensee are not paid.

With regards to Broadcasting Services, section 85(1) of the Communications Act, 2009 provides that CRAN may determine prescribed fees in respect of broadcasting licences. Section 88 provides that CRAN may declare a licence to be forfeited if any fees are not paid.

Section 129 provides that CRAN may make regulations prescribing fees payable to it when applications are made and when licences are issued.

Accordingly, CRAN has made application and licence fees applicable to telecommunications and broadcasting service licences.

In respect of the above, CRAN has published draft regulations and received public comments regarding the fees for renewal applications being too high and thus should be reduced. In contrast comments were also received that the application fees were low. CRAN has decided to keep the application fees as per the draft regulations. According to the Communications Act No.8 of 2009, renewal are to be made every 5 to 10 years and should not impact on business of licensees adversely. In addition the application fees will be adjusted in terms of Regulation 5, with the Consumer Price Index annually.

Further comments were received; particularly with regards to the Telecommunications Individual Comprehensive (ECNS and ECS) licences and that the fees should only be paid on the telecommunications related business. CRAN is of the view that the levy that is charged is on electronic communication network services and on electronic communication services. Furthermore licensees are reminded that the licenses are service and technology neutral. CRAN does regulate telecommunications equipment and thus incurs administrative costs in this respect. If CRAN has to implement a chart of accounts and cost allocation manual it would be an administrative burden for both CRAN and the licensees. CRAN is however at looking conducting a study regarding costs accounting procedures in this regard, which will address this matter.

Further, CRAN has in benchmarking itself to neighbouring countries found that they have not successfully implemented a chart of accounts and cost allocation manuals and that it took years to devise and implement same.

CRAN has considered the comments made regarding the usage of net profit or gross profit as a percentage of the annual license fees. CRAN is of the view that these create measurement challenges and therefore calculation on annual license fees will remain on turnover, especially given the fact that cost accounting procedures are yet to be fully investigated for implementation. Turnover has been used as a basis in many countries benchmarked for the purpose of this study.

CRAN has however considered the comments on the percentage of the annual license fee and has decided on using a progressive licence fee formula, in terms of which the percentage of turnover payable as a license fee is based on a formula that caps the maximum percentage at 1.5%.

In addition to the progressive licence fee formula all licensees shall pay a annual regulatory administrative levy as per regulation (3) below.

The formula is designed in a way so that the percentage levy increases evenly from 0% to 1.5% for turnover ranging from zero to one billion Namibian dollars. Licensees with less than one billion N\$ turnover pay a lower percentage and only licensees and operators that exceed one billion Namibian dollars in turnover pay the full levy.

The formula works as follows: $\text{Levy \%} = \text{Minimum (1.5\%, } 0.0000000002 * \text{Turnover})$. The formula selects the lower value out of 1.5% and $0.0000000002 * \text{turnover}$.

Examples:

- a) 5 million turnover: $\text{Minimum (1.5\%, } 0.0000000002 * 5,000,000) = 0.01\%$.
- b) 500 million turnover: $\text{Minimum (1.5\%, } 0.0000000002 * 500,000,000) = 1\%$.
- c) 2 billion turnover: $\text{Minimum (1.5\%, } 0.0000000002 * 2,000,000,000) = 1.5\%$.

Please note that $0.0000000002 * 2,000,000,000 = 4\%$ and hence the lower 1.5% is selected.

This progressive license fee formula has the following advantages:

- A single formula can be applied to all sectors and licensees.
- Smaller licensees and new entrants are paying a much smaller levy percentage, which encourages market entry and competition.
- Once a licensee has reached a turnover of one billion Namibian dollars, the full levy becomes applicable.
- The progressive license fee formula reduces the market exit risk while maintaining a sound base for the funding of CRAN in order to defray its expenses.
- The progressive licence fee formula and the annual regulatory administrative levy is not unreasonably discriminatory.

CRAN would like the industry to note that it is in the setting up phase and that there are various regulatory projects that need to be rolled out to ensure that CRAN can regulate the sector effectively. Additionally, CRAN is looking at additional transfer of funds from government to address its regulatory program.

~~Regulations Regarding the Application and Licence Fees for Service Licences~~

The Board of the Communications Regulatory Authority of Namibia hereby publishes these Regulations Regarding Application and Licence Fees for Service Licences, in terms of sections 23, 38(10)(f), 42(3), 85(1), 88, and 129 of the Communications Act, 2009 (Act No. 8 of 2009), which regulations amend Notices No. 212 and No. 213 in Government Gazette No. 3942 dated 13 November 2007 and Notice No. 108 in Government Gazette No. 3858 dated 15 June 2007, insofar as they are inconsistent with these new regulations.

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); and
 - (e) Licence renewal applications (for telecommunications service, broadcasting service and spectrum use).
- (2) These regulations set out the annual licence fees applicable to -
- (a) Telecommunications service licences; and
 - (b) Broadcasting service licences.

Administrative Fees

Application

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 dated 18 May 2011, amended from time to time.

Licence Type	New licence	Amendment	Transfer / Transfer of control	Renewal	Annual Levy
Telecommunications - Individual Comprehensive (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
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

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 licence 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 dated 18 May 2011, as may be amended from time to time.

Licence Type	Annual Percentage Licence Fee
Telecommunications - Individual Comprehensive (ECNS and ECS)	Levy %=Minimum (1.5%, 0.0000000002*Turnover)
Telecommunications - Class ECNS	Levy %=Minimum (1.5%, 0.0000000002*Turnover)
Telecommunications - Class ECS	Levy %=Minimum (1.5%, 0.0000000002*Turnover)
Telecommunications - Class Comprehensive (ECNS and ECS)	Levy %=Minimum (1.5%, 0.0000000002*Turnover)
Broadcasting - Commercial	Levy %=Minimum (1.5%, 0.0000000002*Turnover)
Broadcasting - Community	Levy %=Minimum (1.5%, 0.0000000002*Turnover)
Broadcasting - Public	Levy %=Minimum (1.5%, 0.0000000002*Turnover)
Broadcasting - Signal Distribution	Levy %=Minimum (1.5%, 0.0000000002*Turnover)

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.

L. N. JACOBS
CHAIRPERSON OF THE BOARD
COMMUNICATIONS REGULATORY AUTHORITY OF NAMIBIA
