

Publication of licensing decisions and licences

19. (1) All decisions made in terms of these regulations will be communicated to the applicants and other relevant parties in writing together with reasons, and may be published in the *Government Gazette*.

(2) The Authority's register of licences maintained in terms of section 27(3) of the Act and copies of all licences, will be held at the head offices of the Authority and if practicable, on the Authority's website.

(3) Any person may examine the register of licences and copies of licences 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, and, if available, on the Authority's website where copies may be downloaded free of charge.

Reconsideration

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

(2) Any person may submit to the Authority in writing a request to reconsider any decision made in terms of these regulations within thirty (30) days of notice of the decision, 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 further submissions in a manner set out by the Authority.

Repeal of Regulations

21. The Regulations Regarding Licensing Procedures for Telecommunications and Broadcasting Service Licences and Spectrum Use Licences published in Government Gazette 4714, No. 127 of 2011, dated 18 May 2011, are hereby repealed.

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

COMMUNICATIONS REGULATORY AUTHORITY OF NAMIBIA

No. 171

2011

**REGULATIONS REGARDING TRANSITIONAL PROCEDURES FOR
TELECOMMUNICATIONS AND BROADCASTING SERVICE LICENCES AND
SPECTRUM USE LICENCES**

The Board of the Communications Regulatory Authority of Namibia, having reconsidered the "Regulations Regarding Transitional Procedures for Telecommunications and Broadcasting Service Licences and Spectrum Use Licences" published in Government Gazette 4714, No. 125 of 2011, dated 18 May 2011 hereby publishes these "Regulations Regarding Transitional Procedures for Telecommunications and Broadcasting Service Licences and Spectrum Use Licences", in terms of sections 45(1), 92, 101 and 135, read with section 129 of the Communications Act, No. 8 of 2009, effective retrospectively 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 No. 8 of 2009.

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 or at any other address set out by the Authority from time to time;

(2) by post to the head offices of the Authority, namely Private Bag 13309, Windhoek 9000, or at any other address set out by the Authority from time to time;

(3) by electronic mail to the following address: cran@cran.na or at any other address set out by the Authority from time to time;

(4) by facsimile to the following facsimile number: +264 61 23 8646 or at any other number set out by the Authority from time to time; or

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

Applicability

3. These regulations are applicable to the transition of licences and specifically to –

(1) licensees contemplated in sections 92 and 135(2) of the Act;

(2) persons lawfully providing services without a licence contemplated in section 135(5) of the Act, including the Namibian Broadcasting Corporation;

(3) Telecom Namibia Limited’s deemed applications in terms of sections 45(1) and 101(9) of the Act;

(4) applicants contemplated in section 135(10) of the Act;

(5) person’s having authority to use spectrum contemplated in section 101(11) of the Act; and

(6) the application to use spectrum required for defence purposes by the Namibian Defence Force or any other organ of the State in terms of section 101(12) of the Act.

Telecommunications and broadcasting service licensees contemplated in sections 92 and 135(2) of the Act

4. (1) A person who holds a licence to provide telecommunications services or broadcasting services or operate, construct or use an electronic communications network contemplated by section 135(2) of the Act, must submit a copy of their licence or licences to the Authority within sixty (60) days from the date the relevant provisions of the Act come into operation, provided that if any of the following information is not included in the licence or licences or is inaccurate as recorded

in the licence or licences, the licensee must submit such information in writing in the form made available by the Authority –

- (a) full and official name of the licensee and if a natural person, the identity number of that person, and if a juristic person, the registration number of that person;
- (b) name of the contact person (if different) and the following contact details –
 - (i) physical address;
 - (ii) postal address;
 - (iii) telephone number(s);
 - (iv) facsimile numbers(s); and
 - (v) electronic mail address(es);
- (c) full details of all ownership interests in the licensee, including the identity and nationality of holders of ownership interests and if the holders of ownership interests are juristic persons, full details of all the juristic persons' ownership interests;
- (d) full details regarding foreign ownership interests in the licensee;
- (e) a complete, accurate and concise statement of the services licensed, including a description and diagram of any network operated, constructed or used;
- (f) an indication whether and to what extent the services are currently being provided;
- (g) an indication whether and to what extent applicable licence fees (including spectrum use fees) have been paid and proof thereof; and
- (h) any other information the licensee believes might be relevant to the Authority in carrying out its functions set out in section 135(2) of the Act.

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

Persons lawfully providing services without a licence contemplated in section 135(5) of the Act, including the Namibian Broadcasting Corporation; and Telecom Namibia Limited's deemed applications in terms of sections 45(1) and 101(9) of the Act

5. (1) A person who is lawfully providing a service or operating, constructing or using a network without a licence as contemplated in section 135(5) of the Act (including Namibian Broadcasting Corporation and Telecom Namibia Limited), must submit, in writing to the Authority within ninety (90) days from the date the relevant provisions of the Act come into operation, the following information and documentation in the form made available by the Authority –

- (a) the full and official name of the person providing a service or operating, constructing or using a network, and if a natural person, the identity number of that person, and if a juristic person, the registration number of that person;
- (b) the name of the contact person (if different) and the following contact details –
 - (i) physical address;

- (ii) postal address;
 - (iii) telephone number(s);
 - (iv) facsimile numbers(s); and
 - (v) electronic mail address(es);
- (c) full details of all ownership interests in the person referred to in regulation 5(1)(a), including the identity and nationality of holders of ownership interests and if the holders of ownership interests are juristic persons, full details of all the juristic persons' ownership interests;
- (d) full details regarding foreign ownership interests in the person referred to in regulation 5(1)(a); and
- (e) a complete, accurate and concise statement of the services being provided, including a description and diagram of any network operated, constructed or used.

(2) Any person who is lawfully providing a service or operating, constructing or using a network without a licence as contemplated in section 135(5) of the Act (excluding Telecom and those persons providing services that may be provided without a licence in terms of regulations made in terms of section 37 the Act), must submit in writing to the Authority within the time set out in section 135(5) the Act, an application for a licence or licences in the form made available by the Authority.

(3) The application must –

- (a) identify the legal basis on which the service is provided or network operated, constructed or used;
- (b) indicate the licence or licences that the person referred to in regulation 5(2) believes it is entitled to in terms of the Regulations Setting out Broadcasting and Telecommunications Service Licence Categories, setting out a clear and concise statement of motivation, including reference to the relevant provisions of the Act and regulations; and
- (c) include any other information the person referred to in regulation 5(2) believes might be relevant to the Authority in carrying out its functions set out in sections 135(5-8) of the Act.

(4) Telecom Namibia Limited must submit in writing to the Authority within six (6) months of the coming into operation of the Act, an amendment to its deemed licence application provided for in sections 45(1) and 101(9) of the Act, proposing detailed licence conditions related to the issues set out in sections 45(2), 45(3), 45(4), 45(5), 45(6) of the Act in the form made available by the Authority.

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

Applicants contemplated in section 135(10) of the Act

6. (1) Any person who has an application pending before the Namibian Communications Commission as contemplated in section 135(10) of the Act, must submit in writing to the Authority within sixty (60) days from the date the relevant provisions of the Act come into operation, the following information and documentation in the form made available by the Authority –

- (a) the full and official name of the applicant and if a natural person, the identity number of that person, and if a juristic person, the registration number of that person;
- (b) the name of the contact person (if different) and the following contact details –
 - (i) physical address;
 - (ii) postal address;
 - (iii) telephone number(s);
 - (iv) facsimile numbers(s); and
 - (v) electronic mail address(es);
- (c) a copy of the pending application if available or if not available, a concise statement of the application, and a concise statement of the history and status of the application; and
- (d) an amendment to the application as contemplated in section 135(11) to include –
 - (i) full details of all ownership interests in the applicant, including the identity and nationality of holders of ownership interests and if the holders of ownership interests are juristic persons, full details of all the juristic persons' ownership interests;
 - (ii) full details regarding foreign ownership interests in the applicant; and
 - (iii) any other amendment, setting out clear and concise reasons for the amendment, including references to any relevant provisions of the Act.

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

Persons having authority to use spectrum contemplated in sections 101(11) of the Act

7. (1) Any person who holds a licence, certificate or authority (collectively, in this regulation 7, a licence) contemplated by section 101(11) of the Act must submit a copy of their licence or licences to the Authority within sixty (60) days from the date the relevant provisions of the Act come into operation, provided that if any of the following information is not included in the licence or licences or is inaccurate as recorded in the licence or licences, the licensee must submit such information in writing in the form made available by the Authority –

- (a) full and official name of the licensee, and if a natural person, the identity number of that person, and if a juristic person, the registration number of that person;
- (b) name of the contact person (if different) and the following contact details -
 - (i) physical address;
 - (ii) postal address;
 - (iii) telephone number(s);
 - (iv) facsimile numbers(s); and

- (v) electronic mail address(es);
- (c) full details of all ownership interests in the licensee, including the identity and nationality of holders of ownership interests and if the holders of ownership interests are juristic persons, full details of all the juristic persons' ownership interests;
- (d) full details regarding foreign ownership interests in the licensee;
- (e) a complete and accurate list of licences, certificates and authorities held, and in respect of spectrum use licences, a list of radio frequencies or groups of radio frequencies licensed, and a concise explanation of the services provided using the spectrum, including a description and diagram of any network operated, constructed or used;
- (f) an indication whether and to what extent the spectrum is currently being used; and
- (g) an indication whether and to what extent spectrum use fees have been paid and proof thereof.

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

The application to use spectrum required for defence purposes by the Namibian Defence Force or any other organ of the State in terms of section 101(12) of the Act

8. (1) The Namibian Defence Force and any other organ of State using spectrum for defence purposes that is a deemed licensee in terms of section 101(12) of the Act, must submit in writing to the Authority within ninety (90) days from the date the relevant provisions of the Act come into operation, the following information and documentation in the form made available by the Authority –

- (a) the full and official name of the deemed licensee;
- (b) the name of the contact person and the following contact details –
 - (i) physical address;
 - (ii) postal address;
 - (iii) telephone number(s);
 - (iv) facsimile numbers(s); and
 - (v) electronic mail address(es).

(2) The Namibian Defence Force and any other organ of State using spectrum for defence purposes that is a deemed licensee in terms of section 101(12) of the Act must also submit in writing to the Authority within the time set out in section 101(12) of the Act, an application for a licence or licences required by the Act.

- (3) The application must include –
 - (a) a complete and accurate list of radio frequencies or groups of radio frequencies that have been assigned to it for defence purposes;

- (b) an indication whether and to what extent the spectrum is currently being used;
- (c) a copy of any radio frequency assignments;
- (d) an indication whether and to what extent spectrum use fees have been paid and proof thereof;
- (e) any other information the deemed licensee believes might be relevant to the Authority in carrying out its functions set out in sections 101(12) of the Act.

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

Licence review procedures

9. (1) In respect of any licence review to be performed by the Authority in terms of these regulations, as soon as possible after receiving the information submitted by licensees in terms of these regulations, the Authority will publish a notice in the *Government Gazette* setting out the list of licences issued under previous licensing dispensations along with an indication as to what licence or licences will be issued to the licensees in terms of the Regulations Setting out Broadcasting and Telecommunications Service Licence Categories.

(2) Any person who has a right to a licence that does not appear on the list contemplated in regulation 9(1) above, must submit the information required by these regulations in writing to the Authority within fourteen (14) days from the date of publication of the *Government Gazette* referred to in regulation 9(1), after which the Authority will publish a second notice in the *Government Gazette* setting out a revised list of licences.

(3) After the Authority publishes the second notice referred to in regulation 9(2), the public may submit in writing to the Authority, comments, within thirty (30) days from the date of publication.

(4) If the Authority considers it necessary, it will provide the opportunity to the licensee to respond to public comments.

(5) Licensee responses to public comments must be submitted in writing to the Authority within the time set out by the Authority, which time may not be less than fourteen (14) days from the submission of public comments or if the opportunity for the submission of responses is published in a subsequent *Government Gazette*, not less than fourteen (14) days from the date of publication.

(6) The time for the submission of licensee responses are to be determined by the Authority in light of the nature of the review proceeding.

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

(8) 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.

(9) 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;

- (b) be clear and concise; and
- (c) conform to any further requirements determined by the Authority from time to time.

(10) After receiving any written and oral submissions, the Authority will issue the appropriate new licences contemplated in the Regulations Setting out Broadcasting and Telecommunications Service Licence Categories to licensees, provided however -

- (a) If any licensee does not provide all of the information required by these regulations in the time provided, the licensee's licence may be revoked by the Authority and no new licence will be issued, and in the case of spectrum licences, spectrum may be reallocated to other licensees; and
- (b) No new licence will be issued to licensees in terms of these regulations until –
 - (i) all fees due and payable in respect of the licences being reviewed are paid; and
 - (ii) all licences issued under previous licensing dispensations are returned to the Authority; and
- (c) If the licensee is providing a service that falls within the category of services that may be provided without a licence, the Authority will not issue a service licence to that person.

Transitional licence application procedures

10. (1) Excepting the application to use spectrum by the Namibian Defence Force and any other organ of State using spectrum for defence purposes, in respect of any licence application made or amended in terms of these regulations, the Authority will publish notice of the application in the *Government Gazette*.

(2) After the Authority publishes a notice of an application in the *Government Gazette*, the public may submit in writing to the Authority, comments, within the time set out in the notice, which time may not be less than fourteen (14) days from the date of publication.

(3) If the Authority considers it necessary, it will provide the opportunity to the applicant to respond to public comments.

(4) Applicant responses to public comments must be submitted in writing to the Authority within the time established by the Authority, which time may be not less than fourteen (14) days from the submission of public comments or if the opportunity for the submission of responses is published in a subsequent *Government Gazette*, not less than fourteen (14) days from the date of publication.

(5) The times for the submission of public comments and applicant responses are to be determined by the Authority in light of the nature of the licence application.

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

(7) 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.

- (8) 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;
 - (b) be clear and concise; and
 - (c) conform to any further requirements determined by the Authority from time to time.
- (9) After considering any licence application made or amended in terms of these regulations and any written and oral submissions, the Authority will either deny the application or grant the application, in whole or in part, and issue the appropriate licence or licences contemplated in the Regulations Setting out Broadcasting and Telecommunications Service Licence Categories, provided however –
- (a) If any applicant does not provide all of the information required by these regulations in the time provided, the Authority will not grant and issue a licence; and
 - (b) If the applicant is intending to provide a service that falls within the category of services that may be provided without a licence, the Authority will not issue a service licence to that person.

Oral hearings

11. (1) If the Authority considers it necessary or appropriate, it will also hear oral submissions in respect of any licence review carried out or licence application made or amended in terms of these regulations.

(2) The Authority must invite the public to make oral submissions at least fourteen (14) days prior to the hearing.

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

(4) The format and agenda of the hearing is at the discretion of the Authority, depending on the nature of the proceeding, provided however, that the hearing should be informal in nature.

(5) 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.

(6) If the Authority considers it necessary, it will provide the opportunity to the licensee or applicant to respond to oral submissions.

(7) 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.

(8) 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.

Confidential information

12. (1) Any person providing information or documentation 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 it 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.

(2) Any person making oral submissions may request a closed hearing on the grounds that the submissions are confidential. Closed hearings will be treated as confidential meetings 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

13. (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

14. A person may not communicate with the members of the Board, the CEO or staff members of, or consultants to the Authority to discuss the subject matter of a licence review or licence application proceeding, except as provided for herein.

Record of proceedings

15. (1) All documents deemed relevant by the Authority to the licence review proceedings contemplated by the Act and these regulations, including information and documentation provided in terms of these regulations and decisions made by the Authority, must be maintained by the Authority in a file at the head offices of the Authority and if practicable, on the Authority's website.

(2) All documents deemed relevant by the Authority to the licence application proceedings contemplated by the Act and these regulations, including information and documentation provided in terms of these regulations and decisions made by the Authority, must be maintained by the Authority separately for each application proceeding in files located at the head offices of the Authority and if practicable, electronically, on the Authority's website.

(3) Except for confidential information, any person may examine the licence review and licence application proceedings files 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.

Publication of licensing decisions and licences

16. (1) All decisions made in terms of these regulations and the relevant provisions of the Act will be communicated to the applicants and licensees and other relevant parties in writing together with reasons, and may be published in the *Government Gazette*.

(2) The Authority's register of licences maintained in terms of section 27(3) of the Act and copies of all licences, will be held at the head offices of the Authority and if practicable, on the Authority's website.

(3) Any person may examine the register of licences and copies of licences 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

17. (1) The Authority may, on its own, 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 of notice of the decision, 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 further submissions in a manner stated by the Authority.

Repeal of Regulations

16. The Regulations Regarding Transitional Procedures for Telecommunications and Broadcasting Service Licences and Spectrum Use Licences published in Government Gazette 4714, No. 125 of 2011, dated 18 May 2011, are hereby repealed.

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