



# GOVERNMENT GAZETTE

## OF THE

# REPUBLIC OF NAMIBIA

N\$15.60

WINDHOEK - 9 October 2020

No. 7356

### CONTENTS

*Page*

#### GENERAL NOTICE

No. 416	Communications Regulatory Authority of Namibia: Notice of Intention to make Regulations Prescribing Licence Fees and Regulatory Levies under Section 129 of the Communications Act 2009 .....	1
---------	---	---

## General Notice

### COMMUNICATIONS REGULATORY AUTHORITY OF NAMIBIA

No. 416

2020

#### NOTICE OF INTENTION TO MAKE REGULATIONS PRESCRIBING LICENCE FEES AND REGULATORY LEVIES UNDER SECTION 129 OF THE COMMUNICATIONS ACT, 2009

The Communications Regulatory Authority of Namibia, in terms of section 129 of the Communications Act, 2009 (Act No. 8 of 2009), and the Regulations regarding Rule-Making Procedures published in Government Gazette No. 4630, General Notice No. 334 dated 17 December 2010 -

- a) publishes this Notice of Intention to Make Regulations Prescribing Licence Fees and Regulatory Levies under Section 129 of the Communications Act as set out in 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 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 of 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 where any person making a submission wishes to designate any information contained in such submission as confidential, such information must be clearly marked as “confidential”. Notwithstanding, if the Authority is of the opinion that information is not confidential it will inform the person thereof thereby -

- a) allowing the person to 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 confidentiality to be conducted in accordance with section 28 of the Communications Act.

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

- a) by hand to the head office of the Authority, namely Communications House, 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; or
- e) by fax-to-email to: 0886550852.

**H.M. GAOMAB II  
CHAIR PERSON OF THE BOARD  
COMMUNICATIONS REGULATORY AUTHORITY OF NAMIBIA**

**SCHEDULE 1**

**PROPOSED LICENCE FEES AND REGULATORY LEVIES REGULATIONS:  
COMMUNICATIONS ACT, 2009**

The Communications Regulatory Authority of Namibia, in terms of section 129 of the Communications Act, 2009 (Act No. 8 of 2009), makes the regulations set out in this Schedule 1.

**Definitions**

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

“licensee” means the holder of a licence issued under the Act;

“licence types” means the different types of licences as set out and defined, if applicable, in the Regulations Setting Out Broadcasting and Telecommunications Service Licence Categories, published in General Gazette No. 4714 of 18 May 2011, Government Notice No. 124 of 2011;

“licence fee” means a fee set out in Annexure A;

“regulatory levy” means the levy contemplated in section 23 of the Act;

“the Act” means the Communications Act, 2009 (Act No. 8 of 2009), as amended from time to time; and

“these Regulations” means these Regulatory Levies and Licence Fees Regulations as amended from time to time.

### **Licence fees**

2. (1) The application, issue or grant, renewal, transfer and amendment fees for the various licence types, as listed in column 1 of the table contained in Annexure A, are as set out in that Annexure.

(2) The licence fees set out in Annexure A are indicated in Namibian dollar.

(3) Unless otherwise determined by the Authority, a licence fee must be paid by means of electronic transfer or direct deposit into the Authority’s bank account.

(4) The following conditions apply to a licence fee for an application as set out in column 2 of the table contained in Annexure A:

(a) The fee is not refundable;

(b) proof of payment must be attached to the application.

### **Regulatory levy**

3. (1) The regulatory levy payable by the licensees listed in column 1 of the table contained in Annexure B is as indicated in column 2 of that table subject thereto that if the regulatory levy payable by a licensee is less than N\$ 500, such licensee must pay the amount of N\$ 500.

(2) The regulatory levy set out in Annexure B is indicated in Namibian dollar.

(3) Unless otherwise determined by the Authority, the regulatory levy must be paid by means of electronic transfer or direct deposit into the Authority’s bank account.

(4) The regulatory levy applicable to a licensee must be paid by such licensee annually, no later than six months after such licensee’s financial year end.

(5) The regulatory levy is paid based on a licensee’s turnover as reflected in -

(a) the audited annual financial statements of a licensee where a licensee is required by law to have financial statements audited or where a licensee annually have its financial statements audited voluntary; or

- (b) the annual financial statements signed and sworn by the licensee's accounting officer in the event where a licensee is not required by law to audit financial statements and does not voluntarily have such financial statements audited,

subject thereto that in the event where a licensee's turnover is not accounted for separately and such licensee provides other products or services or conducts other business not regulated under the Act, the licensee must attach to the audited annual financial statements or annual financial statements, as the case may be, a separate statement which must -

- (i) indicate the licensee's turnover;
- (ii) indicate the methodology used to extract and determine such turnover;
- (iii) contain such other information as the Authority may determine; and
- (iv) be signed and sworn to by the licensee's auditor or accounting officer, as the case may be, to be a true and correct reflection of the licensee's turnover to the best of the knowledge of such auditor or accountant.

(6) For purposes of clarity -

- (a) turnover is the turnover of a licensee excluding value added tax;
- (b) turnover is limited to turnover derived from services or business which may be regulated under the Act and it is the duty of a licensee to ensure the reflection of the correct turnover amount in the licensee's audited annual financial statements or signed and sworn annual financial statements, as the case may be.

(7) A licensee must, together with proof of payment of the regulatory levy by the licensee, submit its audited annual financial statements or signed and sworn annual financial statements, as the case may be, no later than the due date for payment of the regulatory levy.

- (8) (a) The Authority may, upon written application and on good cause shown by a licensee, authorise a licensee to pay the regulatory levy in equal monthly instalments of not more than six months.
- (b) A licensee wishing to pay the regulatory levy in instalments must submit such written application to the Authority at least three months prior to the due date of payment of the regulatory levy.

### **Penalties**

4. The Penalty Regulations, published in General Gazette No. 7197 of 29 April 2020, Government Notice No. 159 of 2020, apply to any contravention of these Regulations.

### **Amendment of regulations**

5. The regulations set out in Annexure C are hereby repealed or amended as set out in the column 3 thereof.

### **Transitional provision and commencement**

6. (1) In the event where these Regulations commence subsequent to the start of a licensee's financial year, the regulatory levy payable by such licensee is only payable on turnover derived by a licensee as from the commencement of these Regulations.

(2) These Regulations will become effective on date of publication of thereof in the *Gazette*.

### ANNEXURE A

(Regulation 2)

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6
Licence Types	Application Fees	Grant / Issue Fees	Renewal Fees	Transfer Fees	Amendment Fees
Telecommunications - Individual Comprehensive (ECNS and ECS)	n/a	n/a	10,000	10,000	10,000
Telecommunications - Class ECNS	10,000	50,000	10,000	10,000	10,000
Telecommunications - Class ECS	10,000	50,000	10,000	10,000	10,000
Telecommunications - Class Comprehensive (ECNS and ECS)	10,000	50,000	10,000	10,000	10,000
Telecommunications - Network Facilities	10,000	50,000	10,000	10,000	10,000
Telecommunications - Non-profit (ECNS and ECS)	500	500	500	500	500
Broadcasting - Commercial	10,000	50,000	10,000	10,000	10,000
Broadcasting - Community	500	500	500	500	500
Broadcasting - Public	n/a	n/a	10,000	10,000	10,000
Broadcasting - Signal Distribution	10,000	50,000	10,000	10,000	10,000
Broadcasting - Multiplex	10,000	50,000	10,000	10,000	10,000
Broadcasting - Class Comprehensive	10,000	50,000	10,000	10,000	10,000
Broadcasting - Multiplex and Signal Distribution	10,000	50,000	10,000	10,000	10,000
Postal - Designated Postal Operator	n/a	n/a	10,000	10,000	10,000
Postal - Private Postal Service	10,000	50,000	10,000	10,000	10,000

### ANNEXURE B

(Regulation 3)

Column 1	Column 2
Licence Types	Regulatory Levy
Telecommunications - Individual Comprehensive (ECNS and ECS)	Levy % = MAX(500, MIN(1.65%, 0.000000000165*Turnover) *Turnover)
Telecommunications - Class ECNS	Levy % = MAX(500, MIN(1.65%, 0.000000000165*Turnover) *Turnover)
Telecommunications - Class ECS	Levy % = MAX(500, MIN(1.65%, 0.000000000165*Turnover) *Turnover)
Telecommunications - Class Comprehensive (ECNS and ECS)	Levy % = MAX(500, MIN(1.65%, 0.000000000165*Turnover) *Turnover)
Telecommunications - Network Facilities	Levy % = MAX(500, MIN(1.65%, 0.000000000165*Turnover) *Turnover)

Column 1	Column 2
Licence Types	Regulatory Levy
Telecommunications - Non-profit (ECNS and ECS)	Levy % = MAX(500,MIN(1.65%, 0.0000000000165*Turnover) *Turnover)
Broadcasting - Commercial	Levy % = MAX(500,MIN(1.65%, 0.0000000000165*Turnover) *Turnover)
Broadcasting - Community	Levy % = MAX(500,MIN(1.65%, 0.0000000000165*Turnover) *Turnover)
Broadcasting - Public	Levy % = MAX(500,MIN(1.65%, 0.0000000000165*Turnover) *Turnover)
Broadcasting - Signal Distribution	Levy % = MAX(500,MIN(1.65%, 0.0000000000165*Turnover) *Turnover)
Broadcasting - Multiplex	Levy % = MAX(500,MIN(1.65%, 0.0000000000165*Turnover) *Turnover)
Broadcasting - Class Comprehensive	Levy % = MAX(500,MIN(1.65%, 0.0000000000165*Turnover) *Turnover)
Broadcasting - Multiplex and Signal Distribution	Levy % = MAX(500,MIN(1.65%, 0.0000000000165*Turnover) *Turnover)
Postal - Designated Postal Operator	Levy % = MAX(500,MIN(1.65%, 0.0000000000165*Turnover) *Turnover)
Postal - Private Postal Service	Levy % = MAX(500,MIN(1.65%, 0.0000000000165*Turnover) *Turnover)

### ANNEXURE C

(Regulation 5)

Column 1 Government Gazette and General Notice	Column 2 Title of Regulations	Column 3 Extent of Amendment/Repeal
Government Gazette No. 7072 of 2 December 2019 General Notice No. 506 of 2019	Regulations Prescribing Licence Categories and Licensing Procedures for Postal Service Licensees	(a) The repeal of regulations 2(1) (c), 5(4), 7(5), 10(5), 11(4), 13(4) and 14; and  (b) The amendment of regulation 9 by the substitution for paragraph (e) of the following paragraph:  “(e) failure by a licensee to pay any fee, levy or other amount or contribution which such licensee is obligated to pay under the Act;”.
Government Gazette No. 5269 of 19 August 2013 General Notice No. 331 of 2013	Amendment of the Regulations Regarding Administrative and Licence Fees for Service Licences	Repealed in total
Government Gazette No. 5037 of 13 September 2012 General Notice No. 311 of 2012	Regulations Regarding Administrative and Licence Fees for Service Licences	Repealed in total

## SCHEDULE 2

### CONCISE STATEMENT OF PURPOSE

The Communications Act, 2009 (Act No. 8 of 2009), authorises the Authority to impose certain licence fees as follows:

- section 38(10)(f) provides for the imposition of fees payable for the grant, management and control of a telecommunication licence;
- section 85(1) and (4)(a) provides for the imposition of issue and application fees payable with regard to a broadcasting licence;
- section 96(1) provides for the imposition of application and issue fees payable with regard to a postal licence;
- section 129 provides that the Authority may make regulations prescribing fees payable for applications, for the issue of licences or for any service rendered or thing done by the Authority.

Based on the above authorisations, the Authority intends to impose the application, grant/issue, renewal, transfer and amendment fees (collectively referred to as the “licence fees”) as set out in Annexure A of the Regulations contained in Schedule 1.

Section 23 of the Communications Act (as amended) authorises the Authority to impose a regulatory levy on providers of communications services for purposes of covering its regulatory cost. Under the authority of said section 23, the Authority intends to impose the regulatory levy as set out in Annexure B of the Regulations contained in Schedule 1.

Together with this Notice of Intention to Make Regulations Prescribing Licence Fees and Regulatory Levies, the Authority published its Discussion Paper on Administrative Fees and Regulatory Levies for CRAN (hereafter referred to as the “Discussion Paper”). The purpose of the Discussion Paper is to provide detailed information on, and the rationale for, the proposed licence fees and regulatory levy. It is not the purpose of this Concise Statement of Purpose to summarise the Discussion Paper but merely to capture the salient points thereof as follows:

- In view of the Supreme Court having found section 23(2)(a) of the Communications Act unconstitutional, Parliament replaced the whole of section 23 with a new section in order to give effect to the findings of the Supreme Court. This necessitated the issue of new regulations prescribing licence fees and the regulatory levy;
- Licence fees and the regulatory levy must not act as a barrier but allow the objectives of the Communications Act to be met and promote universal access and efficiency objectives;
- The determination of the regulatory levy and licence fees must be compliant with the Communications Act;
- Licence fees, except for issue fees, remain unchanged. Due to the cost involved in the issue of a licence, issue fees are generally increased from N\$ 10,000 to N\$ 50,000 (excluding telecommunications – non-profit (ECNS and ECS) and community broadcasting where the fees remain N\$ 500);
- As part of benchmarking and aligning with regional and international best practices, a comparison was made with communications levies and fees in the following countries: Zambia, Uganda, Tanzania, Botswana, Zimbabwe and South Africa;
- Details on the Authority’s financials are provided covering aspects such as revenue, operational expenses and net income as well as a budget projection and expected shortfall to be funded by the regulatory levy. A glide path is provided of different levels of proposed levy percentages;
- Based on the analysis and modelling, a regulatory levy of 1.65% is proposed with a minimum of N\$ 500.

The Authority will continue to use a progressive regulatory levy formula in terms of which the percentage of turnover payable as a regulatory levy is based on a formula capping the maximum percentage at 1.65%. The formula applied is designed so that the percentage levy increases evenly from 0% to 1.65% for turnover ranging from zero to one billion Namibian dollars. Licensees with less than one billion Namibian dollars turnover will pay a lower percentage and only licensees exceeding one billion Namibian dollars in turnover will pay the full levy.

The formula works as follows:  $\text{Levy \%} = \text{MAX}(500, \text{MIN}(1.65\%, 0.000000000165 * \text{Turnover}) * \text{Turnover})$ . The formula selects the lower value out of NS 500 or 1.65% and  $0.000000000165 * \text{turnover}$ .

Examples:

- a) 5 million turnover: Minimum (1.65%,  $0.000000000165 * 5,000,000$ ) = 0.01%
- b) 500 million turnover: Minimum (1.65%,  $0.000000000165 * 500,000,000$ ) = 0.83%.
- c) 2 billion turnover: Minimum (1.65%,  $0.000000000165 * 2,000,000,000$ ) = 1.65%.

Please note that  $0.000000000165 * 2,000,000,000 = 3.3\%$  and hence the lower 1.65% is selected

This progressive regulatory levy formula has the following advantages:

- A single formula can be applied to all sectors and licensees;
- Smaller licensees and new entrants will pay a smaller levy percentage which would encourage market entry and competition;
- Once a licensee has reached a turnover of one billion Namibian dollars, the full levy becomes applicable;
- The progressive regulatory levy formula would reduce the market exit risk while ensuring income for the Authority which is sufficient to defray the regulatory cost thus enabling the Authority to provide quality regulation by means of securing adequate resources;
- The progressive regulatory levy formula is not unreasonably discriminatory and would, in as far as is practical, result in a fair allocation of cost amongst licensees;
- The proposed regulatory levy is not deemed to have an unreasonable negative impact on licensees' sustainability;
- The determination and imposition of the proposed regulatory levy would ensure predictability, fairness, equitability, transparency and accountability.

### SCHEDULE 3

#### DISCUSSION PAPER ON LICENCE FEES AND REGULATORY LEVIES FOR CRAN

##### TABLE OF CONTENT

1. Introduction
2. Current Legislation
3. The Regulatory Levy
4. Types of Licence Fees
  - 4.1 Current Regulatory Charges
  - 4.2 Regulatory Charges in Other Jurisdictions
    - 4.2.1 Regional Comparisons
    - 4.2.2 International Comparisons
5. CRAN's Financials
  - 5.1 Regulatory Levy Projection
  - 5.2 Budget Projection
  - 5.3 Projected Shortfall
  - 5.4 Impact of Levy on Licensees
6. Proposed Regulatory Levies



7. Conclusion & Recommendations
8. References

## 1. Introduction

In 2012 CRAN set out regulatory levy and licence fees as per section 23 of the Communications Act, 2009 (Act No. 8 of 2009). The regulatory levy was contested as to its validity and constitutionality in the High Court and thereafter the Supreme Court of Namibia. On 11 June 2018, the Supreme Court of Namibia declared section 23(2)(a) of the Communications Act (Act) unconstitutional based on the fact that there were no limits on the powers granted to CRAN to set the regulatory levy. The purpose of this paper is therefore, to set the background for imposing a regulatory levy in terms of the revised section 23 of the Communications Act, as amended. The paper will also set the principles to measure the levy and fee determination against the Act and provide recommendations on the way forward.

## 2. Current Legislation

The objectives of the Act are to guide all of CRAN's actions: The regulatory charges CRAN collects are subject to the objectives of the Act, which fit in with the general trend towards liberalisation, privatisation and increased competition in order to meet the objectives of affordability and increased penetration. Regulatory charges must be addressed within the framework of increasing competition in Namibia. CRAN must also ensure that regulatory charges are not a barrier to competition and that they allow the sector to meet universal access and efficiency objectives. Table 1 matches the objectives of the Act with guidance on how to set charges.

<b>Table 1: Matching the objectives of the Act to principles for setting fees and levies</b>	
<b>Objectives of the Act</b>	<b>Application to fees</b>
(a) to establish the general framework governing the opening of the telecommunication sector in Namibia to competition;	Safeguarding that fees do not limit competition and for CRAN to fulfil its mandate
(b) to provide for the regulation and control of communications activities by an independent regulatory authority;	Securing enough funding for CRAN to fulfil its mandate
(c) to promote the availability of a wide range of high quality, reliable and efficient telecommunications services to all users in the country;	Safeguarding that fees do not limit competition Safeguarding that fees are collected for UAS interventions and for CRAN to fulfil its mandate
(d) to promote technological innovation and the deployment of advanced facilities and services in order to respond to the diverse needs of commerce and industry and support the social and economic growth of Namibia;	Safeguarding that fees are technological and service neutral and for CRAN to fulfil its mandate
(e) to encourage local participation in the communications sector in Namibia;	Safeguarding that fees are not too high to limit local participation and for CRAN to fulfil its mandate
(f) to increase access to telecommunications and advanced information services to all regions of Namibia at just, reasonable and affordable prices;	Safeguarding that fees do not limit competition and for CRAN to fulfil its mandate. For CRAN to fulfil its mandate in terms of UAS.
(g) to ensure that the costs to customers for telecommunications services are just, reasonable and affordable;	Safeguarding that fees do not limit competition and for CRAN to fulfil its mandate
(h) to stimulate the commercial development and use of the radio frequency spectrum in the best interests of Namibia;	Safeguarding that spectrum is used efficiently, that access to spectrum is fair and transparent and in public interest and for CRAN to fulfil its mandate
(i) to encourage private investment in the telecommunications sector;	Safeguarding that fees are not too high to limit private sector participation and for CRAN to fulfil its mandate

<b>Objectives of the Act</b>	<b>Application to fees</b>
(j) to enhance regional and global integration and cooperation in the field of communications;	Safeguarding that fees are not higher than other countries in the region, to prevent distorting investment.
(k) to ensure fair competition and consumer protection in the telecommunications sector;	Safeguarding that fees do not limit competition
(l) to advance and protect the interests of the public in the providing of communications services and the allocation of radio frequencies to the public.	Safeguarding that fees do not limit competition Safeguarding that spectrum is used efficiently, that access to spectrum is fair and transparent and in public interest

In 2012, after a rule-making process, CRAN prescribed the Regulations Regarding Administrative and Licence Fees for Service Licences (General Notice No. 311 published in Government Gazette No. 5037 dated 13 September 2012). The unconstitutionality of section 23(2)(a) affected these Regulations. The Supreme Court of Namibia on 11 June 2018 declared section 23(2)(a) unconstitutional as follows:

- “1. Section 23(2)(a) of the Communications, 2009 is declared unconstitutional and is hereby struck down;
2. Subject to paragraph 3 below, the order of invalidity in paragraph 1 will take effect from the date of this judgement and shall have no retrospective effect in respect of anything done pursuant thereto prior to the said date;
3. Telecom shall not be liable to pay any levy imposed covering a period before the coming into force of Item 6 of the Regulations Regarding Administrative and Licence Fees for Service Licences, published as General Notice No. 311 in Government Notice No. 5037 on 13 September 2012.”

This finding by the Supreme Court that Section 23(2) (a,) is unconstitutional, meant that the section needed to be amended and new regulatory levy regulations be prescribed.

### **3. The Regulatory Levy**

The amended section 23 will allow CRAN to maintain its current levy’ regime, but introduces limitations and guidelines subject to which the regulatory levy will be set. The amended section allows CRAN to use fixed and revenue based licence fees and also a progression for the regulatory levy. The amended section 23 will address the court ruling and safeguard that the current levy regime is constitutional.

<b>23</b>	<b>Amendment Text</b>	<b>Summary</b>
(1)	With due regard to subsections (4) to (8), the Authority may by regulation, after having followed a rule-making procedure, impose a regulatory levy upon providers of communications services in order to defray its regulatory costs, which levy may take one or more of the following forms –  (a) a percentage of the turnover of all or a prescribed class of the providers of communications services;  (b) a fixed amount payable by a prescribed class of providers of communications services in respect of a prescribed period;  (c) a fixed amount payable by a prescribed class of providers of communications services in respect of any customer to whom a prescribed class of service is rendered during that period;	Cover regulatory cost as defined

<b>Table 2: Section 23 as Amended by Communications Amendment Act, 2020 (Act No. 6 of 2020)</b>		
<b>23</b>	<b>Amendment Text</b>	<b>Summary</b>
	<p>(d) as a combination of the forms referred to in paragraph(a), (b) or (c) together with provisions prescribing the circumstances under which a prescribed form of the levy is payable;</p> <p>(e) any other form that is not unreasonably discriminatory.</p>	
(2)	<p>When imposing the levy, the Authority may by regulation –</p> <p>(a) impose different percentages or different fixed amounts depending on –</p> <p>(i) the amount of turnover of the provider;</p> <p>(ii) the category of communications services rendered by the provider;</p> <p>(iii) the class of licence issued to the provider; or</p> <p>(iv) any other matter that is in the opinion of the Authority relevant for such an imposition;</p> <p>(b) impose a fixed minimum amount payable by providers of communications services irrespective of the form of the regulatory levy as set out in subsection (1);</p> <p>(c) impose different forms of the regulatory levy, as set out in subsection (1), depending on –</p> <p>(i) the amount of the turnover of the provider;</p> <p>(ii) the category of communications services rendered by the provider;</p> <p>(iii) the class or type of licence issued to the provider; or</p> <p>(iv) any other matter that is in the opinion of the Authority relevant for such an imposition;</p> <p>(d) prescribe –</p> <p>(i) with regard to the turnover of the providers of communications services, or with regard to their services or business, regulated by this Act, received or provided by the providers of communications services, the aspects thereof which are included or excluded for purposes of determining the regulatory levy or calculating the turnover of the provider concerned;</p> <p>(ii) the period during which turnover, services or business must be received or provided to be considered for the calculation of the regulatory levy; and</p> <p>(iii) without limiting the foregoing, the manner in which the regulatory levy is to be calculated:</p> <p>Provided that the regulatory levy may not be imposed on turnover, services or business received or provided prior to the date on which the regulations imposing the relevant regulatory levy are published in the <i>Gazette</i>;</p> <p>(e) prescribe the periods and methods of assessment of the regulatory levy and the due date for payment thereof which may include payment in prescribed instalments: Provided that the regulatory levy may not be imposed on turnover, or services or business received or provided prior to the date on which the regulations imposing the relevant regulatory levy are published in the <i>Gazette</i>;</p>	<p>Allowing flexibility and options to ensure fairness and non-discrimination</p> <p>Determining what falls within the ambit of turnover and what not</p> <p>Allowing flexibility and options to ensure fairness and non-discrimination</p> <p>Determining what falls within ambit of turnover and what not</p> <p>Allowing different percentages and minimum amounts</p> <p>Prohibits retrospectivity</p> <p>Allowing how to assess levy and periods of assessment</p>

<b>Table 2: Section 23 as Amended by Communications Amendment Act, 2020 (Act No. 6 of 2020)</b>		
<b>23</b>	<b>Amendment Text</b>	<b>Summary</b>
	<p>(f) prescribe the information to be provided to the Authority for the purpose of assessing the regulatory levy payable by the providers of communications services;</p> <p>(g) prescribe penalties, which may include interest, for the late payment of the regulatory levy, or for providing false information or for the failure to provide information to the Authority relating to the assessment of the levy.</p>	Allowing to set penalties
(3)	<p>The objectives of the regulatory levy are –</p> <p>(a) to ensure income for the Authority which is sufficient to defray the regulatory costs thereby enabling the Authority to provide quality regulation by means of securing adequate resources;</p> <p>(b) insofar as it is practicable, a fair allocation of cost among the providers of communication services;</p> <p>(c) to promote the objects of this Act set out in section 2 and the objects of the Authority set out in section 5.</p>	<p>Recover cost of regulation with cost linked to cost of regulatory processes</p> <p>Aims at fair cost allocation</p> <p>Promote objectives of the Act</p>
(4)	<p>The principles to be applied with relation to the imposition of the regulatory levy are –</p> <p>(a) that the impact of the regulatory levy on the sustainability of the business of providers of communications services is assessed and if the regulatory levy has an unreasonable negative impact on such sustainability, that the impact is mitigated, in so far as is practicable, by means of the rationalisation of the regulatory costs and the corresponding amendment of the proposed regulatory levy;</p> <p>(b) that predictability, fairness, equitability, transparency and accountability in the determination and imposition of the regulatory levy are ensured;</p> <p>(c) that the regulatory levy is aligned with regional and international best industry practices.</p>	<p>CRAN must reduce regulatory risk.</p> <p>Best practice must be used.</p> <p>Assess the impact of the levy and cost to the industry.</p>
(5)	<p>When determining the form, percentage or amount of the regulatory levy, the Authority –</p> <p>(a) must duly consider, in view of its regulatory costs –</p> <p>(i) the income it requires and the proportion of such income which should be funded from the regulatory levy in accordance with the objectives and principles set out in subsections (3) and (4) respectively, as projected over the period during which the regulatory levy will apply, and taking into consideration its relevant integrated strategic business plan and annual business and financial plans, including the operating budgets and capital budgets as set out in its annual business and financial plans, as contemplated in sections 13 and 14 of the Public Enterprises Governance Act, 2019 (Act No. 1 of 2019);</p> <p>(ii) income derived from any other sources;</p> <p>(iii) the necessity to ensure business continuity by, amongst others, providing for reasonable reserves as set out in its plans contemplated in sub-paragraph (i);</p> <p>(iv) the necessity to avoid, as far as is reasonably possible or predictable, the receiving of income from the regulatory levy in substantial excess of what is required to cover the regulatory costs;</p>	<p>CRAN must consider budget as well as cash flow and reserves required when setting levy</p> <p>Avoid levy increase more than once every 12 months</p>

<b>Table 2: Section 23 as Amended by Communications Amendment Act, 2020 (Act No. 6 of 2020)</b>		
<b>23</b>	<b>Amendment Text</b>	<b>Summary</b>
	<p>(v) the necessity of managing any risks in the communications industry associated with the imposition of a regulatory levy;</p> <p>(vi) any other fees, levies or charges which the providers of communications services are required to pay under this Act;</p> <p>(vii) any other matter deemed relevant by the Authority in order to ensure that income derived from the regulatory levy is sufficient to defray its regulatory costs;</p> <p>(b) must, in order to maintain reasonable predictability and stability, avoid, unless there is good reason to do so, an increase in the regulatory levy or the introduction of a new regulatory levy in any period of 12 consecutive months;</p> <p>(c) may consider any other matter the Authority deems relevant.</p>	
(6)	The Authority must before the expiry of five years from the last imposition of the levy or a last review under this section, review the regulatory levy to ensure that the levy is compliant with the requirements set out in this section and that there are no continued under- or over-recoveries.	Review levies every 5 years
(7)	If the Authority has received regulatory levy income in excess of its regulatory costs, the Authority may retain such over-recovery but must set it off against the projected regulatory costs used for the next regulatory levy determination and imposition.	CRAN may keep over-recovery but against future set-off
(8)	<p>If the Authority receives income from the regulatory levy less than its regulatory costs in a period during which such regulatory levy applied, or during a specific period, received no income from the regulatory levy for whatever reason, the Authority may, when determining and imposing the next regulatory levy –</p> <p>(a) adjust the regulatory levy, and determine a higher regulatory levy, to recover such under-recovery during the period during which the next regulatory levy will apply; determine a once-off higher regulatory levy for the first period during which the next regulatory levy will apply in order to recover such under-recovery and for the remaining period or periods a different regulatory levy in accordance with subsection (5).</p>	CRAN may increase levies in case of under-recovery
(9)	The Authority may, subject to subsection (5)(b), withdraw or amend the regulatory levy imposed under this section and, in so far as they are applicable, the provisions of this section apply in the same manner, with the necessary changes, to such withdrawal or amendment.”	CRAN can change levies

The amended section 23 provides -

- the rationale for the regulatory levy;
- as well as the charging considerations to guide CRAN’s decision making on an appropriate regulatory levy;
- the charging principles to assist with the design, implementation and review of the regulatory levy.

When making a regulatory levy determination in terms of the amended section 23, CRAN will in addition to the principles set out therein, consider aspects such as transparency, efficiency, performance, equity, simplicity and policy considerations. Regulatory charges should be consistent with the policy intent and legislative objectives.

#### 4. Types of Licence Fees

The Communications Act provides for a number of regulatory charges as well as resource charges (spectrum fees are an example of the latter). As a type of regulatory charge, licence fees should preferably be based on cost recovery. However, the latter may not be efficient as explained elsewhere in this paper. Pricing models underlying resource charges generally aim at value-based pricing, commercial or cost recovery and are generally based on the potential value of the activity to the recipient. For regulatory activities, the only pricing model which can be used is full or partial cost recovery. As far as resource activities are concerned (such as spectrum fees), different pricing models can be used. These pricing models can be market driven or based on recovering the cost. Such pricing models will depend on the nature and objectives of the charging activity. CRAN's pricing models for spectrum and numbering are also based on cost recovery but takes into consideration scarcity and efficiency.

Licence fees and resource charges are being used by regulators for various purposes, including:

- Allocating scarce resources, to ensure that those that value it most will obtain access;
- To cover the costs of regulation;
- High enough to avoid frivolous non-serious applications;
- To cover the administrative cost involved in the consideration of an application and the taking of a decision thereon; and
- To support administrative efficiency.

The Communications Act authorises CRAN to impose a number of regulatory charges, as summarised in the Table 4 below:

Fees	Application	Level	Objectives
Once-Off Licence	New Licence	<ul style="list-style-type: none"> <li>• Auctions</li> <li>• Benchmarking</li> <li>• Discounted cash flows or net present value estimates</li> </ul>	• Revenue generation
	Licence Renewal		• Some cost recovery for admin cost involved in considering and issuing licence
	Application Fees		• Scarce resources
	Transfer of licenses and transfer of control of licences		• Efficient use
	Amendment of licences		• Fair access
Spectrum	• Transparent access		
			• In the public interest
			• Supporting administrative efficiency

<b>Table 3: Types of Charges CRAN may impose</b>			
<b>Fees</b>	<b>Application</b>	<b>Level</b>	<b>Objectives</b>
Annual or Recurring	Spectrum fees	Fixed fees	<ul style="list-style-type: none"> <li>• To cover costs of managing the spectrum</li> <li>• Revenue generation</li> <li>• Scarce resources:</li> <li>• Efficient use               <ul style="list-style-type: none"> <li>• Fair access</li> <li>• Transparent access</li> <li>• In the public interest</li> </ul> </li> </ul>
	Number range and short code fees		
	Licence fees/ Regulatory levy	Revenue based fees	Revenue generation to cover cost of regulator
	Universal Access & Service fees	Revenue based fees	To fund universal service and access projects

High once-off fees for new licences can limit market entry, which can be positive or negative for an economy. Positive, if it limits market entry of those which are not qualified players in terms of capital outlay and/or technical expertise. Negative, if limited market entry leads to an uncompetitive market.

Generally, licence fees change the behaviour of market participants. Too high fees will be passed on to consumers if demand for services is inelastic. Investors may not be able to recover the paid licence fee if demand is elastic. CRAN may therefore, in line with the Communications Act, look at partial cost recovery for certain administrative / procedural type of charges. The cost of the service will then be cross-subsidised from the income derived from other regulatory charges.

#### **4.1 Current Regulatory Charges**

The regulatory charges, (now declared unconstitutional) were listed in Government Gazette No. 5179, General Notice No. 110, dated 13 September 2012. The following formula to determine the regulatory levy was applied to all licensees:

$$\text{Regulatory levy} = \text{Min (1.5\%, 0.0000000002*revenue)} * \text{Revenue}$$

In the previous regulations the licence fees were called administrative fees, but for clarity it is proposed that the fees be referred to as “licence fees”.

The current licence fees are given in Table 5.

Sector	Licence Type	New Licence	Amendment	Transfer/ Transfer of Control	Renewal
Telecommunications	Individual Comprehensive (ECNS and ECS)	n/a	10,000	10,000	10,000
	Class ECS	10,000	10,000	10,000	10,000
	Class ECNS,				
	Cass Comprehensive (ECNS and ECS)s Network Facilities Licence				
Broadcasting	Commercial	10,000	10,000	10,000	10,000
	Signal Distribution				
	Class Comprehensive				
	Multiplex				
	Class Comprehensive	500	500	500	500
	Multiplex & Signal Distribution				
	Community				
Broadcasting Public	n/a	10,000	10,000	10,000	

Spectrum fees will not be dealt with in this document. It suffices to acknowledge that spectrum fees made up close to 20% of the CRAN revenue. Spectrum fees will cover the cost of managing and administering spectrum.

A problem experienced in implementing the licence fees has been that the cost of issuing a new licence is considerable for CRAN. Expenses arise from integrating new licensees into the CRAN portal, legal drafting, issuing of licence certificates and advertisement in the *Gazette* to name a few. The proposal is therefore to introduce a new fee for the issuing a new licence, while keeping the fee for the application for licenses the same. This fee would not recover the total administrative cost but assist in administrative efficiency and avoid non-serious applications. The previous annual licence fee of N\$ 10,000 will be removed. The proposed fee structure is given in Table 6.

Sector	Licence Type	New Licence		Amendment	Transfer/ Transfer of Control	Renewal
		Application	Issue			
Telecommunications	Individual Comprehensive (ECNS and ECS)	n/a	n/a	10,000	10,000	10,000
	Class ECS	10,000	50,000	10,000	10,000	10,000
	Class ECNS,					
	Cass Comprehensive (ECNS and ECS) Network Facilities Licence					
	Non-profit Class ECS or ECNS	500	500	500	500	500



Sector	Licence Type	New Licence		Amendment	Transfer/ Transfer of Control	Renewal
		Application	Issue			
Broadcasting	Commercial					
	Signal Distribution					
	Class Comprehensive					
	Multiplex	10,000	50,000	10,000	10,000	10,000
Broadcasting	Class Comprehensive					
	Multiplex & Signal					
	Distribution					
Broadcasting	Community	500	500	500	500	500
	Broadcasting Public	n/a	n/a	10,000	10,000	10,000
Postal	Designated postal operator license	n/a	n/a	10,000	10,000	10,000
	Private postal service license	10,000	50,000	10,000	10,000	10,000

## 4.2 Regulatory Charges in Other Jurisdictions

### 4.2.1 Regional Comparisons

Generally, when comparing licence fees and regulatory levies across other jurisdictions one ought to compare total regulatory costs in relation to revenues. This includes various types of regulatory charges such as licence fees as well as regulatory levies, spectrum, numbering and universal service fees. It should also take into consideration if the regulator in question is funded by Treasury or self-funded. This section is limited to comparing licence fees and annual regulatory levies from selected countries.

National Licence	Network		Service Licence (With Network)		Service Licence (Without Network)	
	ZMW	N\$	ZMW	N\$	ZMW	N\$
	Initial	1,200,000	1,315,930	300,000	328,984	375,000
Application	16,667	18,276	16,667	18,276	8,333	9,139
Regulatory Levy: Gross Annual Revenue	1.5%		3%		3%	
Source	<a href="https://www.zicta.zm/Downloads/New%20license%20Fee%20schedule-2017.pdf">https://www.zicta.zm/Downloads/New%20license%20Fee%20schedule-2017.pdf</a>					

ZICTA currently has three types of licences: 1) Network Licence, 2) Service (With Network) Licence, 3) Service (Without Network) Licence. Each of these licences has a geographic component and can be categorised as either international, national, provincial or district. Mobile operators fall into the "Holders of a Network License" category and have to pay a regulatory levy of 1.5 percent of gross annual turnover. Holders of the other service licences, such as ISP, are charged 3 percent. ZICTA's application and initial fees are a multiple of Namibia fees.

Services		Fees	N\$	
Telecommunication	Annual Licence Fee	2% of Gross Annual Revenue	2% on GAR	
	Public Infrastructure Provider (PIP)	Application	USD 2,500	37,200
		Initial entry fee	USD 100,000	1,488,430
	Public Infrastructure Provider (PIP)	Application	USD 3,000	44,653
		Initial entry fee	USD 3,000	44,653
	Broadcasting	Radio Station broadcasting fees	Application processing	UGX 6,240,000 (Non Commercial Radio Stations)
			UGX 9,400,000 (Commercial Radio Stations)	37,543
Initial entry fee			UGX 33,000,000 (National commercial Radio Tier 1)	131,800
		Commercial Radio License	UGX 10,000,000 Tier1	39,939
TV - Public Infrastructure Provider Licence		Initial Entry Fees	UGX 100,000	399
		Regulatory Levy	UGX 30,000 and 2% on GAR	120 + 2% on GAR
Source		<a href="https://businesslicences.go.ug/kcfinder/upload/files/UCC%20fees%20structure.pdf">https://businesslicences.go.ug/kcfinder/upload/files/UCC%20fees%20structure.pdf</a>		

Tanzania also uses a minimum fee for the regulatory levy, though it is substantially larger than that of Namibia, N\$ 44,653 (USD 3,000) compared to N\$ 10,000. Tanzania's application, initial and renewal fees are also substantially higher than those for Namibia.

	USD	N\$
Application	5,000	74,421
Initial	600,000	8,930,570
Renewal	750,000	11,163,200
Royalty Fee (Gross Annual Turnover)	1% GAT or USD 3,000 whichever is greater	1% GAT or N\$ 44,653 whichever is greater
Source:	<a href="https://www.tcra.go.tz/images/documents/licensing%20information/GN._57_schedule_to_the_Licensing_Regulations_2018.pdf">https://www.tcra.go.tz/images/documents/licensing%20information/GN._57_schedule_to_the_Licensing_Regulations_2018.pdf</a>	

Botswana also has a higher regulatory levy, 3% of net operating revenues, i.e. service revenues. It has several fix amounts payable per annum. A mobile operator would for example have to pay for the fixed fees for mobile and international services.

	Pula	N\$
Services & Applications Licence	3% of Net Operating Revenue	
Application fee	10,000	13,470
Services carried on Public Fixed Networks (i.e voice/data/text)	127,421	171,641
Services carried on Public Land Mobile Cellular Networks (voice/data/text)	127,421	171,641
International Services (voice /data/text)	63,711	85,821
Satellite Services	63,711	85,821
Source	<a href="https://www.bocra.org.bw/sites/default/files/documents/Licensing%20Fee%20Structure_0.pdf">https://www.bocra.org.bw/sites/default/files/documents/Licensing%20Fee%20Structure_0.pdf</a>	

Zimbabwe's fees are much higher than Namibia's, in particular, to obtain a licence an initial licence fee of N\$1.5 billion have to be paid and the minimum regulatory levy is N\$ 900,000.

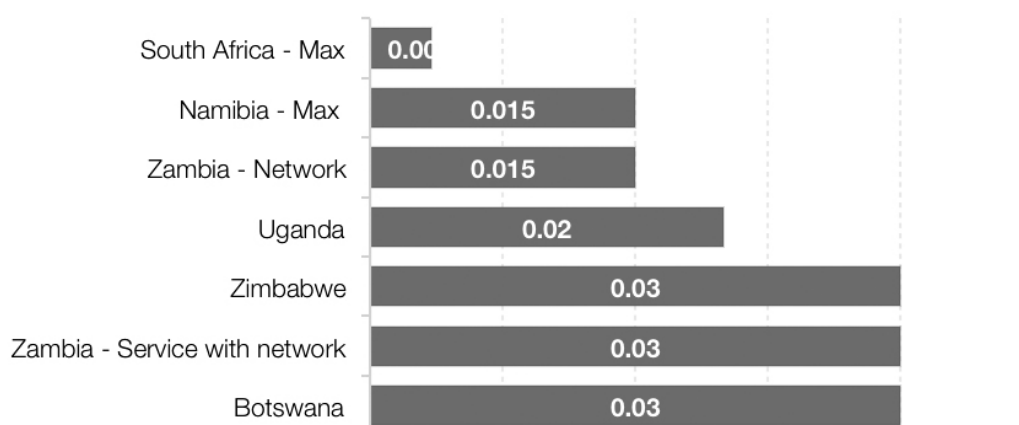
	USD	N\$
Initial licence fee	US\$100,000,000	1,493,350,000
Regulatory Levy	annual fee of US\$60 000 or 3% of the audited annual gross turnover plus VAT	896,010 or 3%
USF	2% of monthly gross turnover plus VAT	
Sources:	<a href="http://www.potraz.gov.zw/wp-content/uploads/2015/04/STATUTORY_INSTRUMENT_11A_of_2001-Licensing_Registration_and_Certification.pdf">http://www.potraz.gov.zw/wp-content/uploads/2015/04/STATUTORY_INSTRUMENT_11A_of_2001-Licensing_Registration_and_Certification.pdf</a>	

ICASA has lower regulatory levies than CRAN. Its licence fees are comparable, except for the initial application, which is set by a different process. A key difference between ICASA and CRAN is that ICASA does not face the same cash flow risks that CRAN faces, as ICASA is not funded by the levies but by the Department of Communications. CRAN, on the other side, is independently funded by fees it collects from licensees.

	Types	Fees ZAR or %
Regulatory Levies	ZAR 0 - 50 million	0.15%
	ZAR 50 million 100 million	0.2%
	ZAR 100 million 500 million	0,25%
	ZAR 500 million 1 billion	0.3%
	ZAR 1 billion -and above	0.35%
Licences for Applications Initial	Application	As specified in ITA
	Amendment	60,940
	Renewal	6,094
	Transfer	60,940
Class Licence	Application	12,187
	Amendment	6,094
	Renewal	6,094
	Transfer	6,093
Sources:	GOVERNMENT GAZETTE, 20 MARCH 2018, No. 41510 GOVERNMENT GAZETTE, 28 MARCH 2013, No. 36323	

With the exception of ICASA, for above mentioned reasons, CRAN's regulatory levies are on par or below comparable countries in Africa.

**Figure 1: Regulatory Levies as % of service revenue**



## 4.2.2 International Comparisons

Operators holding a Public Service Provider (PSP) licence and Public Infrastructure Provider (PIP) licence in Uganda are required to pay an annual licence fee and additionally an annual levy, the latter being a percentage of the gross annual revenue. The Uganda Communications Act 2013 increased the latitude the UCC has in determining the said fee, which fee has since been increased from 1% to 2%.

In France electronic communications operators must pay to the tax authorities an annual tax of 1.3% of all turnover earned from their electronic communications activities in France which is over EUR 5 million.

## 5. CRAN's Financials

The Authority determined the licence fees and regulatory levy for the first time in 2012 and has since kept it at the same levels although the cost of regulation increased considerably since the levy was introduced.

FY ending		2012	2013	2014	2015	2016	2017	2018	2019
Income Statement	Revenue	73.39	60.32	48.90	71.81	82.27	95.17	88.29	66.10
	Operational Expenses	13.38	53.60	48.87	60.65	84.43	113.64	107.42	85.03
	Net Income	61.24	11.04	4.11	16.10	5.39	-9.95	-11.65	-12.55
Cash Flow Statement	Net cash generated from operating activities	60.21	13.58	1.94	29.63	8.53	-18.50	-6.44	-8.16
Notes		CRAN received N\$ 37 million from NCC in 2012							

*Source: Audited Financial Statements (2012-2019)*

The Supreme Court ruled that the Regulator needs the funds to regulate the industry (i.e. the “regulatory scheme”) and that it would not be possible to determine the exact amount required. The Supreme Court did not find fault with the amount received from the regulatory levy (irrespective whether latter would be an under- or over-recovery). The gist of the Supreme Court’s fault finding was the absence of any guidelines or limitations on the size or amount of the regulatory levy.

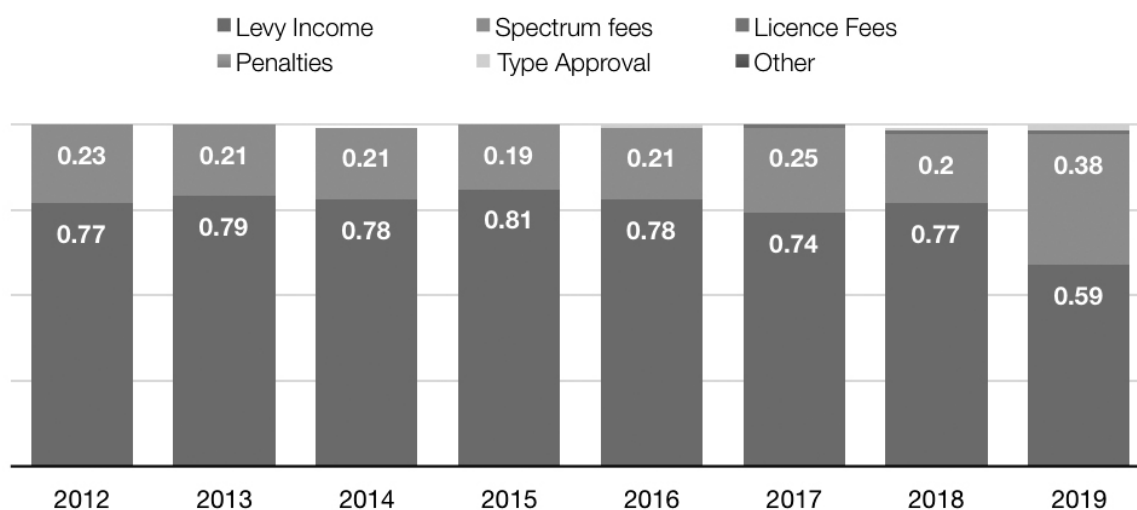
It is a reality that the setting of a regulatory levy could lead to either over-recovery or under-recovery in certain years. After thorough consideration, the only flexible limit or guideline which would be appropriate was identified as the cost of regulation. Again, the latter would not be 100% accurate and could also result in over- or under-recoveries which then should be reconciled, in the following years. Prudent budget management by CRAN is therefore essential.

FY ending	2012	2013	2014	2015	2016	2017	2018	2019
Regulatory Levy Income	56.51	47.46	54.22	57.85	64.34	70.20	68.61	39.05
Administrative (Licence) Fees			0.17	0.25	0.22	0.61	0.69	0.54
Spectrum fees	16.88	12.86	14.80	13.69	17.10	23.43	17.80	25.29
Penalties					0.35			
Type Approval				0.01	0.60	0.93	1.18	1.25
Numbering Fees								
Other				0.01	0.11	0.29	0.25	
<b>Total Revenue</b>	<b>73.39</b>	<b>60.32</b>	<b>69.19</b>	<b>71.81</b>	<b>82.72</b>	<b>95.46</b>	<b>88.53</b>	<b>66.13</b>
Interest	1.24	4.32	4.25	4.94	7.10	8.38	7.23	6.54
Total + interest	74.63	64.64	73.44	76.75	89.82	103.84	95.77	72.67
YoY		-13.4%	13.6%	4.5%	17.0%	15.6%	-7.8%	-24.1%

*Source: Audited Financial Statements (2012-2019)*

Revenue collection declined for the financial years ending in 2018 and 2019 due to MTC and Telecom Namibia not paying the regulatory levy. The drop for the Financial Year ending 2013 was due to the irregular high revenue in Financial Year 2012 of N\$ 37 million, which was transferred from the Namibia Communications Commission (NCC) to CRAN.

**Figure 2: Distribution of CRAN revenues across revenue sources**



The main source of CRAN revenues stems from the regulatory levy, typically close to 80%. The share increase of spectrum fees in 2019 is mostly due to lower regulatory levies collected.

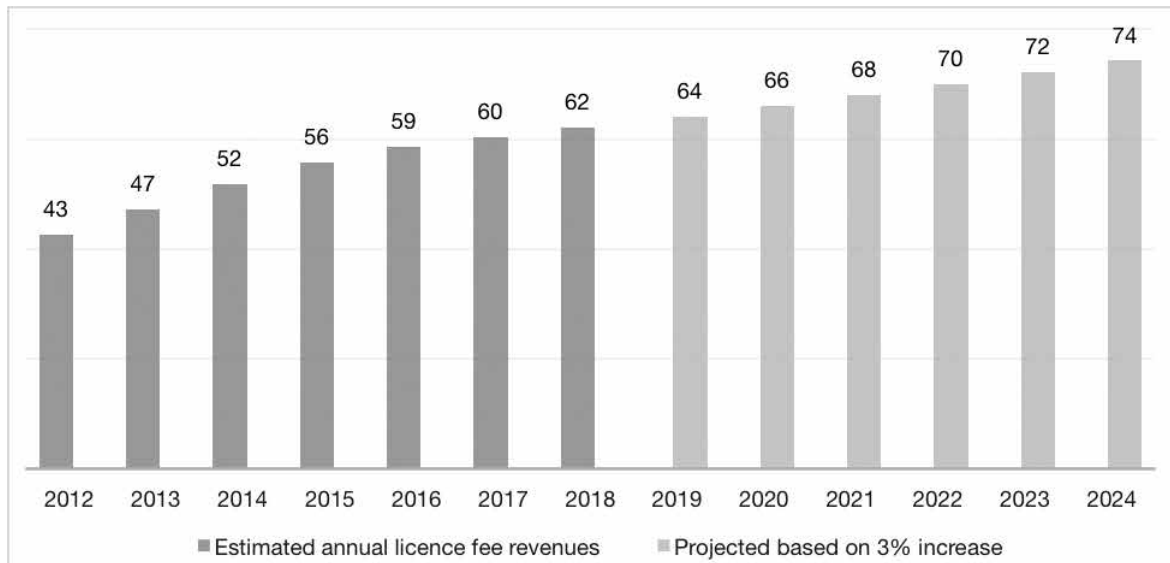
### 5.1 Regulatory Levy Projection

The regulatory levy was set to be a maximum of 1.5% of service revenues since 2012. Some operators have not paid their levies. MTC did not pay the regulatory levy from 2017 onward and Telecom Namibia did not pay these fees since 2012 when the regulation was published. Instead of basing projections on actual fees collected, this section bases them on the revenues as reflected in Audited Financial Statements of licensees – i.e. what the Authority would have collected if all licensees paid the regulatory levy. This then allows CRAN to make a projection of future growth per annum for levy calculations.

FY ending		2012	2013	2014	2015	2016	2017	2018
Revenue in N\$ million	TN	1,223	1,310	1,353	1,420	1,518	1,503	1,530
	MTC	1,617	1,832	2,082	2,251	2,324	2,421	2,498
	Others Telco	-	155	235	352	398	452	481
	Broadcasters							887
Licence Fee Factor	TN	1.5%	1.5%	1.5%	1.5%	1.5%	1.5%	1.5%
	MTC	1.5%	1.5%	1.5%	1.5%	1.5%	1.5%	1.5%
	Others		0.10%	0.09%	0.10%	0.11%	0.11%	0.12%
	Broadcasters							1.07%
Estimated regulatory levy revenue for CRAN in N\$ million	TN	18.3	19.6	20.3	21.3	22.8	22.5	23.0
	MTC	24.3	27.5	31.2	33.8	34.9	36.3	37.5
	Others	-	0.2	0.2	0.7	0.9	1.4	1.8
	Broadcasters							9.5
	Total	<b>42.6</b>	<b>47.3</b>	<b>51.8</b>	<b>55.7</b>	<b>58.6</b>	<b>60.3</b>	<b>62.2</b>
	YoY		<b>11.1%</b>	<b>9.4%</b>	<b>7.6%</b>	<b>5.1%</b>	<b>3.0%</b>	<b>3.2%</b>

The regulatory levy based on AFS revenue increased by 3% in the financial years ending in 2017 and 2018. Figure 2 displays the expected revenue based on this trend continuing.

**Figure 3: Estimated regulatory levy revenue based on AFS revenues and 3% increase from 2019**



## 5.2 Budget Projection

The proposed budget of CRAN, for the next 4 years, provides for effectively regulating the ICT Industry as per its mandate.

FY ending	2021	2022	2023	2024
Expense forecast	97,77	105,19	113,33	90,21
CAPEX forecast	41,29	36,48	36,44	14,76
Budget requirement	<b>138,06</b>	<b>141,57</b>	<b>149,77</b>	<b>104,97</b>
Projected increase	14%	32%	2%	6%
<i>The increases for 2021 and 2022 are due to capital expenditure for spectrum monitoring equipment and sites.</i>				

The 2018/2019 budget of CRAN consisted of N\$ 78 million in expenses and N\$ 11 million Capex resulting in a total budget of N\$ 90 million. Some of the reasons for the budget increases are:

- Increased mandate in terms of Postal, Type Approval and Universal Access and Services;
- Increase in staff members to effectively regulate the industry and allow for the extended mandate;
- Additional office space and other expenses to host the additional staff members;
- New regulations that needed drafting in line with the extended mandate;
- High legal fees.

The main reasons for the future budget increases are:

- To provide for the projects that could not be started or finalised during the previous periods due to lack of funds; and
- Spectrum monitoring sites that need to be constructed or renovated.

In 2020/2021 the expected budget is N\$ 90.4 million. Due to no levies that will be collected during this year it was decided to exclude it from the analysis and projections for purposes of this report. It will not be possible to recoup the losses to be made during this financial year through levies without having a detrimental effect on the ICT industry.

### 5.3 Projected Shortfall

Not increasing the regulatory levy but instead increasing spectrum fees to cover the budget shortfall could lead to a rebalancing exercise. Note that such “cross-subsidisation” can be done as anticipated in the amendment to section 23 and it is not legally required that each service/regulated aspect must be funded by income from a specific source. However, some activities such as numbering are specifically provided for in the Act to be charged on a cost recovery base. Notwithstanding, the aim is that, if not immediately, then eventually, the fees obtained from each revenue stream should cover the cost of providing that service e.g. the total cost of regulating spectrum should be more or less covered by the spectrum fees.

<b>FY ending</b>	<b>2021/2022</b>	<b>2022/2023</b>	<b>2023/2024</b>	<b>Total</b>
Budget requirement	138,06	141,57	149,77	429,40
Numbering fees	5	5	5	15
Type Approval fees	0.5	0.5	0.5	1.5
Spectrum Management Fees	26,42	27,48	28,57	82,47
<i>Total Revenue from Other Sources</i>	12,19	12,56	12,94	37,69
<b>Short fall to be covered by Regulatory Levies</b>	<b>93.95</b>	<b>96.03</b>	<b>102.76</b>	<b>292.74</b>

The table below models different percentages on the gross revenue.

<b>Licensees</b>	<b>1%</b>	<b>1.2%</b>	<b>1.5%</b>	<b>1.60%</b>	<b>1.65%</b>	<b>1.75%</b>
Telecom Namibia Ltd	15.3	18.36	23.0	24.5	25.24	26.77
Mobile Telecommunications Limited	25.0	30.0	37.44	40.0	41.19	43.68
Others	7.95	9.53	11.91	12.7	12.7	13.9
<b>TOTAL</b>	<b>48.25</b>	<b>57.89</b>	<b>72.35</b>	<b>77.2</b>	<b>79.13</b>	<b>84.35</b>

By increasing the levy to 1.65% CRAN should be in a position to stay operational over the next 3 years and conduct most of the regulatory functions as required. It is expected that the levy income should increase with about 3% per annum based on the past 7 years. The levy can be kept at 1.5% if the outstanding levies are collected from non-paying licensees.

<b>FY ending</b>	<b>2021/2022</b>	<b>2022/2023</b>	<b>2023/2024</b>	<b>Total over 4 years</b>
Levy requirement	93.95	96.03	102.76	292.74
Levies from 1.65%	79.13	86.87	89.48	253.47
<b>Over/Under Recovery</b>	<b>(14.82)</b>	<b>(9.16)</b>	<b>(13.28)</b>	<b>(39.27)</b>

<b>FY ending</b>	<b>2021/2022</b>	<b>2022/2023</b>	<b>2023/2024</b>	<b>Total over 4 years</b>
<b>Budget requirement</b>	<b>139,05</b>	<b>141,67</b>	<b>149,77</b>	<b>430,5</b>
Levy Income	79.13	86.87	89.48	253.47
Administrative Fees	0.541	0.541	0.541	1.623
Spectrum fees	26,42	27,48	28,57	82,47
Type Approval	0.5	0.5	0.5	1.5
Penalties	0.5	0.5	0.5	1.5

<b>FY ending</b>	<b>2021/2022</b>	<b>2022/2023</b>	<b>2023/2024</b>	<b>Total over 4 years</b>
Interest	7.4	7.76	8.15	23.31
Numbering Fees	5.0	5.0	5.0	15.0
Other	3.75	3.75	3.75	11.25
<b>Total Revenue</b>	<b>121.22</b>	<b>124.96</b>	<b>128.83</b>	<b>390.12</b>
Over/Under-recovery	(17.83)	(9.26)	(13.28)	(40.37)

Implementing a levy of 1.65% would lead to an under-recovery of 40 million over the next 3 years starting 2021/2022. Any over- or under can be clawed back during the next period under review (i.e. from 2024 onwards).

#### **5.4 Impact of Levy on Licensees**

<b>Licensee</b>	<b>Total Cost of Regulation at 1.5% Levy (%) on cost</b>	<b>Total Cost of Regulation at 1.65% Levy (%) on cost</b>	<b>Total Cost of Regulation at 1.5% Levy (%) on revenue</b>	<b>Total Cost of Regulation at 1.65% Levy (%) on revenue</b>
Telecom Namibia Ltd	1.61%	2.08%	1.53%	1.98%
Mobile Telecommunications Limited	2.70%	3.49%	1.54%	1.99%
Paratus Telecommunications (Pty) Ltd	4.23%	3.85%	1.43%	1.30%
Average Other Telecommunications Licensees	1.62%	1.58%	0.92%	0.90%
MultiChoice Namibia (Pty) Ltd	9.65%	10.45%	1.51%	1.31%
Average Broadcasting Licensees	0.52%	0.53%	0.53%	0.54%

The amended section 23 indicated that the levy should be evaluated in terms of the impact that it would have on the licensees.

Telecommunications licensees in the rest of the world pay only around 10 per cent of their revenues in the form of taxes and levies whereas in Namibia the regulatory levy amounts to about 2%.

For the purpose of the table above the information from the 2018 financial statements were used. All information was kept the same except for the change in the levy to be able to make a determination on the impact of the proposed levy. The impact of the levy is calculated as a percentage of the total expense/cost and as a percentage of the total revenue of the organisation.

The reduction in the cost of regulation for some of the licensees is due to the fact that spectrum fees' contribution to the total cost of regulation is higher than the cost of regulation than the levies.

## **6. Proposed Regulatory Levies**

For the purposes of this document and the draft regulations, regulatory levy would refer to the annual licence fees in the previous regulations.

The formula to determine the regulatory levy is based on a gliding scale. This means that new entries and smaller licensees would pay less due to lower revenue than large licensees with high revenue. One of the challenges with the formula was that smaller licensees have to pay a very small amount that is not even worth invoicing. Thus a minimum annual fee of N\$ 500 is being introduced to be applicable to licensees whose invoices are less than N\$ 500.

**Regulatory Levy = Max (500, (Min (1.65%, 0.000000000165\*revenue) \* Revenue)**



It is further proposed that the levy be set at 1.65% of turnover/revenue to enable CRAN to cover the cost of regulation over the next 4 years. By fixing the amount to a maximum of 1.65% over the next 4 years will reduce regulatory risk to the operators since the levy will be fixed for a period of 4 years and at the same time reduces the risk to the regulator of experiencing financial shortfalls while effectively regulating the industry.

## **6 Conclusion & Recommendations**

The following is recommended for the purposes of this discussion document:

1. A new licence fee payable at issuing of a new licence of N\$ 50,000 except for community broadcasting service licences and for non-profit ECS and ECNS licenses.
2. The regulatory levy should be set at 1.65% of revenues, calculated in terms of the formula as set out in the regulations.
3. Introduce a minimum payment of N\$ 500 per year for non-profit licensees as a regulatory levy.
4. Introduce a minimum annual fee of N\$ 500 to be applicable to licensees whose invoices are less than N\$ 500.

## **7 References**

AUSI (2006): Association of Unified Telecom Service Providers of India (AUSI), Presentation to Minister of Communication and Information Technology on Reduction of License Fees, 19 January 2006

Burguet R. (2005): Licence Allocation and Performance in the Telecommunication Sector, CSIC & CREA, February, 2005

Cave M.E, Majumdar S.K & Volgelsang I. (2002): Handbook of Telecommunications Economics : Structure, Regulation and Competition, Vol 1, Elsevier 2002

CEPT (2001): Licences Fees for Satellite Services, Network and Terminals in CEPT, European Radio Communication Committee Report 108, October 2001

Courcoubetis and Weber (2003): Pricing Communication Networks: Economics, Technology and Modelling, Wiley, 2003

COVEC (2003): MED, Development of Price Setting Formulae for Commercial Spectrum Right at Expiry, 20 October 2003

CRAN (2011a): Practice Manual, <http://www.cran.na/downloads/transitionalprocedures.pdf>.

CRTC (2003): Canadian Radio and Telecommunications Commission, Commercial AM and FM Radio Broadcasting Licence Fees Regulations, 2003. URL: [http://www.canadabusiness.ca/servlet/ContentServer?pagename=CBSC\\_FE%2Fdspla](http://www.canadabusiness.ca/servlet/ContentServer?pagename=CBSC_FE%2Fdspla)

ECA (2005): Electronic Communications Act of 2005, Chapter 2, Republic of Namibia

Esselaar, S. Gillwald, A. and Stork C. (2006): The Namibian Telecommunication Performance Review, Link Centre Public Policy Research Paper, no.8, 2006

Eun-Ju K. (2003): Reference to Licensing as a Market Entry: Policy & Regulatory Training Modules, ITU, July 2003

Genty L. (undated): Auctions and Comparative Hearings: Two Ways to Attribute Spectrum Licence, undated

Gruber H. (2002): The Endogenous Sunk Cost in the Mobile Telecommunication Industry: The Role of Licence Fees, Journal of Economic and Social Review, Vol. 33, no.1, 2002, pp 55-64

Gruber H. (2005): The Economics of Mobile Telecommunications, Cambridge University Press, 2005

[http://canadabusiness.ca/servlet/ContentServer?pagename=BCSC-\\_ON"2Fdispl](http://canadabusiness.ca/servlet/ContentServer?pagename=BCSC-_ON) accessed 16 November 2007

<http://ofta.gov.hk/en/datastat/enfhome.html>

[http://www.acma.gov.au/WEB/STANDARD/pc=PC-\\_1770](http://www.acma.gov.au/WEB/STANDARD/pc=PC-_1770) accessed 20 November 2007

<http://www.dgt.gov.tw/English/Regulations/dgt41/TypeIITelecommunicationsEnterpr> accessed 16 Nov 07

[http://www.rsm.govt.nz/cms/policy-and\\_planning/spectrum-auctions/radio-spectrum-a](http://www.rsm.govt.nz/cms/policy-and_planning/spectrum-auctions/radio-spectrum-a) accessed 20 Nov 07

[http://www.trp.hku.hk/e\\_learning/spectrum/section6.html](http://www.trp.hku.hk/e_learning/spectrum/section6.html)

ICASA (2009): 01/04/2009, General Licence Fees Regulations, General Licence Fees Regulations 32084.

Stork, C. (March 2012), Licence Fee Concept Paper

<https://www.dlapiperintelligence.com/telecoms/index.html?t=taxes&c=FR>, October 2019

---