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General Notices

COMMUNICATIONS REGULATORY AUTHORITY OF NAMIBIA

No. 455

2018

GUIDELINES ON THE GENERAL INTERPRETATION AND THE APPLICABILITY OF SECTION 53 AND THE REGULATIONS REGARDING THE SUBMISSION OF INTERCONNECTION AGREEMENTS AND TARIFFS

The Communications Regulatory Authority of Namibia herewith publishes these Guidelines on the Interpretation and application of section 53 of the Communication Act, 2009 (Act No. 8 of 2009) and the Regulations Regarding the Submission of Interconnection Agreements and Tariffs:

1. Introduction

Section 53 of the Communication Act, 2009 (Act No. 8 of 2009) deals with rates and tariffs as submitted by industry. It provides the ambit within which the Authority regulates these rates and tariffs.

As part of its endeavour to ensure compliance with the Communications Act and the Regulations regarding the Submission of Interconnection Agreements and Tariffs as published in Government Gazette No. 4714 General Notice No. 126 dated 18 May 2016, the Authority herewith introduces tariff guidelines to serve as a guide to telecommunications service licensees when submitting tariffs for approval with the Authority.

The guidelines are not substitute for any regulation or law and are not legal advice. The guidelines will be kept under review and amended as appropriate in light of further experience and developing law and practice and any change of Authority's powers and responsibilities.

The guidelines will set out Authority's general approach to tariff submission and evaluation. The guidelines do not have binding legal effect and where the Authority departs from the approach set out in the guidelines, the Authority will be prepared to explain or provide reasons thereto.

2. Key Terms

For purposes of these guidelines, unless the context otherwise requires, the terms below shall be defined as follows:

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

“Authority” the Communications Regulatory Authority of Namibia (CRAN);

“Bundle” an offer of two or more telecommunications services provided as a single offer (with a single price);

“Notifying Licensee” the licensee that is making the application to introduce a new tariff, or amend or withdraw an existing tariff; and

“Supporting Analysis” qualitative or quantitative analysis to demonstrate that the new or changed tariff reflects the key principles in setting tariffs.

3. Purpose

These guidelines provide general information about the setting and filing of rates and tariffs and the approval process to be followed before implementing a new tariff to any service or product by a licensee. Tariffs have to be closely monitored and, where necessary, regulated to ensure fair competition.

The purpose of these tariff guidelines is to assist notifying licensees to meet their obligations concerning tariffs, specifically to satisfy the requirements concerning tariff filing and the approval process in accordance with the Communications Act. More generally, the tariff guidelines are aimed at preventing anti-competitive pricing and protecting consumers.

4. Enabling Legal Provisions

Section 53 of the Communications Act provides the legal framework for the application and approval of tariffs. This should be read in conjunction with the Regulations Regarding the Submission of Interconnection Agreements and Tariffs.

5. Key Principles In Setting Tariffs

The Authority shall in line with international trends and technology advancements use the following principles in evaluating a tariff application:

a) Cost-based

The tariffs offered to the public should reflect the underlying costs of providing the telecommunication services. Notifying Licensees should not offer tariff rates or charges that are below the true cost of providing the service.

b) Unbundling

The tariffs offered by the licensees have to be sufficiently unbundled, so that the customers do not pay for services or facilities which are not related to the service.

c) Transparency

To discourage anti-competitive practices, licensees should publish details of tariffs and fees and any other terms and conditions on which its services are provided by making them available to the public. Licensees should also ensure that all this information accompanies their tariff submissions for approval.

d) Non-discrimination

A licensee should not offer different conditions to different customers for the same service and products provided. A licensee, therefore, has to offer the customers the same tariff for identical services. A licensee may, however, give discounts to customers based on volumes.

e) Discount Schemes

The Authority should be informed of all discount schemes available to customers so as to ensure that they are transparent and non-discriminatory.

6. Requirement To File Tariffs

The notifying licensee is required to file tariffs for all products and services in terms of section 53 of the Communications Act.

a) Required information

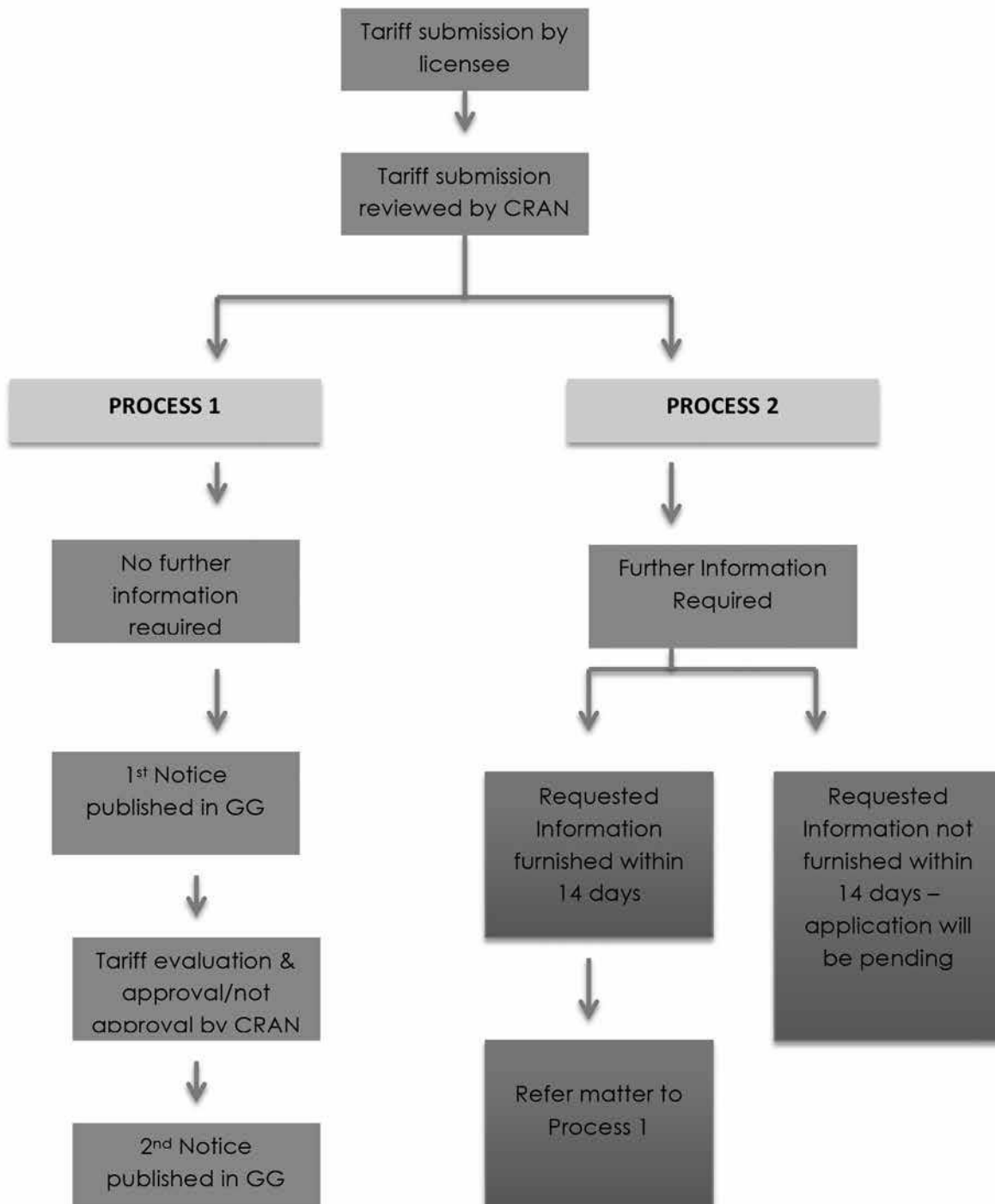
The following information must accompany the tariff submission:

- i. An indication on whether the tariff is a promotion in terms of section 53(2) of the Act or an approval in terms of section 53(1) and (7) of the Act or both;
- ii. All information concerning rates and charges for services, non-recurring charges and monthly charges;
- iii. If the charges are including or excluding VAT;
- iv. All terms and conditions applicable to the provision of the services including all rights and remedies available to customers in the event of unauthorised charges or disputed or claims over billing or the provision of services;
- v. Cost accounting information if required;
- vi. Any other information that the Authority may require;
- vii. The date on which the tariff or amendment comes into operation, which may not be less than sixty (60) days from the date of filing of the tariff or amendment.

b) Approval process

The approval process is depicted in Figure 1 below.

Figure 1: Tariff Approval Process



The tariff submission shall be in hard copy and soft copy¹. The hard copy submission should be made in the form of a letter informing the Authority that the notifying licensee wishes to submit a tariff or an amendment for approval. The letter should further depict the tariff information as well as the date of implementation of the tariff. Lastly, the letter should give indication on whether the tariff submission is a promotion or a permanent filing.

¹ Soft copy means that data provided should be in an accessible digital format. Scanned images should not be submitted unless the underlying data is unavailable in digital format.

A full submission should be posted on the Portal at www.cran-portal.org and should contain all the information as required by the Authority. The tariffs submitted online should be in word or excel format as should be the cost accounting information, if required.

If further information is required, the Authority will contact the notifying licensee within five working days of submission to indicate what further information is required. The notifying licensee must provide such further information within fourteen (14) days as specified by the Authority.

If further information is not provided, or is not provided within the required timeframe, no further action will be taken until such time that the information is provided.

If no further information is required (i.e. the initial application contains all required information, or all requests for further information have been successfully completed), the Authority will make its final decision on the validity of the tariff. The Authority has sixty (60) days after receiving all required information to evaluate the tariff and make a decision. If the Authority is not in a position to take a decision within this time period, the notifying licensee will be informed that the Authority is postponing the commencement of the tariff for a period not exceeding ninety (90) days, which period being the maximum number of days within which the Authority may postpone its decision.

Once the Authority's Board of Directors approves the tariff, the Authority will inform the notifying licensee and the final notice will be published in the *Gazette*.

If the tariff is not approved or approved with conditions, the Authority will similarly inform the notifying licensee of the decision with the reasons for such decision, upon which the licensee can request a reconsideration of decision within a period of 30 days.

7. File Inspection

- a) Any person may at any time after the tariff was published in the Government *Gazette* inspect the "tariff register" as contemplated by Regulation 8(5) of the Regulations Regarding the Submission of Interconnection Agreements and Tariffs.
- b) The requesting person shall complete a form stating the name of the requesting person and the reason for viewing the file.
- c) The Authority may remove any information that is regarded confidential in terms of section 28 of the Act.
- d) The requesting person may make copies of the file at a fee as prescribed from time to time by the Authority, in terms of section 27(10) and (11) of the Act.
- e) The file shall only be viewed at the premises of the Authority during office hours as contemplated in section 27(8) of the Act.
- f) A request to view the file must be made in writing to the Authority on the form attached to this document as Annexure I.

F. KISHI
CHAIRPERSON
COMMUNICATIONS REGULATORY AUTHORITY OF NAMIBIA

ANNEXURE I: APPLICATION FORM TO VIEW A TARIFF REGISTER

NAME OF THE APPLICANT: _____

NAME OF PERSON TO VIEW THE FILE: _____

NAME OF FILE TO VIEW: _____

DATE OF REQUEST: _____

REASON FOR VIEWING: _____

SIGNATURE

APPROVED: _____

TIME TO VIEW: _____ **DATE TO VIEW:** _____

Please forward the completed form to economics@cran.na or legal@cran.na
