

**REASONS FOR DECISION: APPLICATION FOR RECONSIDERATION OF THE DECISION TO AWARD A CLASS COMPREHENSIVE TELECOMMUNICATIONS SERVICE LICENSE (ECNS AND ECS) TO THE MUNICIPAL COUNCIL OF THE MUNICIPALITY OF WINDHOEK.**

**1. BACKGROUND**

Administrative reconsiderations in terms of section 31 of the Communications Act 8 of 2009, are considered by the same Board of Directors that made the primary decision. An applicant should petition the Authority in writing, stating the grounds for reconsideration and submitting any relevant information. A reconsideration is aimed at arriving at the most preferable decision rather than at merely ascertaining whether the primary decision was right or wrong. It requires the Authority to make a decision on the evidence before it, rather than as in the case of a judicial appeal, whereby an appeal body is restricted to examining the primary decision in order to ascertain whether it was correct on the evidence before the primary decision-maker.

A reconsideration therefore involves a *de novo* (afresh) consideration of the application as if there had not been a previous decision, with no restrictions on the information which the Authority may consider and no restrictions on the type of decision it may make. An applicant has the right to put any relevant material whatsoever before the Authority and the Authority has the power to substitute its own decision. The substitution may occur because, on the facts before it, the Authority: comes to a different view of the facts; considers that the law or policy should be applied in a different way; or considers that there is a preferable way of exercising the statutory discretion. The primary decision is taken into account



like any other relevant information, but the Authority attaches no particular weight to such decision.

## **2. INTRODUCTION**

On 02 April 2020, CRAN resolved to award a Class Comprehensive Telecommunications Service License (ECNS and ECS) to the Municipal Council of the Municipality of Windhoek ("City of Windhoek"). The decision was effective from 29 April 2020, being the date of publication in the *Government Gazette*. On 22 May 2020, Paratus Telecommunications (Pty) Ltd ("Paratus") submitted an application for reconsideration of the decision. The application was shared with the City of Windhoek on 27 May 2020. The application for reconsideration was submitted in terms of section 31 of the Communications Act 8 of 2009, and Regulations 11 and 20 of the Regulations Regarding Licensing Procedures for Telecommunications and Broadcasting Service Licenses, General Notice No. 330, *Government Gazette* No. 5269, 19 August 2013 ("the Procedure Regulations").

## **3. PROCEDURAL COMPLIANCE**

Pursuant to the procedural requirements set out in the Procedure Regulations, the application for reconsideration was published in *Government Gazette* No. 7227, as General Notice No. 198, on 03 June 2020, for public comments. Notice of the application was also published in the print media and on the Authority's official website and social media pages.

Telecom Namibia Limited, Dimension Data (Pty) Ltd, ISOC Namibia, ICT Trading Enterprise CC, Mr H. Barnard, and Honourable Henk Mudge submitted written comments (**Annexure C**). The comments from the above-mentioned persons

were shared with the City of Windhoek on 18 June 2020, for reply comments. On 10 July 2020, the City of Windhoek submitted reply comments together with an application for condonation for the late submission of reply comments. The application for condonation was approved and the reply comments accepted by the Authority on 13 July 2020. The reply comments were also shared with Paratus and the public on 13 July 2020 for comments.

On 15 July 2020, the Authority convened a public oral hearing to afford interested persons another opportunity to comment on the decision to award a telecommunications service license to the City of Windhoek, and on the application for reconsideration. A total of 82 persons attended the hearing, and about 2000 views on various social media platforms. At the hearing, the Authority presented the reasons for its primary decision. Paratus submitted its application for reconsideration. The City of Windhoek made reply comments. Then attendants were afforded an opportunity to make their submissions, comments and ask questions.

#### **4. APPLICATION FOR RECONSIDERATION**

Paratus (alternatively “the Petitioner”) petitioned the Authority to reconsider its decision to award a Class Comprehensive Telecommunications Service License (ECNS and ECS) to the City of Windhoek, reject the application and set aside the ‘impugned license’. The petition was premised on a number of grounds. The grounds for reconsideration were amplified by the Petitioner on 17 July 2020, in reply to the City of Windhoek’s reply comments. The grounds for reconsideration are amalgamated and considered as per below.



***First ground of reconsideration (Wrong person lodged the application on behalf of City of Windhoek)***

The first ground is that “an unauthorised person made the purported application. The Petitioner disputes that the application was made by the second respondent” [paragraph 7 and 12.1 of the petition]. The Petitioner submitted that the person that made the application for a telecommunications license to the Authority, was not authorised to make such application on behalf of the City of Windhoek. The City of Windhoek resolved that ‘The Strategic Executive: Electricity is granted approval to apply for the Network Facilities Service License from CRAN’ (Resolution 229/10/2017). The application was subsequently made by a different unauthorised person, the Strategic Executive: ICT.

In response, the City of Windhoek submitted that the resolution by the City of Windhoek does not prohibit another equally placed official to sign and submit an application to the Authority. Further, the City of Windhoek has an integrated structure and officials that complement each other in carrying out their respective functions, and that materially it is not the individual that applied but the City of Windhoek. The City of Windhoek also argued that the Strategic Executive: Electricity is not a separate legal persona from the City of Windhoek.

The Petitioner argued that the application is *ultra vires* because it was brought by the Strategic Executive: ICT instead of the Strategic Executive: Electricity as directed by City of Windhoek resolution. In terms of section 6(1) of the Local Authorities Act, 1992, the affairs of a municipality are governed by the City of Windhoek, thus the applicant must have been the City of Windhoek. The important consideration for the Authority is the identity of applicant and not that

of the person lodging the application on behalf of applicant. In addition, the Applicant itself did not dispute the power of the Strategic Executive: ICT to bring the application. The Authority and all parties involved knew who the applicant was and no one is confused as to the particulars of the Applicant. To this end, whether the internal affairs of Applicant have not been complied with is an interesting point, perhaps best debated before a platform with inherent jurisdiction, but not for purposes of considering this application.

The important consideration for the Authority is the identity of the Applicant as a person in law, which in this case has been duly identified as the City of Windhoek. Although the application refers to the “City of Windhoek” as an applicant, the Authority remains of the view that the incorrect description of the Applicant on the application form is a superficial defect which does not prejudice the Authority or any other interested party, and can be corrected by a simple insertion. There is a resolution by the “Municipal Council of the Municipality of Windhoek” (being the legal person) for this application to be made. The Authority will not formalistically ignore an application on the basis that an Applicant was not accurately described, especially when all interested parties are not confused as to the particulars of the Applicant. In other words, by acting in support of the application, the City of Windhoek has indicated that the application has been correctly made by Council.

The Authority has no mandate to make a determination as to whether such a person acted *ultra vires* in that the powers of the Authority is confined to ensuring compliance with the provisions of the Communications Act and the licensing criteria set out therein. The Authority thus maintains that the application submitted to the Authority was duly authorised by the City of Windhoek.



## ***Second ground of reconsideration (Incomplete application)***

The second ground for reconsideration relates to the incompleteness of the application form submitted by the City of Windhoek. The Petitioner submitted that the “the purported application was substantially deficient and incomplete. Regulation 5A was not complied with in material respects”. As a result, the Petitioner was not able to “make meaningful representations” on the application. Further, the Authority “entered in engagements” with the City of Windhoek by requesting for further information, and not making that available to the Petitioner. The City of Windhoek in its response submitted that its application was complete, and further consultations with the Authority were to obtain more information and to get clarity on its business case.

It is factually correct that parts of the application form submitted by the City of Windhoek were not completed. The information required by the specific parts of the form that were not completed was submitted separately as annexes to the application form. Specifically, Part D of the application form requires details of foreign ownership, “if any”. The Applicant is a local authority and thus 100% percent Namibian owned as indicated under Part C of the Application form. Part E requires an applicant to list the members of its governing body. The names of the Councillors of the Applicant, as well as copies of their national identity documents were submitted together with the application. Part F and G of the application requires the applicant to set out the services it intends to provide, and the description and location of its network facilities.

The Applicant submitted together with the application form, a business case on how it intends to commercialise its existing network infrastructure. The business

case also described and indicated the location of the load centres and distribution stations. However, the business case includes business secrets of the City of Windhoek and was thus not made available to the public. A seven (7) years financial projection was also submitted together with the application as required by Part H of the application form. The information required by the application form was thus submitted by the City of Windhoek. That information was also available to the public for inspection and comments. To this end, if one considers substance over form, the information provided in these annexures is what the regulations requires.

In addition, the Authority is empowered to request for clarification from the City of Windhoek, in terms of regulation 11(7) of the Procedure Regulations. The consultations were done in order for the Authority to obtain more information and to get clarity on the business case. The Authority thus agrees with the City of Windhoek that there is no legal basis upon which the Petitioner could demand to have sight of the information exchanged between the Authority and the City of Windhoek.

Applications for telecommunications service licenses are considered pursuant to the procedure set out in the Procedure Regulations. Apart from stating that a fair and transparent procedure was not followed, the Petitioner failed to indicate which provision of the Procedure Regulations was not complied with. Should the Procedure Regulations in themselves be unfair and not transparent, the public should raise such concerns before competent forums. It is safe to state that the Authority does not consider applications made in terms of the Communications Act 8 of 2009, in concert with the Petitioner or any other party.



### ***Third ground of reconsideration (Change of License Category)***

The Petitioner submitted that the public was not informed that the Authority intends to award a Class Comprehensive Telecommunications Service License to the Applicant. The Authority may only award a Class Comprehensive Telecommunications Service License if an application was made in terms of regulation 4 of the Procedure Regulations. The Petitioner only made representations on the license category indicated in the Government Gazette notice. The City of Windhoek on its part submitted that the Authority is empowered to grant a license it deems appropriate.

The arguments relating to this ground of reconsideration are premised on regulation 11(9) of the Procedure Regulations. The concerns raised pertain to the fairness and legality of the Procedure Regulations not taking into account the full effect to section 40 of the Communications Act.

In terms thereof, the Authority is empowered to issue the appropriate license in respect of class telecommunications service license applications. The Procedure. We point out that regulation 11(9) of the Regulations regarding Licensing Procedures for Telecommunications gives the powers to the Authority to *“issue the appropriate licence in respect of class telecommunications service licence applications.”*

Regulation 5(1)(b) of the Regulations setting out Broadcasting and Telecommunications Service Licence Categories in turn provides for at least five class telecommunications service licences which may be granted by the



Authority , namely, “(i) ECS; (ii) ECNS; (iii) Comprehensive telecommunications service licences (ECNS and ECS); (iv) Non-profit ECNS/ECS; and (v) Network Facilities.” The Authority's view, is that it has the powers, to grant the “appropriate licence” but limited to those within a “class telecommunications service”. The Authority is further of the opinion that the business case as presented to the Authority especially in respect of services such smart metering and public Wi-Fi warrants the issuance of a Class Comprehensive Telecommunications service licence (ECS & ECNS) in that the provisioning of these services constitutes the conveyance of information *via* an electronic communications network and is not reliant on a joint venture with any other telecommunications service licensee.

The Procedure Regulations do not provide that in such instances the Authority must republish the application in the *Government Gazette* for public comments. The Authority followed the process set out in the Procedure Regulations, and awarded the appropriate class telecommunications licence. Lastly, the Petitioner went into great detail on the fact that it was not presented an opportunity to comment on the changed licensed category. However, the Petitioner failed to comment on how it is prejudiced by the license category so issued. The impact of the license on the market was however, dealt with in the public comments received from MTC and Telecom Namibia and will be discussed below.

***Fourth ground of reconsideration (Powers of City of Windhoek and Compliance to Local Authorities Act)***

The fourth ground of reconsideration regards the powers of City of Windhoek to apply for a telecommunications service license, and to provide telecommunications services to the public. Without restating the submissions of

the Petitioner and the City of Windhoek, the Authority is of the following view:  
The City of Windhoek, like the Authority, is a creature of statute and can only act within the confines of the enabling statutes.

The relevant parts of section 30(1)(ab) of the Local Authorities Act 23 of 1992, gives the City of Windhoek City of Windhoek the power to commercialise, subject to regulations which may be made relating thereto, any service rendered by it or any function or duty exercised or carried out by it. Commercialisation of services by a local authority is done pursuant the Commercialisation Regulations published as General Notice No. 39, under Government Gazette No. 2492 on 05 March 2001.

Furthermore it should be noted that the Authority can only refuse to award a license on the following grounds; public interest, national security, technical constraints due to the limited availability of frequencies, the lack of technical and financial capability, or the fact that the City of Windhoek has been subject to penalties referred to in section 115(4). The Authority did not find the City of Windhoek guilty of any of these grounds listed in section 39(3) of the Act. The Authority was thus under an obligation in terms of section 39(7) of Act to award City of Windhoek City of Windhoek the license as they complied with the prescribed requirements.

All telecommunications service licenses are applied for and granted within the legal framework created by the Communications Act, and not any other law. The Communications Act does not prohibit institutions established in terms of the Local Authorities Act from applying for or being granted telecommunications licenses. Consequently, it is not the Authority's mandate to ensure that local authorities comply with the Commercialisation Regulation, and adherence to those regulations is not a requirement for the



award of a telecommunications service license. To this end, the Authority does not have jurisdiction to enforce compliance with the commercialisation regulations made under the Local Authorities Act. It is also doubtful whether the Petitioner has the *locus standii* to enforce compliance to the commercialisation regulations.

## 5. PUBLIC COMMENTS

It is important to also discuss the comments made by the public and some licensees. As indicated above Telecom Namibia Limited, Dimension Data (Pty) Ltd, ISOC Namibia, ICT Trading Enterprise CC, Mr H. Barnard, Honourable Henk Mudge, and Mobile Telecommunications Limited submitted written comments. Additional comments were submitted after the oral hearing by Witel Service Provider CC and Electricity Control Board. However, the Comments by Witel Service CC Provider were not considered as they were filed out of time. The public comments are not separate applications for reconsideration, but only views of the public in support of or against the application for reconsideration submitted by the Petitioner.

The comments are summarised as follows:

### ***Telecom Namibia Limited***

In summary, Telecom Namibia Limited submits that:

- a) The Authority acted *ultra vires* the Local Authorities Act and the Commercialisation Regulations.



- b) The Authority did not act procedurally in awarding the license to the City of Windhoek. The application ought to have been re-published for public comments indicating the category of license the Authority intend to award.
- c) The Authority's decision is not rational because the City of Windhoek intends to lease out its fibre optic network, and this could be done with a Class Network Facilities Service License.

The comments of Telecom are in support of the grounds of reconsideration as submitted by the Petitioner, and have accordingly been dealt with above.

### ***The Internet Society of Namibia***

The submissions of the Internet Society of Namibia support the award of the license to the City of Windhoek. The Society is of the view that this will speed up the digitization process of all areas within the municipal boundaries for the benefit of all Windhoek residents.

### **Dimension Data (Pty) Ltd & Honourable Henk Mudge**

The comments submitted by Dimension Data (Pty) Ltd are exactly the same as the comments submitted by Honourable Henk Mudge on behalf of the Republican Party of Namibia, and will be summarised together.

- a) The Authority should ensure compliance with sections 2(k), 23(1), 33, and 40 of the Communications Act 8 of 2009.
- b) The Authority must act in compliance with article 13 and 18 of the Namibian Constitution.



- c) By awarding the license to the City of Windhoek, the Authority has supported attempts by the City of Windhoek to monopolise the provision of telecommunications services in Windhoek.
- d) The Authority should have sought input from the public on the different license awarded to the City of Windhoek.
- e) The City of Windhoek does not have the power to provide telecommunications services.
- f) The Authority might not be acting as an autonomous statutory regulatory body.

The comments above are noted and dealt with in consideration of the grounds for reconsideration. Suggestions that the Authority acts on external pressures are without foundation in fact and remains unfortunate opinions of the makers.

### ***ICT Trading Enterprises CC***

The submissions of ICT Trading Enterprises CC, in the main, mirror those by the Internet Society of Namibia. They support the granting of the license to the City of Windhoek for the provision of internet services throughout the city.

### ***Mr H. Barnard***

Mr Barnard disapproves of the license as this will increase rates and taxes. In his view, the City of Windhoek should concentrate on the delivery of water, electricity, and rubbish management.



### ***Mobile Telecommunications Limited***

MTC submitted that:

- a) The provision of telecommunication services as outlined in the Communications Act, falls outside the ambit of powers, services, functions and/or duties of local authorities.
- b) The Authority's interpretation of Regulation 11(9) lacks a reasonable degree of certainty and would therefore result in incessant litigation.
- c) The Authority erred in its duty to ensure fair competition, especially in light of Section 62 of the Communications Act.
- d) The Authority failed to uphold the provisions of section 40 of the Communications Act and article 18 of the Namibian Constitution.

The only distinct comment by Mobile Telecommunications Limited relates to the fact that the City of Windhoek's controls the public land within its area of jurisdiction. Other licensees will need to notify the City of Windhoek before constructing infrastructure on this land. Therefore *"granting of the licence together with the notice required from the City of Windhoek enables a dominant position susceptible to abuse in the form of barrier of entry into the fibre market within the local authority area of the City of Windhoek . This is by pre-empting any planned routes."*

In terms of section 59 of the Communications Act, holders of telecommunications service licenses have special rights including the construction of network infrastructure on public land in any municipal area. There are valid reasons as to why a local authority of a specific municipal area should be notified before construction work is commenced. It is clear that operators do not require consent from a



municipal authority before constructing infrastructure on public land. Further, any grievances regarding the exercise of special rights granted by section 59 of the Communications Act may be adjudicated upon by the Authority in terms of section 69 of the Communications Act.

### ***Witel Service Provider CC***

The comments submitted by Witel Service Provider CC were submitted out of time and accordingly not considered.

### ***Electricity Control Board***

The submissions by the Electricity Control Board (“ECB”) are based on the fact that the City of Windhoek is also licensed by ECB to operate an electricity distribution network. This network comprises of the fibre network which the City of Windhoek intends to commercialise under the license awarded by the Authority. The ECB submits that the fibre network or a portion of it was financed by electricity customers and they should be appropriately compensated. Further, the ECB indicated that a central regional electricity distributor will be established in the near future, and the City of Windhoek might be required to transfer the fibre network to the new entity.

The Authority does not determine the tariffs or prices for the sharing of infrastructure. Therefore, it cannot assume a mandate on the finances derived from infrastructure agreements. The potential transfer of assets of licensee to another entity are clearly beyond the purview of the Authority. To this end, the comments by ECB are valid, but the Authority does not



have jurisdiction to deal with them. This issue is best addressed at a policy level by the relevant organs of State.

## **6. CONCLUSION ON PUBLIC COMMENTS**

The Authority has considered all relevant public concerns in consideration of the application by the City of Windhoek, within the regulatory framework set by the Communications Act. Most of the comments made by the public support or amplify the grounds for reconsideration as submitted by the Petitioner, and have been accordingly discussed together with those grounds above.

The public further indicated that in awarding a class comprehensive telecommunications license (ECS/ECNS) to the City of Windhoek, the Authority failed in its duty to ensure fair competition in the telecommunications sector. This was based on the fact that the City of Windhoek might prevent other licensees from constructing network infrastructure on public land under its administration. In the Authority's view, this is a valid point especially in view of the prescripts of section 33 of the Communications Act.

Section 33(1) of the Communications Act provides that any practice or activity that has the effect of restricting or distorting competition in a market for the supply of telecommunications services is prohibited. Further, pursuant to section 34(1) of the Communications Act, the Authority, must in the performance of its functions under this Act, promote, develop and enforce fair competition and the equality of treatment among all providers of telecommunications and broadcasting services and users of such services.



## **Competition issues**

An analysis of the comments submitted demonstrated that other licensees are concerned that the award of a license to the City of Windhoek allows it to enter the telecommunications fibre, market and participate therein and further that City of Windhoek will enjoy preference to land rights. Further that City of Windhoek will enjoy the dominant position in land ownership and infrastructure development, which will disadvantage other industry players. In the Authority's view, this is a valid observation and the Authority will impose additional conditions on the City of Windhoek to ensure that its unique setting does not culminate into a restrictive practice. We pause to caution however, that there are other licensees in the market that hold infrastructure required for the provision of services by other players and this situation may not be unique to the City of Windhoek. Be that as it may the conditions to be imposed, involve compliance with all obligations imposed under regulation 4, 5, 7, 8, 9, 10 and 11 of the Infrastructure-sharing Regulations, as well as sections 48, 49 and 50 of the Communications Act.

However, it is also important to note that if the City of Windhoek commercialise its network for infrastructure sharing, it will be pro-competitive as it will result in overall lower costs of infrastructure development by other licensees. This will then translate into lower prices for the telecommunications end-consumer.

## **Exercise of rights of carriers**



Apart from restating that licensed telecommunications service providers have special rights under section 59 of the Communications Act, the Authority cannot determine at this stage that the City of Windhoek would have significant market power through its administration of public land. The Authority will however, update the dominance paper as published in Government Gazette to conduct an assessment on whether through the award of this license, the City of Windhoek assumes a dominant position.

Any actions by the City of Windhoek that prevent the construction of network infrastructure on public land under its administration is unlawful and contrary to Part 5 of the Communications Act [*Paratus Telecommunications (Pty) Ltd v MC for the Municipality of Windhoek & Others* (HC-MD-CIV-MOT-GEN-2020/00064) [2020] NAHCMD 116 (26 March 2020)]. Further in order to regulate the exercise of rights under Part V, the Authority intends to prescribe regulations setting out the manner, form and period of notice to be given by a carrier to a land owner in connection with installation or maintenance of telecommunications facilities.

The public also indicted that section 62 of the Communications Act must be amended not to require notice/consent to be provided by the City of Windhoek. Although this is an issue that only the policy maker can determine, the Authority is of the view that many of the concerns pertaining to access to land for the installation of fibre infrastructure, will now be addressed through the regulations to be prescribed and the license conditions so attached. The Authority will also enforce compliance with the provisions of section 60 to 68 of the Act. The Authority will also impose additional conditions on the City of Windhoek to ensure compliance with the rights enshrined in Part V of the Communications Act.



Furthermore, the public indicated that the Authority should not allow a “by-law to be enacted” by the City of Windhoek, regarding access to public land for construction of network infrastructure. The Authority does not make or “allow” the making of by-laws. During the rule-making process, the Authority made comments on the by-laws like any other interested stakeholder. The making of by-laws for the municipal area of the City of Windhoek is the sole discretion of the City of Windhoek, and the Authority is not accountable for any by-law that contravenes a provision of a primary legislation.

Subsidiary law is subject to primary laws – by-laws of the City of Windhoek are subject to the Communications Act. The Authority remains of the ardent view that the laying of telecommunications infrastructure is an important factor to market entry, expansion and development. The by-laws must be crafted in such a manner that the process of notification is disclosed in the by-laws.

### **Cross subsidization**

Another concern raised by the public relates to the cross-subsidisation of the telecommunications services through other business activities of the City of Windhoek. The electricity network which is complemented by the fibre network that will be commercialised was partly financed by electricity consumer. It is not clear how the electricity consumers would be reimbursed for the utilisation of the network for telecommunication services. However, as indicated above, this matter should be overseen by the ECB. Section 54 of the Communications Act also provides guidance on account separation in the event that a licensee provides other services in addition to telecommunications.



Further, the electricity network, including the fibre network of the City of Windhoek is already well established. This means that in the calculation of rates for infrastructure sharing the CAPEX part of the tariff would be minimal and the only cost that would have to be considered would be that of OPEX. Rates for infrastructure sharing are not regulated by the Authority except in circumstances of anti-competitive behaviour. Without regulation, this could result in rates under cutting other licensees that are investing large amounts of capital to roll-out infrastructure or could lead to super profits for the City of Windhoek to the detriment of the end-consumer, both for telecommunications and electricity. In that scenario, this might be classified as anti-competitive behaviour.

However, it is also important to note that if the City of Windhoek commercialises its network for infrastructure sharing, it will be pro-competitive as it will result in overall lower costs of infrastructure development by other licensees. This will then translate into lower prices for the telecommunications end-consumer.

### **Privacy concerns**

Further, the public raised privacy concerns based on information that the City of Windhoek intends to engage Huawei in the commercialisation of its fibre network. Apart from type approving all telecommunications equipment imported or sold in Namibia, the Authority does not prescribe equipment vendors to licensees. Therefore, the Authority cannot assume jurisdiction over the privacy of information shared between City of Windhoek and any of its vendors. All issues raised therein have been dealt



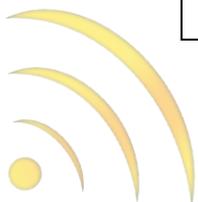
with in the comments. Some were instantly clarified at the hearing and did not require further consideration.

## 7. CONCLUSION

In conclusion, the Authority is in agreement with the sentiments expressed by the Internet Society of Namibia and ICT Trading Namibia CC that the award of the license to City of Windhoek will speed up the digitization process of all areas within the municipal boundaries, for the benefit of all Windhoek residents. The license is also important because the commercialisation of the City of Windhoek’s network for infrastructure sharing, is pro-competitive as it will result in overall lower costs of infrastructure development by other licensees. This will then translate into lower prices for the telecommunications end-consumer. Ultimately the award of a license to City of Windhoek will increase access to telecommunications and advanced information services at just reasonable and affordable prices. For ease of reference, the consideration of the application for reconsideration is summed up in **Table 1** below:

**Table 1- Summary of Conclusions**

<b>Ground</b>	<b>Consideration</b>	<b>Recommendation (accept or reject ground)</b>
Unauthorised person made the application to the Authority.	The material consideration is the identify of Applicant as a person in law and not that of the person lodging the application on behalf of applicant. Especially because applicant did not distance itself from the	Reject



	application so lodged.	
The application form was materially incomplete and the public was not able to submit meaningful representations.	The information not indicated on the application form was sufficiently submitted as annexures to the application form.	Reject
The public was not afforded an opportunity to comment on the Class Comprehensive Telecommunications Service License that was ultimately awarded to the City of Windhoek.	The Authority is empowered by regulation 11(9) of the Procedure Regulations to award an appropriate category of telecommunications service license.	Reject
City of Windhoek is not authorised in terms of the Local Authorities Act to provide telecommunications services.	The Authority does not have jurisdiction to enforce compliance to section 30(1)(ab) of the Local Authorities Act.	Reject

## 8. DECISION

In light of the above the Authority upholds its decision of 29 April 2020, and approves-

- (i) The award of a Class Comprehensive Telecommunications Service Licence to the Municipal City of Windhoek of the Municipality of Windhoek;
- (ii) Subject to-
  - a. the licence conditions set out in Annexure "M" and the provisions of the Communications Act; and



- b. Quarterly submission of a compliance report to the Authority in respect of the imposed licence conditions;
- (iii) That the decision comes into effect on date of decision.
- (iv) Any person who has a substantial interest in this decision may take this decision on review within six months from date of this decision.

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