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General Notices

COMMUNICATIONS REGULATORY AUTHORITY OF NAMIBIA

No. 353

2014

NOTICE IN TERMS OF SECTIONS 101 AND 38 OF THE COMMUNICATIONS ACT, 2009 (NO. 8 OF 2009) AND REGULATION 19(1) REGARDING LICENSING PROCEDURES FOR TELECOMMUNICATIONS AND BROADCASTING SERVICE LICENCES AND SPECTRUM USE LICENCES

The Communications Regulatory Authority of Namibia, in terms of sections 85 and 101 of the Communications Act, 2009 (Act No. 8 of 2009) read with regulation 19(1) of the “Regulations Regarding Licensing Procedures for Telecommunications and Broadcasting Service Licences and Spectrum Use Licences”, in Government Gazette No. 4785, General Notice No. 272, dated 29 August 2011, herewith gives notice that the application for a Telecommunications service license and spectrum use licence for Promax Communications (Pty) Ltd has been declined.

THE FOLLOWING ARE THE REASONS FOR THE DECISION:**Application for Telecommunication Service Licence**

Promax Communications (Pty) Ltd submitted applications for a telecommunications service licence and a spectrum use licence on the 23rd August 2013 in accordance with sections 85 and 101 of the Communications Act, 2009 (Act No. 8 of 2009) (hereinafter referred to as the "Act") and the Regulations regarding Licensing Procedures for Telecommunications and Broadcasting Service Licenses and Spectrum Use licenses as published in Government Gazette No. 4785, General Notice No. 272 of 29 August 2011. All licence application fees in respect of the application were paid. Promax Communications (Pty) Ltd intends to provide voice services utilizing Voice-over-IP on a prepaid basis, focus on the small to medium enterprise market offering prepaid voice services via VOIP technology, fax-to-email and SMS/instant messaging and premium rated services.

Promax Communications (Pty) Ltd is a 100% Namibian owned company with Registration No. 2005/759. There are no foreign ownership interests in the Promax Communications (Pty) Ltd and therefore complies with the provisions of section 85(2) of the Act.

Following due process in terms of Regulations Regarding Licensing Procedures for Telecommunications and Broadcasting Service Licenses and Spectrum Use Licenses, the Authority published a notice in the Government Gazette No. 5396, General Notice No. 4, dated 27 January 2014, allowing fourteen (14) days for public comments from the date of publication of the Notice in the *Gazette*. The commenting period lapsed on the 10th of February 2014, and the Authority received comments from Telecom Namibia Limited.

When considering the award of a telecommunications service licence, the Authority is obliged to consider the provisions of section 39(3) of the Communications Act, which provides as follows:

"When considering an application for the issue of a telecommunications service license the Authority is obliged to consider the following -

- (a) national defence or public security;*
- (b) technical constraints due to the limited availability of frequencies;*
- (c) the lack of technical and financial capability to substantially meet the obligations arising out of the applicant's operating conditions or the fact that it does not meet prior specified selection criteria; or the fact that the applicant has been subject to penalties referred to in section 115(4)."*

The Authority is of the view that Promax Communications (Pty) Ltd will not be able to substantially meet the requirements of a telecommunications service licence as set out in section 39(3) for the following reasons:

- i) The business case submitted by Promax Communications (Pty) Ltd does not identify the competitors of Promax Communications (Pty) Ltd in the target market;
- ii) The tariffs submitted are below the regulated mobile and fixed voice termination rates and do not include operational expenses related to the leasing of backhaul transmission links from existing licensees, although Promax Communications (Pty) Ltd will be dependent on these entities to deliver telecommunications services to customers on a national basis. The Authority is therefore, unable to determine future sustainability of the company should a licence be awarded;
- iii) Promax Communications (Pty) Ltd did demonstrate to the Authority that the company will be able to comply with the standard licensing conditions for telecommunications service licensees in respect of regulations 8 and 10 regarding Licence Conditions for Telecommunications Service Licences published in Government Gazette No. 5037, General Notice No. 308 dated

13 September 2012, as Promax Communications (Pty) Ltd has stated its intention to charge below cost tariffs and will have difficulty in complying with the forthcoming Quality of Service regulations related to billing and customer service and network quality.

- iv) The Authority is further of the view that Promax Communications (Pty) Ltd will further have difficulties in complying with the forthcoming Quality of Service regulations because it does not intend to establish a fully-fledged office or supply end-user equipment to customers and will rely on best effort technologies operating in the spectrum use licence exempt spectrum band with no protection from interference to provide voice services.

In light of the a foregoing considerations of fact and law and evaluation thereof in terms of the criteria as set out in Section 85(8) (b) of the Act, the Authority resolved to decline the service licence application for a telecommunications service licence submitted by Promax Communications (Pty) Ltd.

Application for spectrum use licence

Section 101 (7) of the Act provides that “*where a person applies for a licence to operate a network or provide...broadcasting services, that person must also apply for such spectrum use licences as are necessary to render the service concerned.*” Consequently, on 23rd August 2013, Promax Communications (Pty) Ltd submitted an application for spectrum use for utilisation of 5GHz spectrum to provide last mile access to their future customers.

Pursuant to the provisions of section 101 (6) of the Act, an applicant may only be issued with a spectrum use licence, where the operation of a network or the provision of broadcasting service or the use thereof entails the use of radio waves. Section 101(8) places a duty on the Authority to consider the application for spectrum in conjunction with the application for a service licence and to ensure that such spectrum use licence as may be required is issued to enable the applicant to render the services for which the service licence is issued.

Although the Regulations Regarding Licensing Procedures for Telecommunications and Broadcasting Service Licences and Spectrum Use Licences were already published in 2011 the Authority noted that Promax Communications (Pty) Ltd does not have a clear understanding of the utilization of these spectrum bands. However, the Authority did not evaluate the spectrum use application further as no spectrum use licences are issued in licence exempt spectrum band and the utilization of these spectrum bands are not protected from interference.

Therefore, in view of the fact that the telecommunications service licence application has been declined, the Authority has similarly resolved to decline the application for a spectrum use licence submitted by Promax Communications (Pty) Ltd be declined.

L.N. JACOBS
CHAIR PERSON OF THE BOARD
COMMUNICATIONS REGULATORY AUTHORITY

COMMUNICATIONS REGULATORY AUTHORITY OF NAMIBIA

No. 354

2014

NOTICE IN TERMS OF THE REGULATIONS REGARDING LICENSING PROCEDURES FOR TELECOMMUNICATIONS AND BROADCASTING SERVICE LICENCES AND SPECTRUM USE LICENCES

The Communications Regulatory Authority of Namibia, in terms of sections 31 read with regulations 19 and 20 of the “Regulations Regarding Licensing Procedures for Telecommunications and Broadcasting Service Licences and Spectrum Use Licences”, published in Government Gazette

No. 4785, General Notice No. 272, dated 29 August 2011 (as amended) herewith gives notice that it has reconsidered the applications for a broadcasting service licence and a spectrum use licence by Confluence Broadcasting CC as submitted by Confluence Broadcasting CC and has denied the application in whole.

THE FOLLOWING ARE THE REASONS FOR THE DECISION:

- a) Confluence Broadcasting CC submitted an application for a commercial broadcasting service licence to provide FM broadcasting. As per Section 87(1) of the Act such a service licence must be issued for a period of 5 years. The initial statement provided by Confluence Broadcasting CC indicated that First Finance, Nigeria would provide funding, but that it may be withdrawn after an initial investment period of 3 years. This time period falls short of the period for which the licence is being considered. On written request from the Authority dated the 24th October 2013, Confluence Broadcasting CC submitted proof of its Namibian bank account. However, although Confluence Broadcasting CC has submitted proof of start up capital, the business case does not give proof of financial resources for sustenance of the radio station.
- b) The Walvis Bay area is already well serviced by existing broadcasters including the national broadcaster. The program schedule submitted by Confluence Broadcasting CC does not indicate compelling content not already provided by existing Broadcasters as it is centered around a morning show, music and news every day of the week. The visual radio concept is not unique in that it is already offered by licenced and unlicenced operators, depending on the model chosen.
- c) Given the fact that spectrum is a scarce resource and because Confluence Broadcasting CC did not provide proof that it will add value to the current broadcasting services available by adding new content not already available in the area, the Authority is of the opinion that the objectives of clause 85(8)(f) to ensure the optimal use of spectrum will not be achieved by awarding this licence.

In light of the consideration of the information submitted with the application and evaluation thereof based on the criteria as set out in Section 85(8) (b) and (f) of the Communications Act, 2009, the Authority therefore resolved not to award the licences.

L.N. JACOBS
CHAIR PERSON OF THE BOARD
COMMUNICATIONS REGULATORY AUTHORITY
