



# GOVERNMENT GAZETTE

## OF THE

# REPUBLIC OF NAMIBIA

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WINDHOEK - 24 May 2019

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### CONTENTS

*Page*

#### GENERAL NOTICES

No. 130	Communications Regulatory Authority of Namibia: Notice in terms of the Regulations Regarding Prescribing Procedures Regarding Application for and Amendment, Renewal, Transfer and Cancellation of Spectrum Licences .....	1
No. 131	Communications Regulatory Authority of Namibia: Notice in terms of the Regulations Regarding Licensing Procedures for Telecommunications and Broadcasting Service Licences and Spectrum Use Licences .....	3
No. 132	Communications Regulatory Authority of Namibia: Notice in terms of Section 53(7) of the Communications Act (Act No 8 of 2009) read with the Regulations Regarding the Submissions of Interconnection Agreements and Tariffs .....	4
No. 133	Communications Regulatory Authority of Namibia: Decision: Application for Reconsideration of the Broadcasting Code for Broadcasting Licensees .....	5
No. 134	Communications Regulatory Authority of Namibia: Amendment of the Broadcasting Code for Broadcasting Licensees issued in terms of Section 89 of the Communications Act, 2009 .....	7

## General Notices

### COMMUNICATIONS REGULATORY AUTHORITY OF NAMIBIA

No. 130

2019

#### NOTICE IN TERMS OF THE REGULATIONS REGARDING PRESCRIBING PROCEDURES REGARDING APPLICATION FOR, AND AMENDMENT, RENEWAL, TRANSFER AND CANCELLATION OF SPECTRUM LICENCES

The Communications Regulatory Authority of Namibia, in terms of regulation 6 of the Regulations Regarding Prescribing Procedures Regarding Application for, and Amendment, Renewal, Transfer and Cancellation of Spectrum Licences, as published in Government Gazette No. 6888, General Notice No. 104 dated 29 April 2019, hereby gives notice that the persons referred to in the tables below have submitted the following applications to the Authority:

## a) Application for a Spectrum Licence

Applicant	Applicant's place of incorporation	Percentage of Stock owned by Namibian Citizens	Type of service licence	List of radio frequencies or groups of radio frequencies applied for	List of radio frequencies or groups of radio frequencies being considered for assignment by the Authority	Description of geographic coverage area	License Fees Outstanding?	Service to be provided using frequency applied for
Namibia Civil Aviation Authority	Namibian, Established in terms of the Civil Aviation Act, No. 6 of 2006	100%	Class Electronic Communication Network Service (ECNS) Licence	6 GHz Band (5925-7075 MHz)	CH 1 Tx/RX: (5974.855/6226.895 MHz): Centre Frequency BW= 29.65 MHz  CH 2 Tx/RX: (6004.505/6256.545 MHz): Centre Frequency BW= 29.65 MHz	Namibia	No	FIXED Links

## b) Application for amendment of Spectrum Licence

Licensee	Licensee place of incorporation	Percentage of Stock owned by Namibian Citizens	Grounds for Amendment	Description of geographic coverage area	Current Frequency Assigned	Proposed Frequency to be assigned after the amendment	License Fees Outstanding?
Telecom Namibia Limited	Namibian	100%	To Amend the current fixed service spectrum to be able to provide TD-LTE services (MOBILE IMT)	Namibia	2308.000 MHz -2386.000 MHz	2320.000 MHz -2380.000 MHz	No

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

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

All written submissions must - (a) contain the name and contact details of the person making the written submissions or the name and contact details of the person for whom the written submission is made, if different; (b) be clear and concise; and (c) conform to any further requirements determined by the Authority from time to time.

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

- (1) By hand to the head offices of the Authority, namely Communication House, 56 Robert Mugabe Avenue, Windhoek;
- (2) By post to the head offices of the Authority, namely Private Bag 13309, Windhoek, 9000;
- (3) By electronic mail to the following address: legal@cran.na;
- (4) By facsimile to the following facsimile number: +264 61 222790; or
- (5) By fax to e-mail to: 088642748.

**F. K. MBANDEKA**  
**CHIEF EXECUTIVE OFFICER**  
**COMMUNICATIONS REGULATORY AUTHORITY OF NAMIBIA**

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**COMMUNICATIONS REGULATORY AUTHORITY OF NAMIBIA**

No. 131

2019

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

The Communications Regulatory Authority of Namibia, in terms of regulation 6 of the Regulations Regarding Licensing Procedures for Telecommunications and Broadcasting Service Licences, as published in Government Gazette No. 4785, General Notice No. 272, dated 29 August 2011 (as amended), hereby gives notice that the Applicant referred to in the table below submitted the following application to the Authority:

Applicant	Applicant place of incorporation	Percentage of Stock owned by Namibian Citizens	Category of Licence applied for	Concise statement on Services intended to be provided	Description of geographic coverage area	Licence Application Fees Paid?
Namibia Civil Aviation Authority	Namibian, Established in terms of the Civil Aviation Act, No. 6 of 2006	100 %	Class Electronic Communication Network Service (ECNS) Licence	Electronic Communications	Namibia	Yes

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

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

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

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

- (1) By hand to the head offices of the Authority, namely Communication House, 56 Robert Mugabe Avenue, Windhoek;
- (2) By post to the head offices of the Authority, namely Private Bag 13309, Windhoek, 9000;
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**F. K. MBANDEKA**  
**CHIEF EXECUTIVE OFFICER**  
**COMMUNICATIONS REGULATORY AUTHORITY OF NAMIBIA**

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**COMMUNICATIONS REGULATORY AUTHORITY OF NAMIBIA**

No. 132

2019

NOTICE IN TERMS OF SECTION 53 (7) OF THE COMMUNICATIONS ACT (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**:

1. The 15% Discount for pensioners as submitted by **Paratus Telecommunications (Pty) Ltd**, which came into force and effect on **1 May 2019**, notwithstanding the date of publication of the notice in the *Gazette*; and

2. Fixed Wireless Packages as submitted by **Witel Service Provider (Pty) Ltd t/a Witel**, which came into force and effect on **18 April 2019**, notwithstanding the date of publication of the notice in the *Gazette*; and

**Please note that the full tariff submission and reasons for approval can be obtained from the Authority.**

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

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## COMMUNICATIONS REGULATORY AUTHORITY OF NAMIBIA

No. 133

2019

### DECISION: APPLICATION FOR RECONSIDERATION OF THE BROADCASTING CODE FOR BROADCASTING LICENSEES

The Communications Regulatory Authority of Namibia, in terms of section 31 of the Communications Act, 2009 (Act No. 8 of 2009) read together with regulation 12(1) of the Regulations Regarding Rule-Making Procedures, as published in Government Gazette No. 4630, General Notice No. 334, dated 17 December 2010, hereby gives notice of the following decision in respect of the **Application for Reconsideration of the Broadcasting Code for Broadcasting Licensees** as published in the Government Gazette No. 6750, General Notice No. 602, dated 31 October 2018 submitted by **MultiChoice Namibia (Pty) Ltd**.

#### 1. INTRODUCTION

In terms of Section 89 of the Communications Act, 2009 (Act No. 8 of 2009), the Authority published the Broadcasting Code for Broadcasting Licensees on 31 October 2018 in Government Gazette No. 6750, General Notice No. 602.

On 13 November 2018, Multichoice Namibia (hereinafter referred as Multichoice) submitted an application for reconsideration in terms of Regulation 12 of the Regulations Regarding Rule-Making Procedures read with section 31 of the Communications Act, 2009.

#### 2. PROCEDURAL COMPLIANCE

Following due process in terms of Regulations Regarding Rule-Making Procedures, the Authority published a notice of reconsideration in Government Gazette No. 6798, General Notice No. 687, dated 21 December 2018, allowing fourteen (14) days for public comments from the date of publication of the Notice in the *Gazette*. The commenting period lapsed on 7 January 2019, and no comments were received.

#### 3. GROUNDS FOR RECONSIDERATION

- 3.1 Multichoice' grounds for reconsideration is based on the on the percentage of local content stipulated for subscription broadcasting licensees in terms of section 27(2) (d) of the Broadcasting Code.
- 3.2 Multichoice states further that, the Authority in the draft Broadcasting Code published in May 2018, proposed a subscription television broadcasting licensees to expend a minimum of 1.5% of their annual revenue on the acquisition or development of local content. In responses to the draft published May 2018, Multichoice proposed that a percentage of the

licensee's content is a more appropriate basis of calculation than the percentage of revenue and that based on these reasons, Multichoice thus proposed that a percentage of no more than 3% of a subscription broadcasting service licensee's annual content cost.

**3.3** Multichoice is therefore not in support of the Authority's decision to set the percentage at 6% and requests the Authority to reconsider its decision for the following reasons:

**3.3.1** That neither the Code nor the summary and analysis of comments annexed to the Code provide any reason why the Authority decided on 6% or why their proposed maximum of 3% was not acceptable, nor where they afforded the opportunity to engage the Authority on the proposed 6%;

**3.3.2** Secondly, Multichoice states that the 6% quota is excessive and that there is no rationale connection between the 6% and the basis of calculation, or any evidence-based explanation;

**3.3.3** Thirdly, Multichoice states that the 6% quota imposes a significant financial burden and will severely impact the financial sustainability of their business. They further state that the excessively high quotas can disincentivise licensees to invest in content (or increase their investment in content) and could have the effect of constraining licensees' investment in content in an effort to avoid escalating local content expenditure obligations.

#### **4. KEY CONSIDERATIONS**

**4.1** After having looked at the reasons forwarded by Multichoice, the Authority is inclined to accept that the 6% quota as prescribed in the Code is high and imposes a substantial financial burden on licensees.

**4.2** However, the Authority is of the opinion that, the proposed 3% quota by Multichoice is low for the following grounds:

**4.2.1** The Authority conducted a Benchmark exercise with other regulators to determine the percentage of the subscription television broadcasting of their annual acquisition budget spent on local content. The Authority looked at South Africa and Malawi, being the countries that have imposed a local content quota for subscription television. It was found that in South Africa, subscription TV have to spend 15% of their annual content acquisition budget on local television programming. In Malawi, subscription television is required to have a local equity participation of 20%.

**4.2.2** The Authority acknowledge that the local content industry in South Africa, and Malawi is more advanced than that of Namibia. As such, there is more content to choose from to the satisfaction of viewers. In its previous submissions, Multichoice stated that there is a lack of sufficient local content in Namibia and as such broadcasting licensees would be required to create local content. The Authority notes that the local content industry in Namibia is still in its infant stage. The Authority had consultations with the Namibian Film Commission and the Commission advised the Authority that the film market is underfunded and as such the Authority is of the view that the percentage on local content for subscription broadcasting licensees should not be high.

**4.2.3** The importance of local content in the broadcasting sector is to protect and promote local programming, pluralism and to be implemented progressively. The Authority notes that in the absences of local content, countries with large and well developed broadcasting and production sectors can easily displace local programming and homogenies programming in countries with smaller and less develop sectors.

- 4.2.4** Before deciding on the quota that the Authority deem appropriate, it is important to look at the financial implication of the imposition of such quota. In doing so, the Authority looked at the Audited financial statements for the year 2017/2018.
- 4.2.5** Having looked at the financial implication of the quota on Multichoice and the duty to promote and encourage the creation of local content in Namibia, the Authority is of the position that 4.5% quota is a reasonable percentage.

## **5. DECISION**

The Authority resolved to:

- (i) Decline Multichoice Namibia's Three Percent (3%) proposal; and
- (ii) Approve that the percentage on local content for subscription broadcasting licensees as per Rule 27(2) (d) of the Code be amended to Four point Five Percent (4.5%).

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

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### **COMMUNICATIONS REGULATORY AUTHORITY OF NAMIBIA**

No. 134

2019

#### **AMENDMENT OF THE BROADCASTING CODE FOR BROADCASTING LICENSEES ISSUED IN TERMS OF SECTION 89 OF THE COMMUNICATIONS ACT, 2009**

The Communications Regulatory Authority of Namibia in terms of regulation 12(1) of the Regulations Regarding Rule-Making Procedures published in the Government Gazette No. 4630, General Notice No. 334 of 17 December 2010 amends the **Broadcasting Code for Broadcasting Licensees** published in the Government Gazette No. 6750, General Notice No. 602 dated 31 October 2018 as set out in the Schedule.

**F. KISHI**  
**CHAIRPERSON**  
**COMMUNICATIONS REGULATORY AUTHORITY OF NAMIBIA**

#### **SCHEDULE 1**

##### **1. Substitution of rule 27(2)(d) of the Code**

Rule 27(2)(d) of the Code is hereby amended by the deletion and substitution in that paragraph of the following paragraph:

“subscription television broadcasting licensees: Four point Five Percent (4.5%) of their annual channel and content acquisition cost as incurred their most recent completed financial year must be expended on the acquisition or development of local content which expenditure may include expenditure in the Republic of Namibia on local content training, skills development and business development;”

**SCHEDULE 2****PRECISE STATEMENT AND PURPOSE OF THE PROPOSED AMENDMENT OF THE BROADCASTING CODE FOR BROADCASTING LICENSEES ISSUED IN TERMS OF SECTION 89 OF THE COMMUNICATIONS ACT, 2009**

The purpose of the amendment is to change the local content requirements for subscription television from six percent (6%) to four point five percent (4.5%) following the decision by the Authority on the application for reconsideration by Multichoice Namibia (Pty) Ltd. The reasons for the Authority's decision is as follows:

- a) The prescribed quota of 6% initially prescribed is high and imposes a substantial financial burden on the licensees;
- b) Having looked at the financial implication of the quota and the duty to promote and encourage the creation of local content in Namibia, the Authority is of the position that 4.5% quota is a reasonable percentage.

The full decision of the Authority is published in the Government Gazette No. 6915, General Notice No. 133 dated 24 May 2019.

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