



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

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CONTENTS

Page

GENERAL NOTICES

No. 287	Communications Regulatory Authority of Namibia: Notice in terms of Section 53 of the Communications Act, 2009 (Act No. 8 of 2009) read with the Regulations Regarding the Submissions of Inter-connection Agreements and Tariffs	2
No. 288	Communications Regulatory Authority of Namibia: Notice in terms of Section 101(2) of the Communications Act, 2009 (Act No. 8 of 2009) and Regulations 11 and 20 of the Regulations Regarding Licensing Procedures for Telecommunications and Broadcasting Service Licences and Spectrum Use Licences	4
No. 289	Communications Regulatory Authority of Namibia: Notice of Determination of Lapsing of Telecommunications Service Licence in terms of Regulation 12 (4) of the Regulations Regarding Licence Conditions for Broadcasting Service Licences	5
No. 290	Communications Regulatory Authority of Namibia: Notice in terms of Sections 101 and 85 of the Communications Act, 2009 (Act No. 8 of 2009) and the Regulations Regarding Licensing Procedures for Telecommunications and Broadcasting Service Licences and Spectrum Use Licences	10
No. 291	Communications Regulatory Authority of Namibia: Notice in terms of the Regulations Regarding Licensing Procedures for Telecommunications and Broadcasting Service Licences	15
No. 292	Communications Regulatory Authority of Namibia: Notice to conduct an oral hearing for the Proposed Benchmark Charges in terms of Regulation 6(1) of the Regulations Regarding Hearings	17
No. 293	Communications Regulatory Authority of Namibia: Notice to conduct an oral hearing in respect of the Proposed Regulations to Impose a Universal Service Levy on Telecommunications Service Providers and the Regulations Prescribing the Provision of Universal Service by Telecommunication Service Licensees in terms of Regulation 7(2) of the Regulations Regarding Rule Making Procedures .	18

General Notices

COMMUNICATIONS REGULATORY AUTHORITY OF NAMIBIA

No. 287

2015

NOTICE IN TERMS OF SECTION 53 OF THE COMMUNICATIONS ACT, 2009 (ACT NO. 8 OF 2009) READ WITH THE REGULATIONS REGARDING THE SUBMISSIONS OF INTERCONNECTION AGREEMENTS AND TARIFFS

The Communications Regulatory Authority of Namibia, in terms section 53(1) and (7) of the Communications Act read with regulation 8 of the “Regulations Regarding the Submission of Interconnection Agreements and Tariffs”, in Government Gazette No. 4714, Notice No. 126, dated 18 May 2011, herewith gives notice that it has approved tariffs for new VSAT products as submitted by MWireless (Pty) Ltd t/a AfricaOnline Namibia, which notwithstanding date of publication in the Gazette came into force on 31 May 2015.

REASONS FOR THE APPROVAL OF THE TARIFFS

In terms of section 53 (1) and (7) of the Communications Act, 2009 (Act No. 8 of 2009) (hereinafter referred to as “the Act”), MWireless (Pty) Ltd t/a AfricaOnline Namibia (hereinafter referred to as “AfricaOnline”), filed for the approval of tariffs for new VSAT products on 5 March 2015. The terms and conditions for the product were however only received on 30 March 2015.

PROCEDURAL COMPLIANCE

The proposed tariffs were published as General Notice No. 151 in the Government Gazette No. 5713 dated 21 April 2015 in terms of Regulation 8 of the “Regulations Regarding the Submission of Interconnection Agreements and Tariffs” published in Government Gazette No. 4714 of 18 May 2011.

Comments were invited from the public, in terms of the Notice published in the *Gazette*, within a period of fourteen (14) days from the date of publication of the Notice in the *Gazette*, which period lapsed on 7 May 2015.

No public comments were received in respect of the tariffs as published during the commenting period, and as such no reply comments were required from AfricaOnline. The date of commencement of the tariffs is 31 May 2015.

FINANCIAL AND ECONOMIC ANALYSIS OF THE MWIRELESS (PTY) LTD t/a AFRICAONLINE TARIFFS FOR NEW VSAT PRODUCTS

The tariff information is as follows:

Table 1: Proposed Tariffs

Product	Downlink	Uplink	Volume	Price Ex VAT
Name	k CIR (kbps)	Target (kbps)	(GB)	N\$
Afri KA - Consumer500	512	128	5	480
Afri KA - Consumer1000	1024	256	15	649
Afri KA - Consumer2000	2048	512	20	999
Afri KA - Consumer4000	4096	1024	25	1,499

Afri KA - Consumer6000	6144	1536	35	1,999
Afri KA - Consumer10000	10240	2048	40	2,799
Afri KA - Consumer15000	15360	2560	50	3,499
Afri KA - Professional2000	2048	512	50	2,999
Afri KA - Professional4000	4096	1024	75	4,299
Afri KA - Professional6000	6144	1536	125	6,599
Afri KA - Professional10000	10240	2048	250	11,999
Afri KA - Professional15000	15360	2560	350	15,999
Afri KA - Professional1000	1024	512	UNLTD	7,999
Afri KA - Activation Charge				500
Afri KA - Charge per excess GB				149
Afri KA - Consumer - Private/Carrier NAT IP				
Afri KA - Consumer - Public IP /32				99
Afri KA - Professional IP /32 (Free)				
Afri KA - Professional IP /30				99
Afri KA - Professional IP /29				299
Afri KA - Professional IP /28				799
Afri KA - Professional IP /27				1,499
Hardware Kit				8,000
Installation				1,500
Per km charge				5.5

AfricaOnline Namibia is part of the IwayAfrica Group that has recently started selling KA Band VSAT solutions through Avanti PLC in various countries. Avanti works off spot beams and therefore only some parts of Namibia will be covered for the time being.

TABLE 2: COMPARISON

PRODUCT	VOLUME GB	AFRICA ONLINE	AFRICA ONLINE	MTN BUSINESS
		New Proposed Tariff	Previously Approved Tariffs	
Afri KA - Consumer500	5	480		
Afri KA - Consumer1000	15	649		
Afri KA - Consumer2000	20	999	4,099	6,620
Afri KA - Consumer4000	25	1,499		
Afri KA - Consumer6000	35	1,999		
Afri KA - Consumer10000	40	2,799		
Afri KA - Consumer15000	50	3,499		15,440
Afri KA - Professional2000	50	2,999		
Afri KA - Professional4000	75	4,299		
Afri KA - Professional6000	125	6,599		
Afri KA - Professional10000	250	11,999		
Afri KA - Professional15000	350	15,999		
Afri KA - Professional1000	UNLTD	7,999		

From the above it could be seen that it is very difficult to compare these tariffs to other tariffs for VSAT product approved for AfricaOnline and MTN Business (Pty) Ltd since this is a new and

completely different product. However, from the few comparisons that could be made on price (which excludes upload and download speed) it is clear that this product will be cheaper. It will also provide more choice to customers.

The tariffs are not deemed anti-competitive and are not unreasonably discriminatory since it is available to a limited number of customers until the whole of Namibia is covered and the product can be provided nationally.

All requirements in terms of section 53 of the Act that deals with the approval of tariffs have been adhered to as indicated above. All pertinent information as required by section 53(9) was submitted to the Authority such as the terms and conditions applicable to the provision of services by AfricaOnline, including rights and remedies available to customers. The tariffs contained all pertinent information relating to the tariff such as costing and budget information as required by section 53(18) of the Act. The date of implementation was indicated as 31 May 2015 (which date is not less than 60 days from the date of the filing of the tariff) as required by section 53(8) of the Act).

In light of the above, the Authority approved the tariffs for new VSAT services as submitted by Mwireless (Pty) Ltd t/a AfricaOnline.

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

COMMUNICATIONS REGULATORY AUTHORITY OF NAMIBIA

No. 288

2015

**NOTICE IN TERMS OF SECTION 101(2) OF THE COMMUNICATIONS ACT, 2009
(ACT NO. 8 OF 2009) AND REGULATIONS 11 AND 20 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 section 101(2) of the Communications Act (No 8 of 2009) read with Regulations 11 and 20 of the Regulations Regarding Licensing Procedures for Telecommunications and Broadcasting Service Licences and Spectrum Use Licence, as published in Government Gazette No. 4785, General Notice No. 272 dated 29 August 2011 (as amended), herewith gives notice that it wishes to rectify the notice published in Government Gazette No. 5745, General Notice No. 191, dated 29 May 2015, which indicated that the Authority allocated additional spectrum to Paratus Telecommunications (Pty) Ltd in the following bands:

- a) 1746 – 1765 MHz paired with 1841-1860 MHz
- b) 1935 – 1965 MHz paired with 2125-2155 MHz

Kindly note that the actual correct additional allocated spectrum to Paratus Telecommunications (Pty) Ltd is:

- a) 1840.2 – 1860 MHz paired with 1745.2-1765 MHz
- b) 2130 – 2150 MHz paired with 1940 – 1960 MHz.

Kindly further be informed that the rest of the notice as published in Government Gazette No. 5745, General Notice No. 191, dated 29 May 2015 remains valid and unchanged.

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

COMMUNICATIONS REGULATORY AUTHORITY OF NAMIBIA

No. 289

2015

**NOTICE OF DETERMINATION OF LAPSING OF BROADCASTING SERVICE LICENCE
IN TERMS OF REGULATION 12 (4) OF THE REGULATIONS REGARDING LICENCE
CONDITIONS FOR BROADCASTING SERVICE LICENCES**

The Communications Regulatory Authority of Namibia, in terms of regulation 12 (4) of the “Regulations regarding Licence Conditions for Broadcasting Service Licences” as published in Government Gazette No. 5037, Notice No. 309 dated 13 September 2012 and in terms of regulation 6(4) and (5) of the Regulations setting out Licence Conditions for Spectrum Use Licences as published in Government Gazette No. 5354, General Notice No. 469, dated 2 December 2013, herewith gives notice that the Broadcasting Service License issued in terms of section 85 of the Communications Act, 2009 (Act No. 8 of 2009) to Equity Broadcasting CC t/a Equity FM has lapsed on 19 April 2013, and the Spectrum Use Licences for FM Broadcasting awarded in conjunction with the broadcasting service licences in Katima Mulilo, Klein Waterberg and Rössing Mountain issued in terms of section 101 of the Communications Act, 2009 (Act No. 8 of 2009) has lapsed on 1 June 2014.

The Authority awarded Equity Broadcasting CC t/a Equity FM (hereinafter referred to as “Equity FM”) a Commercial Broadcasting Service Licence in terms of section 85 of the Communications Act, 2009 (Act No. 8 of 2009) (hereinafter referred to as “the Act”) and regulation 11 (9) Regulations regarding Licensing Procedures for Telecommunications and Broadcasting Service Licences and Spectrum Use Licences as published in Government Gazette No. 4785, General Notice No. 272 dated 29 August 2011 (as amended) (hereinafter referred to as “the Licensing Procedures Regulations”) on 19 April 2013. In addition thereto the Authority awarded three (3) spectrum use licences for FM broadcasting in Katima Mulilo, Klein Waterberg and Rössing Mountain in conjunction with the service licence on the same date.

The award of the broadcasting service licence and spectrum use licences were published in Government Gazette No. 5179, General Notice No. 113 dated 19 April 2013 and came in force and effective on the same date.

BACKGROUND TO THE MATTER**Broadcasting service licence**

The broadcasting service licence was awarded subject to the Regulations regarding Licence Conditions for Broadcasting Service Licences as published in Government Gazette No. 5037, Notice No. 309 dated 13 September 2012.

Regulation 12(4) of the aforementioned regulations states as follows-

“In terms of section 87(7) of the Act, in the event licensees fail to commence broadcasting services within a period of six (6) months from the date of issue of the licence, such licence shall automatically expire (our emphasis) at the end of the six (6) month period, without the Authority having given notice to the licensee, unless otherwise approved by the Authority in advance.”

In terms of the above-mentioned regulation, Equity was required to commence commercial broadcasting services by 18 October 2013 which date is the last day of the six (6) months period referred to above. However, Equity FM did not inform the Authority that it has commenced commercial broadcasting services nor submitted a request that the Authority grant condonation to extend the six (6) month period to a later date for commencement of services.

Spectrum use licences

The spectrum service licences were awarded subject to the Regulations regarding Licence Conditions for Spectrum Use Licences as published in Government Gazette No. 5354, Notice No. 469 dated 2 December 2013.

Regulation 6(4) and (5) of the aforementioned regulations states as follows-

“(4) A spectrum use licence issued in respect of telecommunications and broadcasting service licences shall lapse six months after the date of issuance thereof.

(5) If the Authority-

(a) Is satisfied that a licensee has-

- (i) within six months after issue of licence, failed to commence to carry on services in respect of which it is licenced;*
- (ii) failed to pay licence fees payable; or*
- (iii) ceased to carry on services in respect of which it is licenced, the Authority may by written notice to the licensee inform such licensee that it intends to cancel such licensee’s spectrum use licence and in such notice state the grounds for such intended action.”*

Subsequently, the six (6) month period for all spectrum use licences awarded prior to this date will come into force on 1 June 2014.

In terms of the above-mentioned licence conditions, Equity was required to commence utilisation of the spectrum use licences in the following locations: Katima Mulilo, Klein Waterberg and Rössing Mountain by 1 June 2014 which date is the last day of the six (6) months period referred to above. However, Equity FM did not inform the Authority that it has not commenced utilisation of the spectrum use services nor submitted a request that the Authority grant condonation to extend the six (6) month period to a later date for commencement of utilisation of the spectrum use licences.

Equity FM proceeded to submit an application for a spectrum use licence for a studio link on 3 April 2014 between its studio in Otjiwarongo and the water tower owned by Namwater within the municipal boundaries of Otjiwarongo. It should be noted that the broadcasting service licence awarded to Equity FM has already expired prior to the date of this application.

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.

Further thereto, section 101(7) of the Communications Act stipulates as follows:

“When a person applies for a licence to operate a network or provide telecommunications services or broadcasting services, that person must also apply for such spectrum licences as are necessary to render the service concerned.”

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. Read jointly, these sections suggest that if an applicant has applied for a broadcasting service licence, it must also have such spectrum use licence as is necessary to render the service concerned and further that a spectrum use licence is required in addition to a broadcasting service licence.

Application for a spectrum use licence for a studio link

Further concerns were raised by the Authority due to the fact that an application was submitted for an additional spectrum use licence for a studio link to terminate at the water tower in Otjiwarongo on 3 April 2014. The Authority has not at any point in time awarded a spectrum use licence to Equity FM for a site located at the water tower in Otjiwarongo. The spectrum use licence awarded to Equity FM for FM broadcasting in Otjiwarongo on 19 April 2013 stated the site to be located on Klein Waterberg which is situated some distance away from the town of Otjiwarongo.

Regulation 8(1)(c) of the Regulations Setting Out Licence Conditions for Spectrum Use Licences as published in Government Gazette No. 5354, Notice No. 469 dated 2 December 2013 states as follows-

“(c) Licensees must not change, without prior written consent of the Authority, the location of a transmitter and the specific geographical area to which services may be rendered as reflected in the licence certificate.”

Equity FM submitted a letter to the Authority on 19 August 2014 requesting authorisation from the Authority to move its transmitter for Klein Waterberg to the water tower located within the municipal area of Otjiwarongo. No authorisation was provided by the Authority. As indicated above under point 6.2.1 the broadcasting service licence has already lapsed on 18 October 2013.

STEPS TAKEN BY THE AUTHORITY

The Authority has contracted LS Telcom to conduct a broadcasting site audit utilising a drone to investigate compliance of broadcasting service licensees with their service and spectrum use licence conditions. The audit was completed on 30 September 2014 and the final reports were submitted to the Authority on 27 October 2014. The aforementioned audit included all the towers located at Rössing Mountain and Klein Waterberg.

The broadcasting site audit report reflected that Equity FM was not providing broadcasting services from Rössing Mountain (90.1 MHz) or Klein Waterberg (93.1 MHz) nor were any transmissions detected on any other tower in the vicinity as per the spectrum use licences awarded to Equity FM.

NOTICE OF LAPSING OF SPECTRUM USE LICENCE

Subsequently, the Authority addressed a letter to Equity FM on 12 January 2015 in terms of Regulation 6(4) and (5) of the Regulations Setting Out Conditions for Spectrum Use Licences as published in Government Gazette No. 5354, Notice No. 469 dated 2 December 2013 giving written notice that the spectrum use licence awarded to Equity FM for Katima Mulilo, Rössing Mountain and Klein Waterberg has lapsed.

Equity FM responded to the Authority on 6 February 2015 confirming that it is not utilising its spectrum use licences awarded for Katima Mulilo and Rössing Mountain to date and is therefore, not providing broadcasting services in these areas.

Contrary to the broadcasting site audit report, Equity FM stated that it is offering broadcasting services in Otjiwarongo as from 10 September 2014 from its transmitter site located at the water tower in Otjiwarongo.

The Authority thus travelled to Otjiwarongo to again conduct spectrum sweeps to verify the claim made by Equity FM that it is providing broadcasting services. The spectrum sweeps were concluded during the last week of February 2015. The results showed that Equity FM was providing broadcasting services on 93.1 MHz from transmitters located at the water tower located within the municipal boundaries of Otjiwarongo.

ANALYSIS OF SUBSTANTIVE ISSUES

Spectrum use licences awarded for Katima Mulilo and Rössing mountain

Equity FM confirmed that it is not utilising the spectrum use licences awarded on 19 April 2013 in respect of Katima Mulilo and Rössing Mountain. This corresponds with the broadcasting site audit conducted for Rössing mountain. The Authority is therefore, satisfied that Equity has failed to commence with the provision of services in respect of its spectrum use licence for Katima Mulilo and Rössing Mountain and thus the Authority is satisfied that it is just and equitable to withdraw the said licences.

It is further noted from the response of Equity FM dated 6 February 2015 that no transmitter equipment has been ordered as the quotation from Satcom (Pty) Ltd is still pending.

Equity FM further states that it has requested a satellite uplink from NBC which was subsequently granted and attached a quotation as proof. However, the Authority doubts the Authenticity of the said quotation, because it is not printed on a NBC letterhead or any other form identifying NBC as the provider thereof, does not indicate whether the uplink will be provided at Rössing Mountain or Katima Mulilo and is not signed by a representative of the NBC.

The Authority thus concludes that the aforementioned spectrum use licences have lapsed in terms of Regulation 6(4) and (5)(a)(i) of the Regulations Setting Out Conditions for Spectrum Use Licences as published in Government Gazette No. 5354, Notice No. 469 dated 2 December 2013.

Broadcasting service licence and spectrum use licence at Otjiwarongo

By its own admission Equity FM has not commenced broadcasting services within six (6) months from the 19 April 2013, being the date of issuance of the licence. The broadcasting service licence awarded by the Authority on 19 April 2013 therefore automatically expired on 18 October 2013 in terms of Regulation 12(4) of the Regulations regarding Licence Conditions for Broadcasting Service Licences as published in Government Gazette No. 5037, Notice No. 309 dated 13 September 2012. Section 83(1) of the Act provides as follows -

“(1) No person may broadcast or otherwise operate a broadcasting service or do or permit anything to be done for which a broadcasting licence is required in terms of this Act, unless he or she is in possession of the appropriate licence so required, in addition to any other licence or certificate which may be required by the Act for the transmission or operation of a broadcasting service undertaken by him or her or for the doing of that thing”

Equity FM does not hold a commercial broadcasting service licence and is not in a position to provide broadcasting services since the service licence automatically expired on 18 October 2013. Any provision of broadcasting services by Equity FM after this date is therefore, illegal as contemplated in terms of section 83 (1) of the Act.

Further thereto section 101(1) and (6) of the Act provides as follows-

“(1) Unless expressly provided otherwise by this Act, no person may-

- (a) transmit any signal by radio waves;*
- (b) use radio apparatus to receive any signal transmitted by radio waves;*
or
- (c) instruct, permit or fail to prohibit any person in his or her employ or under his or her control to perform any action referred to in paragraph (a) and (b), except under and in accordance with a licence issued in terms of subsection (2) and if applicable a certificate or authority issued in terms of subsection (3).*

(6) A spectrum licence is required as provided in subsection (2) in addition to any licence to operate a network or to provide telecommunications service or a broadcasting services issued under this Act, where the operation of the network or the provision of the service or the use thereof entails the use of radio waves as contemplated in that subsection.”

Equity FM was awarded spectrum use licences to be utilised in conjunction with the broadcasting service licence awarded on 13 April 2013. The expiry of the broadcasting service licence on 18 October 2013 therefore prohibits Equity FM from utilising spectrum to provide the said services. Notwithstanding the above,, Equity FM proceeded to utilise spectrum frequencies to provide broadcasting services. In addition thereto it utilised this frequency at a different location from the location stated on the licence awarded and also implemented a studio link on frequencies without being awarded a spectrum use licence to do so. This constitutes a breach of the licence condition 8(1) (c), which stipulates that a licensee must not change, without prior written consent of the Authority, the location of a transmitter.

The Authority concludes that-

- (i) the broadcasting services licence awarded to Equity FM on 19 April 2013 has expired at the end of the six month period as provided for in terms of Regulation 12 (4) of the Regulations regarding Licence Conditions for Broadcasting Service Licences as published in Government Gazette No. 5037, Notice No. 309 dated 12 September 2012, The aforementioned service licence lapsed on 18 October 2013, due to the fact that no commercial broadcasting services were launched by Equity FM within the aforementioned time period; and
- (ii) that the spectrum use licences awarded to Equity FM for Katima Mulilo, Klein Waterberg and Rössing Mountain in conjunction with its service licence lapsed on 01 June 2014, being six(6) months from the date of publications of the Regulations Setting Out Licence Conditions for Spectrum Use Licences as published in Government Gazette No. 5354, Notice No. 469 dated 2 December 2013 due to the fact that Equity FM did not utilise the spectrum to provide broadcasting services within the six (6) month timeframe as required by Regulation 6(4) and (5)(i) of the said regulations.

Further thereto the aforementioned actions by Equity FM constitute a regulatory offence in terms of section 114(1) of the Act by illegally providing broadcasting services and utilising spectrum illegally to provide these services whereas section 83 of the Act prohibits the provision of broadcasting services without a licence.

In light of the above, the commercial broadcasting service licence awarded to Equity FM on 19 April 2013 has automatically expired due to the fact no commercial broadcasting services have been provided in respect of the said licence within six (6) months from date of issue of the licence. In addition, that the spectrum use licences awarded in conjunction with the broadcasting service licences in respect of Katima Mulilo, Klein Waterberg and Rössing Mountain has lapsed on 1 June 2014, due to the fact that the spectrum has not been utilised within six (6) months from the date of publication of the above-mention regulations in respect of the spectrum use licence conditions.

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

COMMUNICATIONS REGULATORY AUTHORITY OF NAMIBIA

No. 290

2015

NOTICE IN TERMS OF SECTIONS 101 AND 85 OF THE COMMUNICATIONS ACT, 2009
(ACT NO. 8 OF 2009) AND 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 85 and 101 of the Communications Act, 2009 (Act No. 8 of 2009) read with Regulations 5, 6 and 11 of the “Regulations Regarding Licensing Procedures for Telecommunications and Broadcasting Service Licences and Spectrum Use Licences”, in Government Gazette No. 4785, Notice No. 272, dated 29 August 2011, herewith gives notice that Maroela Trust t/a Shipi FM has been awarded with a Community Broadcasting Service Licence and Spectrum Use Licence as contained in the table below:

(a) Broadcasting Service Licence Application:

Licensee's Name;	Licensee's citizenship or place of incorporation;	Percentage of Stock owned by Namibian Citizens or Namibian Companies controlled by Namibian Citizens;	Category of Broadcasting Service Licence as contemplated in the Regulations Setting out Broadcasting and Telecommunications Service Licence categories;	Provision of Signal Distribution;	Whether Licensee intends to use spectrum in the provision of broadcasting services intended to be provided;	Proof of Application fees paid up to date submitted?
Maroela Trust t/a Shipi FM A trust established in terms of a Constitution with attributes similar to a Section 21 company	Namibian	100 %	Community Broadcasting Service Licence	Own	Yes	Yes

(b) Spectrum Use Licence Application

Licencee's Name;	Licencee's citizenship or place of incorporation;	Percentage of Stock owned by Namibian Citizens or Namibian Companies controlled by Namibian Citizens;	Radio frequency assigned;	Description of geographic coverage area(s);			Maximum Output Power & Coordinates;	Service to be provided using frequency applied for;	Party providing Signal Distribution;	Proof of Application Fees paid up to date submitted?
				Region;	District;	City/Town;				
Maroela Trust t/a Shipi FM A trust established in terms of a Constitution with attributes similar to a Section 21 company	Namibia	100 % A trust established in terms of a Constitution with attributes similar to a Section 21 company	103.6 MHz 450.0250 / 460.0250 MHz	Oshana	Ondangwa	Ondangwa Telecom Namibia Tower	250W S17°54'55.27" E15°17'17.22"	Community Broadcasting Service License FIXED	Own	Yes

REASONS FOR THE DECISION ARE AS FOLLOWS:

Maroela Trust (hereinafter referred to as “the Applicant”) submitted applications for a community broadcasting service licence and a spectrum use licence on 16 August 2014 for consideration by the Authority, in accordance with sections 85 and 101 of the Communications Act, 2009 (Act No. 8 of 2009) (hereinafter referred to as the “Act”) and regulations 5 and 6 of the Regulations regarding Licensing Procedures for Telecommunications and Broadcasting Service Licences and Spectrum Use licences 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.

As per documentation submitted with the application for a community broadcasting service licence, the Applicant is a 100% Namibian owned trust with registration no T/363/06. There are no foreign ownership interests in the Application. The trustees are listed as follows:

Name of Member	ID. Number	Nationality of Owner
Martin Kaali Shipanga	6803061100026	Namibian
Elsie Ndeshipanda Heita	69062200461	Namibian
Silvanus Thikameni Kathindi	68111600054	Namibian

In terms of Section 101 (7) of the Communications Act, 2009 (Act No. 8 of 2009), “*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, the Applicant submitted an application for spectrum use for FM broadcasting frequency between 87 MHz and 108 MHz and a studio link between 400 MHz and 470 MHz, also dated 16 August 2014, to provide broadcasting services in the geographical area of Ondangwa with a transmitter output power of 250 Watt.

The Applicant intends to provide their own signal distribution service as required by Regulation 5(2)(g) of the Regulations Regarding Licensing Procedure for Telecommunications and Broadcasting Service Licences and Spectrum Use License. It is noted however, that the Applicant will enter into a site sharing agreement with Telecom Namibia Limited to attach its antenna and transmitter to the existing infrastructure owned by Telecom Namibia Limited as per documentation submitted to the Authority.

As required by regulation 5(2)(j) of the Regulations Regarding Licensing Procedure for Telecommunications and Broadcasting Service Licences and Spectrum Use Licence, the Applicant submitted a proposed program schedule indicating its intention to provide broadcasting services on a 24-hour basis from Monday to Sunday.

The Authority requested for outstanding information related to the banking statements of the Trust and concise statements of expertise and experience of the Applicant on 3 September 2014. The Applicant submitted all information to the Authority on the 5 September 2014.

The Authority requested the Applicant to make an oral submission in respect of its application on 15 January 2015.

At the oral hearing, the Applicant gave a brief overview of the expertise of the management team that will ensure the operation of the radio station in Ondangwa, financial resources and intended program schedule. The Authority posed various questions to the applicant on the forecasted market growth, the community it will serve, programme content, financial resources technical expertise and options for site sharing considered. The Applicant provided detailed responses stating-

- i. that the Applicant has sufficient funds available for this project and has submitted proof thereof with its application documentation to the Authority;

- ii. that the Applicant has applied for site sharing with Telecom Namibia and will be responsible for its own signal distribution;
- iii. that the radio content will focus on educational and health information community announcement, contributing to Vision 2030 and opportunities in Ondangwa as well as local and national news; and
- iv. that the Applicant intends to provide services in Ondangwa and nearby surrounding areas.

After the discussion during the oral submission made by the Applicant the Authority requested the Applicant on 27 February 2014 to provide the trust deed of Maroela Trust and *curriculum vitae* of the staff that will manage the proposed radio station. The request information was provided without delay.

Based on the evaluation of the trust deed submitted the Authority requested the Applicant to amend its trust to-

- (i) Reflect that the objective of the Trust is the opening of a radio station for the benefit of the Ondangwa Community; or
- (ii) Create a non-profit association registered in terms of section 21 of the Companies Act, 2004; or
- (iii) Create a non-profit associated 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) with the objective of forming a radio station for the benefit of the particular community.

The Applicant submitted an amended trust deed and a constitution as per the guideline provided by the Authority for the creation of Shipi-FM to be funded by Maroela Trust on 2 March 2015.

Procedural Compliance

Following due process in terms of Regulations Regarding Licensing Procedures for Telecommunications and Broadcasting Service Licences and Spectrum Use Licences, the Authority published a notice in the Government Gazette 5595, Notice No. 388, dated 20 October 2014, allowing fourteen (14) days for public comments from the date of publication of the Notice in the *Gazette*. The commenting period lapsed on 3 November 2014, and no comments were received.

The last day for the decision was 1 June 2015, following the last correspondence and documentation submitted by the Applicant on 2 March 2015. On 26 May 2015, the Authority postponed the decision date to 15 June 2015 to allow for the submission of the recommendation to the Board for approval.

SUBSTANTIVE COMPLIANCE

Application for commercial broadcasting service licence

The Ondangwa area is serviced by six (6) commercial broadcasters (Omulungu Radio, Fresh FM, Radio Kudu, Radio 99, Radiowave, Cosmos Digital Namibia), two (2) community broadcasters (Media for Christ, Ohangwena Community Radio) and the Namibia Broadcasting Corporation (NBC). It should be noted that NBC is broadcasting services in nine (9) languages and a national radio channel (English). All aforementioned broadcasters provide broadcasting services to the Ondangwa area from transmitters located in Oshakati.

When considering the award of a broadcasting service licence, the Authority is obliged to consider the provisions of section 85(8) of the Communications Act, which provides as follows:

“When considering an application for the issue of a broadcasting licence the Authority must have regard to-

- (a) *the character of the applicant or, if the applicant is a body corporate, the character of its directors;*
- (b) *the adequacy of the expertise, experience and financial resources available to the applicant;*
- (c) *the desirability or otherwise allowing any person or association of persons, to have control or a substantial interest in-*
 - (i) *more than one broadcasting service;*
 - (ii) *more than one radio station and one television station and one registered newspaper with a common coverage and distribution area or significantly overlapping coverage and distribution areas;*
- (d) *whether the applicant is likely to comply with such technical broadcasting standards as the Authority may prescribe;*
- (e) *whether the conditions of a broadcasting licence will unjustly benefit one licensee above another;*
- (f) *the allocation of spectrum in such a manner as to ensure the widest possible diversity of programming and the optimal utilization of such resources. Provided that priority may be given to broadcasters transmitting the maximum number of hours per day;*
- (g) *the reservation of radio wave spectrum resources for future use; and*
- (h) *the desirability of giving priority to community based broadcasts”.*

The Authority is of the opinion:-

- i) that a power output of 250 W from Ondangwa will be sufficient to provide broadcasting services to the community of Ondangwa as envisaged by the Applicant;
- ii) that the Applicant has sufficient financial resources to fund the initial capital expenses and ongoing operations of the proposed community broadcaster;
- iii) that the Applicant will provide content that will educate, entertain and inform its listeners thereby adding value to the lives of the community of Ondangwa; and
- iv) that the Applicant's staff complement collectively have thirteen (13) years experience in broadcasting and have been actively employed in the broadcasting industry illustrating that it has both experience and expertise to provide broadcasting services in line with licence conditions as enforced by the Authority.

After consideration of the information submitted with the application and during the oral submissions and evaluation thereof in terms of the criteria as set out in section 85(8) of the Communications Act, the Authority approves the service licence application for a community broadcasting service licence as submitted by the Applicant to establish Shipi-FM within the geographical area of Ondangwa, subject to the Communications Act, 2009 (Act. No. 8 of 2009) and the Regulations regarding Licence Conditions for Broadcasting Service Licences as published in Government Gazette No. 5037, General Notice No. 309 dated 13 September 2012.

Application for spectrum use licence

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.

As indicated above, section 101(7) of the Communications Act stipulates as follows:

“When a person applies for a licence to operate a network or provide telecommunications services or broadcasting services, that person must also apply for such spectrum licences as are necessary to render the service concerned.”

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. Read jointly, these sections suggest that if an applicant has applied for a broadcasting service licence, it must also have such spectrum use licence as is necessary to render the service concerned and further that a spectrum use licence is required in addition to a broadcasting service licence. It also indicates that a spectrum use licence cannot be issued for the provision of broadcasting services in the absence of a broadcasting service licence.

Subsequently, a recommendation to approve the award of a broadcasting service licence would naturally be accompanied by an approval of a spectrum use licence, because frequencies for FM broadcasting may only be utilised with a broadcasting service licence.

The Authority thus considered the spectrum use licence applications submitted by the Applicant for spectrum to be utilized for FM broadcasting services and a studio link within the geographical area of Ondangwa taking into consideration spectrum assigned to existing broadcasting service licensees. In the opinion of the Authority, the applicant complies with all technical requirements and has submitted all equipment specifications and coverage plots as required by section G of the spectrum use application form. It was further noted that the transmitter equipment will be deployed on the existing Telecom Namibia Limited telecommunications infrastructure and therefore no environmental impact assessments or authorization from the Ondangwa Town Council to construct a broadcasting transmitter tower is required. Irrespective of this fact, the Applicant has submitted approval from the Ondangwa Town Council in support of its application.

It should further be noted that Telecom Namibia Limited will only grant final approval to the Applicant for infrastructure sharing, once the Applicant can provide documented proof of the service licence awarded by the Authority.

The Authority therefore, approves the application for a spectrum use licence within the geographical area of Ondangwa for 103.6 MHz with a power output of 250W for FM radio broadcasting services and 450.025/460.025 MHz for a studio link to be awarded to the Applicant, subject to the Communications Act, 2009 (Act No. 8 of 2009) and the Regulations Regarding License Conditions for Spectrum Use Licensee as published in Government Gazette No. 5354, General Notice No. 469, dated 2 December 2013.

L.N. JACOBS

CHAIRPERSON OF THE BOARD OF DIRECTORS

COMMUNICATIONS REGULATORY AUTHORITY OF NAMIBIA

COMMUNICATIONS REGULATORY AUTHORITY OF NAMIBIA

No. 291

2015

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

The Communications Regulatory Authority of Namibia, in terms of sections 101(13) of the Communications Act, 2009 (Act No. 8 of 2009), read with regulations 8 and 11 of the “Regulations Regarding Licensing Procedures for Telecommunications and Broadcasting Service Licences and Spectrum Use Licences”, as published in Government Gazette No. 4785, General Notice No. 272, dated 29 August 2011 (as amended) herewith gives notice that the Licensee referred to in the table below has submitted an application for amendment of its spectrum use licence as follows:

Amendment of Spectrum Use Licences:

Licencee's Name;	Licencee's citizenship or place of incorporation;	Percentage of Stock owned by Namibian Citizens or Namibian Companies controlled by Namibian Citizens;	Grounds for Amendment;	Description of geographic coverage area(s);			Current Frequency Assigned	New Frequency to be assigned after the amendment	Licence Fees Outstanding?
				Region;	District;	City/Town;			
Comprehensive Nuclear-Test-Ban Treaty Organization (CTBTO)	International Treaty Organisation	Treaty Body of the United Nations	These amendments are necessary to adapt to the configurations of the Namibian network to that of CTBTO's global network.	Khomas	Windhoek	Windhoek	6383.000 MHz 4157.000 MHz	6382.523 MHz 6382.690 MHz 6382.774 MHz 4157.8971 MHz	No
				Otjikoto	Tsumeb	Tsumeb	6337.000 4112.000	6337.2582 MHz 6337.4125 MHz 6337.5667 MHz 4112.100 MHz	No

The public may submit comments in writing to the Authority within a period of fourteen (14) days from the date of publication of this notice in the *Gazette*.

The applicant may submit written reply comments within fourteen (14) days from date of notification of the written public comments.

All written submissions must 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 be clear and concise.

All written submissions and reply comments must be made 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: legal@cran.na;
- (4) By facsimile to the following facsimile number: +264 61 222790; or
- (5) By fax to e-mail to: 0886550852.

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

COMMUNICATIONS REGULATORY AUTHORITY OF NAMIBIA

No. 292

2015

**NOTICE TO CONDUCT AN ORAL HEARING FOR THE PROPOSED
BENCHMARK CHARGES IN TERMS OF REGULATION 6 (1) OF THE
REGULATIONS REGARDING HEARINGS**

The Communications Regulatory Authority of Namibia, in terms of regulations 6(1) of the “Regulation Regarding Hearings”, in Government Gazette No. 5037, General Notice No. 310, dated 13 September 2012, herewith gives notice of its intention to conduct an oral hearing in respect of the Proposed Benchmark Charges for Services as published for comments in the Government Gazette No. 5745, General Notice No. 194, dated 29 May 2015.

The oral hearing is scheduled for 21 July 2015 at a venue to be determined in due course. The hearing will be open to the public.

In terms of regulation 6 (5) of the Regulations Regarding Hearings, 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.

All parties intending to make oral submissions must confirm on or before 17 July 2015 in writing.

All written confirmations must be made 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;
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L.N. JACOBS
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COMMUNICATIONS REGULATORY AUTHORITY OF NAMIBIA

COMMUNICATIONS REGULATORY AUTHORITY OF NAMIBIA

No. 293

2015

**NOTICE TO CONDUCT AN ORAL HEARING IN RESPECT OF THE
PROPOSED REGULATIONS TO IMPOSE A UNIVERSAL SERVICE LEVY ON
TELECOMMUNICATIONS SERVICE PROVIDERS AND THE REGULATIONS
PRESCRIBING THE PROVISION OF UNIVERSAL SERVICE BY TELECOMMUNICATION
SERVICE LICENSEES IN TERMS OF REGULATION 7 (2) OF THE REGULATIONS
REGARDING RULE MAKING PROCEDURES**

The Communications Regulatory Authority of Namibia, in terms of regulation 7 (2) of the “Regulations Regarding Rule-Making Procedures”, in Government Gazette No. 4630, General Notice No. 334, dated 17 December 2010, herewith gives notice that it will conduct an oral hearing in respect of the Proposed Regulations to Impose A Universal Service Levy On Telecommunications Service Providers and the Regulations Prescribing the Provision of Universal Service by Telecommunication Service Licensees as published for comments in the Government Gazette No. 5755, General Notice No. 236 , dated 8 June 2015.

The oral hearing is scheduled for 28 July 2015 at a venue to be determined in due course. The hearing will be open to all telecommunications service licensees and the public.

In terms of regulation 6(5) of the Regulations Regarding Hearings, 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.

All parties intending to make oral submissions must confirm in writing on or before 21 July 2015.

All written confirmations must be made 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;
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