



# GOVERNMENT GAZETTE

## OF THE

# REPUBLIC OF NAMIBIA

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WINDHOEK - 1 June 2017

No. 6322

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### COMMUNICATIONS REGULATORY AUTHORITY OF NAMIBIA

No. 156

2017

#### NOTICE OF INTENTION TO MAKE REGULATIONS PRESCRIBING LIMITS OF TARIFFS FOR TELECOMMUNICATIONS SERVICES (“PRICE CAP REGULATIONS”), COMMUNICATIONS ACT, 2009

The Communications Regulatory Authority of Namibia in terms of regulation 4(3) of the Regulations Regarding Rule-Making Procedures published as General Notice No. 334 of 17 December 2010 publishes this notice of intention to make Regulations Prescribing Limits of Tariffs for Telecommunications Services (“Price Cap Regulations”) which contains the following:

- (a) Publishes this Notice of Intention to Make Regulations Prescribing Limits of Tariffs for Telecommunications Services (“Price Cap Regulations”) as set out in Schedule 1;

- (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 are hereby invited to make written representations, comments, communications and submissions (hereafter collectively called "submissions") to the Authority within Thirty (30) consecutive days from the date of publication of this notice in the Gazette, in the manner set out below for making written submissions.

All written submissions must:

- (a) Contain the name and full contact details (physical and postal address, email address and telephone or cell phone number) of the person making the written submissions and the name and similar contact details of the person for whom the written submission is made if different; and
- (b) be clear and concise.

In the event that where any person making a submission wishes to designate any information contained in such submission as confidential, such must be clearly marked as "confidential". Notwithstanding, if the Authority is of the opinion that information is not confidential it will inform the person that thereof thereby-

- (a) allowing the person the withdraw the information from the rule-making proceedings;
- (b) agreeing with the person that it will not be treated anymore as confidential information; or
- (c) requesting a hearing on the issue of confidentially to be conducted in accordance with section 28 of the Communications Act.

In terms of Regulation 7 of the Regulation regarding Rule-Making Procedure published in Government Gazette 4630, General Notice No. 334 dated 17 December 2010 herewith gives notice that it will hold a hearing regarding the proposed regulations as follow:

**DATE: TUESDAY, 11 JULY 2017**

**TIME: 11H00**

**VENUE: TBA**

The public is invited to make comments and/or oral submissions at the hearing.

All notices of oral submissions to be made during the hearing must be submitted to the Authority on or before **03 JULY 2017**.

All written submissions and notice of oral submissions must be send or submitted to be received by the Authority on or prior to the due date to anticipated above in any of the following manners-

- (a) by hand to the head office of the Authority, namely Communications House, No 56 Robert Mugabe Avenue, Windhoek;
- (b) by post to the head office of the Authority; namely Private Bag 13309, Windhoek, 9000;
- (c) by electronic mail to the following address: [legal@cran.na](mailto:legal@cran.na);

- (d) by facsimile to the following facsimile number: +264 61 222790; and
- (e) By fax to email to: 0886550852

**F. KISHI**  
**CHAIRPERSON OF THE BOARD OF DIRECTORS**  
**COMMUNICATIONS REGULATORY AUTHORITY OF NAMIBIA**

**SCHEDULE 1**

**PROPOSED REGULATIONS PRESCRIBING LIMITS OF TARIFFS FOR  
 TELECOMMUNICATIONS SERVICES (“PRICE CAP REGULATIONS”)**

The Communications Regulatory Authority of Namibia, in terms of section 53(20)(a) and (d) and 129 of the Communications Act, 2009 (Act No. 8 of 2009) and the “Regulations regarding Rule-Making Procedures: Communications Act, 2009”, published as No. 334 in Government Gazette No. 4630 dated 17 December 2010, hereby publishes these “Regulations Prescribing Limits of Tariffs for Telecommunications Services (‘Price Cap Regulations’)” which will become effective on the date set out in regulation 7 of these Regulations Prescribing Limits of Tariffs for Telecommunications Services.

**Definitions**

**1.** In these Regulations, any word or expression to which a meaning is assigned in the Act, has the same meaning and -

“leased line”, whether national or international in scope, means a private bi-directional or symmetric telecommunications line between two or more locations provided in exchange for a monthly or other periodic rent and, without limiting the generality of the foregoing, includes a two-way link for the exclusive use of a subscriber regardless of the manner used by the subscriber (for example switched subscriber or non-switched, or voice or data);

“pre-arranged connectivity” means any fibre based data connectivity including, but without limiting the generality of the foregoing, PDH, SDH, ATM, Gigabit Ethernet or any similar protocol;

“pricecap” means the limits on tariffs that licensees may charge for the rendering of telecommunications services to which these Regulations apply;

“Regulations in respect of Type Approval and Technical Standards for Telecommunications Equipment” means the Regulations in respect of Type Approval and Technical Standards for Telecommunications Equipment as published in Government Gazette No. 5659 of 30 January 2015, Notice No. 22 of 2015;

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

“these Regulations” means these Regulations Prescribing Limits of Tariffs for Telecommunications Services (“Price Cap Regulations”).

“resale” means the commercial offering to the public of telecommunications services obtained from another carrier and “reseller” will be construed accordingly;

**Application and purpose of these Regulations**

- 2.** (1) These Regulations apply to -

- (a) Licensees that are deemed to be dominant operators in the market for national data transmission, providing telecommunications services for pre-arranged connectivity in the form of leased lines; and
- (b) managed and unmanaged transmission services, independent of the protocol used (such as PDH, SDH, ATM and Gigabit Ethernet or any similar protocol).
- (c) for the purpose of resale

(2) The purpose of these Regulations is to prescribe the price caps which licensees may charge for leased lines and all other pre-arranged connectivity.

### Price caps

3. (1) The price caps and the times at which they become applicable are as set out in the table below:

Date of Becoming Applicable	Price Cap
On date of commencement of these Regulations	N\$ 1,585.60 per 2 Mbps
On the first anniversary after the commencement of these Regulations	N\$ 1,413.13 per 2 Mbps
On the second anniversary after the commencement of these Regulations	N\$ 1,122.72 per 2 Mbps
On the third anniversary after the commencement of these Regulations	N\$ 891.27 per 2 Mbps

- (2) The price caps as set out in the table -
  - (a) are applicable to 2 Mbps and every multiple thereof and as regards submultiples of 2 Mbps the price cap shall be apportioned accordingly;
  - (b) apply irrespective of the distance involved or the duration of the contract concluded for the provision of the telecommunication services to which these Regulations apply; will become effective as indicated without any notification or tariff approval procedure by the Authority;
  - (c) do not apply to customer premises devices, whether such devices are on the customer's own premises or not or whether such devices are owned or leased by such customer, and a licensee's tariffs must, in this regard, be sufficiently disaggregated as anticipated in section 53(19)(f).

(3) Subregulation (2)(c) does not impact on the obligations of a licensee providing telecommunications services to obtain approval from the Authority for tariffs contemplated in section 53(1) and (7) of the Act.

### Customer premises devices

4. (1) A Dominant licensee providing telecommunications services for resale must offer leased lines and pre-arranged connectivity with and without customer premises devices.

(2) A reseller and an end user may use their own customer premises devices if approved in accordance with the Regulations in respect of Type Approval and Technical Standards for Telecommunications Equipment or may use devices provided by Telecom.

### Granting of extension

5. (1) If a licensee, on reasonable grounds, is unable to reduce its tariffs, whether with regard to a single person or a category of persons or with regard to all its tariffs, in accordance

with the price caps at the relevant time frames provided, such licensee may, at least seven days prior to such price cap becoming effective, request the Authority, for an extension of time to allow it reasonable opportunity in view of the circumstances to ensure that its tariffs comply with these Regulations.

(2) Upon receiving a request for extension under subregulation (1), the Authority must consider such request taking into consideration, amongst others but not limited to, the nature of the proceedings and the reasons for the inability of the dominant licensee to comply with the price caps in a timely manner, and as soon as is practical under circumstances decide whether or not to grant an extension and the period of the extension.

### **Penalties**

**6.** (1) The penalties provided for in this regulation may be imposed on a licensee to whom these Regulations apply and who fails to comply with or contravenes any provision of these Regulations.

(2) In the event where a licensee contemplated in subregulation (1) fails to comply with, or contravenes, any provision of these Regulations, the Authority may -

- (a) issue to such licensee a written warning indicating in such warning the date upon which the licensee must comply with such provision;
- (b) request such licensee to implement a remedial plan which would ensure compliance within the time frames determined by the Authority;
- (c) impose a penalty on such licensee not exceeding N\$ 1,000,000.00 which penalty may be imposed with regard to every failure to comply or contravention by such licensee;
- (d) issue an enforcement order as contemplated in section 116, read with section 129(3), of the Act;
- (e) take any such other measures as the Authority may deem appropriate under circumstances.

(3) The Authority may impose any one or more of the measures set out in subregulation (2).

(4) A penalty payable in terms of this regulation, is payable to the Authority, is a debt due to the Authority and may be recovered by the Authority by means of instituting proceedings in a competent court.

(5) Except in the event of an urgency, before taking any measure set out in subregulation (6), the Authority must give the affected dominant licensee the opportunity to be heard whereafter the Authority may -

- (a) decide not to impose the relevant measure; or
- (b) impose such measure as the Authority deems fit.

### **Commencement of these Regulations**

**7.** Subject to subregulation (2), these Regulations will become effective on 1 January 2018.