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CONTENTS

Page

GENERAL NOTICE

No. 272	Communications Regulatory Authority of Namibia: Regulations regarding licensing procedures for telecommunications and broadcasting service licences and spectrum use licences	1
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General Notice

COMMUNICATIONS REGULATORY AUTHORITY OF NAMIBIA

No. 272 2011

REGULATIONS REGARDING LICENSING 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 Licensing Procedures for Telecommunications and Broadcasting Service Licences and Spectrum Use Licences” published in Government Gazette 4737, No. 170 of 2011, dated 17 June 2011, hereby publishes these “Regulations Regarding Licensing Procedures for Telecommunications and Broadcasting Service Licences and Spectrum Use Licences” in terms of sections 40, 85 and 101, 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 -

(1) Class telecommunications service licence applications;

(2) Broadcasting service licence applications;

(3) Spectrum use licence applications, where the Authority, in its sole discretion, determines that spectrum use licence applications will be processed on a first come, first served basis;

(4) Licence transfer applications (for telecommunications service, broadcasting service and spectrum use);

(5) Licence amendment applications (for telecommunications service, broadcasting service and spectrum use);

(6) Licence renewal applications (for telecommunications service, broadcasting service and spectrum use); and

(7) Withdrawal of licences by licensees (for telecommunications service, broadcasting service and spectrum use).

Class Telecommunications Service licence applications

4. (1) A person intending to provide a class telecommunications service must submit, in writing to the Authority, an application for a class telecommunications service licence in the form made available by the Authority.

(2) The application must –

(a) set out the full and official name of the person intending to provide a class telecommunications service (applicant), and if a natural person, the identity number of that person, and if a juristic person, the registration number of that person;

- (b) set out the name of the contact person (if different from the applicant) 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) set out 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 their ownership interests;
 - (d) set out full details regarding foreign ownership interests in the applicant;
 - (e) identify the category of class telecommunications service licence as contemplated in the Regulations Setting out Broadcasting and Telecommunications Service Licence Categories;
 - (f) set out a complete, accurate and concise statement of the telecommunications services intended to be provided, including a description and diagram of any network to be operated, constructed or used; and
 - (g) include any other information the applicant believes might be relevant to the Authority in considering the application.
- (3) The class telecommunications service licence application must be accompanied by the relevant application fee as determined by the Authority from time to time.
- (4) The class telecommunications service licence application must be accompanied by a spectrum use licence application if the applicant intends to use spectrum in the provision of the telecommunications service.
- (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.

Broadcasting Service licence applications

5. (1) Any person intending to provide a broadcasting service as contemplated in the Act and Regulations Setting out Broadcasting and Telecommunications Service Licence Categories, must submit, in writing to the Authority, an application for a broadcasting service licence in the form made available by the Authority.

- (2) The application must –
 - (a) set out the full and official name of the person intending to provide a broadcasting service (applicant), and if a natural person, the identity number of that person, and if a juristic person, the registration number of that person;
 - (b) set out the name of the contact person (if different from the applicant) and the following contact details -

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- (i) physical address;
 - (ii) postal address;
 - (iii) telephone number(s);
 - (iv) facsimile numbers(s); and
 - (v) electronic mail address(es);
- (c) set out 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 their ownership interests;
- (d) set out full details regarding foreign ownership interests in the applicant;
- (e) if the applicant is a juristic person, set out full names, nationalities and identity numbers of the members of the Board of Directors or other governing body;
- (f) identify the category of broadcasting service licence as contemplated in the Regulations Setting out Broadcasting and Telecommunications Service Licence Categories;
- (g) in respect of the commercial, community, and public broadcasting service categories, indicate whether the applicant intends to provide its own signal distribution service or whether it intends to contract with a signal distribution service licensee for such service;
- (h) in respect of the commercial, community, and public broadcasting service categories, indicate whether the applicant intends to use spectrum in the provision of the broadcasting service;
- (i) set out a complete, accurate and concise statement of the broadcasting services intended to be provided;
- (j) in respect of commercial, community, and public broadcasting service categories, set out a proposed programme schedule detailing the daily transmission time allocated to different programme types;
- (k) include a statement of accounts setting out the financial resources available to the applicant in relation to the broadcasting service licence applied for;
- (l) include a concise statement of expertise and experience of the applicant;
- (m) indicate full details of any ownership interests held in existing broadcasting services licences and other broadcasting services licence applications, by the applicant and if the applicant is a juristic persons, by persons who hold ownership interests in the applicant; and
- (n) include any other information the applicant believes might be relevant to the Authority in considering the application.
- (3) The broadcasting service licence application must be accompanied by the relevant application fee as determined by the Authority from time to time.

(4) In respect of commercial, community, and public broadcasting service categories, the broadcasting service licence application must be accompanied by a spectrum use licence application if the applicant intends to use spectrum in the provision of the broadcasting service.

(5) In respect of commercial, community, and public broadcasting service categories, the broadcasting service licence application must be accompanied by a signal distribution licence application if the applicant intends to provide its own signal distribution service and the applicant is not already a signal distribution service licensee.

(6) 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.

Spectrum use licence applications

6. (1) Any person intending to use spectrum, where the Authority, in its sole discretion, determines that spectrum use licence applications will be processed on a first come, first served basis, must submit, in writing to the Authority, an application for a spectrum use licence in the form made available by the Authority.

(2) The application must -

(a) set out the full and official name of the person intending to use spectrum (applicant), and if a natural person, the identity number of that person, and if a juristic person, the registration number of that person;

(b) set out the name of the contact person (if different from the applicant) 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) set out 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 their ownership interests;

(d) set out a complete list of radio frequencies or groups of radio frequencies being applied for;

(e) set out a complete, accurate and concise statement of the services intended to be provided using the spectrum being applied for;

(f) include the completed technical portion of the application form made available by the Authority; and

(g) include any other information the applicant believes might be relevant to the Authority in considering the application.

(3) The spectrum use licence application must be accompanied by the relevant application fee as determined by the Authority from time to time.

(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.

Transfer of licences and transfer of control of licences

7. (1) A licensee may request the Authority to authorise the transfer of its licence or the transfer of control of its licence by submitting in writing to the Authority, an application to transfer a licence or transfer control of a licence, in the form made available by the Authority.

(2) Name changes and transfers of ownership interests not resulting in a transfer of control do not require prior approval from the Authority, however the Authority must be notified of the impending change at least fourteen (14) days prior to the effective date.

(3) The application must -

- (a) set out details of the licence, including the licence number and include a copy of the licence;
- (b) set out full details of the licensee, including the 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;
- (c) set out the name of the contact person (if different from the licensee) 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);
- (d) in respect of telecommunications service licences, set out the details of the proposed new licensee, called for in sections 4 (2) (a) - (d) and (g) of these regulations;
- (e) in respect of broadcasting service licences, set out the details of the proposed new licensee, called for in sections 5 (2) (a) - (e) and 5 (2) (k) - (n) of these regulations;
- (f) in respect of spectrum use licences, set out the details of the proposed new licensee called for in sections 6 (2) (a) - (c) and (g) of these regulations;
- (g) set out a complete, accurate and concise statement of the reasons for the proposed transfer or transfer of control; and
- (h) include any other information the applicant believes might be relevant to the Authority in considering the application.

(4) The transfer application must be accompanied by the relevant application fee as determined by the Authority from time to time.

(5) If any amendment to the licence is sought, the licence transfer application must be accompanied by a licence amendment application.

(6) 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.

Amendment of licences

8. (1) A licensee may request the Authority to amend its licence by submitting in writing to the Authority, an application to amend a licence in the form made available by the Authority.

(2) Changes to the licensee's name and name and details of contact persons do not require prior approval from the Authority, but the Authority must be notified of the impending change at least fourteen (14) days prior to the effective date.

(3) The application must -

- (a) set out details of the licence, including the licence number and include a copy of the licence;
- (b) set out full details of the licensee, including the 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;
- (c) set out the name of the contact person (if different from the licensee) 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);
- (d) set out a complete, accurate and concise statement of the proposed amendment;
- (e) set out a complete, accurate and concise statement of the reasons for the proposed amendment; and
- (f) include any other information the applicant believes might be relevant to the Authority in considering the application.

(4) The amendment application must be accompanied by the relevant application fee as determined by the Authority from time to time.

(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.

Renewal of licences

9. (1) A licensee may request the Authority to renew its licence by submitting in writing to the Authority, an application to renew a licence in the form made available by the Authority.

- (2) The application must -
 - (a) set out details of the licence, including the licence number and include a copy of the licence;
 - (b) set out full details of the licensee, including the 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;
 - (c) set out the name of the contact person (if different from the licensee) 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);
 - (d) set out a complete and accurate statement detailing any action taken by the Authority or other entity with competent jurisdiction in relation to any breach or alleged breach by the licensee of the Act, regulations or the licensee's licence; and
 - (e) include any other information the applicant believes might be relevant to the Authority in considering the application.
- (3) The amendment application must be accompanied by the relevant application fee as determined by the Authority from time to time.
- (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.

Withdrawal of licences

10. (1) If a licensee cannot provide service in accordance with its licence for a period greater than twenty-four (24) hours, it must notify the Authority of that occurrence within twenty-four (24) hours of the occurrence, or if the licensee was unaware of the interruption of service, as soon as the licensee becomes aware of the occurrence.

(2) If a licensee intends to permanently discontinue providing service in accordance with its licence, it must request the Authority to withdraw its licence by submitting in writing to the Authority, an application to withdraw a licence in the form made available by the Authority.

- (3) The application must -
 - (a) set out full details of the licence, including the licence number and include a copy of the licence;
 - (b) set out full details of the licensee, including the 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;

- (c) set out the name of the contact person (if different from the licensee) 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);
- (d) set out a complete, accurate and concise statement of the reasons for the proposed withdrawal;
- (e) set out the date the licensee intends to permanently discontinue providing service, which must be at least sixty (60) days after the date the application is submitted;
- (f) indicate whether the licensee has paid all fees payable to the Authority in relation to the licence; and
- (g) include any other information the applicant believes might be relevant to the Authority in considering the application.

(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.

Application procedures

11. (1) In respect of any application made in terms of these regulations, except applications concerning spectrum used in conjunction with the following telecommunications services that may be provided without a licence: amateur service, aeronautical service, maritime service, navigation and radar system service, the Authority will publish a notice of the application in the *Government Gazette*.

(2) After the Authority publishes 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 set out 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 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 application made 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 –

- (a) issue the appropriate licence in respect of class telecommunications service licence applications, broadcasting services licence applications and spectrum use licence applications;
- (b) issue the appropriate licence to the transferee in respect of licence transfer applications;
- (c) issue an amended licence in respect of licence amendment applications; or
- (d) issue a renewal licence in respect of licence renewal applications.

(10) In the event the Authority is unable to render a decision within sixty (60) days of the last written or oral submission, the Authority will inform the applicant or licensee of its inability and the reasons for such inability and what measures are being taken to address the matter urgently, which matter must then be addressed within a further maximum period of sixty (60) days, unless the Authority has identified extraordinary circumstances, beyond its reasonable control that makes it impossible to render its decision within the further maximum period of sixty (60) days.

Application procedures concerning spectrum used in conjunction with licence exempt telecommunications services

12. (1) In respect of any application concerning spectrum used in conjunction with the following telecommunications services that may be provided without a licence: amateur service, aeronautical service, maritime service, navigation and radar system service, the Authority may publish a notice of the application in the *Government Gazette* and follow the procedure set out in regulation 11 above, or it may follow the procedures set out in this regulation 12.

(2) After considering any application made in terms of this regulation and any further information submitted by the applicant, the Authority will either deny the application or grant the application, in whole or in part, and –

- (a) issue the appropriate licence in respect of class telecommunications service licence applications, broadcasting services licence applications and spectrum use licence applications;
- (b) issue the appropriate licence to the transferee in respect of licence transfer applications;

- (c) issue an amended licence in respect of licence amendment applications; or
- (d) issue a renewal licence in respect of licence renewal applications.

(3) In the event the Authority is unable to render a decision within thirty (30) days of the last written or oral submission, the Authority will inform the applicant or licensee of its inability and the reasons for such inability and what measures are being taken to address the matter urgently, which matter must then be addressed within a further maximum period of fourteen (14) days, unless the Authority has identified extraordinary circumstances, beyond its reasonable control that makes it impossible to render its decision within the further maximum period of fourteen (14) days.

Licence modification procedures

13. (1) The Authority may initiate a licence modification proceeding contemplated in section 42(2) of the Act by providing notice to a licensee setting out the proposed modification and the grounds for such modification.

(2) The licensee may submit in writing to the Authority, comments within the time set out in the notice, which time may not be less than thirty (30) days from the date of notice.

(3) Thereafter, the Authority will publish a notice, either as originally proposed or as modified taking into account the licensee's comments, of a proposed licence modification in the *Government Gazette*.

(4) After the Authority publishes the notice of a proposed licence modification 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 thirty (30) days from the date of publication.

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

(6) Licensee responses to public comments must be submitted in writing to the Authority within the time set out 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.

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

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

(9) 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.

(10) 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.

(11) After considering any written and oral submissions in respect of a proposed licence modification, the Authority must either issue a modified licence or decide not to issue the modified licence.

(12) In the event the Authority is unable to render a decision within sixty (60) days of the last written or oral submission, the Authority will inform the applicant or licensee of its inability and the reasons for such inability and what measures are being taken to address the matter urgently, which matter must then be addressed within a further maximum period of sixty (60) days, unless the Authority has identified extraordinary circumstances, beyond its reasonable control that makes it impossible to render its decision within the further maximum period of sixty (60) days.

Oral hearings

14. (1) If the Authority considers it necessary or appropriate, it will also hear oral submissions in respect of any application made in terms of these regulations or any licence modification proceeding.

(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 indicating 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 application file by the Authority.

Confidential information

15. (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 application file.

Condonation

16. (1) In the event any party is unable to comply with any time set out in these regulations, it may request from the Authority an extension of time at least seven (7) days prior to the time set out or within such other time period agreed by the Authority upon good cause shown.

(2) The Authority will respond to the request for condonation as soon as practicable, 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 time set out.

***Ex parte* communications**

17. 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 an application proceeding, except as provided for herein.

Record of proceedings

18. (1) All documents deemed relevant by the Authority to the application proceedings contemplated by 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 in files located at the head offices of the Authority and, if practicable, on the Authority's website.

(2) Except for confidential information, any person may examine the application proceeding 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 from time to time, and, if available, on the Authority's website where copies may be downloaded free of charge.

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 4737, No. 170 of 2011, dated 17 June 2011, are hereby repealed.

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