



# **CRAN**

Communications Regulatory Authority of Namibia

## **REMARKS**

**HEINRICH MIHE GAOMAB II, CHAIRPERSON CRAN  
BOARD OF DIRECTORS**

**AT THE**

**MEDIA CONFERENCE ON THE OUTCOME –  
APPLICATION FOR RECONSIDERATION ON THE CITY OF  
WINDHOEK TELECOMMUNICATIONS SERVICE LICENCE**

**Date: 28 JULY 2020**

**Venue: AVANI HOTEL, WINDHOEK**

**Time: 11h00**

- Deputy Chairperson of CRAN BOD, Ms Vivienne Katjuongua,
- Fellow Board Members CRAN,
- Acting Chief Executive Officer CRAN, Mr. Jochen Traut,
- Executive Management and CRAN team,
- Esteemed members of the media,
- Director of Ceremonies,

Good morning and thank you for joining us for the announcement on the outcome of the application for reconsideration on the Municipal Council of the Municipality of Windhoek (and herein after referred to as CoW) Telecommunications Service Licence.

As you may all be aware, the Communications Regulatory Authority of Namibia (CRAN) hosted a public hearing on 15 July 2020 on the application for reconsideration submitted by Paratus Telecommunications (Pty) Ltd on 22 May 2020, in respect of CRAN's decision to award a Class Comprehensive Telecommunications Service Licence (ECNS and ECS) to CoW. The licence was awarded 29 April 2020 in terms of Section 38 of the Communications Act (No. 8 of 2009) (herein after referred to as the Communications Act).

The application for reconsideration was submitted in terms of Section 31 of the Communications Act and Regulations 11 and 20 of the Regulations Regarding Licensing Procedures for Telecommunications and Broadcasting Service Licenses.

CRAN convened the public hearing in line with Regulation 14 of the Regulations regarding Licensing Procedures, which makes provision for CRAN to host a public consultative meeting to present the reasons for its decision to grant the licence, and to provide interested stakeholders an opportunity to comment, pose questions and receive clarity from CRAN on its decision to award a Telecommunications Service License to CoW, and on the application for reconsideration. The public consultative meeting which was streamed live on various social media platforms was attended by a total of 82 stakeholder, and received approximately 2,000 views on various social media platforms.

**Various grounds for reconsideration were received and considered:**

The **first ground for reconsideration** is that “an unauthorised person made the purported application. Paratus disputes that the application was made by the second respondent” and 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 Council resolution. CRAN found that the important consideration for the Authority is the identity of the applicant as a legal person and not that of the person lodging the application on behalf of applicant. CRAN also found that Cow did not dispute the power of the Strategic Executive: ICT to bring the application.

Furthermore, the Authority and all parties concerned knew who the applicant is and no one was confused as to the particulars of the Applicant. To this end, this issue is perhaps best debated before a platform with inherent jurisdiction, but not for purposes of considering this application before the Authority. 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 Municipal Council of the Municipality of Windhoek. Although the application refers to the “City of Windhoek” as an applicant, 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.

The **second ground for reconsideration** relates to the incompleteness of the application form submitted by CoW. Paratus submitted that the “the purported application was substantially deficient and incomplete. Further that regulation 5A was not complied with in material respects. As a result, Paratus claims that it was not able to “make meaningful representations” on the application.

CRAN found that it is factually correct that parts of the application form submitted by the Council were not completed. However, the information required by the specific parts of the form (that were not completed) were submitted separately as annexures to the application form. To this end, if

one considers substance over form, the information provided in these annexures is what the regulations require.

Paratus submitted that the public was not informed that the Authority intended to award a Class Comprehensive Telecommunications Service License to the Applicant. Paratus is further of the view that 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.

CRAN finds 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.”* The Authority’s view, is that it has the powers, to grant an appropriate licence, but limited to, those within a “class telecommunications service”. The Authority is further of the opinion that the business case as presented by CoW 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). This is because 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.

Furthermore, the Procedure Regulations do not provide that in such instances the Authority must republish the application in the *Government Gazette* for public comments. In so doing, this may pre-empt the decision of the Authority. The Authority followed the process as set out in the Procedure Regulations, and awarded the appropriate class telecommunications licence. Should the Procedure Regulations in themselves be unfair and not transparent, the public should raise such concerns before competent forums.

### **Director of Ceremonies,**

The **fourth ground for reconsideration** regards the powers of the Council to apply for a telecommunications service license, and to provide telecommunications services to the public. The relevant parts challenged under this ground are Section 30(1) (ab) of the Local Authorities Act 23 of 1992.

CRAN finds that it 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 Council has been subject to penalties referred to in Section 115(4).

CRAN further finds that the Council has complied with all prescribed requirements. Thus 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 Commercialization Regulation, and adherence to the said 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 commercialization regulations made under the Local Authorities Act.

**Director of Ceremonies,**

Members of the public raised critical issues and an analysis of the comments submitted demonstrated that stakeholders, in this case, other licensees, are concerned that the award of a license to the Council allows it to enter the telecommunications fibre market and participate therein and further that Council will enjoy preference to land rights. Further that Council will enjoy the dominant position in land ownership and infrastructure development, which will disadvantage other industry players.

Members of the public further indicated that Section 62 of the Communications Act must be amended in order not to require notice and or consent to be provided by CoW.

**Director of ceremonies, ladies and gentleman,**

After careful consideration of the various and valid observations and comments raised by stakeholders, CRAN upholds its decision of 29 April 2020, and awards the Municipal Council of the Municipality of Windhoek with a Class Comprehensive Telecommunications Service Licence (with additional licence conditions imposed) effective 24 July 2020.

Further hereto, CRAN shall impose additional licence conditions to address stakeholder comments to ensure fair competition, infrastructure sharing, as this will result in overall lower costs of infrastructure development by other licensees and thus translate into lower prices for the telecommunications end-consumer. Ultimately the award of a license to Council will increase access to telecommunications and advanced information services at just reasonable and affordable prices.

I Thank You!



