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REPUBLIC OF NAMIBIA

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General Notice

COMMUNICATIONS REGULATORY AUTHORITY OF NAMIBIA

No. 453

2015

NOTICE OF INTENTION TO MAKE REGULATIONS REGARDING THE PROVISION OF ROAMING SERVICES FOR TELECOMMUNICATIONS SERVICE LICENCES

The Communications Regulatory Authority of Namibia, in terms of sections 129, 53(20) (a) and (e) of the Communications Act, 2009 (Act No. 8 of 2009) read with regulation 11 of the “Regulations Regarding Rule-Making Procedures: Communications Act”, as published in Government Gazette 4630, Notice No 334, hereby:

- a) Publishes this notice of intention to make Regulations Regarding the Provision of Roaming Services for Telecommunication Service Licensees, as set out in the Schedule 1; and
- b) Sets out the concise statement of the reasons and purpose for the proposed regulations in Schedule 2.

The public may make oral submissions on the proposed regulations to the Authority, at a time, date and place notified by the Authority.

The public may also make written submissions to the Authority within thirty (30) days from the date of publication of this notice in the *Gazette*, in the manner set out below for making of written submissions.

Written replies to written submission may be submitted to the Authority within fourteen (14) days from the date of notification of written comments by the Authority.

All written submissions must –

- a) Contain the name and contact details of the person making the written submissions and the name and contact details of the person for whom the written submission is made, if different; and
- b) Be clear and concise.

All written submission must send or given in any of the following manner:

- a) by hand to the head offices of the Authority, namely Communication House, 56 Robert Mugabe Avenue, Windhoek;
- b) by post to the head offices of the Authority, namely Private Bag 13309, Windhoek 9000;
- c) by electronic mail to the following address: legal@cran.na;
- d) by facsimile to the following facsimile number: +264 61 222 790; and
- e) by fax to e-mail to: 0886550852.

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

SCHEDULE I

Definitions

1. In these regulations, any word or expression to which a meaning is assigned in the Act, shall have the same meaning and –

“Act” means the Communications Act, 2009 (Act No. 8 of 2009).

“Home country” means the country of origin of the roaming customer;

“Home provider” means a Telecommunications Service Licensee that provides a roaming customer with mobile communication services either *via* its own network or as a mobile virtual network operator or reseller;

“Home network” means a public mobile communications network located within a SADC Member State and used by a home provider for the provision of mobile communications services to a roaming customer;

“Member State” means a country, which is a member of the Southern African Development Community (SADC);

“Licensee” means any person who has been awarded with a telecommunications service licence by the Authority;

“Region” means Southern African Development Community;

“Retail Charges” means prices charged to the end user of a roaming service;

“Roaming” means the ability for a mobile subscriber to automatically make and receive voice calls, send and receive SMS messages, send and receive data, or access other services, including home data services, when travelling outside the geographical coverage area of the home network;

“Roaming customer” means a customer of a terrestrial mobile communications services, by means of a mobile network situated in the Region, whose contract or arrangement with his home provider permits the use of a mobile phone or other device to make or to receive calls, to send or receive SMS messages, or to use packet switched data communications or any other electronic communications service on a visited network by means of arrangements between the operator of the home network and the operator of the visited network;

“Roaming service” means electronic communication services provided seamlessly to a roaming customer by a visited network in a visited country;

“Use Cases” means the various modes of usage of roaming services;

“Visited network” means a terrestrial public mobile communications network situated in a Member State other than that of the home network and permitting a roaming customer to make or receive calls, to send or receive SMS messages or to use packet switched data communications, by means of arrangements with the operator of the home network;

“Regulations regarding Consumer Complaints” means the Regulations as published in Government Gazette No. 4714, General Notice No. 128 dated 18 May 2011;

“Regulations Setting Out Cost Accounting Procedures and Reporting Requirements” means the Regulations as published in Government Gazette No. 5357, General Notice No. 474 dated 6 December 2013;

“Regulations regarding the Submission of Interconnection Agreements and Tariffs” means the Regulations as published in the Government Gazette No. 4714, General Notice No. 126 dated 18 May 2011 as amended;

“Telecommunications service licence” means a licence issued in terms of sections 38 or 45 of the Communications Act;

Purpose

2. The purpose of these Regulations is to formulate guidelines and prescribe limits on the tariffs that licensees may charge for the rendering of roaming services.

Applicability

3. These regulations shall be applicable to all telecommunications service licensees.

Transparency and Safeguarding Mechanisms

4. (1) Licensees shall ensure transparency of retail charges for roaming calls, data and SMS Messages by:

- (a) ensuring that information on availability of roaming services and applicable charges are provided, free of charge, to the roaming customer’s mobile phone or other device by means of an SMS message, e-mail or any other mode of communication, every time the roaming customer enters a visited country within SADC; and
- (b) Ensuring that the minimum information on applicable charges for roaming services provided includes the following:

- (i) tariff per minute of incoming and outgoing calls within the visited country, the home country and elsewhere in the SADC region;
- (ii) tariff per SMS sent or received within the visited country, the home country and elsewhere in the SADC region;
- (iii) tariff per megabyte of data used; and
- (iv) a link to the home provider's website or customer service telephone number where updated retail roaming tariff information can be obtained.

(4) Licensees shall provide the blind or partially-sighted customers with basic pricing information automatically, by a voice call, SMS or USSD Code, free of charge, on request.

(5) Licensees shall afford roaming customers the right to request and receive, free of charge, detailed pricing information on roaming charges that apply in the visited country on roaming services.

(6) Licensees shall make information on applicable roaming tariffs easily accessible to the roaming customer on its website and other media.

(7) Licensees shall ensure that licensees inform the roaming customer of the risk of automatic and uncontrolled data roaming connections and downloads.

(8) Licensees shall ensure that an alert SMS is sent to the roaming customer when the data roaming services have reached fifty percent (50%) of the agreed volume limit in cases where the customer is using a roaming data package.

Obligation to provide information on roaming services

5. Licensees shall provide information as and when requested in the prescribed format on roaming services to the Authority as per the Regulation Setting out Cost Accounting Procedures and Reporting Requirements.

Cost based roaming charges glide path

6. (1) The Authority shall implement a glide path in transitioning from existing roaming charges to cost based roaming charges which shall consist of the following:

- (a) Roam Like at Home (RLAH) under which the charging and pricing of regional roaming services shall be calculated with specific reference to the roaming customer's home country rates plus a premium outlined in [Annexure I to these Regulations].
- (b) Cost Based Pricing under which the charging and pricing of regional roaming services shall be calculated based on cost plus a premium in [Annexure I to these Regulations].

Application of the glide path

7. (1) The mechanisms for calculation of the wholesale and retail price ceilings in Annexure I of these Regulations shall apply to the following use cases:

- (a) Voice:
 - (i) Roaming mobile call made within the visited country to a local subscriber;

- (ii) International call back to home country from visited country;
 - (iii) Incoming call while roaming that originates from home country or from within visited country; and
 - (iv) Call from inside a visited country to a third country.
- (b) SMS;
 - (c) Data; and
 - (d) Any other roaming services.

Ceiling for wholesale charges

8. (1) Licensees shall ensure that the wholesale charges applied to a visited network which they may levy from the operator of a roaming customer's home network for the provision of a roaming service originating on that visited network, including origination, transit and termination costs shall not exceed the price ceilings included under Annexure I.

(2) Licensees may make a distinction between peak and off-peak charges.

(3) Wholesale charges referred to in subsection (1) are only applicable between any pair of Licensees and shall be calculated over a twelve-month (12) period or any such shorter period as may remain before the end of the period of application of a maximum average wholesale charge as provided for in these regulations.

Ceiling for retail charges

9. (1) Licensees shall ensure that the retail charge (excluding Value Added Tax (VAT)) for roaming services that a home operator may levy from its roaming customer for the provision of a regulated roaming service shall not exceed the price ceilings included under Annexure I.

(2) Licensee shall ensure that the retail prices referred to in subsection (1) shall be calculated over a twelve-month (12) period or any such shorter period as may remain before the end of the period of application of a maximum average retail charge as provided for in these regulations.

Approval process for roaming charges

10. (1) The Authority shall approve all tariffs contained in inbound wholesale roaming agreements as contemplated in section 53(1) and (7) of the Act.

(2) Licensees shall not impose any tariff or charge for the provision of regional roaming services unless the tariffs or charges are within the boundaries of the price ceiling as determined by the Authority in accordance with these regulations.

Technical characteristics

11. (1) Licensees of a home provider or operator of a visited network shall not alter the technical characteristics of regulated roaming services in such a way as to make them differ from the technical characteristics of same services provided within its domestic network.

(2) Licensees shall establish direct routes to connect and roam with operators in other Members States.

(3) Licensees shall adopt a fair usage policy to avoid instances of network abuse through permanent roaming by roaming customers.

Quality of Service Parameters

12. Licensees shall comply with the quality of service parameters as contained in Annexure 2 to these regulations.

Consumer Protection

13. The licensees shall comply with the provisions relating to consumer protection as prescribed in terms of sections 79 of the Act as well as any specific terms and conditions contained in the Regulations regarding Consumer Complaints.

Supervision by Authority

14. (1) The Authority shall supervise compliance with these conditions in terms of sections, 114 to 116 of the Act.

(2) The Authority may request any information, determined by it as relevant from the Licensees for the purposes of monitoring and ensuring compliance with the Act and these regulations, to which request a licensee shall comply in the manner set out by the Authority.

(3) Subject to subsection (2) above, licensees are required to maintain such information as will enable the Authority to carry out its functions under the Act and Regulations in such manner and at such times as the Authority may request.

Penalties

15. (1) Any licensee who fails to comply with the requirements and obligations contained in these regulations or fails to submit document and/or information as required to be submitted by these regulations, shall be guilty of contravening these regulations.

(2) Where a licensee contravenes one or more of the regulations contained herein, the Authority may-

- (a) issue to a licensee a written warning and final date for submitting outstanding documents and/or information where the licensee is guilty of not submitting same as required by these Regulations;
- (b) impose a penalty of not more than N\$500,000.00 for-
 - (i) failure by a licensee to comply with any requirement and/or obligation contained in these regulations;
 - (ii) submitting or causing the submission of false or misleading information to the Authority;
 - (iii) failure to submit the documents and/or information as required pursuant to a written warning issued in terms of sub-regulation 2 (a) above;
- (c) take any other measure the Authority regards as reasonable in the circumstances.

(3) Any amount of penalty payable in terms of paragraph (b) of sub regulation (2) constitutes a debt due to the Authority by the relevant licensee concerned and may be recovered by the Authority by means of proceedings instituted in any competent court.

(4) Notwithstanding the provisions of sub regulations (2) and (3), the Authority may waive the payment of or refund the whole or any part of a fine payable.

(5) Before imposing any penalty as contemplated by paragraph (b) of sub regulation (2), the Authority must give an affected licensee the opportunity to be heard, where after the Authority may-

- (a) decide not to impose any penalty; or
- (b) impose such penalty the Authority deems fit.

ANNEXURE I

PART I

GLIDE PATH FOR CALCULATION OF WHOLESALE PRICE CEILINGS

The wholesale price ceilings and glide paths shall be determined as follows:

21 October 2014	Existing IOT Prices
1 October 2015	$WTA + ((IOT - WTA) * 0.67) * 1.05$
1 October 2016	$WTA + ((IOT - WTA) * 0.33) * 1.05$
1 October 2017	$WTA * 1.05$

The objective of the glide path is to annually reduce the premium on wholesale rates charged between two roaming partners over a three year period. Ultimately, the charges on wholesale roaming services shall not exceed cost plus 5%.

Illustration 1: Calculation of Country Wholesale Price Ceiling											
	WTA	+	((IOT	-	WTA)	*	(%)	* 1.05	Ceiling	Existing Rate	% Reduction
VOICE											

Definitions:

For the purposes of calculating the wholesale price ceilings, the components of the formula above shall be defined as follows:

- i. **IOT** – means Inter Operator Tariff:

These are the wholesale rates charged between two roaming partners. The IOTs shall be calculated as the outbound roaming traffic weighted average per country. This entails calculating a weighted average of the IOTs faced by each MNO within a specific country.

Illustration: Calculation of IOTs for Home Country				
Country	Operator	Wholesale Inter Operator Tariff for an Originating Call Within the Visited Country (US\$)	Outbound Roaming Traffic (From Country B to Home Country) – (Minutes)	Traffic Weighted IOT (US\$)
COUNTRY B	MNO 1			
	MNO 2			
	MNO 3			

NB: This applies to all MNOs within a Home Country and should cover all the use case scenarios under section 11 (1).

- ii. **WTA** – means Weighted Traffic Average:

The Weighted Traffic Average shall be calculated as the weighted average of domestic Mobile Termination Rates (MTR) within the SADC Region. The weighting shall be based on domestic off net outbound traffic for each country.

For countries that have asymmetric domestic MTR, a national weighted average MTR shall be determined on the basis of off net outbound traffic for each MNO in that country. The WTA will be calculated by the CRASA Roaming Task Team (CRTT) and updated annually.

Illustration 2: Calculation of WTA (Floor Price for Regional Wholesale Roaming Charges)			
Country	Domestic MTRs (US\$)	TRAFFIC OFF-NET (Outbound) -(Minutes)	Traffic Weighted MTR
ANGOLA			
BOTSWANA			
CONGO DRC			
LESOTHO			
MADAGASCAR			
MALAWI			
MAURITIUS			
MOZAMBIQUE			
NAMIBIA			
SEYCHELLES			
SOUTH AFRICA			
SWAZILAND			
TANZANIA			
ZAMBIA			
ZIMBABWE			
TOTAL			
		Regional Traffic Weighted MTR	

The floor price for IOTs shall be the WTA while the ceiling will be determined by the glide path formulae above.

PART II

GLIDE PATH FOR CALCULATION OF RETAIL PRICE CEILINGS

The retail price ceilings and glide paths shall be determined as follows:

Year	ROAM
2014	ROAM
1 October 2015	$RLAH + (ROAM - RLAH) * 0.67$
1 October 2016	$RLAH + (ROAM - RLAH) * 0.33$
1 October 2017	$RLAH * 1.05$
1 October 2018	$COST + (RLAH - COST) * 0.67$
1 October 2019	$COST + (RLAH - COST) * 0.33$
1 October 2020	$COST * 1.05$

The objective of the glide path formulae is to annually reduce the premium on retail roaming charges by 33.3% over a three year period. Ultimately, the charges for roaming services shall not exceed cost plus 5%.

Definitions:

For the purposes of calculating the retail price ceilings, the components of the formulae above shall be defined as follows:

- i. **ROAM** – means existing retail roaming prices per country as at 21 October 2014.

“Roam” shall be determined as the average of all MNO roaming charges within a specific country for each of the various roaming services and or use cases.

ii. **RLAH** – means Roam Like At Home

RLAH refers to a pricing framework for roaming where the prices charged to a roaming subscriber for voice calls, SMS and mobile data access are similar to the prices faced by the subscriber in the home country rather than those of the visited country.

RLAH shall be determined as the traffic weighted average of existing current DOMESTIC prepaid headline retail charges (i.e. basic charges for electronic communication services before any distorting factors such as bundled offers and periodic promotions that offer discounted charges) for each of the various services on offer by each MNO in the Region.

iii. **COST** will be derived by means of a harmonised regional ‘Cost model’ which takes into account all underlying cost elements for the various use cases for roaming services.

Illustration: Calculation of Retail Price Ceilings										
	RLAH	+	(ROAM	-	RLAH)	*	%	Ceiling	Existing Roaming	% Reduction
Voice	4.2		156.8		4.2		67%	106.442	156.8	-32%
SMS	1.2		12		1.2		67%	8.436	12	-30%
DATA	0.06		8.03		0.06		67%	5.40	8.03	-33%

ANNEXURE II

PART I

ROAMING QUALITY OF SERVICE PARAMETERS

The quality of service parameters regarding all types of roaming services provided in the roaming region shall include the following:

1. **Seamless caller ID:** (where a “caller” should be understood as a customer calling or sending an SMS to another customer who is roaming): the roaming customer should be able to identify a caller in the same way as when using his/her home network;
2. **Areas where no service is available:** – where a domestic mobile service is available, the roaming service should be available as well; this does not mean that the home provider should provide roaming services in any area of the visited country covered by at least one operator; in practice it only means that in a competitive roaming market the home operator should be able to conclude an interconnection contract with at least one operator with national coverage;
3. **Transparency –:** operators should fulfil their obligation of providing roaming customers with appropriate basic personalised pricing information on the roaming charges according to regulation XX of the Regulations; they should also be able to limit the number of legitimate bill correctness complaints; the number of bill correctness complaints regarding roaming services should not be much higher than those regarding domestic services.
4. In the case of voice and SMS, the reference point for quality of service parameters should be the quality of the international equivalents of these services.

PART II

SPECIFIC QUALITY OF SERVICE PARAMETERS

1. Voice Services

Additional quality parameters, resulting from the specific nature of voice services should include the following:

- (1) **Call set up time:** the time to establish a voice call should be the same for a roaming customer making a call as a domestic customer on the same network making an international call;
- (2) **Possibility to access the home operator’s general customer information centre/ information hotline:** the possibility of using it should be similar, irrespective of whether the customer is roaming or using his/her home network; however, where at home user usually connects to the hotline with a short code, the operator may choose to provide an appropriate regular phone number for the same purpose when the customer is roaming;
- (3) **Response times for customer information centre/information hotline regarding roaming services:** the waiting time to connect to the information hotline on roaming services should be reasonable and should not prevent customers from using it;
- (4) **Unsuccessful call ratio:** the ratio of unsuccessful to successful roaming voice calls on one hand should not be higher than the ratio of unsuccessful to successful international voice calls originated from the same network, and on the other hand not significantly higher than in the case of national calls – both for non-roaming users;
- (5) **Aborted calls (drops):** the ratio of interrupted to uninterrupted roaming calls on one hand should not be higher than the ratio of interrupted to uninterrupted international voice calls

originated from the same network, and on the other hand not significantly higher than in the case of national calls – both for non-roaming users;

- (6) **Sound:** the quality of sound during the roaming voice call should be equal to the quality of an international call on the same network and not significantly lower than in the case of national calls – both for of non-roaming users.

2. **Short Message Service (SMS)**

Additional quality parameters, resulting from the specific nature Shot Message Services should include the following

- (1) **Number of SMS undelivered:** the ratio of undelivered to delivered roaming SMS on one hand should not be higher than the same ratio for international SMS messages sent from the same network, and not significantly higher than in the case of national messages – both for non-roaming users;
- (2) **Number of SMS delivered late:** the ratio of SMS delivered late to SMS delivered on time should not be higher than the same ratio for the international SMS messages sent from the same network, and not significantly higher than in the case of national messages – both for non-roaming users.

3. **Data services**

Additional quality parameters, resulting from the specific nature of data services should include the following

- (1) **Speed of data transmission:** actual speeds of roaming data transmission should be equal to the ones provided for domestic users of the visited network for non-roaming users;
- (2) **Transparency:** the roaming market should be transparent enough so that customers do not experience bill-shock and that clear information is available on the tariffs to be applied for the service.

SCHEDULE 2

CONCISE STATEMENT AND PURPOSE OF THE PROPOSED REGULATIONS REGARDING THE PROVISION OF ROAMING SERVICES FOR TELECOMMUNICATIONS SERVICE LICENCES: COMMUNICATIONS ACT, 2009

The purpose of the proposed Regulations is to regulate the provision of roaming services provided by Telecommunications Service Licensees in Namibia for the SADC region in terms of price and quality of service.
