



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

N\$33.60

WINDHOEK - 10 June 2016

No. 6032

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General Notices

COMMUNICATIONS REGULATORY AUTHORITY OF NAMIBIA

No. 169

2016

NOTICE IN TERMS OF SECTION 53 (7) OF THE COMMUNICATIONS ACT, 2009 (ACT NO. 8 OF 2009) READ WITH THE REGULATIONS REGARDING THE SUBMISSIONS OF INTERCONNECTION AGREEMENTS AND TARIFFS

The Communications Regulatory Authority of Namibia, in terms section 53(1) and (7) of the Communications Act read with regulation 8 of the “Regulations Regarding the Submission of Interconnection Agreements and Tariffs”, in Government Gazette No. 4714, Notice No. 126, dated 18 May 2011, herewith gives notice that it has approved tariffs for New Netman Products (Netman TurboBoost) as submitted by **Mobile Telecommunications Limited**, which came into force and effect on **29 April 2016**, notwithstanding date of publication of the notice in the *Gazette*.

THE FOLLOWING ARE THE REASONS FOR THE DECISION:

1. INTRODUCTION

In terms of section 53 (1) and (7) of the Communications Act No. 8 of 2009 (hereinafter referred to as “the Act”), Mobile Telecommunications Limited (hereafter referred to as “MTC”) filed for the approval of tariffs for the Netman TurboBoost product on 30 September 2015.

2. PROCEDURAL COMPLIANCE

The proposed tariffs were published as General Notice No. 568 in the Government Gazette No. 5908 dated 24 December 2015 in terms of Regulation 8 of the “Regulations Regarding the Submission of Interconnection Agreements and Tariffs” published in Government Gazette No. 4714 of 18 May 2011.

Comments were invited from the public, in terms of the Notice published in the *Gazette*, within a period of fourteen (14) days from the date of publication of the Notice in the *Gazette*, which period lapsed on 11 January 2016.

On 6 January 2016 the Authority informed MTC that due to the disruption caused by the public holidays, the commenting period was extended to 20 January 2016.

On 26 January 2016 the Authority informed MTC in writing that although the commenting period had lapsed, an e-mail was received from the Namibia Consumer Protection Group, on 21 January 2016, requesting condonation to submit comments in respect of their tariff. The Authority granted the Namibia Consumer Protection Group condonation and afforded them ten (10) days to submit their comments.

Public comments were received in respect of the tariffs as published during the commenting period from the Namibia Consumer Protection Group on 1 February 2016. Same were forwarded to MTC for their response in terms of regulation 9 (2) of the Regulations Regarding the Submission of Interconnection Agreements and Tariffs and MTC was afforded fourteen (14) days to furnish the Authority with reply comments, which lapsed on 19 February 2016.

3. PUBLIC COMMENTS IN TERMS OF THE NETMAN TURBOBOOST TARIFF

Pursuant to the publications in the *Gazette*, public comments were received from Namibia Consumer Protection Group. The comments and reply comments are summarised below.

Namibia Consumer Protection Group

The Namibia Consumer Protection Group submitted comments on the following issues pertaining to the newly submitted tariffs:

- a) The tariffs are discriminatory in nature and unfairly penalise the lowest income earners. Data usage is eight times more expensive to the lower income groups than to high-end market user.
- b) MTC proposes to charge the lowest cost package N\$ 179/month for 2GB calculating to N\$ 89.50/GB/month. The top-end unlimited package costs N\$ 999/month for 90GB meaning that 1GB costs N\$ 11.10.
- c) Further that data costs are sold at a profit, so assuming the N\$ 11.10 per gigabyte is already making a profit, the Group questioned why MTC is making an additional N\$ 780.40 per gigabyte off the lowest income earners.

The submission also included graphs depicting the comparisons of all packages. In its submission the Group also requested for the Authority to hold a hearing on the tariffs and further indicated that they would like these tariffs to be discussed with as many consumers as possible.

MTC Reply Comments

As per the provisions of the Act, the comments from the NCPG were forwarded to MTC for their response as per letter dated 3 February 2016. The letter further indicated that although the comments were received out of time, the Authority has granted NCPG condonation in accordance with regulation 11 of the Regulations Regarding the Submission of Interconnection Agreements and Tariffs.

The letter also addressed the request of the oral hearing from NCPG and advised that the Regulations on the Submission of Tariffs and Interconnection Agreements as well as section 53 of the Communications Act do not make provision for oral submissions in respect of tariff submissions and that the Authority will thus only consider written submissions in this regard.

The letter further advised that due to the comments received from NCPG, the Authority is unable to make a decision in respect of the tariff within sixty (60) days (i.e. by 01 February 2016) because it requires more time to examine the reasonableness of the tariffs in light of the comments from NCPG.

In light of the above explanation and pursuant to the provision of section 53(13) of the Communications Act, the Authority postponed the decision for forty-two days to 14 March 2016.

As per letter dated 15 February 2016, MTC responded to the comments from NCPG which response can be summarised as follows:

- a) All Netman postpaid data packages as proposed are unlimited in data usage and once the free data is reached during a cycle the speeds are reduced to 512Kbps on 4G or 384Kbps on 3G.
- b) The Netman TurboBoost is an add-on product that increases speed of data when the threshold speed is reached during a cycle.

- c) The reverse of the argument that the tariffs are discriminatory and unfair against lower income groups also holds true in that a customer who has purchased a higher Netman package is unfairly treated if they have not fully utilised the speeds during a certain period as the cost per GB would then be higher than for the lower income groups.
- d) It is a common sales philosophy that bulk/volume purchasers get discounts. These are referred to as volume incentives.
- e) MTC's aim is to encourage usage as much as possible to recoup its investments hence the volume incentives.

AUTHORITY'S POSITION ON THE COMMENTS AND REPLY COMMENTS

1. According to analysis done by the Authority the cost of the Netman 2GB TurboBoost is calculated as 9 cents/MB. For Netman 6GB TurboBoost it is 6cents/MB, Netman 20GB it equates to 3cents/MB and for Netman Unlimited TurboBoost it calculates to 1cent/MB. The difference between the highest and the lowest packages is therefore eight times as stated by NCPG. This does however not mean that the tariffs are discriminatory since volume discounts are not deemed to be a discriminatory practice.
2. The calculations and graphs as submitted by NCPG are thus correct but the understanding of what constitutes discrimination is not correct. Price discrimination is pricing strategy where identical or largely similar goods or services are transacted at different prices by the same provider in different markets. Furthermore, differential pricing is used to describe the practice of charging different prices to different buyers for the same quality and quantity of a product. None of these two practices are taking place in this instance. The goods that are sold here are different in that the product is different and therefore there is no discrimination taking place in this instance.
3. Worldwide there is a movement away from data caps to validity periods on data. This allows the customers to use as much data as he/she wishes but with a validity period attached to it. Once the period expires, the data not utilised will be lost. MTC introduced this concept with this new product which gives the customer unlimited data access but if the original faster data is not utilised within 60 days it will be forfeited.

In an every growing demand for data this gives the consumer more freedom to utilise data and gives the customer always access to data, which is demand supported by the Authority. At the same time operators should have the choice to change terms and conditions for new products.
4. Volume discount is an acceptable practice which is allowed by the Authority and practiced by all operators in the telecommunications industry. The principle should always be that for the same product and the same amount the same discount should be offered to all customers.

Comments from Mr. Hundt

On 9 February 2016, the Namibian Competition Commission referred a complaint from Mr. Hundt to the Authority. As per letter dated 10 March 2016, the Authority referred the complaint to MTC as one received in respect of the proposed tariffs. The Authority indicated that although the commenting period has lapsed, it finds it practicable to consider the submission.

The comments can be summarised as follows:

- a. The customer bought credit in November 2014 to the amount of N\$ 999.00. The data bundles purchased at that time was available until depleted. In November 2015 the customer bough

12GB data for N\$ 599.00. On 20 January 2016 he received a warning by SMS indicating that the data bundles are only valid for 60 days. MTC simply “stole” his credit.

- b. Since MTC is a monopoly electricity suppliers could also do this and cancel credit on pre-payment meters.
- c. Mr Hundt would like to have his 12.5GB back.

MTC’s Reply Comments

As per the provisions of the Act, the comments from Mr. Hundt were forwarded to MTC for their response as per letter dated 10 March 2016. The letter further indicated that although the comments were received out of time, the Authority has granted Mr. Hundt condonation in accordance with regulation 11 of the Regulations Regarding the Submission of Interconnection Agreements and Tariffs.

The letter further advised that due to the comments received from Mr Hundt, the Authority is unable to make a decision in respect of the tariff by 14 March 2016 because it requires more time to examine the reasonableness of the tariffs in light of the comments from NCPG.

In light of the above explanation and pursuant to the provision of section 53(13) of the Communications Act, the Authority postponed the decision for forty-three days to 29 April 2016.

As per letter dated 11 March 2016, MTC responded to the comments from Mr. Hundt which response can be summarised as follows:

- a. The customer, Mr. Hundt could not be allocated by MTC on their system and therefore the complaint is not actioned against Netman TurboBoost product. The customer was allegedly not aware of MTC’s Terms & Conditions for the product which denial is disputed since Mr. Hundt acknowledges that he was aware of the 60-day validity period. The allegations made are therefore unfair.
- b. MTC was of the view that the complaint by Mr. Hundt is not a comment on the tariff, as he is not complaining on the product. The Authority was therefore wrong in considering it as a comment on the proposed tariff.
- c. The Authority’s attempt to condone the late comment is improper and unlawful as it is against the Regulations.
- d. The Authority has taken too much time in forwarding the complaint to MTC for their response.
- e. The Authority was reminded that it is prudent for an administrative body to act fairly at all times. Postponing the implementation date again at such short notice to allow public comments is not taking the operations of the operator into account.
- f. The Authority already exercised its powers in terms of section 53(13) of the Act and therefore MTC will go ahead with implementing the tariff since it cannot reverse the system.

AUTHORITY’S POSITION ON THE COMMENTS AND REPLY COMMENTS

- 1. The Authority acknowledges that the complaint was on the MTC prepaid data bundles since the customer indicated that he purchased the data once a year or as required.
- 2. The customer read the advertisement and read about the validity period. If he understood the Terms and Conditions and the advertisement cannot be established.

3. The Authority exchanged a number of emails and telephone conversations with MTC on the implementation of the Netman TurboBoost tariff and warned MTC that the Authority would issue summons if MTC would go ahead and implement. The tariff was not implemented on 14 April 2016.

4. FINANCIAL AND ECONOMIC ANALYSIS OF THE NETMAN TURBOBOOST TARIFF SUBMITTED BY MOBILE TELECOMMUNICATIONS LIMITED

The tariff for Netman TurboBoost was reduced and the package was submitted as promotional tariff in terms of section 53(2). During the promotion period the TurboBoost tariff was reduced by 10%.

MTC revised and reduced its Netman offers to only four (4) offers. These 4 products have a new functionality called TurboBoost. The TurboBoost functionalities are as follows:

- a. A basic monthly subscription including free data (Fair Use Policy), which will have first priority with every bill cycle, and unused free units do not carry over to the next bill cycle.
- b. Once the included free data is utilised before the bill cycle period, the speed will be reduced to a maximum of 512Kbps on 4G or 384Kbps on 3G depending on the network.
- c. The data used during reduced speed sessions will still be free and unlimited (for the remainder of the bill cycle) and the free data will re-establish automatically at the beginning of the new bill cycle.
- d. Should the customer wish to boost the speed back to the original speed before the new bill cycle begins, then the customer can buy an add-on TurboBoost data bundle equal to the original free data at a reduced price (the customer can buy as many TurboBoost add-on bundles as they wish).
- e. The TurboBoost will have a validity of sixty (60) days therefore, if the customer does not deplete the bundles during the current bill cycle period, it could be used in the next bill cycle period if the included free data bundle is reached again.

The tariff information is as follows:

Table 1: Proposed Tariffs

Package Detail	Netman 2GB TurboBoost	Netman 6GB TurboBoost	Netman 20 GB TurboBoost	Netman Unlimited TurboBoost
Connection Fee	N\$ 218	N\$ 218	N\$ 218	N\$ 218
Subscription fee	N\$ 179	N\$ 349	N\$ 549	N\$ 999
TurboBoost Fee (TB)	N\$ 59	N\$ 115	N\$ 179	N\$ 329
Contract Period	24 months	24 months	24 months	24 months
Technology	4G	4G	4G	4G
Free Device	3G USB	4G USB	4G Router	4G Router
Free Data	2GB	6GB	20GB	90GB
TurboBoost Data	2GB	6GB	20GB	90GB

Due to the fact that TN Mobile has limited postpaid products that could be compared with the Netman postpaid products and Paratus Telecommunications (Pty) Ltd offers mainly data for businesses, some existing pre-paid offerings were added to the analysis.

A comparative analysis of the tariffs indicates the following:

Table 2: Comparative Analysis based on BVI

Table 1: Bundled Value Index			Cost N\$	Validity	Free Minutes	Free SMS	Free MB	Social Media MB	FX USD Q4 2014	BVI
MTC	Prepaid	Aweh Super	50	7 Days	700	1,500	350	710	14.2	3.3
		Aweh Prime	30	7 Days	350	700	200	210	14.2	2.3
		Aweh Gig	30	7 Days	100	700	1,000	510	14.2	6.6
		Aweh Go	12	7 Days	50	150	50	60	14.2	1.4
	Postpaid (no VAT)	Netman 2GB	179	30 days	0	0	2,000	0	14.2	1.6
		Netman 6GB	349	30 days	0	0	6,000	0	14.2	2.4
		Netman 20GB	549	30 days	0	0	20,000	0	14.2	5.2
		Netman Unlimited	999	30 days	0	0	90,000	0	14.2	12.8
TN Mobile	Prepaid	TN Mobile 20	19	7 Days	20	20	20	0	14.2	0.2
		TN Mobile 50	49	30 Days	50	50	50	0	14.2	0.2
		Business Lite	149	30 Days	150	150	150	0	14.2	0.2
		Jiva	30	7 Days	100	700	1,000	0	14.2	4.5

The comparative analysis used for these tariffs are two-fold; firstly by using the bundled value index (BVI) methodology and secondly by comparing the value that 1GB of data offers. Both these methodologies are internationally adopted and accepted for comparing data tariffs.

Table 2 utilises the BVI methodology. The Bundled Value Index (BVI) captures the value of bundles that combine data, SMS and voice as a top-up package. It does not make any assumptions about the average usage pattern as user baskets do. It simply expresses what a consumer gets in terms of what the consumer has to pay. The BVI complements the basket approach allowing a different view on affordability and allows comparison between top-up bundles across any validity.

The BVI adds the value of bundled voice minutes, SMSs and data and divides it by the price. The value of bundled minutes is derived by multiplying the number of minutes with a fixed USD value inclusive of tax. The BMI is constructed from the perspective of a smartphone/OTT user. One MB of data is more valuable than 1-minute voice call or a single SMS. One minute is valued at 0.2 US cents, 1 SMS at 0.1 US cent, and 1 MB data at 1 US cents and 1 MB dedicated to Social Media at 0.5 US cents. An offering with 50 minutes, 500 SMSs and 1000MB data bundled, with a price of 10 US\$ will then have the following BVI:

$$BVI = (50 * 0.002 + 500 * 0.001 + 1000 * 0.01) / 10 = 1.06$$

This means that the consumer gets 1.06 times the value of the bundle offering. The higher the score in the index, the higher the value. The same USD values were used across all operators for comparative purposes. Unlimited calls, SMSs or data contracts were made comparable to capped packages by applying the following rules:

Unlimited minutes = 240 minutes per day or 7200 minutes per month

Uncapped SMS = 240 SMSs a day or 7200 per month.

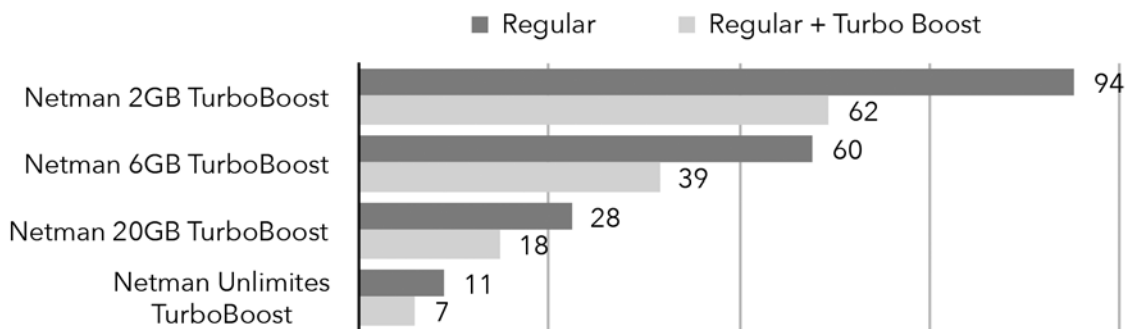
Uncapped data = the smaller value out of the fair terms of use policy limit and 30 GB.

From the above it shows that the Netman Unlimited has the highest BVI followed by Aweh GIG, Netman 20GB, and JIVA.

Table 3: Giga Byte per Month Basket

1 GB per month Basket			Cost N\$	Validity	Free Minutes	Free SMS	Free MB	Social Media MB	1 GB per month incl VAT	Price per MB (excl. social media)
MTC	Prepaid	Aweh Super	50	7 Days	700	1,500	350	710	230.00	0.16
		Aweh Prime	30	7 Days	350	700	200	210	138.00	0.17
		Aweh Gig	30	7 Days	100	700	1,000	510	138.00	0.03
		Aweh Go	12	7 Days	50	150	50	60	55.20	0.28
	Postpaid (no VAT)	Netman 2GB	179	30 days	0	0	2,000	0	179.00	0.09
		Netman 6GB	349	30 days	0	0	6,000	0	349.00	0.06
		Netman 20GB	549	30 days	0	0	20,000	0	549.00	0.03
		Netman Unlimited	999	30 days	0	0	90,000	0	999.00	0.01
TN Mobile	Prepaid	Jiva	30	7 Days	100	700	1,000	0	138.00	0.03

Netman Unlimited has the cheapest per MB price followed by Netman 20GB, Aweh GIG and Jiva.

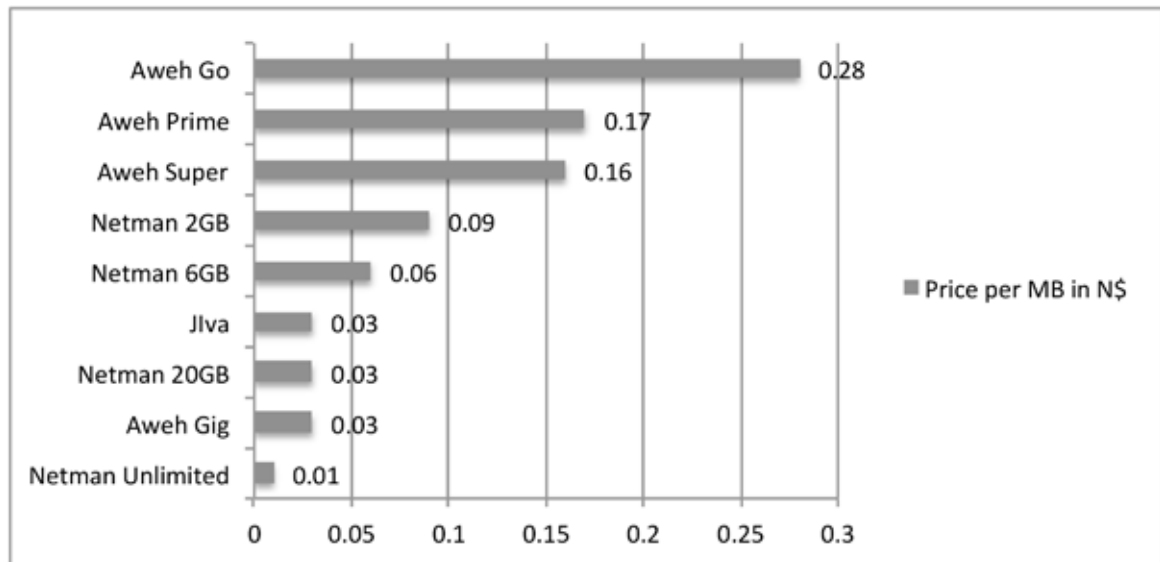
Figure 1: Price per GB for MTC's proposed postpaid products, regular and with 1 TurboBoost top-up, based on 24 months period including set up fee**Table 4: Post-paid Price Comparison**

Postpaid Top up price comparison		Cost N\$	Free MB	Price per MB (excl. social media)	Average
Proposed	Netman 2GB	179	2,000	0.09	0.05
	Netman 6GB	349	6,000	0.06	
	Netman 20GB	549	20,000	0.03	
	Netman Unlimites	999	90,000	0.01	
Current Netman	Netman	99	300	0.33	0.08
	1GB	149	1,000	0.15	
	2GB	199	2,000	0.10	
	5GB	349	5,000	0.07	
	Home	399	5,000	0.08	
	Unlimited	849	90,000	0.01	
	4G Extreme	399	10,000	0.04	
	4G Unlimited	999	90,000	0.01	
	Home 4G	599	20,000	0.03	
Home 4G Unlimited	999	90,000	0.01		

Postpaid Top up price comparison		Cost N\$	Free MB	Price per MB (excl. social media)	Average
TN	Data 500 MB	175	500	0.35	0.13
	Data 1 GB	235	1,000	0.24	
	Data 2 GB	295	2,000	0.15	
	Data 5 GB	345	5,000	0.07	
	Data unlimited	945	90,000	0.01	
	LTE 10 GB	398	10,000	0.04	
	LTE Unlimited	998	90,000	0.01	
	Smart Connection 500	449	3,000	0.15	

Table 4 compares the actual prices per MB of the currently approved Netman packages by the Authority as per General Notice No. 467 published in Government *Gazette* No. 5354 dated 2 December 2013. In these comparisons the newly submitted tariffs are also cheaper than the tariffs previously approved.

Figure 2: Price/MB



Netman 2 GB and Netman 6 GB could be cheaper replicated using Aweh Gig or Aweh oh Yeah. The latter is not in the comparison since it allows the user to specify thousands of combinations for data, SMS and minute bundles. The maximum data that can be purchased for a 7-day period is 2 GB plus 1 GB social media data.

The reasons for going postpaid with MTC would thus only make sense for obtaining the bundled router and for users with a higher data consumption than 12 GB per month that do not want to reload and or change SIM cards.

The tariffs are not deemed anti-competitive and are not unreasonably discriminatory in that:

1. They do not prevent, restrict or distort competition in the market for the supply of telecommunications since the tariff is not deemed below cost;
2. There is no abuse of individual or collective dominant position by MTC for the supply of telecommunications in respect hereof, since MTC is not engaged in conduct that is intended to eliminate or discipline a competitor or to deter future entry by new competitors, with the result that competition is prevented or lessened substantially since this product is aimed at customers.
3. There is no restrictive practice or activity whose anti-competitive effects outweigh its pro-competitive effective.

All requirements in terms of section 53 of the Act that deals with the approval of tariffs have been adhered to in that:

1. All pertinent information as required by section 53(7) was submitted to the Authority in that MTC filed the tariff in the prescribed manner with the Authority for approval.
2. All pertinent information as required by section 53(9) was submitted to the Authority such as:
 - 2.1 The rates and charges for services, including all deposits, non-recurring charges and monthly charges;
 - 2.2 The terms and conditions applicable to the provision of services by MTC, including rights and remedies available to customers in the event of unauthorised charges or other disputes or claims over billing or the provision of services, and any other information requested by the Authority pursuant to this section.
3. The date of implementation was indicated as 30 December 2015 (which date is not less than 60 days from the date of the filing of the tariff) as required by section 53(8) of the Act. On 18 November 2015 the Authority send a letter to MTC requesting additional information to which MTC responded on 1 December 2015. Due to the fact that comments were received during the commenting period, the date of implementation therefore changed to 14 March 2016. On 4 February 2016, the Authority received comments from Mr. Winfried Hundt which comments were forwarded to MTC on 2 March 2016. On 10 March 2016, the Authority postponed the decision date once more to 29 April 2016 in order to examine the comments and the reasonableness of the tariff.

The Authority postponed the date of commencement of the tariff with forty-two (42) days in terms of section 53(13) of the Act to examine the reasonableness of the tariff to 14 March 2016. The date was again postponed with forty-three (43) days in terms of section 53(13) of the Act to examine the reasonableness of the tariff to 29 April 2016.

5. DECISION

The Authority herewith approves:

The proposed Netman TurboBoost tariffs as submitted by Mobile Telecommunications Limited for implementation effective from date of approval.

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

COMMUNICATIONS REGULATORY AUTHORITY OF NAMIBIA

No. 170

2016

NOTICE IN TERMS OF SECTION 53 (7) OF THE COMMUNICATIONS ACT, 2009 (ACT NO. 8 OF 2009) READ WITH THE REGULATIONS REGARDING THE SUBMISSIONS OF INTERCONNECTION AGREEMENTS AND TARIFFS

The Communications Regulatory Authority of Namibia, in terms section 53(1) and (7) of the Communications Act read with regulation 8 of the “Regulations Regarding the Submission of Interconnection Agreements and Tariffs”, in Government Gazette No. 4714, Notice No. 126, dated

18 May 2011, herewith gives notice that it has approved tariffs for New Netman Prepaid Data Tariffs product as submitted by **Mobile Telecommunications Limited**, which came into force and effect on **29 April 2016**, notwithstanding date of publication of the notice in the *Gazette*.

THE FOLLOWING ARE THE REASONS FOR THE DECISION:

1. INTRODUCTION

In terms of section 53 (1) and (7) of the Communications Act No. 8 of 2009 (hereinafter referred to as “the Act”), Mobile Telecommunications Limited (hereafter referred to as “MTC”) filed for the approval of new prepaid data tariffs on 13 November 2015.

2. PROCEDURAL COMPLIANCE

The proposed tariffs were published as General Notice No. 10 in the Government Gazette No. 5947 dated 15 February 2016 in terms of Regulation 8 of the “Regulations Regarding the Submission of Interconnection Agreements and Tariffs” published in Government Gazette No. 4714 of 18 May 2011.

Comments were invited from the public, in terms of the Notice published in the *Gazette*, within a period of fourteen (14) days from the date of publication of the Notice in the *Gazette*, which period lapsed on 29 February 2016.

No public comments were received in respect of the tariffs as published during the commenting period, and as such no reply comments were required from MTC. The date of commencement of the tariffs was 17 February 2016.

On 24 November 2015 the Authority requested additional information from MTC with regards to the tariff. MTC responded and provided the requested information on 1 December 2015. The new data of implementation became 1 March 2016.

3. REQUEST FOR INFORMATION

As per letter dated 09 December 2015, the Authority sought the following clarification from MTC on the tariffs submitted:

AD NEW PREPAID NETMAN BUNDLES

The Authority noted the introduction of the 3 new packages or add-on data bundles only applicable to Netman Prepaid. The Authority however, sought clarification on the following matters:

- a) Whether in the event that a Netman prepaid customer does not opt for this promotion, he or she only has the option to use the second promotion with add-on data bundles with a 60-day period?
- b) Whether the existing and approved out-of-bundle data bundles with no time limit are still available to the Post and Prepaid Netman packages?

AD DATA BUNDLES WITH VALIDITY

The Authority noted the introduction of 7 new out-of-bundle data bundles or add-on data bundles with a validity period limited to 60 days. In summation, the Authority understood this to mean that if a customer has not used all the data as per the selected new data bundle within the validity period, the customer will lose the remainder of the unused data after 60 days and will have to purchase a new data bundle.

The Authority thus sought clarification on the following issues:

- a) What is MTC's view on the fact that a customer loses the remainder of the unused bundles upon expiry of the validity period, *albeit* the fact that the consumer has paid for the bundles?
- b) What is MTC's view on the possibility of refunding the customer for the unused bundles upon expiry of the validity period?

The Authority noted the proposed add-on- data bundle packages indicated contained in MTC dated 13 November 2015 as shown below:

N\$ 12.00	for 40 MB	at 30 cents/MB
N\$ 19.00	for 80 MB	at 24 cents/MB
N\$ 79.00	for 400 MB	at 20 cents/MB
N\$ 129.00	for 800 MB	at 16 cents/MB
N\$ 219.00	for 1.5 GB	at 14.6 cents/MB
N\$ 329.00	for 3 GB	at 11 cents/MB
N\$ 999.00	for 15 GB	at 6.7 cents/MB

These are also the only "out-of-bundle" data bundles and rates available for all pre-paid and post-paid packages as indicated on the MTC website as from 18 November 2015. In the letter dated 13 November 2015 MTC indicated in its cost comparisons the following "NEW MTC" add-on data bundles rates as shown below:

N\$ 12.00	for 40 MB	at 30 cents/MB
N\$ 23.00	for 100 MB	at 23 cents/MB
N\$ 35.00	for 200 MB	at 18 cents/MB
N\$ 79.00	for 500 MB	at 16 cents/MB
N\$ 239.00	for 2048 MB	at 12 cents/MB
N\$ 499.00	for 6144 MB	at 8 cents/MB
N\$ 999.00	for 15360 MB	at 7 cents/MB

In the premise, the Authority sought clarification on the following issues:

- a) Why the bundles highlighted in red are not in line with the packages and rates as indicted in the letter of 11 November 2015 and what is shown on the MTC website for all the packages that can purchase additional data bundles?

AD DISCONTINUATION OF EXISTING DATA BUNDLES

The Authority notes the discontinuation of the current approved out-of-bundle data bundles. The Authority notes that this discontinuation has a direct correlation to the introduction of data bundles with a validity period as indicated above.

The Authority therefore, sought the following clarifications on the practical implementation of the new bundles and requires MTC's views on the following implementation of the new bundles:

- a) Why do the proposed terms and conditions not impose an obligation on MTC to inform customers that the validity period will expire, so that customers can purchase an additional bundle to make sure that the unused data bundles are transferred to the new data bundle period and cost?
- b) Given the fact that the new bundles now have a validity period and there is a high probability that those customers that do not utilize all the data will lose it upon the expiration of the validity period, please advise on the increase in cost of new data bundles per MB?

AD THE MTC ADVERT ON THE NEW DATA BUNDLES

The Authority notes that MTC is only advertising that it has a new data bundle with data validity that is ending 14 February 2016.

The Authority therefore thus sought clarifications on the following issues:

- a) Why does the advert not indicate the fact that the existing and approved out of bundle data bundles without validity period are being discontinued as of 17 November 2015? In the alternative please advise how customers have been informed of this change?
- b) Furthermore, why did MTC decide to discontinue the existing and approved data bundles during the promotion period instead of waiting until after the new data bundles are approved?

The information/clarifications was requested in terms of regulation 20 of the Telecommunications Licence Conditions to ensure monitoring and compliance with the Communications Act.

As per letter dated 5 February 2016, MTC responded to the Authority's letter as follows:

AD NEW PREPAID NETMAN BUNDLES

MTC advised that a Netman prepaid customer has three options as follows: New prepaid Netman bundles, new data bundles with validity and normal out of bundle rates as approved by the Authority.

Further that although MTC is not clear on what the Authority meant with this question, and indicated that if it's whether the out of bundle rate is still applicable, then the answer is in the affirmative. If the question is whether the data bundles with unlimited time periods are still available, then the answer is in the negative as the product was discontinued.

AD DATA BUNDLES WITH VALIDITY

MTC responded that the terms and conditions of the services that MTC provides are available on the MTC website and that the customer by purchasing the product binds himself to the terms and conditions thereof. The terms and conditions advises the customer that the validity period for the product is 60 days as such the customer will lose the unused data upon expiry thereof, similar to the Aweh product which was approved by the Authority. MTC further indicated that should the customer purchase another bundle before the expiry, the unused data on that bundle is carried over to the purchased bundle.

AD DISCONTINUATION OF EXISTING DATA BUNDLES

MTC indicated that the customers are informed 2 days prior to the date of expiry that the product is about to expire, the remaining bundles will be carried over to the next period should the customer purchase another bundle.

MTC indicated that for the first three options being 40MB, 80MB and 400MB it is slightly more expensive, the highest difference being 0.5 cents. Further that MTC has reduced the entry level retail price of the bundles to allow easier or more affordable entry level for the customer, however the remainder of the options being the 800MB, 1.5GB and the 15 GB is cheaper thus more beneficial to the customer.

AD THE MTC ADVERT ON THE NEW DATA BUNDLES

MTC indicated that the advert does not indicate the termination of the out of bundle data product, however that the customers were advised on 20 November 2015 by way of SMS, that the existing

“out of bundle data bundles without validity period were discontinued on 17 November 2015”.

MTC maintained that they are of the view that the Act mandates it to discontinue a product at any stage and in the event that the new tariffs are not approved, consumers will have the option of using data services at the out of bundle tariff and as such the service would not be denied to the customers.

4. AUTHORITY’S POSITION ON THE POSITION RAISED BY MTC

AD NEW PREPAID NETMAN BUNDLES

Section 53(7) of the Act states that if a licensee “*wishes to use a new tariff, it must file a new or amending tariff in the prescribed manner with the Authority for the approval thereof*”.

Section 53(2) of the Act states that a promotion “*apply to a temporary reduction in any rates charged by a licensee.....*”

MTC therefore followed the correct procedure in filing the new MTC pre-paid tariffs since the Act is not clear in prescribing that the licensee has to continue in charging the old tariffs until the new tariffs have been approved by the Authority.

AD DATA BUNDLES WITH VALIDITY

The Terms and Conditions are available on the MTC website and were also submitted to the Authority for approval.

The analysis done by the Authority shows that the lower data packages are more expensive than the higher packages as indicated by MTC. It is correct that the entry-level retail price of the bundles is less but per Mega Byte this package is more expensive to the customer.

AD DISCONTINUATION OF EXISTING DATA BUNDLES

MTC customers are warned by SMS, 2 days before expiry, that the data bundles will expire. It might be prudent to warn customers more than once that their data bundles are about to expire and therefore the Authority is of the opinion that an earlier warning should be sent to customers by MTC.

AD THE MTC ADVERT ON THE NEW DATA BUNDLES

Customers were warned via SMS of the new T&C although it was not mentioned in the advertisement placed in newspapers.

5. FINANCIAL AND ECONOMIC ANALYSIS OF THE NEW PREPAID DATA TARIFFS SUBMITTED BY MOBILE TELECOMMUNICATIONS LIMITED

The tariffs for prepaid data were increased by 100 MB and the package was submitted as a promotional tariff in terms of section 53(2).

MTC requested that all the Data Bundles, Netman Time Add-on Bundles and Happy Hour for prepaid Netman be terminated. In its place the new Data Bundles for prepaid were launched.

At the same time MTC submitted new Terms and Conditions for the prepaid packages for approval by the Authority. The biggest change in the Terms and Conditions is that the data bundles will have a validity period associated with it.

The tariff information is as follows:

Table 1: New Netman Prepaid Bundles

Package Detail	Data Volume	Cost N\$ excl VAT	Validity Hours
Netman 1	1GB	N\$ 29.00	24 (1day)
Netman 3	5GB	N\$ 79.00	72 (3 days)
Netman 7	10GB	N\$ 149.00	168 (7days)

Table 2: Add-on Data Bundles

Package Detail	Price N\$	Bundle Volume	In-bundle Rate per MB excl VAT	Validity Period (days)
New MTC	12.00	40MB	0.30	60
New MTC	19.00	80MB	0.24	60
New MTC	79.00	400MB	0.20	60
New MTC	129.00	800MB	0.16	60
New MTC	219.00	1.5GB	0.14	60
New MTC	329.00	3GB	0.11	60
New MTC	999.00	15GB	0.07	60

A comparative analysis of the tariffs shows as follows:

Table 1: Bundled Value Index

Table 1: Bundled Value Index			Cost N\$	Validity	Free Minutes	Free SMS	Free MB	Social Media MB	FX USD Q4 2014	BVI
MTC	Prepaid	Aweh Super	50	7 Days	700	1,500	350	710	14.2	3.3
		Aweh Prime	30	7 Days	350	700	200	210	14.2	2.3
		Aweh Gig	30	7 Days	100	700	1,000	510	14.2	6.6
		Aweh Go	12	7 Days	50	150	50	60	14.2	1.4
		Netman 1	29	1 day	0	0	1,000	0	14.2	4.3
		Netman 3	79	3 days	0	0	5,000	0	14.2	7.8
		Netman 7	149	7 days	0	0	10,000	0	14.2	8.3
		Data top-up 12	12	60 Days	0	0	40	0	14.2	0.4
		Data top-up 19	19	60 Days	0	0	80	0	14.2	0.5
		Data top-up 79	79	60 Days	0	0	400	0	14.2	0.6
		Data top-up 129	129	60 Days	0	0	800	0	14.2	0.8
		Data top-up 219	219	60 Days	0	0	1,500	0	14.2	0.8
		Data top-up 329	329	60 Days	0	0	3,000	0	14.2	1.1
		Data top-up 999	999	60 Days	0	0	15,000	0	14.2	1.9
TN Mobile	Prepaid	Jiva	30	7 Days	100	700	1,000	0	14.2	4.5

The Bundled Value Index (BVI) captures the value of bundles that combine data, SMS and voice as a top-up package. It does not make any assumptions about the average usage pattern as user baskets do. It simply expresses what a consumer gets in terms of what the consumer has to pay. The BVI complements the basket approach allowing a different view on affordability and allows comparison between top-up bundles across any validity.

The BVI adds the value of bundled voice minutes, SMSs and data and divides it by the price. The value of bundled minutes is derived by multiplying the number of minutes with a fixed USD value inclusive of tax. The BMI is constructed from the perspective of a smartphone / OTT user. One MB

of data is more valuable than 1-minute voice call or a single SMS. One minute is valued at 0.2 US cents, 1 SMS at 0.1 US cent, and 1 MB data at 1 US cents and 1 MB dedicated to Social Media at 0.5 US cents. An offering with 50 minutes, 500 SMSs and 1000MB data bundled, with a price of 10 US\$ will then have the following BVI:

$$BVI = (50 * 0.002 + 500 * 0.001 + 1000 * 0.01) / 10 = 1.06$$

This means that the consumer gets 1.06 times the value of the bundle offering. The higher the score in the index, the higher the value. We used the same USD values across all operators and countries for comparative purposes. Unlimited calls, SMSs or data contracts were made comparable to capped packages by applying the following rules:

Unlimited minutes = 240 minutes per day or 7200 minutes per month

Uncapped SMS = 240 SMSs a day or 7200 per month.

Uncapped data = the smaller value out of the fair terms of use policy limit and 30 GB.

Netman 1, 3 and 7 provide a high value for money. Netman 7 has the highest value for money index value among prepaid products with 8.3 index points.

The prepaid data top ups provide little value and the average user would better swap SIM cards and get another 7day top up when running out of data. This is increasingly feasible with higher OTT (over the top) services being used such as WhatsApp and Facebook. The data top-ups will a niche though since they are valid for 60 days and are thus suitable for low infrequent data use.

Table 2: Price/MB

Prepaid data top up		Cost N\$	Free MB	Price per MB incl. VAT	Average MB Price
MTC	New	12	40	0.35	0.20
		19	80	0.27	
		79	400	0.23	
		129	800	0.19	
		219	1,500	0.17	
		329	3,000	0.13	
		999	15,000	0.08	
	Current	15	60	0.29	0.18
		23	100	0.26	
		35	200	0.20	
		99	600	0.19	
		139	1,000	0.16	
		239	2,000	0.14	
		399	4,000	0.11	
849	10,000	0.10			
TN Mobile	Current	5	20	0.29	0.18
		10	40	0.29	
		15	60	0.29	
		23	100	0.26	
		35	300	0.13	
		99	600	0.19	
		139	1,000	0.16	
		199	2,000	0.11	
		399	5,000	0.09	
		849	10,000	0.10	
		1049	20,000	0.06	

Table 2 compares the new data prices as price on price and not as a value index. In this comparison the new product is on average more expensive than the previously approved data bundles by the Authority published as General Notice No. 168 in *Government Gazette* No. 5725 dated 5 May 2015. This is however justifiable due to the depreciation of the Namibian dollar (N\$) against the United States dollar (US\$) given that international data connectivity is a US\$ expense.

Table 2 further shows that the lower usage products for the currently approved products are cheaper up to 400 MB but the higher usage products are more expensive than the newly submitted products.

Table 3: Price/MB for Top Up

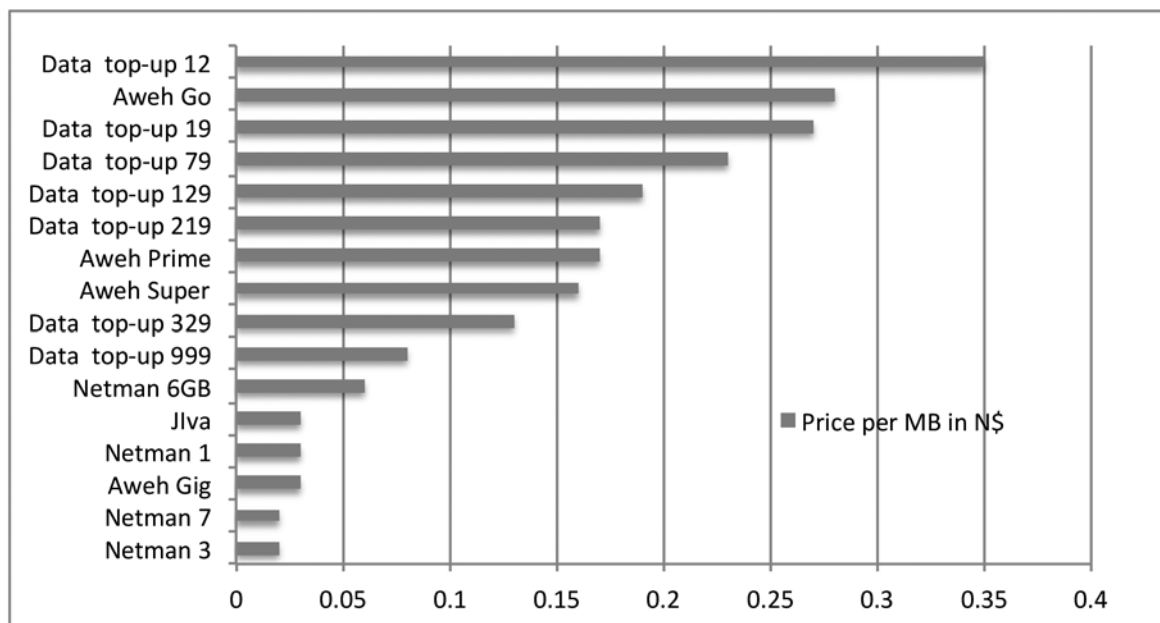
MTC's prepaid data top up with short validity			Validity	Cost N\$	Free MB	Price per MB incl. VAT	Average MB Price
MTC	Netman short validity	Netman 1	1 day	29	1,000	0.03	0.02
		Netman 3	3 days	79	5,000	0.02	
		Netman 7	7 days	149	10,000	0.02	

Table 3 indicates that the top-up products, with short validity, is cheaper than any of the current products in the market.

The Netman products cost a multiple of MTC's Aweh products for a 1GB monthly use. This is a very much low end user basket for which Netman is clearly not meant. Aweh Go costs N\$ 55.20 compared to Netman 1 N\$133.40, for example.

A user wanting to use 1 GB per for a single day could either buy Netman 1 or Aweh Gig as a top up, only the latter comes with 100 minutes, 700 SMS and 510 MB social media data as well and last for 7 days rather than just 1. This would therefore clearly be a better deal. Unless the user needs to use 1 GB every day in which case a new SIM card would need to be purchased since Aweh Gig can only be renewed after 7 days again.

Figure 1: Price/MB



Analysis of New Terms and Conditions

MTC proposed that a validity period of 60 days be placed on the usage of the data. If a customer recharges before the data expires the data is valid for another 60 days. Customers will be warned that their data will expire 2 days prior to the data expiring.

The Authority is of the opinion that the two days are not sufficient to allow the consumer sufficient time to fully utilise the remaining data or to make arrangements to recharge in order to keep the remaining data valid. The Authority is therefore of the view that MTC gives consumers a notification twice; 7 days before and then again at 2 days before expiration of the 60 days. The Authority is of the view that this type of notification will be sufficient to enable the consumer to make the necessary arrangements.

In addition, the Authority notes the fact that losing unused data after the lapsing of the validity period is a universally applied practice. In Table 3 below find some of the operators in the region using validity periods associated with data packages.

Table 3: Validity Periods for Data

Operator	Validity Period
Vodacom SA	30 days
Cell C South Africa	30 days
Zamtel Zambia	30 days
Mascom Botswana	Between 30 and 60 days
Movitel Mozambique	30 days
Tigo Tanzania	30 days

These regional operators also offer packages with data that has validity periods ranging from several hours to days to weeks.

The drop from unlimited to 60 days validity of data top-ups is unlikely to be a major consumer concern since 60 days are a fairly long period and the data top-ups still being expensive compared to other products. Currently the Aweh Products have a 7-day validity period to which consumers adjusted very fast. Telecom Namibia Limited still offers packages with no validity period, which could increase competitiveness between the two operators. This however, does not take away the fact that there will be some consumers that will be frustrated by the loss of data due to their data utilisation reasons and business models.

Discontinuing data top-up without validity has an impact on specific user profiles such as M2M communication. IP based M2M communication will be considerable more expensive with the limited validity of 60 days. M2M could be provided previously with an annual top-up and would now need to be recharged every two months. A resolution would be to make the approval of the new top-up rates contingent on MTC offering a small data top-up with unlimited validity for any prepaid or post paid product. The Authority is of the view that M2M communication is a crucial input for e-health, transport, e-government and retail.

Further the low-end data users will be negatively affected by the new model introduced by MTC. If the assumption is made that the low-end data users are also the low-end income users this will have a negative affect on this segment of the population that does not have the choice or means to change licensees.

It was therefore recommended that the Board approves the tariffs on the following conditions:

1. The terms and conditions must be amended to place an obligation on MTC to give the consumers notification at least 7 days and again 2 days before the expiration of the 60 days validity period;
2. MTC must reintroduce the lower end packages with no validity period placed on data usage in order to give the consumer more choice and allow the consumer the choice of package that suits their specific needs.

The tariffs are not deemed anti-competitive and are not unreasonably discriminatory in that:

1. They do not prevent, restrict or distort competition in the market for the supply of telecommunications since the tariff is not deemed below cost;
2. There is no abuse of individual or collective dominant position by MTC for the supply of telecommunications in respect hereof, since MTC is not engaged in conduct that is intended to eliminate or discipline a competitor or to deter future entry by new competitors, with the result that competition is prevented or lessened substantially since this product is aimed at customers.
3. There is no restrictive practice or activity whose anti-competitive effects outweigh its pro-competitive effective.

All requirements in terms of section 53 of the Act that deals with the approval of tariffs have been adhered to in that:

1. All pertinent information as required by section 53(7) was submitted to the Authority in that MTC filed the tariff in the prescribed manner with the Authority for approval.
2. All pertinent information as required by section 53(9) was submitted to the Authority such as:
 - 2.1 The rates and charges for services, including all deposits, non-recurring charges and monthly charges;
 - 2.2 The terms and conditions applicable to the provision of services by MTC, including rights and remedies available to customers in the event of unauthorised charges or other disputes or claims over billing or the provision of services, and any other information requested by the Authority pursuant to this section.
3. The date of implementation was indicated as 17 February 2016 (which date is not less than 60 days from the date of the filing of the tariff) as required by section 53(8) of the Act. On 24 November 2015 the Authority send a letter to MTC requesting additional information to which MTC responded on 1 December 2015. The date of implementation therefore changed to 1 March 2016.

On 9 December 2015 the Authority requested some clarification in terms of the tariffs. In the response form MTC received on 9 February 2016 MTC requested an extension of the promotion to 4 April 2016.

The Authority postponed the date of commencement of the tariff with forty (40) days in terms of section 53(13) of the Act to examine the reasonableness of the tariff to 31 March 2016. On 10 March 2016 the Authority postponed the commencement of the tariff once more for twenty-two (22) days to 29 April 2016.

6. DECISION

The Authority herewith approves:

The proposed new Data Tariffs for prepaid as submitted by Mobile Telecommunications Limited for implementation effective from 29 April 2016 on condition that the following amendments are made to the tariff:

- a. The terms and conditions must be amended to place an obligation on MTC to give the consumers notification at least 7 days and again 2 days before the expiration of the 60 days validity period;
- b. Mobile Telecommunications Limited must reintroduce the following data bundles with no validity period placed on the usage of data for lower end users and users whose data usage patterns might be affected by the expiration of the validity period.

Price (NS)	MB
15	60
23	100
35	200

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

COMMUNICATIONS REGULATORY AUTHORITY OF NAMIBIA

No. 171

2016

NOTICE IN TERMS OF SECTIONS 85 AND 101 OF THE COMMUNICATIONS ACT, 2009
 (ACT NO. 8 OF 2009) AND THE REGULATIONS REGARDING LICENSING PROCEDURES
 FOR TELECOMMUNICATIONS AND BROADCASTING SERVICE LICENCES AND
 SPECTRUM USE LICENCES

The Communications Regulatory Authority of Namibia, in terms of Sections 101 of the Communications Act, 2009 (Act No. 8 of 2009) read with Regulations 6 and 11 of the “Regulations Regarding Licensing Procedures for Telecommunications and Broadcasting Service Licences and Spectrum Use Licences”, in Government Gazette No. 4785, Notice No. 272, dated 29 August 2011 (as amended), herewith gives notice that the application for a Spectrum Use Licence for **De Beers Marine Namibia (Pty) Ltd** has been approved.

THE FOLLOWING ARE THE REASONS FOR THE DECISION:

De Beers Marine Namibia (Pty) Ltd (hereinafter referred to as “the Applicant”) submitted applications for spectrum use licences in the spectrum band 3600 MHz to 4200 MHz to implement fixed wireless links between its mining vessels and shore station within the licence mining area of the Applicant on 8 September 2015. The aforementioned applications were submitted in accordance with section 101 of the Communications Act, 2009 (Act No. 8 of 2009) (hereinafter referred to as the “Act”) and the Regulations regarding Licensing Procedures for Telecommunications and Broadcasting Service Licences and Spectrum Use Licences as published in Government Gazette No. 4785, General Notice No. 272 of 29 August 2011, for consideration by the Authority.

BACKGROUND TO APPLICATION

The Applicant operates a private ECNS network within the borders of the mining area licenced to the Applicant and therefore does not hold a telecommunications service licence in terms of Regulation 5(2) of the Regulations Setting Out Broadcasting and Telecommunications Service Licence Categories and section 43 of the Communications Act, 2009.

The Applicant does not intend to provide telecommunications services to third parties, but intends to utilise wireless fixed links to communicate from shore to its mining vessels at sea within the mining area and vice versa to support its own day-to-day operations.

The Applicant submitted a spectrum use licence application for spectrum in the band 3600-4200 MHz to implement fixed wireless links between its shore station and its vessels (Explorer, Debmar Atlantic, Debmar Pacific, Grand Banks, !Gariiep, Coral Sea, Mafuta and SS Nujoma) located off the coast of Oranjemund within the Atlantic 1 mining concession area to facilitate voice and data communications from shore to ship. The individual frequencies applied for are listed in the table below-

Vessel	Vessel TX (MHz)	Vessel RX (MHz)	Shore TX (MHz)	Shore RX (MHz)
Explorer	3604	3724	3724	3604
Debmar Atlantic	3612	3732	3732	3612
Debmar Pacific	3620	3740	3740	3620
Grand Banks	3628	3748	3748	3628
!Gariiep	3636	3756	3756	3636
Coral Sea	3644	3764	3764	3644
Mafuta	3652	3772	3772	3652
SS Nujoma	3660	3780	3780	3660

The application was submitted in order to migrate the Applicant's existing wireless fixed links from the 786-850 MHz spectrum band to the spectrum band as applied for in compliance to the Regulations Setting Out the Frequency Band Plan for Namibia as published in Government Gazette No. 5214, Notice No. 191 dated 31 May 2013.

PROCEDURAL COMPLIANCE

Following due process in terms of the Regulations Regarding Licensing Procedures for Telecommunications and Broadcasting Service Licences and Spectrum Use Licences, the Authority published a notice in the Government Gazette No. 5947, General Notice No. 16, dated 15 February 2016, allowing fourteen (14) days for public comments from the date of publication of the Notice in the *Gazette*. The commenting period lapsed on 29 February 2016, and no comments were received.

The last day for the Authority to make a decision in respect of this Application is 6 May 2016.

ANALYSIS BY THE AUTHORITY

The issuance of spectrum use licences by the Authority is guided by-

- (i) Section 101 of the Communications Act, 2009;
- (ii) International Telecommunications Union Regulations and subsequent international agreements signed by Namibia as a member state of the International Telecommunications Union; and
- (iii) Regulations Setting Out the Frequency Band Plan for Namibia as published in Government Gazette No. 5214, General Notice No. 191 dated 31 May 2013.

The Applicant operates a private ECNS network to facilitate telecommunications services between its shore operations and its seagoing vessels performing mining operations within the Atlantic 1 mining concession areas off shore to Oranjemund as licenced to the Applicant. The ownership structure of the Applicant is indicated below-

Name of Applicant	Percentage of Namibian Ownership
De Beers Marine Namibia (Pty) Ltd	100%

Pursuant to the provisions of regulation 5(2) of the Regulations Setting out Broadcasting and Telecommunications Service Licence Categories, as published in Government Gazette 4714, Notice 124, dated 18 May 2011, private ECNS network may be provided without a telecommunications service licence.

Section 43(7) of the Communications Act provides as follows:

“(1) The installation, administration and operation of private networks do not require a licence if such networks and services conform to the provisions of this Act and the basic qualifications and conditions that the Authority may prescribe.

(2) A private network for the purposes of this section means a network that –

(a) connects only equipment situated on one erf or one piece of land registered as such in the deeds office; and

(b) does not have any radio apparatus in the network concerned, unless the possession and use of that apparatus in such network has been authorized by regulations made (or deemed to have been made) in terms of section 101(16)”.

The Management Licensing Committee is of the opinion that the Atlantic 1 mining concession licenced to the Applicant to conduct diamond mining activities, although consisting of land and sea, constitutes once piece of land in that the mining concession is registered with demarcated boundaries authorising the Applicant’s operations within the boundaries of the said mining area. The Applicant is therefore considered as private network in that it complies with section 43(7) of the Act as stated above.

It is noted that the spectrum as applied for is not licenced exempt in terms of the Regulations regarding Licence Exempt Spectrum as published in Government Gazette No. 4839, General Notice No. 395 as published on 25 November 2011. The operation of radio apparatus as contemplated in section 43(7) of the Act will therefore require a spectrum use licence.

The Applicant was awarded spectrum use licences in the spectrum band 786-850 MHz to implement wireless fixed links between its shore station and vessels by the Namibian Communications Commission on 14 November 2006. A copy of the licence is attached hereto as Annexure A for ease of reference.

It should be noted that no national spectrum band plan for Namibia was published prior to the existence of the Authority. The Authority published the first Regulations Setting Out the Frequency Band Plan for Namibia in Government Gazette No. 5214, General Notice No. 191 dated 31 May 2013.

The spectrum bands 694-790 MHz and 790-862 MHz are allocated to International Mobile Telecommunications (IMT) for implementation of mobile telecommunications services. These spectrum bands previously provided for the implementation of fixed links and broadcasting services.

Subsequently, the Authority informed the Applicant on 9 July 2014 that the aforementioned spectrum bands are now reserved on an exclusive basis for mobile telecommunications services and requested the Applicant to consider other spectrum bands for the operation of its fixed links between their shore station and seagoing vessels.

The application submitted by the Applicant for spectrum in the 3600-4200 MHz spectrum band for implementation of wireless fixed links is compliant to the aforementioned spectrum band plan of Namibia and the directive to Applicant in 2014. The Applicant will utilise the wireless fixed links for operations critical to its daily operations such as vessel security, video surveillance, SAP business system, voice and internet connectivity from ship to shore and vice versa. The envisaged network and services is for the exclusive use of the Applicant and no services are offered on a commercial basis.

Favourable consideration of this application will allow the Applicant to comply with the regulatory framework set by the Authority for spectrum use licensee and allow for the migration of its existing network to the new spectrum band to support its operations going forward. On completion of the migration process, the spectrum use licences awarded for the spectrum band 786-850 MHz will be returned to the Authority allowing for the clearance of the aforementioned band to be assigned for mobile telecommunications going forward. The Authority noted that Applicant paid all spectrum fees.

In light of the above, the Management Licensing Committee resolved at its meeting held 30 March 2016 to recommend the approval of the spectrum application as submitted by the Applicant on condition that utilisation of spectrum is restricted to the mining area located at Oranjemund and that no telecommunications services will be offered on a commercial basis to other parties.

DECISION

In terms of sections 101 of the Communications Act and the Regulations regarding Licensing Procedures for Telecommunications and Broadcasting Service Licences and Spectrum Use Licences, the Authority herewith approves –

- (i) The award of spectrum use licences to De Beers Marine Namibia (Pty) Ltd for the provision of fixed links as indicated below-
 - a. 3804 MHz (TX)/3924 MHz (RX) (8 MHz bandwidth);
 - b. 3812 MHz (TX)/3932 MHz (RX) (8 MHz bandwidth);
 - c. 3820 MHz (TX)/3940 MHz (RX) (8 MHz bandwidth);
 - d. 3828 MHz (TX)/3948 MHz (RX) (8 MHz bandwidth);
 - e. 3836 MHz (TX)/3956 MHz (RX) (8 MHz bandwidth);
 - f. 3844 MHz (TX)/3964 MHz (RX) (8 MHz bandwidth);
 - g. 3852 MHz (TX)/3972 MHz (RX) (8 MHz bandwidth) and
 - h. 3860 MHz (TX)/3980 MHz (RX) (8 MHz bandwidth).
- (ii) That the licences are awarded subject to the Communications Act, 2009 (Act No. 8 of 2009) and the Regulations Regarding Licence Conditions for Spectrum Use Licensee as published in Government Gazette No. 5354, General Notice No. 469, dated 2 December 2013;
- (iii) That no telecommunications services may be offered on a commercial basis utilising the spectrum awarded;
- (iv) That the use of the frequencies are restricted to the borders of the Atlantic 1 mining area of De Beers Marine Namibia (Pty) Ltd in Oranjemund; and
- (v) Submission of application for withdrawal of the spectrum use licence in respect to the frequencies listed hereunder to the Authority on completion of the migration process-
 - a. 786 MHz;
 - b. 794 MHz;
 - c. 802 MHz;
 - d. 810 MHz;

- e. 818 MHz;
- f. 850 MHz.

Kindly take note that section 31 of the Communications Act provides that the Authority may, on its own motion or on a petition filed by an aggrieved party to any proceedings, reconsider any order or decision that it has made, within 90 days from the date of making that decision or issuing that order.

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

COMMUNICATIONS REGULATORY AUTHORITY OF NAMIBIA

No. 172

2016

**NOTICE IN TERMS OF SECTIONS 85 AND 101 OF THE COMMUNICATIONS ACT, 2009
(ACT NO. 8 OF 2009) AND THE REGULATIONS REGARDING LICENSING PROCEDURES
FOR TELECOMMUNICATIONS AND BROADCASTING SERVICE LICENCES AND
SPECTRUM USE LICENCES**

The Communications Regulatory Authority of Namibia, in terms of Sections 85 and 101 of the Communications Act, 2009 (Act No. 8 of 2009) read with Regulations 5, 6 and 11 of the “Regulations Regarding Licensing Procedures for Telecommunications and Broadcasting Service Licences and Spectrum Use Licences”, in Government Gazette No. 4785, Notice No. 272, dated 29 August 2011 (as amended), herewith gives notice that the application for a Community Broadcasting Service License and Spectrum Use Licence for **the Voice of the Kingdom Ministries Incorporated** has been declined.

THE FOLLOWING ARE THE REASONS FOR THE DECISION:

The Voice of Kingdom Ministries Incorporated (hereinafter referred to as “the Applicant”) submitted applications for a community broadcasting service licence and spectrum use licence in Ondangwa on 24 February 2012 in accordance with sections 85 and 101 of the Communications Act, 2009 (Act No. 8 of 2009) (hereinafter referred to as the “Act”) and the Regulations regarding Licensing Procedures for Telecommunications and Broadcasting Service Licences and Spectrum Use licences as published in Government Gazette No. 4785, General Notice No. 272 of 29 August 2011, for consideration by the Authority.

BACKGROUND TO APPLICATION

As per documentation submitted with the application for a community broadcasting service licence, The Applicant is a 100% Namibian and submitted unregistered Articles of Association as well as proof of registration as a section 21 company with Registration No. 21/2011/0301. There are no foreign ownership interests in the Applicant.

In terms of Section 101 (7) of the Communications Act (Act 8 of 2009), “*where a person applies for a licence to operate a network or provide...broadcasting services, that person must also apply for such spectrum use licences as are necessary to render the service concerned.*”

Consequently, the Applicant submitted an application for spectrum use for FM broadcasting frequency between 87 MHz and 108 MHz dated 20 March 2012 in the geographical area of Ondangwa and a transmitter output power of 500W.

The Applicant is intending to provide their own signal distribution service in terms of Regulation 5(2) of the Regulations Regarding Licensing Procedure for Telecommunications and Broadcasting

Service Licences and Spectrum Use License although it will enter into a site sharing agreement with the Telecom Namibia Limited to attach its antenna and transmitter to the existing infrastructure owned by Telecom Namibia Limited in Ondangwa as per documentation and coverage plot submitted to the Authority.

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

REQUEST FOR INFORMATION

The initial application as submitted to the Authority on 24 February 2012 contained no technical information as required by section G of the spectrum use licence application form rendering the Authority unable to consider the application. Technical equipment specifications and the intended output power for the transmitter was submitted to the Authority on 20 March 2013 followed by an application to Telecom Namibia Limited for site sharing submitted on 20 October 2014.

Oral Submissions

The Authority requested the Applicant to make oral submissions in respect of its application on 8 April 2015.

At the oral submission, the Applicant gave a brief overview of their financial resources and intended program schedule. The Authority posed various questions to the applicant in respect of the community it will serve, programme content, financial resources, technical expertise and envisaged site sharing with Telecom Namibia Limited.

After the discussion during the oral submission made by the Applicant, the Authority requested the Applicant on 15 April 2015 to provide-

- (i) Curriculum vitae of the expert who will run the operations of the radio station;
- (ii) Contents of the register of Directors of the Applicant;
- (iii) An indication of the group of persons with a common interest that the Applicant will be providing broadcasting services to;
- (iv) A revised weekly program schedule for the radio station, including Saturdays and Sundays;
- (v) Detailed budget/financial projection for the next five (5) year; and
- (vi) Bank statement or bank account in the name of the Voice of Kingdom Ministries

The Applicant did not submit all information as requested on 6 May 2015 and the Authority therefore made further requests for the outstanding information on 2 July 2015, 23 September 2015 and 12 November 2015 respectively. To date the application for a spectrum use licence for a studio link, curriculum vitae of expert to manage the operations of the radio station and proof of registration of the Articles of Association as submitted to the Authority remains outstanding.

PROCEDURAL COMPLIANCE

Following due process in terms of Regulations Regarding Licensing Procedures for Telecommunications and Broadcasting Service Licences and Spectrum Use Licences, the Authority published a notice in the Government Gazette 5659, Notice No. 28, dated 30 January 2015, allowing

fourteen (14) days for public comments from the date of publication of the Notice in the *Gazette*. The commenting period lapsed on 14 February 2014, and no comments were received.

The last day for the decision is 22 April 2016 following the last correspondence from the Authority requesting submission of outstanding documentation by the Applicant on 12 November 2015.

ANALYSIS BY THE AUTHORITY

Application for community broadcasting service licence

The Ondangwa area is already well serviced by seven (7) commercial broadcasters (Omulungu Radio, Radio 100, Radio Kudu, Radio 99, Radiowave, Cosmos Digital Namibia, Fresh FM), three (3) community broadcasters (Media for Christ, Ohangwena Community Radio, Maroela Trust) and the Namibia Broadcasting Corporation (NBC) broadcasting from transmitter towers located in Oshakati and Ondangwa respectively. Please note that NBC is broadcasting services in nine (9) languages as well as offering a National Radio channel.

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

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

(a) the character of the applicant or, if the applicant is a body corporate, the character of its directors”;

The Authority has no reservations on the character of the applicant or its directors and has also not received any information that suggests that they have a bad character or that they would not be fit to run a radio station.

“(b) the adequacy of the expertise, experience and financial resources available to the applicant”;

Based on the facts presented, the Applicant wishes to transmit in an area that is serviced by eleven (11) broadcasters, most of them being national. Unfortunately the Applicant did not provide CRAN with proposals of how they plan to create consumer awareness and market penetration, also failing to include any budget provision with regards to publicity in their forecasted Income and Expenditure statement listing.

The Bank Statement of Wendy Private School, submitted by the Applicant does not warrant sufficient capital start up, and another donor, Jetties Petroleum & Mining CC’s Bank Statement was omitted from the business case making it difficult to assess their financial capability with regards to their commitment of funding the radio station.

The Applicant further provided proof of a bank account in the name of the Applicant at Standard Bank dated 6 May 2015. However, no proof or information was provided to the Authority in respect of any funds available in the said account to be utilised to sustain the envisaged radio station.

The forecasted income and expenditure provided also failed to provide notes to illustrate how the total income will be collected, making it impossible to test the correctness of the earnings as stipulated. Another notable omission is the finance cost of the studio set up, lease agreement of towers, license fees and insurance of studio equipment. The Applicant’s biggest cost drive goes into staff salaries, with more than a third of their income, but the business case did not disclose the number of employees the station will recruit, which makes it difficult to clarify the expenditure.

When compared to other Community Broadcasting Service Licensees, with a focus on preaching the Gospel, it is clear that the Applicant over stated their income and understated their expenditure.

They expect to break even in the second year of operation according to their projection which is over ambitious.

The Applicant has no experience or expertise in the field of broadcasting and was thus given the opportunity to submit a curriculum vitae for the person to assist with the operation of the radio station. However, the Applicant has failed to submit the requested documentation to date.

“(c) the desirability or otherwise allowing any person or association of persons, to have control or a substantial interest in-

(i) more than one broadcasting service;

(ii) more than one radio station and one television station and one registered newspaper with a common coverage and distribution area or significantly overlapping coverage and distribution areas”;

There is no evidence presented before the Authority that Applicant has a controlling or substantial interest in any broadcasting service licensee or a registered newspaper with a common coverage and distribution area.

“(d) whether the applicant is likely to comply with such technical broadcasting standards as the Authority may prescribe”;

Although the Applicant submitted an application for a FM broadcasting frequency in Ondangwa and a site sharing agreement application with Telecom Namibia Limited for access to the tower located in Ondangwa, the Applicant has failed to date to submit any information or application for spectrum use in respect of the link between the studio and the transmitter site.

Further thereto section 101(8) places a duty on the Authority to consider the application for spectrum in conjunction with the application for a service licence and to ensure that such spectrum use licence as may be required is issued to enable the applicant to render the services for which the service licence is issued.

However it should be noted that an Applicant must have the ability to install the relevant technical equipment to facilitate the use of spectrum assigned. The Applicant has failed to provide proof of how it intends to facilitate a connection between the studio and transmitter tower.

In the opinion of the Authority, the Applicant will not be able to comply with the broadcasting service licence conditions and spectrum use licence conditions requiring licensees to commence services and utilisation of spectrum within a period of six (6) months from the date of award of said licences should approval be granted by the CRAN Board of Directors.

“(e) whether the conditions of a broadcasting licence will unjustly benefit one licensee above another”;

There is no indication that if awarded a licence, the conditions imposed will unjustly benefit applicant above another licensee.

“(f) the allocation of spectrum in such a manner as to ensure the widest possible diversity of programming and the optimal utilization of such resources. Provided that priority may be given to broadcasters transmitting the maximum number of hours per day”;

The Applicant has applied for a community broadcasting service licence and intends to broadcast religious content to a specific community comprising of all age groups, all gender groups in towns, settlements, villages and farming areas within reach of its transmitter to be located in Ondangwa, on a 24-hour basis.

“(g) the reservation of radio wave spectrum resources for future use; and”

The FM broadcasting frequency applied for is not reserved for future use, however spectrum in the Ondangwa area is in short supply given the high number of existing broadcasting service licensees.

“(h) the desirability of giving priority to community based broadcasts.”

Given that the Applicant does not meet the criteria as set out in points (b) and (d) above, it is not desirable to give priority to the Applicant’s application for a community broadcasting service licence and spectrum use licence.

In light of the above analysis, the Authority is of the opinion:-

- i) that the Applicant will encounter sustainability challenges given the fact the Applicant did not provide proof of sufficient funding resources as required by section 85 (b);
- ii) That based on the analysis of the current projections, the Applicant will not have adequate financial resources, to sustain the station as required by section 85(8)(b) of the Communications Act;
- iii) That the Applicant does not have the experience or expertise as required by section 85(8)(b) to manage the operations of a radio station; and
- iv) That the Applicant failed to provide proof of its ability to implement a link from the studio to the transmitter tower. The Applicant will therefore not be able to adhere to technical requirements as set out in section 85 (8)(b) and (d).

After consideration of the information submitted with the application and evaluation thereof in terms of the criteria as set out in Section 85(8) (b) and (d) of the Communications Act, the Licensing Committee at its meeting held 13 January 2016 concluded to submit a recommendation to the CRAN Board of Directors to decline the service licence application for a community broadcasting service licence submitted by the Applicant.

Application for spectrum use licence

Pursuant to the provisions of section 101(6) of the Act, an applicant may only be issued with a spectrum use licence, where the operation of a network or the provision of broadcasting service or the use thereof entails the use of radio waves.

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

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

Section 101(8) places a duty on the Authority to consider the application for spectrum in conjunction with the application for a service licence and to ensure that such spectrum use licence as may be required is issued to enable the applicant to render the services for which the service licence is issued.

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

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

DECISION

In terms of sections 85 and 101 of the Communications Act and the Regulations regarding Licensing Procedures for Telecommunications and Broadcasting Service Licences and Spectrum Use Licences, the Authority herewith declines –

- i) The application for a community broadcasting service licence submitted by The Voice of The Kingdom Ministries based on the criteria as set out in Section 85(8)(b) and (d) of the Communications Act, 2009 (Act No. 8 of 2009); and
- ii) The application for spectrum use in the geographical area of Ondangwa submitted in conjunction with the service licence application.

Kindly take note that section 31 of the Communications Act provides that the Authority may, on its own motion or on a petition filed by an aggrieved party to any proceedings, reconsider any order or decision that it has made, within 90 days from the date of making that decision or issuing that order.

F. KISHI

CHAIRPERSON OF THE BOARD OF DIRECTORS

COMMUNICATIONS REGULATORY AUTHORITY OF NAMIBIA

COMMUNICATIONS REGULATORY AUTHORITY OF NAMIBIA

No. 173

2016

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

The Communications Regulatory Authority of Namibia, in terms of Section 101 of the Communications Act, 2009 (Act No. 8 of 2009) read with Regulations 6 and 11 of the “Regulations Regarding Licensing Procedures for Telecommunications and Broadcasting Service Licences and Spectrum Use Licences”, in Government *Gazette* No. 4785, Notice No. 272, dated 29 August 2011 (as amended), herewith gives notice that the application for a Community Broadcasting Service License and Spectrum Use Licence for **Fresh FM (Pty) Ltd** has been approved.

THE FOLLOWING ARE THE REASONS FOR THE DECISION:

Fresh FM (Pty) Ltd (hereinafter referred to as “the Applicant”) submitted applications for four (4) spectrum use licences to provide FM broadcasting services in the geographical areas of Grootfontein, Tsumeb, Rundu and Otjiwarongo on 5 March 2015 in accordance with section 101 of the Communications Act, 2009 (Act No. 8 of 2009) (hereinafter referred to as the “Act”) and the Regulations regarding Licensing Procedures for Telecommunications and Broadcasting Service Licences and Spectrum Use Licences as published in Government Gazette No. 4785, General Notice No. 272 of 29 August 2011, for consideration by the Authority.

The Applicant failed to submit proof of access to infrastructure in Tsumeb and Otjiwarongo to install its broadcasting transmitters as requested by the Authority on 15 October 2015.

The CRAN Board of Directors at its meeting held 11 February 2016 resolved to put the spectrum use applications for Tsumeb and Otjiwarongo on hold until such time that the Applicant submits all outstanding information in respect thereof. It however transpired that the information was submitted on 8 December 2015, but due to an oversight on the Authority's part, it was not presented to the Board on 11 February 2016. The Authority has apologised to Applicant in this regard.

BACKGROUND TO APPLICATION

The Applicant holds a commercial broadcasting service licence, which was awarded on 25 November 2011 in terms of Regulation 9(10) of the Regulations regarding Transitional Procedures for Telecommunications and Broadcasting Services Licences and Spectrum Use Licences as published in Government Gazette No. 4737, General Notice No. 171 dated 17 June 2011 and was awarded spectrum use licences for coverage in the geographical areas of Windhoek and Oshakati in terms of regulation 10(1) of the aforementioned regulations. The award of the spectrum use licences was published in Government Gazette No. 5037, General Notice No. 306 dated 13 September 2012 and came in force and effect on the same date.

The Applicant was awarded additional spectrum use licences to extend its services to the geographical areas of Swakopmund and Walvis Bay as published in Government Gazette No. 5017, General Notice No. 276 dated 17 August 2012. At the Board meeting held on 11 February 2016, the CRAN Board of Directors resolved to award spectrum use licences to the Applicant in the geographical areas of Grootfontein and Rundu. These spectrum use licences are pending publication in the *Gazette*.

The Applicant wishes to expand its broadcasting services further to the geographical areas of Tsumeb and Otjiwarongo. The application forms were submitted together with coverage predictions, the location of broadcasting transmitters and technical equipment specifications. All the transmitters are to be operated with a power output of 100W.

The Applicant does not intend to construct its own transmitter towers. As per documentation submitted, the Applicant will enter into lease agreements with infrastructure owners of infrastructure located at Tsumeb Mine and the water tower in Otjiwarongo to install their transmitters on existing infrastructure.

REQUEST FOR INFORMATION

The Applicant did not submit proof of the site lease agreements with its application forms. Subsequently the Authority requested the Applicant to provide the outstanding documentation on 15 October 2015 as listed hereunder-

- i) Site sharing agreements with the respective organisations for the utilisation of the following sites;
 - a. Rundu Noordgrens School (Rundu);
 - b. Otjiwarongo Water Tower (Otjiwarongo)
 - c. Tsumeb Mine Site (Tsumeb); and
 - d. Grootfontein Water Tower (Grootfontein)
- ii) A prediction coverage map for the transmitter site in Grootfontein as required in Section G of the application form.

The Applicant submitted the aforementioned coverage prediction and a letter from Satcom entitled "**Letter of Acceptance of Applicant to Rent**" on 27 October 2015 to the Authority. No actual site sharing agreements as requested were submitted.

The Applicant failed to submit infrastructure sharing agreements or any documents in respect of Tsumeb and Otjiwarongo to the Authority on 20 November 2016 for consideration resulting in the Board resolution to put these applications on hold.

The Authority acknowledged receipt of the aforementioned outstanding information as submitted by the Applicant on 24 February 2016.

PROCEDURAL COMPLIANCE

Following due process in terms of the Regulations Regarding Licensing Procedures for Telecommunications and Broadcasting Service Licences and Spectrum Use Licences, the Authority published a notice in the Government Gazette 5805, General Notice No. 380, dated 12 August 2015, allowing fourteen (14) days for public comments from the date of publication of the Notice in the *Gazette*. The commenting period lapsed on 29 August 2015, and no comments were received.

The last day for the decision is 26 April 2016 following the last day of correspondence delivered to the Applicant on 24 February 2016.

ANALYSIS BY THE AUTHORITY

The Applicant is an established commercial broadcasting service licensee providing FM radio broadcasting services and intends to extend its services to two new geographical areas in Northern Namibia namely: Otjiwarongo, and Tsumeb.

FM Radio broadcasting services in the aforementioned areas are currently provided by-

- (i) Tsumeb – Namibian Broadcasting Corporation, Media for Christ, 99FM (Pty) Ltd, Radio 100 (Pty) Ltd, Radio Kudu (Pty) Ltd and Omulunga Radio (Pty) Ltd (1 community broadcaster, 4 commercial broadcasters and the public broadcaster); and
- (ii) Otjiwarongo –Namibian Broadcasting Corporation, Otji-Investments t/a Otji-FM, Media for Christ, Omulunga Radio (Pty) Ltd, HitRadio, Radio Kudu (Pty) Ltd, Radiowave CC, Cosmos Digital Namibia (Pty) Ltd, and 99FM (Pty) Ltd (1 community broadcasters, 7 commercial broadcasters and the public broadcaster).

The issuance of spectrum use licences by the Authority is guided by-

- (i) Section 101 of the Communications Act, 2009;
- (ii) International Telecommunications Union Regulations and subsequent international agreements signed by Namibia as a member state of the International Telecommunications Union; and
- (iii) Regulations Setting Out the Frequency Band Plan for Namibia as published in Government *Gazette* No. 5214, General Notice No. 191 dated 31 May 2013.

Section 101(7) of the Communications Act stipulates as follows:

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

The Applicant holds a commercial broadcasting service licence as published in Government *Gazette* No. 4839, General Notice No. 393 dated 25 November 2011 and thus may apply for additional spectrum licences to provide services as contained in its broadcasting service licences. The ownership structure of the Applicant is indicated below-

Name of Applicant	Percentage of Namibian Ownership
Fresh FM (Pty) Ltd	100%

The two (2) spectrum use licence application forms as submitted by the Applicant requested the Authority to consider frequencies between 88 MHz and 108 MHz, which request conforms to the provisions contained in the abovementioned regulations.

The Authority identified the frequencies as listed hereunder for consideration-

- (i) Tsumeb 91.400 MHz 100W; and
- (ii) Otjiwarongo 87.800 MHz 100W.

It should be noted that the geographical area of Tsumeb is served by a limited number of broadcasters only as indicated above. The Authority has sufficient spectrum available in all aforementioned areas applied for.

The Authority is of the opinion that the favourable consideration to award the additional spectrum use licences to the Applicant will be aligned with the objectives of the Act in that it will promote private investment in the communications industry and expand the variety of broadcasting services available into rural areas providing Namibia with wider access to information.

The Management Licensing Committee, at its meeting held on 1 March 2016, noted that the Applicant has submitted all outstanding information and that the said application now complies with all regulatory requirements in respect of spectrum use licences. It was therefore resolved to recommend that the CRAN Board of Directors approve the award of spectrum use licences to the Applicant for the geographical areas of Tsumeb and Otjiwarongo.

DECISION

In terms of sections 101 of the Communications Act and the Regulations regarding Licensing Procedures for Telecommunications and Broadcasting Service Licences and Spectrum Use Licences, the Authority herewith approves –

- (i) The awards of two (2) additional spectrum use licences to Fresh FM (Pty) Ltd for the provision of broadcasting service as indicated below-
 - a. Otjiwarongo 87.800 MHz 100W; and
 - b. Tsumeb 91.400 MHz 100W.
- (ii) That the licences are awarded subject to the Communications Act, 2009 (Act No. 8 of 2009) and the Regulations Regarding Licence Conditions for Spectrum Use Licensee as published in Government Gazette No. 5354, General Notice No. 469, dated 2 December 2013;

Kindly take note that section 31 of the Communications Act provides that the Authority may, on its own motion or on a petition filed by an aggrieved party to any proceedings, reconsider any order or decision that it has made, within 90 days from the date of making that decision or issuing that order.

F. KISHI

**CHAIRPERSON OF THE BOARD OF DIRECTORS
COMMUNICATIONS REGULATORY AUTHORITY OF NAMIBIA**

COMMUNICATIONS REGULATORY AUTHORITY OF NAMIBIA

No. 174

2016

NOTICE IN TERMS OF SECTIONS 38 AND 101 OF THE COMMUNICATIONS ACT, 2009 (ACT NO. 8 OF 2009) AND THE REGULATIONS REGARDING LICENCE CONDITIONS FOR TELECOMMUNICATIONS SERVICE LICENCES AND REGULATIONS SETTING OUT LICENCE CONDITIONS FOR SPECTRUM USE LICENCES

The Communications Regulatory Authority of Namibia, in terms of Sections 38 and 101 of the Communications Act, 2009 (Act No. 8 of 2009) read with Regulation 17 of the “Regulations regarding Licence Conditions for Telecommunications Service Licences” in Government Gazette No. 5037, Notice No. 308, dated 13 September 2012 and Regulation 6 of the “Regulations setting out Licence Conditions for Spectrum Use Licences”, in Government Gazette No. 4785, Notice No. 272, dated 29 August 2011 (as amended), herewith gives notice that the Class Comprehensive Telecommunications Service Licence (ECS and ECNS) and the Spectrum Use Licence awarded to **YFI Technologies (Pty) Ltd** have lapsed.

THE FOLLOWING ARE THE REASONS FOR THE DECISION:

YFI Technologies (Pty) Ltd (hereinafter referred to as “YFI”) was awarded with a Class Comprehensive Telecommunications Service Licence (ECS and ECNS) on 15 May 2012 to provide telecommunications services in terms of section 38 of the Communications Act No. 8 of 2009 (hereinafter referred to as “the Act”) and regulations 5 and 11 of the Regulations regarding Licensing Procedures for Telecommunications and Broadcasting Service Licences and Spectrum Use Licences as published in Government Gazette No. 4785, General Notice No. 272 dated 29 August 2011. The award of the telecommunications service licence was published in Government Gazette No. 4946, Notice No. 121 dated 15 May 2012 and came into force and effect on the same date.

Further thereto YFI was awarded a spectrum use licence for 14339-14357 MHz uplink and 11055 MHz downlink to provide fixed satellite services on 28 March 2014 in terms of section 101(6) of the Communications Act No. 8 of 2009 (hereinafter referred to as “the Act”) read with regulation 6 (1) of the Regulations regarding Licensing Procedures for Telecommunications and Broadcasting Service Licences and Spectrum Use Licences as published in Government Gazette No. 4785, General Notice No. 272 dated 29 August 2011. The award of the spectrum use licence was published in Government Gazette No. 5790, Notice No. 359 dated 24 July 2015. It should be noted that the spectrum use licence came into force and effect on the date of the decision by the CRAN Board of Directors being 28 March 2014.

BACKGROUND TO THE TELECOMMUNICATIONS SERVICE LICENCE

YFI was awarded a Class Comprehensive Telecommunications Service Licence to provide telecommunications services *via* wifi hotspots utilising licence exempt spectrum in the 2.4 GHz spectrum band and installing last mile network infrastructure on 15 May 2012 as stated above.

Regulations 17(4) of the Regulations regarding Licence Conditions for Telecommunications Service Licences as published in Government Gazette No. 5037, Notice No. 308 dated 13 September 2012 indicates that in the event that a licensee fails to provide services within six (6) months after the date of issuance thereof, the Authority may declare the licence to be forfeited.

Regulation 17(4) of the said Regulations reads as follows-

“A licence will lapse six (6) months after the date of the issue of that licence in the event that no commercial telecommunications are provided under that licence. The Authority may, after considering a written request from a licensee, extend, in writing, for such further periods as may be

determined by the Authority and, if applicable, condone the licensee's failure to commence rendering telecommunications services timeously, in which event the licence will lapse at the expiry of such extended period."

In terms of the above-mentioned Regulations, YFI was required to commence with the provisioning of telecommunications services on or before 14 March 2014 (being six (6) months from the date of publication of the Regulations regarding Licence Conditions for Telecommunications Service Licences as published in Government *Gazette* No. 5037, General Notice No. 308 dated 13 September 2013).

At no time did YFI ever submit any requests to the Authority to grant condonation to commence offering of commercial services at a later date. YFI, however, submitted an application for spectrum use licence to extend their service offering to fixed satellite services on 6 September 2013.

BACKGROUND TO THE SPECTRUM USE LICENCE

YFI was awarded a spectrum use licence for 14 339-14 357 MHz uplink and 11 055 MHz downlink to provide fixed satellite services on 28 March 2014 as stated above.

Regulations 6(3) of the Regulations Setting Out Licence Conditions for Spectrum Use Licences as published in Government Gazette No. 5354, Notice No. 469 dated 2 December 2013 indicates that in the event that a licensee fails to provide services within six (6) months after the date of issuance thereof, the Authority may declare the licence to be forfeited.

Regulations 6 (4) and (5)(a)(i) of the said Regulations reads as follows-

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

(5) if the Authority-

(a) is satisfied that a licensee has-

(i) within six months after issue of the licence, failed to commence to carry on services in respect of which it is licensed;

(ii) failed to pay licence fees payable

The Authority may by written notice to the licensee inform such licensee that it intends to cancel such licensee's spectrum use licence and in such notice state the grounds for such intended action."

In terms of the above-mentioned regulations, YFI was required to commence with the provisioning of fixed satellite services on or before 29 November 2014 (being six (6) months from the date of award of the said spectrum use licence by the CRAN Board of Directors). Further thereto, YFI failed to pay spectrum use licence fees in respect of the licence awarded for the year 2015.

NOTICE OF INTENTION TO CANCEL

Notice of Intention to cancel spectrum use licence

Following due process, the Authority addressed a letter to YFI on 8 June 2015 indicating that YFI has not complied with its spectrum use licence conditions as contained in Regulation 6(4) and 6(5)(a)(i) and (ii) of the Regulations Setting Out Licence Conditions for Spectrum Use Licences and that the Authority intends to cancel the aforementioned spectrum use licences. The letter indicates that the intended cancellation is due to the fact that the spectrum use licence is unutilised as no fixed satellite services are being offered to date and that the spectrum licence fees for 2015 amounting to thirty two thousand Namibian Dollars (N\$32,000.00) have not been paid.

YFI was requested to make a written representation in terms of regulation 6(6) of the said Regulations to the Authority advancing reasons as to why the Authority should not make a determination that the

spectrum use licence as awarded to YFI has lapsed as contemplated in the conditions contained in regulations 6(5)(a)(i) and (ii) as cited above.

YFI submitted its response on 25 June 2015 providing proof of payment in respect of the spectrum licence fees to the amount of thirty two thousand Namibian Dollars (N\$32,000.00) dated 6 June 2015.

As per their written submission received on 25 June 2015, YFI stated that the company is in a dormant state and is not offering any services to consumers. YFI also submitted financial statements and the bi-annual operator's questionnaire.

Notice of Intention to cancel telecommunications service licence

Analysis of the financial statements and operator's questionnaire submitted by YFI showed that the licensee has no customer base, has not generated any revenue for telecommunications services and is not offering telecommunications services *via* wifi hotspots or fixed satellite utilising its spectrum use licence or licence exempt spectrum.

Subsequently, following due process, the Authority addressed a letter to YFI on 13 January 2016 indicating that YFI has not complied with its telecommunications service licence conditions as contained in regulation 17(4) of the Regulations regarding Licence Conditions for Telecommunications Service Licences and that the Authority intends to cancel the aforementioned telecommunications service licences due to the fact that telecommunications service licence is unutilised as no fixed satellite services or services *via* wifi hotspots are being offered.

YFI was requested to make a written representation to the Authority advancing reasons as to why the Authority should not make a determination that the telecommunications service licence as awarded to YFI has lapsed as contemplated in the conditions contained in regulation 17(4) as cited above.

YFI submitted a letter to the Authority on 8 February 2016 stating that it is in the process of selling the company taking into consideration that the consolidation of Salt Essential IT (Pty) Ltd and the Renaissance Technology Group (owners of YFI) has required the allocation of critical resources in view of market conditions.

ANALYSIS BY THE AUTHORITY

Issues pertaining to the Telecommunications Service Licences

YFI was initially awarded a Class Comprehensive Telecommunications Service Licence (ECS and ECNS) on 15 May 2012 to provide telecommunications services *via* the implementation of wifi hotspots to facilitate last mile access. Prior to the lapsing of the six (6) month period to launch commercial services, YFI applied for spectrum to expand its product portfolio to provide fixed satellite services in addition to envisaged services offered *via* wifi hotspots as was contained in the application for a telecommunications services. The spectrum use licence was awarded to YFI on 28 March 2014.

The Authority is of the opinion that YFI was provided with the necessary regulatory approvals to enter the ICT market, subject to the respective licence conditions as indicated above. However, YFI did not request condonation from the Authority to extend the time period to commence the provision of commercial services as required by the said conditions.

Based on the information submitted on 25 June 2015 in response to the Authority's notice of intention to cancel the spectrum use licence, it came to light that YFI is not offering any telecommunications services to the Namibian public and has no customer base. This, as explained above, is what gave rise to the notice of intention to cancel the telecommunications service licence, due to non-compliance with regulation 17(4) of licence conditions as well.

YFI has not at any point in time informed the Authority that it is not offering telecommunications services *via* wifi hotspots but instead applied for spectrum to extend its service offering to fixed satellite services. From the operator's questionnaire and financial reports it is evident that YFI as a company is dormant and is not providing any telecommunications services.

YFI informed the Authority in its submission made in respect of the cancellation of its spectrum use licence on 25 June 2015 and in its submission made in respect of the cancellation of its telecommunications service licence on 8 February 2016 respectively, that it intends to sell the company. The Authority is therefore of the opinion that YFI has no intention of putting measures in place to offer telecommunications services, but is rather planning on selling the company all together.

The Authority is therefore, of the opinion that the telecommunications service licence awarded to YFI on 15 May 2012 lapsed on 14 March 2014 (being six (6) months from the date of publication of the Regulations regarding Licence Conditions for Telecommunications Service Licences as published in Government Gazette No. 5037, Notice No. 308 dated 13 September 2013) due to the following reasons: -YFI did not commence with the provision of telecommunications services within the time limits set out in regulation 17(4) of the licence conditions.

The Management Licensing Committee resolved at its meeting held on 1 March 2016 that-

- i) The telecommunications service licence awarded to YFI lapsed on 14 March 2014 due to the fact the YFI did not provide telecommunications services on a commercial basis;
- ii) That YFI by its own admission does not intend to provide telecommunications services to the Namibian public; and
- iii) That the intended sale of the company has no bearing on the Authority's consideration in respect of cancellation of the telecommunications service licence awarded to YFI as the licence lapsed on 14 March 2014 which date is fifteen (15) months prior to YFI informing the Authority it has not provided telecommunications services due to the reasons that it intends to sell the company.

It should be noted that no customers are affected as YFI is not providing any services utilising the telecommunications service licence and as indicated above and has no customer base.

YFI may apply for a reconsideration of this decision as contemplated in section 31 of the Communications Act.

Issues pertaining to the Spectrum Use Licences

The fact that YFI settled outstanding spectrum fees on 6 June 2015 does not negate the fact that the spectrum remained unutilised from the date of issuance on 28 March 2014 to date, which is the requirement in terms of the said licence. The Board will note that the criteria in regulation 6 are twofold in that it refers to failure to pay license fees and inability to provide services in terms of the license.

The spectrum bands 10.7-11.7 GHz and 14.3-14.4 GHz are allocated to fixed satellite services in terms of Regulations Setting out the Frequency Band Plan for Namibia and has limited vacant spectrum available. YFI has been awarded 14339-14357 MHz uplink and 11055 MHz downlink for provision of fixed satellite services in rural areas based on the network rollout and equipment specifications contained in its application.

Spectrum use licences are awarded on condition that a licensee utilises spectrum awarded within six (6) months from the date of issuance. The time period as contained in the regulations is based on-

- i) the fact that an applicant for a spectrum use licence has to submit rollout plans and equipment specifications together with its application form implying that the applicant would have completed its planning process for implementation of the network; and
- ii) the prevention of spectrum hoarding by a licensee, which places a prohibition on competition in the market.

The Authority noted that YFI did not submit a request for condonation in respect to the said spectrum use licence prior to end of the aforementioned six (6) month period or at any time thereafter for consideration by the Authority.

YFI further stated in its submission dated 25 June 2015 that it is intending to sell the company as a matter of urgency. The Authority notes however that YFI has no intention to put measures in place to utilise the said spectrum use licences to provide telecommunications services to the Namibian public.

The award of a spectrum use licence grants the holder of such a licence the “right-of-use” of the assigned spectrum as per the provisions of section 101 of the Act. The award of a spectrum use licence to a licensee does not grant the recipient of such a licence ownership of the said spectrum. Further thereto the spectrum use licence as awarded on 28 March 2014 lapsed on 29 November 2014. YFI can therefore not regard the aforementioned spectrum use licence as an asset to trade in the event that the company is sold. The intended sale of the company therefore, has no bearing on the Authority’s consideration in respect of cancellation of the spectrum use licences awarded to YFI on the aforementioned date.

The non-utilisation of the spectrum use licence for 14 339-14 357 MHz uplink and 11 055 MHz downlink for provision of fixed satellite services by YFI results in the hoarding of spectrum and places a limitation on the promotion of competition in the market in that no other licensee may utilise the said spectrum nor can the Authority consider assignment of the said spectrum to a new entrant as the “right-to-use” has been transferred to YFI with the award of the spectrum use licence on 28 March 2014.

The Licensing Committee therefore, resolved at its meeting held on 1 March 2016 to recommend to the Board of Directors that the spectrum use licence awarded to YFI on 28 March 2014 for spectrum for 14 339-14 357 MHz uplink and 11 055 MHz downlink has lapsed due to the fact that-

- i) the licensee has failed to launch fixed satellite services in terms of regulation 6(4) and 6(5) (a)(i) of the Regulations Setting Out Licence Conditions for Spectrum Use Licences as published in Government *Gazette* No. 5354, Notice No. 469 dated 2 December 2013;
- ii) that the licensee by its own admission does not have the intention to utilise the spectrum to provide telecommunications services; and
- iii) the hoarding of spectrum places a limitation on competition in the market and is prohibited in terms of the aforementioned regulations.

It should be noted that no customers are affected as YFI did not provide any services to date utilising the spectrum as contained in the spectrum use licence awarded.

In light of the above, it is recommended that the Board approves the cancellation of the spectrum use for 14 339-14 357 MHz uplink and 11 055 MHz downlink previously awarded to YFI within the borders of Namibia.

YFI may apply for a reconsideration of this decision as contemplated in section 31 of the Communications Act.

DECISION

In terms of sections 38 and 101 of the Communications Act and the Regulations regarding Licence Conditions for Telecommunications Service Licences and the Regulations setting out Licence Conditions for Spectrum Use Licences, the Authority herewith approves –

- (i) That the Class Comprehensive Telecommunications Service Licence (ECS and ECNS) awarded to YFI Technologies (Pty) Ltd on 15 May 2012 to provide telecommunications services has lapsed;
- (ii) That the spectrum use licence for 14339-14357 MHz uplink and 11055 MHz downlink awarded to YFI Technologies (Pty) Ltd on 28 March 2014 to provide fixed satellite services has lapsed; and

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

COMMUNICATIONS REGULATORY AUTHORITY OF NAMIBIA

No. 175

2016

**NOTICE IN TERMS OF REGULATION 17(4) OF THE REGULATIONS REGARDING
LICENCE CONDITIONS FOR TELECOMMUNICATIONS SERVICE LICENCES**

The Communications Regulatory Authority of Namibia, in terms of Regulations 17(4) of the “Regulations Regarding Licence Conditions for Telecommunications Service Licences”, in Government Gazette No. 5037, Notice No. 308, dated 13 September 2012, herewith gives notice that application for an extension to commence telecommunications services for **Demshi Investment Holdings (Pty) Ltd** has been approved.

THE FOLLOWING ARE THE REASONS FOR THE DECISION:

Demshi Investment Holdings (Pty) Ltd (hereinafter referred to as “the Applicant”) was awarded a Class Comprehensive Telecommunications service licence (ECS & ECNS) to provide telecommunications services within the border of the Republic of Namibia on 9 September 2015. The licences were awarded in terms of section 38 of the Communications Act read with the Regulations regarding Licensing Procedures for Telecommunications and Broadcasting Service Licences and Spectrum Use Licences as published in Government Gazette No. 4785, General Notice No. 272 dated 29 August 2015.

The decision to award the above stated licences was conveyed to the Applicant in a letter dated 16 September 2015. Subsequent to notifying the Applicant, the Authority proceeded to publish its decision herein in the *Gazette* in terms of regulation 19(1) of the Licensing Procedures for Telecommunications and Broadcasting Service Licences and Spectrum Use Licences. The said decision was published under Government Gazette No. 5867, Notice 524 dated 2 November 2015.

Please note that the last day for the Applicant to commence with telecommunications services herein is 18 March 2016.

The Authority received a letter from the Applicant on 23 February 2016 wherein it requested an extension from the Authority to commence with telecommunications services, due to the fact that-

- i) The Authority is still to make a decision in respect of a number range to allow the Applicant to provide telecommunications services; and

- ii) That Telecom Namibia Limited is not responding to the Applicant's request for infrastructure sharing.

The Authority acknowledged receipt of the request on 8 March 2016 and further indicated that it would revert once it had considered the request.

LEGAL REQUIREMENTS FOR COMMENCEMENT WITH SERVICES

Regulation 17(4) of the Regulations regarding Licence Conditions for Telecommunications Service Licences provides as follows –

“(4) A licence shall lapse six (6) months after the date of issue of the licence in the event that no commercial telecommunications services are provided under that licence. The Authority may, after considering a written request from a licensee, extend, in writing, for such further periods as may be determined by the Authority and, if applicable, condone the licensee's failure to commence rendering telecommunications services timeously, in which event the licence will lapse at the expiry of such extended period.”

The power to grant an extension to the Applicant is a discretionary power given to the Authority by virtue of the Communications Act. This therefore, means that any licensee that is unable to comply with regulation 17(4) must submit in writing a request for extension to the Authority.

The Communications Act does not expressly prescribe when an extension may or may not be granted to a licensee or Applicant. The Regulations as listed above are similarly silent on the subject matter. The Authority is however guided by the rules of natural justice which require that a party be heard (*audi alteram partem* rule) (See **Chairperson of the Immigration Selection Board v Frank and Another 2001 NR 107 (SC)** at page 108) and furthermore, Article 18 of the Constitution which requires reasonableness from the Authority. In the afore-mentioned case of **Minister of Health and Social Services v Lisse**, the Court defined reasonableness on page 774 as follows:

“Collectively one could say, in my opinion, that the decision of the person or body vested with the power must be rationally justified”.

The question that arises at this stage is whether or not (in light of the aforesaid) the extension will be just and equitable. In other words, would the granting of the extension result in the creation of any prejudice, alternatively, whether prejudice is likely to be suffered if the period within which to commence telecommunications services is not extended (See **MEC for Health, Eastern Cape and Another v Kirland Investments (Pty) Ltd [2014] ZACC 6** and **Acting Speaker of the National Assembly v Teddy Bear Clinic for Abused Children and Another [2015] ZACC 16** – Both matters were heard within the South African Constitutional Court).

ANALYSIS BY THE AUTHORITY

As indicated above, the Applicant requested the Authority to grant condonation based for the following reasons:

- i) That the Authority is unable to consider the request for a number range as submitted by the Applicant on 17 November 2015 pending the finalisation of the Regulations regarding the National Numbering Plan for Use in the Provision of Telecommunications Services in the Republic of Namibia, Numbering Licence Fees and Procedures for Number Licences and publication of the final notice in the Government Gazette; and
- ii) That Telecom Namibia Limited is not responding to the Applicant's request for infrastructure sharing thereby denying the Applicant access to essential infrastructure to launch telecommunications services as provided for in terms of the service licence awarded to the Applicant.

The Management Licensing Committee at its meeting held 1 March 2016 noted that the inability of the Authority to consider the request for a number range submitted by the Applicant is a prohibitive factor to the launch of telecommunications services by the Applicant in that the Applicant is unable to provide voice services without a number range assigned to the Applicant. It was further noted that the aforementioned regulations were approved by the CRAN Board of Directors on 19 February 2016 and is now pending publication of the final notice in the *Gazette*.

The Applicant will be able to apply for a number range on publication of the *Gazette* commencing the licensing process and consideration of the application by the Authority. It must be noted that the said regulations set out a process for the application of the number range which will take up to three (3) months and hence the Management Licensing Committee finds comfort in granting the extension to enable the Applicant to obtain a number range which is a prerequisite to the provision of telecommunications

The Management Licensing Committee further noted that it appears that Telecom Namibia Limited is not adhering to the provisions contained in sections 47, 48 and 50 of the Communications Act, 2009 in respect of infrastructure sharing and the duties of carriers relating to promotion of competition. To this end the Authority advised the Applicant on 7 March 2016 to submit a licensee dispute form to the Authority in terms of the Regulations regarding Licensee Disputes as published in Government Gazette No. 5194, General Notice No. 148 dated 17 May 2013. The submission of the said form will mandate the Authority to request a hearing on the matter in terms of section 50(10) of the Communications Act and regulation 6 of the said Regulations. The Authority extended the advice to the Applicant based on the fact that the Applicant will not be able to launch telecommunications services without an agreement with Telecom Namibia Limited to share its radio access network.

It should be noted that the Applicant herein failed to state the prejudice it stands to suffer should the extension not be granted. The Management Licensing Committee is however of the view that the prejudice or harm that can be suffered by the Applicant is obvious, should the Authority not grant the extension sought resulting in the lapsing of its Class Comprehensive Telecommunications service licence (ECS and ECNS) awarded to the Applicant.

Therefore, after having considered the facts presented to it by the Applicant and the various legal instruments cited above, the Management Licensing Committee is satisfied with the reasons advanced as to why Applicant will not be able to commence with the provision of telecommunication services as required in the licence conditions. It is therefore recommended that the CRAN Board of Directors approves the extension as requested by the Applicant.

DECISION

In terms of Regulations 17(4) of the Regulations regarding Licence Conditions for Telecommunications Service Licences, the Authority herewith approves –

- (i) That Demshi Investment Holdings (Pty) Ltd is granted an extension to commence with commercial telecommunications services as from 09 September 2016.

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

COMMUNICATIONS REGULATORY AUTHORITY OF NAMIBIA

No. 176

2016

NOTICE OF WITHDRAWAL OF TARIFF SUBMISSION IN TERMS OF THE REGULATIONS REGARDING THE SUBMISSIONS OF INTERCONNECTION AGREEMENTS AND TARIFFS

The Communications Regulatory Authority of Namibia, in terms of Section 53(11) of the Communications Act (Act 8 of 2009) herewith gives notice that **Paratus Telecommunications Limited** has withdrawn its full tariff submission referred to in the table below as published in the Government Gazette No. 5980 General Notice No. 92 dated 31 March 2016, effective from 12 April 2016.

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

SCHEDULE 1

**SUBMISSION OF PROPOSED TARIFFS
BY PARATUS TELECOMMUNICATIONS LIMITED
COMMUNICATIONS ACT, 2009**

The following are the proposed tariffs as submitted by Paratus Telecommunications Limited:

LTE DATA BUNDLES POSTPAID PACKAGES

	PT LTE LITE	PT Ultimate	PT LTE Pulse	PT LTE FLIX
Connection Fee - N\$	340.00	340.00	430.00	430.00
Monthly Fee - N\$	340.00	954.00	430.00	473.00
Includes Dongle (CPE)	Yes	Yes	Yes	Yes
Data CAP - GB	5	125	5	5
Max Clients (MAC)	1	10	1	1
Renewal period (months)	1	1	1	1
Contract Period (months)	3	24	3	3
Out of Bundle Rate - N\$ per GB	See Bundles	See Bundles	See Bundles	See Bundles
Max Speed - Mbps	50	50	50	50

LTE DATA BUNDLES PREPAID PACKAGES

	PT Prepaid	PT BYO
Connection Fee - N\$	740.00	150.00
Monthly Fee - N\$	-	-
Includes Dongle (CPE)	Yes	No
Data CAP – GB (Valid for 30 days)	10	2
Max Clients (MAC)	1	1
Rollover period (months)	0	0
Subscription Validity (months)	3	3
Out of Bundle Rate - N\$ per GB	See Bundles	See Bundles
Max Speed – Mbps	50	50

LTE DATA BUNDLES TOP UP

Bundle Upgrades (Excl VAT)	Bundle Volume	Cost	Validity (Days)
Bundle 1	20MB	5.00	30
Bundle 2	50MB	10.00	30
Bundle 3	150MB	20.00	30
Bundle 4	225MB	30.00	30
Bundle 5	500MB	50.00	30
Bundle 6	1GB	86.00	30
Bundle 7	2GB	120.00	30
Bundle 8	2.25GB	150.00	30
Bundle 9	3GB	180.00	30
Bundle 10	5GB	250.00	30
Bundle 11	6GB	295.00	30
Bundle 12	10GB	460.00	30
Bundle 13	25GB	865.00	30
Bundle 14	50GB	1,495.00	30

Please note that the full tariff submission including the terms and conditions and the remedies available to the consumers can be obtained from the Authority

COMMUNICATIONS REGULATORY AUTHORITY OF NAMIBIA

No. 177

2016

**NOTICE OF INTENTION TO MAKE REGULATIONS PRESCRIBING
SHARING OF INFRASTRUCTURE: 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 the sharing of infrastructure, which contains the following:

1. A concise statement of the purpose for the proposed Regulations as set out in Schedule 1.
2. A draft of the proposed Regulations as set out in Schedule 2;

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

The public may also make written submissions to the Authority no later than fourteen (14) days from the date of publication of this Notice of Intention to Make Regulations, in the manner set out below for making written submissions.

Reply comments to written submissions may be submitted to the Authority-

- (a) no later than fifteen days after the time for the making of written submissions has lapsed; or
- (b) if the opportunity for the submission of reply comments is published in a subsequent *Gazette*, after the lapse of fourteen days from the date of such publication.

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 submissions must be sent or given in any of the following ways:

1. By hand to the head offices of the Authority, namely Communication House, No 56 Robert Mugabe Avenue, Windhoek.
2. By post to the head offices of the Authority; namely Private Bag 13309, Windhoek, 9000;
3. By electronic mail to the following address: legal@cran.na;
4. By fax to email to: 0886550852

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

SCHEDULE 1

CONCISE STATEMENT OF PURPOSE

The purpose of these regulations is-

- (a) to regulate the duties imposed on carriers, dominant carriers and utilities by sections 48 and 50 of the Act; and
- (b) to set out the terms upon which carriers, dominant carriers and utilities must agree to fulfill those duties.
- (c) to ensure that conditions and charges of any agreement referred to in the regulations are reasonable, non-discriminatory and fairly apportioned.

SCHEDULE 2

**PROPOSED REGULATIONS PRESCRIBING SHARING OF INFRASTRUCTURE:
COMMUNICATIONS ACT, 2009**

The Communications Regulatory Authority, in terms of section 129, read with sections 48 and 50 of the Communications Act, 2009 (Act No. 8 of 2009), makes the regulations set out in the Schedule.

**PART 1
INTRODUCTORY PROVISIONS**

1. Definitions

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);

“active infrastructure sharing” means sharing of infrastructure contained in the active layer of the network;

“active layer of the network” means the active electronic network elements as contained in the defined in section 48(9) of the Act

“carrier” means a carrier contemplated in section 47(3) of the Act;

“carrier infrastructure” means poles, ducts and conduits belonging to a carrier;

“carrier infrastructure access agreement” means an agreement contemplated by section 48(1)(a) of the Act entered into between a carrier infrastructure acquirer and a carrier infrastructure provider to enable such acquirer to have access to any carrier infrastructure of such provider;

“carrier infrastructure acquirer” means a carrier who seeks access to the carrier infrastructure of a carrier infrastructure provider;

“carrier infrastructure provider” means a carrier who has a duty to provide carrier infrastructure in accordance with section 48(1) of the Act;

“conduits” means any protective tube, pipe, or tunnel through which wires, fibers, cables or similar items can pass;

“dominant carrier” means a carrier which the Authority has determined in accordance with section 78 of the Act to hold a dominant position in the market for telecommunications services;

“ducts” means a system of distribution and feeder ducts or a network of raceways embedded in concrete;

“equipment” in relation to a network element includes any thing or apparatus used in connection with telecommunication services;

“facility” in relation to a network element means any facility, any apparatus or other thing that is used or is capable of being used for telecommunications or for any operation connected with telecommunications and without limitation includes-

- (a) tangible facilities such as poles, ducts, conduits, apparatus, antennas, antenna feeders, access nodes, towers, masts tunnels, buildings, landing stations or other similar equipment; and
- (b) intangible facilities such as sharing agreements, software applications, central databases, network content, wireless transmission services and other similar intangible assets designed to facilitate the termination and transport of telecommunication services;

“infrastructure sharing agreement” means an agreement contemplated by section 50(1) of the Act between a dominant carrier and a requesting carrier to enable the requesting carrier to-

- (a) lease infrastructure of the dominant carrier;
- (b) to install telecommunications equipment on such infrastructure; or
- (c) otherwise utilize such infrastructure.

“infrastructure sharing request” means a written request from a requesting carrier to a dominant carrier to provide active or passive infrastructure sharing of facilities.

“interconnection point” means the technically feasible point of interconnection between carriers’ respective networks where an originating carrier’s traffic is deemed to be handed off to the terminating carrier’s network for the purpose of determining reciprocal compensation;

“network element” means a network element referred to in section 48(9) of the Act;

“network element access agreement” means an agreement contemplated by section 48(2) of the Act entered into between a requesting carrier and a dominant carrier to enable the requesting carrier to have access to any network element equipment or facility of the dominant carrier;

“passive infrastructure sharing” means sharing of infrastructure contained in the physical layer of the network;

“physical co-location” means a type of co-location where a carrier in control of a building, tower or other structure in or on which that carrier’s switches, antennas or other equipment are accommodated, allows another carrier to also operate those switches, antennas or equipment;

“poles” means structures designed to support antennas or aerials to enable telecommunications services and includes towers, masts or similar structures;

“reciprocal compensation agreement” means an agreement between two carriers in accordance with section 48(1)(b) of the Act in which each carrier receives compensation from the other for the transport and termination on each carrier’s infrastructure of telecommunications that originate on any portion of the telecommunications network of the other carrier, regardless of the network technology utilised by the carrier to transport or terminate the telecommunications;

“requesting carrier” means a carrier requesting from a dominant carrier access to its network elements on an unbundled basis at any technically feasible point;

“spare capacity” means capacity exceeding the capacity necessary to meet normal demands that a utility could objectively justify in operational or economic terms;

“telecommunications”, for purposes of a reciprocal compensation agreement, means the conveyance by electromagnetic means from one device to another of any encrypted or non-encrypted sign, signal, impulse, writing, image, sound, instruction, information, or intelligence of any nature, whether for the information of any person using the device or not;

“termination” means the switching of telecommunications at the terminating carrier’s end office switch, or equivalent facility, and delivery of such traffic to the called party;

“transport” means the transmission, and any necessary tandem switching of telecommunications from the interconnection point between carriers to the terminating carrier’s end office switch that directly serves the called party, or equivalent facility provided by a carrier;

“utility” means a utility referred to in section 50(11) of the Act;

“virtual co-location” means co-location where equipment is placed in the equipment line-up of a carrier and is maintained by that carrier.

Submission of documents to the Authority

2. In these regulations, when persons are permitted or called upon to submit information to the Authority in writing, they may do so either physically or electronically -

- (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: operations@cran.na;
- (d) by facsimile to the following facsimile number: +264 61 222790; or
- (e) in any other manner or at alternative addresses set out by the Authority from time to time.

Application and Purpose

- 3. (1) These regulations apply to-
 - (a) all carriers;
 - (b) any dominant carrier;
 - (c) all utilities.
- (2) The purpose of these regulations is to-
 - (a) regulate the duties imposed on carriers, dominant carriers and utilities by sections 48 and 50 of the Act;
 - (b) set out the terms upon which carriers, dominant carriers and utilities must agree to fulfill those duties; and
 - (c) ensure that any conditions and charges for agreements referred to in these regulations are reasonable, non-discriminatory and fairly apportioned.

Duty to negotiate agreements in good faith

4. (1) Upon receipt of a notice to negotiate any agreement contemplated by these regulations, a carrier, dominant carrier or utility must participate in good faith negotiations to enter into any such agreement.

(2) The following actions or practices are deemed to contravene the duty in subregulation (1) to negotiate in good faith:

- (a) obstructing or delaying negotiations, or failing to make reasonable efforts to resolve outstanding disputes; or
- (b) refusing to provide information about the telecommunications services, telecommunications network, infrastructure or network elements of the carrier or dominant carrier or the tower, mast, pole, duct, conduit or pipe of a carrier that are necessary for any agreement contemplated by these regulations; or
- (c) misleading or coercing a carrier, dominant carrier or utility into reaching an agreement it would not otherwise have made; or

- (d) interfering in any way with a the ability of a carrier, dominant carrier or utility to communicate with the Authority, including requiring such carrier or utility not to disclose information requested by the Authority; or
 - (e) refusing to permit amendment of any agreement contemplated by these regulations to take into account changes in circumstances, including changes to the Act.
- (3) A carrier, dominant carrier or utility may not be required to enter into an agreement contemplated by these regulations on terms that would, on reasonable grounds either:
- (a) cause or be likely to cause material danger, damage or injury to any person or any property; or
 - (b) cause material damage or otherwise materially interfere with the operation of its telecommunications network, infrastructure, network elements or the provision of its telecommunications services to its end users.

Just, reasonable and non-discriminatory rates, terms and conditions of agreements

5. (1) Subject to these regulations, all carriers, dominant carriers and utilities must make infrastructure, technology, information, network elements, the transport and termination of telecommunications, services or functions, as the case may be, available to a qualifying carrier on just, reasonable and non-discriminatory rates, terms and conditions.

(2) Without limiting the generality of subregulation (1), a carrier, dominant carrier or utility may not propose, enter into, or give effect to, any contract, arrangement or understanding containing a provision:

- (a) directly or indirectly fixing, controlling or maintaining the price, or other terms and conditions of supply, lease or acquisition of infrastructure, a network element, spare capacity, the transport and termination of telecommunications or any telecommunication service; and
- (b) preventing or restricting the supply, lease or acquisition of infrastructure, a network element, spare capacity, the transport and termination of telecommunications or any telecommunication service to or from another carrier or class of carriers;

(3) Any agreement contemplated by these regulations, which are based on a bartering system is prohibited.

(4) No provision of a contract that has the purpose, effect, or is likely to have the effect of being unjust, exclusive and discriminatory is enforceable.

Carrier disputes

6. (1) If a carrier, dominant carrier or utility refuses to enter into any agreement contemplated by these regulations with another carrier within the applicable time periods, that carrier may request the Authority to conduct a hearing to determine whether or not the carrier, dominant carrier or utility has reasonable grounds for its refusal.

(2) If two or more carriers fail to reach agreement on any terms and conditions of a reciprocal compensation agreement within a period of thirty (30) days from the date of receipt of a written notice provided under regulations 8(1), 9(1), (10(1) the dispute may be referred by one or more carriers to the Authority to conduct a hearing for determination of the dispute.

(3) A request for a hearing referred to in subregulations (1) and (2) must be submitted in writing, setting out the reasons forming the basis for the request, including but not limited to specific areas of disagreement and agreement.

(4) If a dispute is referred to the Authority in accordance with subregulations (1) and (2), the Authority may-

- (a) order the carriers to enter into an agreement contemplated by these regulations on such terms and conditions as the Authority determines; or
- (b) determine that such agreement should not be entered into.

Publication of information on infrastructure and network elements

7. (1) All carriers must publish on their websites information in respect of carrier infrastructure to which they will afford access to other carriers.

(2) All dominant carriers must publish on their websites information in respect of-

- (a) unbundled network elements to which those dominant carriers will afford access to other carriers;
- (b) infrastructure available for lease to or use by other carriers.

(3) All utilities must publish on their websites information in respect of spare capacity available for lease by carriers.

(4) A carrier, dominant carrier or utility referred to in subregulations (1) (2) and (3), respectively must submit a copy of the published information contemplated in those subregulations to the Authority for publication on its website.

(5) Information required in terms of subregulation (4) must be submitted to the Authority within 60 days from the date that the carrier, dominant carrier or utility as the case may be, started using the infrastructure.

(6) The Authority must on its website maintain an updated register of the information provided to it in terms of subregulations (1), (2) and (3).

Carrier infrastructure access agreement

8. (1) Every carrier has the right to require, by notice in writing, any other carrier that operates a telecommunications network in Namibia to negotiate in good faith a carrier infrastructure access agreement.

(2) Subject to these regulations, the carrier infrastructure acquirer and the carrier infrastructure provider must negotiate just, reasonable and non-discriminatory, rates, terms and conditions in terms of which such provider grants carrier infrastructure access to such acquirer.

(3) Subject to these regulations, rates, terms, and conditions for a carrier infrastructure access agreement must be established through negotiated agreements.

(4) Whenever a carrier infrastructure provider intends to modify or alter its carrier infrastructure, such provider must provide written notification of such action to a carrier infrastructure acquirer that has obtained an attachment to such carrier infrastructure so that such acquirer may have a reasonable opportunity to add to or modify its existing attachment.

(5) Any carrier infrastructure acquirer that adds to or modifies its existing attachment after receiving the notification referred to in subregulation (4) must bear a proportionate share of the costs incurred by the carrier infrastructure provider in making such carrier infrastructure accessible.

(6) A carrier that obtains an attachment to carrier infrastructure is not required to bear any of the costs of rearranging or replacing its attachment, if such rearrangement or replacement is required as a result of an additional attachment or the modification of an existing attachment sought by any other carrier (including the provider of such carrier infrastructure).

Reciprocal compensation agreements

9. (1) Every carrier has the right to require, by notice in writing, any other carrier that operates a telecommunications network in Namibia to negotiate in good faith a reciprocal compensation agreement.

(2) All carriers exchanging telecommunications must measure minutes-of-use for compensation purposes if technically and economically feasible, unless they mutually agree to a different arrangement.

(3) The rate for access to network elements is just and reasonable if such rate-

(a) provides for the mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network of telecommunications that originate on the network facilities of the other carrier; and

(b) determines such costs on the basis of a reasonable approximation of the additional costs of termination.

(4) Subject to these regulations, rates, terms, and conditions for the transport and termination of telecommunications must be established through negotiated agreements.

Network element access agreements

10. (1) A requesting carrier has the right to require, by notice in writing, unbundled access to the network elements of a dominant carrier.

(2) Upon receipt of a notice under subregulation (1), the dominant carrier must participate in good faith negotiations with the requesting carrier to enter into a network element access agreement.

(3) A dominant carrier may not-

(a) bundle access to network elements, in such a manner that the requesting carrier acquires a network element or service that it does not need as a condition of having such access to the dominant carrier's network elements;

(b) adopt technical specifications for networks or systems to prevent access to its network elements of, or interoperability with, a network or system of the dominant carrier.

(4) Without limiting the scope of a network element access agreement, such agreement-

(a) must provide for a detailed schedule of itemized charges negotiated between the dominant carrier and the requesting carrier for each network element included in the agreement;

- (b) subject to section 48(4) of the Act, must provide that a dominant carrier has to provide unbundled access to its network elements in a manner that would allow a requesting carrier to combine such elements;
 - (c) subject to section 48(5) of the Act, must provide for physical co-location of equipment necessary for access to unbundled network elements at the premises of the dominant carrier, if such network elements relate to the market segment in which the carrier is dominant; and
 - (d) may provide for virtual or any other form of co-location if a dominant carrier is able to demonstrate to the Authority that physical co-location is not practical for technical reasons or because of space limitations.
- (5) The rate for access to network elements is just and reasonable if such rate-
- (a) is based on the cost (determined without reference to a rate-of-return or other rate-based proceeding) of providing the network element;
 - (b) is nondiscriminatory; and
 - (c) if it includes a profit, such profit is reasonable.

Infrastructure sharing agreements

11. (1) A requesting carrier has the right to require a dominant carrier, by means of an infrastructure sharing request to-

- (a) lease any component of the dominant carrier's infrastructure;
- (b) install telecommunications equipment on such infrastructure; or
- (c) otherwise utilise such infrastructure.

(2) The infrastructure sharing request referred to in subregulation (1) must indicate whether the requesting carrier seeks-

- (a) active infrastructure sharing; or
- (b) passive infrastructure sharing; or
- (c) a combination of passive and active infrastructure sharing.

(3) The dominant carrier must complete an assessment of its infrastructure and provide a written decision in respect of the infrastructure sharing request referred to in subregulation (1) to the requesting carrier within thirty (30) days from date of receipt of the request, stating-

- (a) whether the carrier has infrastructure available to be shared and confirmation that negotiations for an infrastructure sharing agreement should commence; and
- (b) the technical requirements necessary to ensure successful connection to the dominant carrier's infrastructure; or
- (c) whether the dominant carrier refuses the infrastructure sharing request subject thereto that the dominant carrier must give reasons for such refusal, in accordance with section 50(1) of the Act.

(4) After providing a written decision referred to in subregulation (3) accepting an infrastructure-sharing request, the dominant carrier must participate in good faith negotiations with the requesting carrier to enter into an infrastructure sharing agreement.

(5) Subject to these regulations, the dominant carrier and the requesting carrier must negotiate reasonable and non-discriminatory conditions and charges that are fairly apportioned between such carriers.

(6) The negotiation and signing of an infrastructure sharing agreement must be completed no later than sixty (60) days from-

- (a) the date of receipt of the written decision in terms of subregulation (3) confirming the dominant carrier's acceptance of the infrastructure sharing request by the requesting carrier; or
- (b) the date the requesting carrier receives written confirmation of acceptance of the proposed technical requirements to connect to the dominant carrier's infrastructure,

which ever is the earlier.

(7) A dominant carrier that has entered into an infrastructure sharing agreement in terms of these regulations must provide to all parties to such agreement timely information on the planned deployment of telecommunications services and equipment, including any software or upgrades of software integral to the use or operation of such telecommunications equipment.

(8) All infrastructure sharing agreements must be non-exclusive and non-discriminatory.

(9) An infrastructure sharing agreement must contain information on issues relevant to the dominant carrier and the requesting carrier.

(10) Without limiting the generality of subregulation (9) an infrastructure sharing agreement should include the following:

- (a) Purpose of the infrastructure sharing agreement;
- (b) obligations of both parties;
- (c) duration of the agreement;
- (d) tariffs and billing conditions;
- (e) service description;
- (f) implementation and co-ordination;
- (g) access to facilities and co-operation;
- (h) information relating to maintenance and operation;
- (i) subletting and conditions; and
- (j) any other information pertinent to the contract between the parties.

(12) For the purpose of this regulation, "telecommunications equipment" means equipment used by a carrier to provide telecommunications services, and includes software integral to such equipment, including upgrades.

Utility Agreements

12. (1) A requesting carrier has the right to require a utility by means of a written notice to lease any spare capacity available in any tower, mast, pole, duct, conduit or pipe to the requesting carrier in order to-

- (a) attach any telecommunications equipment to such infrastructure; or
- (b) lay any telecommunications wires or fiber in such infrastructure.

(2) Upon receipt of a notice under subregulation (1), the utility must complete an assessment of whether it has any spare capacity available in any of its towers, masts, poles, ducts, conduits or pipes and provide a written decision to the requesting carrier within thirty (30) days from date of receipt of the request referred to in subregulation (1), stating-

- (a) whether the utility has such spare capacity available to be leased and confirmation that negotiations for an infrastructure sharing agreement should commence; and
- (b) the technical requirements necessary to ensure successful connection to the utility's towers, masts, poles, ducts, conduits or pipes; or
- (c) whether the utility refuses the request subject thereto that the utility must give reasons for such refusal, in accordance with section 50(7) of the Act.

(3) Upon acceptance of the request referred to in subregulation (1), the utility must participate in good faith negotiations with the requesting carrier to enter into a utility agreement.

(4) Subject to these regulations, the utility and the requesting carrier must negotiate reasonable and non-discriminatory conditions and charges that are fairly apportioned between the utility and carrier.

(5) For purposes of subregulation (4), a rate is just and reasonable if it assures a utility the recovery of-

- (a) not less than the additional costs of providing attachments to its towers, masts, poles, ducts, conduits or pipes; and
- (b) not more than an amount determined by multiplying the percentage of the total spare capacity occupied by such attachment by the sum of the operating expenses and actual capital costs of the utility attributable to the entire tower, mast, pole, duct, conduit or pipe.

(6) A utility that has entered into a utility agreement in terms of these regulations must provide timely information to all parties to such agreement on any planned deployment of services and equipment, including any software or upgrades of software integral to the use or operation of the utility's tower, mast, pole, duct, conduit or pipe.

Duty to lodge agreements with Authority

13. (1) All signed agreement contemplated by these regulations must be submitted to the Authority within thirty (30) days from the concluding of the agreement.

(2) Unless the parties agree to a later date, all signed agreements referred to in subregulation (1) come into operation thirty (30) days after such agreement is submitted to the Authority, unless the Authority objects to any aspect of the agreement.

Combining agreements

14. Nothing in these regulations may be construed as preventing carriers, dominant carriers or utilities from entering into agreements comprising a combination of any of the agreements contemplated by these regulations.

Penalties

15. (1) Any carrier, dominant carrier or utility that fails to submit information or adhere to any regulation, shall be guilty of contravening these regulations.

(2) Without derogating from the generality of subregulation (1), where a carrier, dominant carrier or utility contravenes one or more of the regulations contained herein, the Authority may-

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

(3) Any amount of penalty payable in terms of paragraphs (b) or (c) of subregulation (2) constitutes a debt due to the Authority by the carrier, dominant carrier, utility or other person involved and may be recovered by the Authority by means of proceedings instituted in any competent court.

(4) Notwithstanding subregulations (1) and (2), the Authority may waive the payment of or refund the whole or any part of a penalty payable.

(5) Before imposing any penalty as contemplated by paragraphs (b), (c) or (d) of subregulation (2), the Authority must give an affected carrier, dominant carrier, utility or other person the opportunity to be heard, whereafter the Authority may-

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

Offences

16. (1) A carrier, dominant carrier, utility or other person who—

- (a) fails to submit, during a time specified by the Authority, information requested by the Authority pursuant to these regulations;
- (b) submits or publishes false or misleading information about its infrastructure, network elements or any other matter;

- (c) obstructs or prevents an inspection or investigation carried out by the Authority pursuant to these regulations;
- (d) engages in any act or omission whose effect would be to defeat the purposes of these regulations,

commits an offence, which the Authority will prosecute in accordance with the Act.

Transitional arrangements

17. (1) Within sixty (60) days from the date these regulations came into force, all carriers, dominant carriers and utilities must submit to the Authority full details of existing carrier infrastructure, network elements or spare capacity owned or leased by such carrier, dominant carrier or utility.

(2) Agreements referred to in these regulations that were concluded before the regulations came into force must remain in force until the date of termination as stipulated in such agreements subject thereto that-

- (a) charges negotiated in terms of those agreements remain unchanged;
- (b) any provision in the existing agreement for automatic renewal is of no force and effect;
- (c) such agreement complies with the Act; and
- (d) after such agreements lapsed, new agreements must be negotiated complying with these regulations.

(3) Agreements referred to in these regulations that were concluded before these regulations came into force must be submitted to the Authority within 30 days from the date these regulations came into force.

COMMUNICATIONS REGULATORY AUTHORITY OF NAMIBIA

No. 178

2016

NOTICE IN TERMS OF THE REGULATIONS REGARDING THE SUBMISSIONS OF INTERCONNECTION AGREEMENTS AND TARIFFS

The Communications Regulatory Authority of Namibia, in terms of Section 53(10) of the Communications Act (Act 8 of 2009) read with regulation 8(1) of the “Regulations Regarding the Submission of Interconnection Agreements and Tariffs”, in Government Gazette No. 4714, Notice No. 126, dated 18 May 2011, herewith gives notice that **Paratus Telecommunications Limited** has filed tariffs with the Authority as set out in Schedule 1.

Any person may examine copies of the tariffs submitted at the head offices of the Authority during normal business hours and copies may be made on payment of a fee determined by the Authority. Copies are also available at www.cran.na where copies may be downloaded free of charge.

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

Paratus Telecommunications Limited may submit, in writing to the Authority, a response to any written comments within fourteen (14) days from the lapsing of the time to submit written submissions.

All written submissions must contain the name and contact details of the person making the written submissions and the name and contact details of the person for whom the written submissions is made, if different and be clear and concise.

All written submissions and reply comments must be made either physically or electronically -

- (1) by hand to the head offices of the Authority, namely Communication House, 56 Robert Mugabe Avenue, Windhoek;
- (2) by post to the head offices of the Authority, namely Private Bag 13309, Windhoek 9000;
- (3) by electronic mail to the following address: legal@cran.na; and
- (4) by facsimile to the following facsimile number: +264 61 222790.
- (5) by fax to e-mail to: 0886550852

F. KISHI

CHAIRPERSON OF THE BOARD OF DIRECTORS

COMMUNICATIONS REGULATORY AUTHORITY OF NAMIBIA

SCHEDULE 1

SUBMISSION OF PROPOSED TARIFFS BY PARATUS TELECOMMUNICATIONS LIMITED COMMUNICATIONS ACT, 2009

The following are the proposed tariffs as submitted by Paratus Telecommunications Limited:

LTE POSTPAID PACKAGES

	PT	PT	PT	PT
	LTE LITE	Ultimate	LTE Pulse	LTE FLIX
Connection Fee - N\$	345.00	345.00	440.00	440.00
Monthly Fee - N\$	345.00	975.00	440.00	485.00
Includes Dongle (CPE)	Yes	Yes	Yes	Yes
Data CAP - GB	5	125	5	5
Max Clients (MAC)	1	10	1	1
Renewal period (months)	1	1	1	1
Contract Period (months)	3	24	3	3
Out of Bundle Rate - N\$ per GB	See Bundles	See Bundles	See Bundles	See Bundles
Max Speed - Mbps	50	50	50	50

The customer has an option to subscribe to any of the 3 months Post-Paid packages for 12 months at a standard connection fee of N\$285.00, with an option to get a router at a monthly fee of N\$195.00 both excluding VAT.

LTE PREPAID PACKAGES

	PT	PT
	Prepaid	BYO
Connection Fee - N\$	1350.00	150.00
Monthly Fee - N\$	-	-
Includes Dongle (CPE)	Yes	No
Data CAP ó GB (Valid for 30 days)	10	2
Max Clients (MAC)	1	1
Rollover period (months)	0	0
Subscription Validity (months)	3	3
Out of Bundle Rate - N\$ per GB	See Bundles	See Bundles
Max Speed ó Mbps	50	50

DATA BUNDLES TOP UP

Bundle Upgrades (Incl VAT)	Bundle Volume	Cost	Validity (Days)
Bundle 1	20MB	5.00	30
Bundle 2	50MB	10.00	30
Bundle 3	150MB	20.00	30
Bundle 4	225MB	30.00	30
Bundle 5	500MB	50.00	30
Bundle 6	1GB	85.00	30
Bundle 7	2GB	120.00	30
Bundle 8	2.25GB	150.00	30
Bundle 9	3GB	180.00	30
Bundle 10	5GB	250.00	30
Bundle 11	6GB	295.00	30
Bundle 12	10GB	460.00	30
Bundle 13	25GB	865.00	30
Bundle 14	50GB	1,495.00	30

Please note that the full tariff submission including the terms and conditions and the remedies available to the consumers can be obtained from the Authority.