

COMMUNICATIONS REGULATORY AUTHORITY OF NAMIBIA

No. 126

2011

**REGULATIONS REGARDING THE SUBMISSION OF
INTERCONNECTION AGREEMENTS AND TARIFFS**

The Board of the Communications Regulatory Authority of Namibia, in terms of sections 49 and 53, read with section 129 of the Communications Act, 2009 (Act No. 8 of 2009), publishes these “Regulations Regarding the Submission of Interconnection Agreements and Tariffs”, 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);

“Domestic Interconnection Agreement” means an interconnection agreement concluded between persons who are licensed to provide services in Namibia or who are providing services in Namibia that may be provided without a licence; and

“International Interconnection Agreement” means an interconnection agreement concluded between a person who is licensed to provide services in Namibia or who is providing services in Namibia that may be provided without a licence, and a person authorised to provide services in a jurisdiction outside of Namibia.

Submission of documents to the Authority

2. In these regulations “submit in writing to the Authority” means either physically or electronically –

(1) by hand to the head offices of the Authority, namely Communication House, 56 Robert Mugabe Avenue, Windhoek;

(2) by post to the head offices of the Authority, namely Private Bag 13309, Windhoek 9000;

(3) by electronic mail to the following address: cran@cran.na;

(4) by facsimile to the following facsimile number: +264 61 23 8646; or

(5) in any other manner or at alternative addresses set out by the Authority from time to time.

Applicability

3. (1) These regulations are applicable to the submission of interconnection agreements to the Authority in terms of sections 49(4) and (16) of the Act.

(2) These regulations are applicable to the submission and amendment of tariffs in terms of sections 53(6) and (7) of the Act.

Interconnection agreements

4. (1) All parties to Domestic Interconnection Agreements must submit in writing to the Authority copies of all Domestic Interconnection Agreements within the time set out in section 49(4) of the Act.

(2) All domestic parties to International Interconnection Agreements must submit in writing to the Authority copies of all International Interconnection Agreements within the time set out in section 49(16) of the Act.

(3) The Authority may request further information or documentation regarding the submitted interconnection agreements, which must be provided to the Authority in the time and the manner set out by the Authority.

(4) All interconnection agreements submitted in terms of these regulations must include a cover letter containing the name and contact details of the person submitting the agreement and the name and contact details of the person for whom the agreement is submitted, if different.

Decisions and publication of interconnection agreements

5. (1) After considering a Domestic Interconnection Agreement and any further written information or documentation regarding the interconnection agreement, the Authority must approve or disapprove the interconnection agreement in the manner set out in section 49(6) of the Act.

(2) After considering an International Interconnection Agreement and any further written information or documentation regarding the interconnection agreement, the Authority must determine whether it has the effect of impairing competition or the interoperability of networks, and if it does, hold a hearing to impose obligations on the licensee as contemplated in section 49(17) of the Act.

(3) The Authority must maintain a register of interconnection agreements submitted to it and copies of all interconnection agreements, physically at the head offices of the Authority and if practicable, electronically, on the Authority's website.

(4) Any person may examine the register of interconnection agreements and copies of interconnection agreements either at the head offices of the Authority during normal business hours and copies may be made on payment of a fee determined by the Authority, or if available on the Authority's website where copies may be downloaded free of charge.

Oral hearings regarding international interconnection agreements

6. (1) If the Authority determines that an International Interconnection Agreement has the effect of impairing competition or the interoperability of networks, the Authority must invite the licensee and the public to make oral submissions by notice in the *Government Gazette* at least fourteen (14) days prior to the hearing.

(2) Unless otherwise specified by the Authority, hearings will be open to the public.

(3) The format and agenda of the hearing is at the discretion of the Authority, provided however, the hearing should be informal in nature.

(4) All oral submissions must -

(a) include a statement of the name and contact details of the person making the oral submission and the name and contact details of the person for whom the oral submission is made, if different;

- (b) be clear and concise; and
 - (c) conform to any further requirements determined by the Authority from time to time.
- (5) If the Authority considers it necessary, it will provide the opportunity to the licensee to respond to oral submissions.
- (6) The Authority may request further oral or written submissions, for example, further information or clarification, which must be provided to the Authority in the time and the manner set out by the Authority.
- (7) At the conclusion of the hearing, a concise report summarising the oral submissions must be prepared and placed in the relevant file by the Authority.

Tariffs

7. (1) All persons who are entitled to a comprehensive telecommunications service licence in the licence transition process in terms of section 135 of the Act, must submit in writing to the Authority a tariff within the time set out in section 53(6) of the Act, or an amendment to a tariff contemplated in section 53(7) of the Act within the time set out in section 53(8) of the Act.
- (2) The tariffs and amendments must comply with the provisions of section 53 of the Act, including sections 53(8), (9), and (18).
- (3) The Authority may request further information or documentation regarding the submitted tariffs and amendments, which must be provided to the Authority in the time and the manner set out by the Authority.
- (4) All tariffs and amendments submitted in terms of these regulations must include a cover letter containing the name and contact details of the person submitting the tariff and the name and contact details of the person for whom the tariff is submitted, if different.

Decisions and publication of tariffs

8. (1) After the submission of a tariff or tariff amendment, the Authority will as soon as is practicable, publish a notice of the submission in the *Government Gazette*.
- (2) The Authority must maintain copies of all tariffs submitted to it at the head offices of the Authority and if practicable, on the Authority's website.
- (3) Any person may examine copies the tariffs and tariff amendments submitted at the head offices of the Authority during normal business hours and copies may be made on payment of a fee determined by the Authority, or, if practicable, on the Authority's website where copies may be downloaded free of charge.
- (4) After considering the tariff or tariff amendment and any further written information or documentation, the Authority must take such action as is contemplated in sections 53(12-19) of the Act.
- (5) The Authority must maintain a register of approved tariffs and tariff amendments (to be known as the register of tariffs), and copies of all such tariffs and tariff amendments, at the head offices of the Authority and if practicable, on the Authority's website.
- (6) Any person may examine the register of tariffs and copies of approved tariffs and tariff amendments either at the head offices of the Authority during normal business hours and copies may be made on payment of a fee determined by the Authority, or, if available, on the Authority's website where copies may be downloaded free of charge.

Written submissions on tariffs

9. (1) After the Authority publishes a *Government Gazette* notice referred to in regulation 8(1), the public may submit in writing to the Authority written comments within fourteen (14) days from the date of publication of the notice.

(2) The person who submitted the tariff or tariff amendment may submit in writing to the Authority a response to any written comments within fourteen (14) days from the lapsing of the time to submit written submissions.

(3) The Authority may consider written submissions not timeously filed if, in its opinion, it is practicable to do so.

(4) The Authority may request further written submissions, for example, further information or clarification, which must be provided to the Authority in the time and the manner set out by the Authority.

(5) All written submissions must -

(a) contain the name and contact details of the person making the written submissions and the name and contact details of the person for whom the written submission is made, if different; and

(b) be clear and concise; and

(c) conform to any further requirements determined by the Authority from time to time.

Confidential information

10. (1) Any person submitting documents or making written submissions to the Authority in terms of these regulations may designate information as confidential, provided, however, if the Authority is of the opinion that the information is not confidential, it must inform the person that he or she may withdraw the information, agree that it will not be treated as confidential, or request a hearing on the issue of confidentiality to be conducted in terms of section 28 of the Act, provided however that tariffs and interconnection agreements themselves are not confidential.

(2) Any person making oral submissions may request a closed hearing on the grounds that the submissions are confidential, provided however that tariffs and interconnection agreements themselves are not confidential. A closed hearing will be treated as a confidential meeting in terms of section 29 of the Act, and the notice of the closed meeting required by section 29(4) must be maintained in the relevant file.

Condonation

11. (1) In the event any party is unable to comply with the times set out in these regulations, they may request from the Authority an extension of time at least seven (7) days prior to the time set out.

(2) The Authority will respond to the request for condonation within two (2) days, and may either grant or deny the request, in its sole discretion, based on, among other things, the nature of the proceeding and the reasons for non-compliance with the times set out.

***Ex parte* communications**

12. (1) A person may not communicate with the members of the Board to discuss the subject matter of a submission made in terms of these regulations, unless a request to do so is

addressed to the Chairperson of the Board, has been granted, and provided that the person and the Board both must submit a report to the Authority summarising the substance of the discussion and indicating whom was communicated with and when.

(2) A person may communicate with the CEO or staff members of, or consultants to the Authority, at the official premises of the Authority, to discuss the subject matter of a submission made in terms of these regulations, provided however, the person and the CEO or staff members of, or consultants to the Authority both must submit a report to the Authority summarising the substance of the discussion and indicating whom was communicated with and when.

Record of proceedings

13. (1) All documents deemed relevant by the Authority to the interconnection and tariff proceedings contemplated by the Act and these regulations, including documents submitted to the Authority, written submissions, reports of oral hearings, and *ex parte* communication reports must be maintained by the Authority in a file kept separate for each proceeding, at the head offices of the Authority and if practicable, on the Authority's website.

(2) Except for confidential information, any person may examine a interconnection agreement or tariff proceeding file either at the head offices of the Authority during normal business hours and copies may be made on payment of a fee determined by the Authority, or, if available, on the Authority's website where copies may be downloaded free of charge.

Reconsideration

14. (1) The Authority may reconsider any decision made in terms of these regulations, within the time set out in section 31 of the Act.

(2) Any person may request the Authority in writing to reconsider any decision made in terms of these regulations, within thirty (30) days, and the Authority will reconsider such regulation within the time set out in section 31 of the Act.

(3) The Authority may publish its decision on reconsideration without further submissions being received, or it may provide an opportunity for the public to provide further written or oral submissions in a manner determined by the Authority.

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