

COMMUNICATIONS REGULATORY AUTHORITY OF NAMIBIA

No. 124

2011

**REGULATIONS SETTING OUT BROADCASTING AND TELECOMMUNICATIONS
SERVICE LICENCE CATEGORIES**

The Board of the Communications Regulatory Authority of Namibia, in terms of sections 37, 38 and 84, read with section 129 of the Communications Act, 2009 (Act No. 8 of 2009), hereby prescribes these “Regulations Setting out Broadcasting and Telecommunications Service Licence Categories”, effective from the date the Act comes into operation as determined by the Minister in terms of section 136(1) of the Act.

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);

“Aeronautical service” means a radio service used principally for the purpose of the transmission of messages from and to aircraft;

“Alarm system service” means a radio service used in connection with the operations of an alarm system;

“Amateur service” means a radio service used for the purpose of self-training in radio communications, intercommunication using radio communications and technical investigation into radio communications by persons who do so solely for personal use and have no pecuniary interest in the operations of the service;

“Broadcasting back-haul system service” means a telecommunications service used in connection with the operations of a broadcasting back-haul system, whereby broadcasting content is transported to the point where it is made available in its final content format, from where it will be conveyed to any broadcast target area;

“Class telecommunications licence” means a licence awarded to a person who applies to the Authority and meets the criteria of the class and is not otherwise disqualified from holding a class licence;

“Commercial broadcasting service” means a broadcasting service operating for profit;

“Community broadcasting service” means a broadcasting service that serves a particular community (either geographic or a group of persons having a common interest) and is wholly-owned by a non-profit association registered in terms of section 21 of the Companies Act, 2004 (Act No. 28 of 2004) or, if it is not registered, is established in terms of a constitution (or other agreement) containing provisions that comply with the effect of the provisions of section 21 of the Companies Act, 2004 (Act No. 28 of 2004);

“Electronic communications network service” or “ECNS” means a service whereby a person makes available an electronic communications network, whether by sale, lease or otherwise –

- (a) for that person’s own use for the provision of an electronic communications service;
- (b) to another person for that other person’s use in the provision of an electronic communications service; or

(c) for resale;

“Electronic communications service” or “ECS” means any service provided to the public, sections of the public, or the subscribers to such service, which consists wholly or mainly of the conveyance of electronic communications over an electronic communications network, but excludes broadcasting services;

“Emergency response system service” means a radio service used in connection with the operations of an emergency response system;

“Individual licence” means a licence awarded to Telecom in terms of section 45 of the Act to provide ECNS and ECS;

“Maritime service” means a radio service between maritime ship stations, maritime coast stations and on-board communications stations associated with maritime ship stations, survival craft stations or emergency position indicating radio beacon stations;

“Navigation and radar system service” means a radio service used in connection with the operations of a navigation and radar system;

“Non-profit ECNS/ECS” means an electronic communications network service or electronic communications service that is wholly-owned by a non-profit association registered in terms of section 21 of the Companies Act, 2004 (Act No. 28 of 2004) or, if it is not registered, is established in terms of a constitution (or other agreement) containing provisions that comply with the effect of the provisions of section 21 of the Companies Act, 2004 (Act No. 28 of 2004);

“Private ECNS/ECS network” means an electronic communications network used for providing an electronic communications network service or electronic communications service solely for the provider’s own use;

“Public broadcasting service” means any broadcasting service provided by the Namibian Broadcasting Corporation;

“Resale of ECNS/ECS” means acquiring, through lease or other commercial arrangement, an electronic communications network service or electronic communications service and making such electronic communications network service or electronic communications service available to subscribers for a fee;

“Signal distribution” means the electronic communications network service where the output signal of a broadcasting service is taken from the point of origin, being the point where such signal is made available in its final content format, from where it is conveyed to any broadcast target area, by means of electronic communications.

Submission of documents to the Authority

2. In these regulations “submit in writing to the Authority” means by hand to the head offices of the Authority, namely Communication House, 56 Robert Mugabe Avenue, Windhoek or at alternative addresses set out by the Authority from time to time.

Purpose

3. (1) These regulations set out the broadcasting licence categories in terms of section 84 of the Communications Act.

(2) These regulations set out the telecommunications licence categories in terms of sections 37 and 38 of the Communications Act.

Broadcasting service licence categories

4. (1) The following are categories of broadcasting service licences -

- (a) Commercial;
- (b) Community;
- (c) Public; and
- (d) Signal Distribution.

(2) In respect of the commercial, community, and public broadcasting service categories, each broadcasting service licensee may provide its own signal distribution service or may contract with a signal distribution service licensee for such service.

(3) In respect of the commercial, community, and public broadcasting service categories, each broadcasting service licensee must, in addition to its broadcasting service licence, obtain from the Authority any required radio frequency spectrum licence.

Telecommunications service licence categories

5. (1) The following are categories of telecommunications service licences, all of which are technology and service neutral -

- (a) Individual (Comprehensive telecommunications service licence (ECNS and ECS)); and
- (b) Class;
 - (i) ECS;
 - (ii) ECNS; and
 - (iii) Comprehensive telecommunications service licence (ECNS and ECS).

(2) Persons may provide the following telecommunications services without a licence -

- (a) Private ECNS/ECS;
- (b) Resale of ECNS/ECS;
- (c) Non-profit ECNS/ECS;
- (d) Amateur service;
- (e) Aeronautical service;
- (f) Maritime service;
- (g) Navigation and radar system service;

- (h) Alarm system service;
- (i) Emergency response system service; and
- (j) Broadcasting back-haul system service.

(3) Each telecommunications service licensee must, in addition to its telecommunications service licence, and each person providing a telecommunications service that may be provided without a licence, must obtain from the Authority any required radio frequency spectrum licences.

Manner of prosecuting regulatory offences

6. (1) The form of summons to be issued by the Authority in terms of section 115(1) of the Act, is included herein and marked “SUMMONS IN TERMS OF SECTION 115(1) OF THE COMMUNICATIONS ACT, 2009 (ACT NO. 8 OF 2009)”.

(2) The form of notice the accused must submit in writing to the Authority in terms of section 115(2) and (6) of the Act is included herein, marked “NOTICE IN TERMS OF SECTION 115(2) AND (6) OF THE COMMUNICATIONS ACT, 2009 (ACT NO. 8 OF 2009) - RESPONSE TO SUMMONS”.

SUMMONS IN TERMS OF SECTION 115(1) OF THE COMMUNICATIONS ACT, 2009 (ACT NO. 8 OF 2009)

To [Insert name of the accused]:	
Date:	
[Insert the following information, if known]	
Physical Address:	
Postal Address:	
Tel:	
Fax:	
E-mail:	

You are herewith notified in terms of section 115(1) of the Communications Act, 2009 (Act No. 8 of 2009) , that on or about the _____ day of _____, 20____, at or near _____, you are alleged to have committed a regulatory offence in terms of section 114 of the Act, in that you [*Set out allegation of facts, and state the regulatory offence that the accused is alleged to have committed*]:

The Authority may, after a hearing to determine the appropriate sanction or penalty, impose any or all of the following penalties, in terms of section 115(4) of the Act, if you admit the offence alleged in this summons or admit a different offence and the Authority accepts that admission:

Impose a fine;

Declare any telecommunications equipment or radio apparatus forfeited; and

Amend or withdraw any licence issued to you.

If you deny the offence alleged or the Authority does not accept your admission of a different offence, the Authority may forward a request to prosecute the matter to the Prosecutor-General.

In terms of section 115(2) and (6) of the Act, you must deliver a notice to the Authority, within thirty (30) days from the date of acknowledging receipt of this summons, indicating whether you admit or deny the commission of the offence alleged or whether you admit any other offence referred to in section 114 of the Act, in the form prescribed by the Authority, entitled “NOTICE IN TERMS OF SECTION 115(2) AND (6) OF THE COMMUNICATIONS ACT, 2009 (ACT NO. 8 OF 2009) - RESPONSE TO SUMMONS”.

ACKNOWLEDGEMENT OF RECEIPT BY ACCUSED:

Full Name:	
Date:	
Place:	
Signature:	

FOR OFFICE USE ONLY:

DELIVERED BY:	
Full Name:	
Date:	
Place:	
Signature:	

NOTICE IN TERMS OF SECTION 115(2) AND (6) OF THE COMMUNICATIONS ACT, 2009 (ACT NO. 8 OF 2009) - RESPONSE TO SUMMONS

From [Insert full, legal name]	
Date:	
[Insert the following information]	
Physical Address:	
Postal Address:	
Tel:	
Fax:	
E-mail:	

Admission of Offence:

I herewith admit that I committed the regulatory offence stated in the summons issued by the Communications Regulatory Authority of Namibia on _____, reference number _____.

OR

In response to the summons issued by the Communications Regulatory Authority of Namibia on _____, reference number _____, I herewith admit an alternative regulatory offence referred to in section 114 of the Communications Act, 2009. [State facts and state the regulatory offence admitted.]

OR

Denial of Offence:

I herewith deny that I committed the regulatory offence stated in the summons issued by the Communications Regulatory Authority of Namibia on _____, reference number _____.
[State facts supporting the denial.]

SIGNATURE OF ACCUSED

Signed at _____ on the _____ day of _____ 20____.

ACKNOWLEDGEMENT OF RECEIPT BY CRAN:

Name:	
Date:	
Place:	
Signature:	

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