



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

N\$6.00

WINDHOEK - 30 April 2019

No. 6889

CONTENTS

Page

GENERAL NOTICE

No. 105	Communications Regulatory Authority of Namibia: Amendment of Regulations Regarding Procedures for the Adjudication of Disputes: Communications Act, 2009	1
---------	--	---

General Notice

COMMUNICATIONS REGULATORY AUTHORITY OF NAMIBIA

No. 105 2019

AMENDMENT OF REGULATIONS REGARDING PROCEDURES FOR THE ADJUDICATION OF DISPUTES: COMMUNICATIONS ACT, 2009

The Communications Regulatory Authority of Namibia, under section 129 read with section 132 of the Communications Act, 2009 (Act No. 8 of 2009) has amended the regulations set out in the Schedule.

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

SCHEDULE

Definitions

1. In these regulations the “Regulations” means the Regulations Regarding Procedures for the Adjudication of Disputes published under General Notice No. 468 of 9 November 2017.

Substitution of regulation 1 of the Regulations

2. Regulation 1 of the Regulations is hereby amended by the substitution of the following definitions:

“complainant” means any person, who is a customer of a service provider, who submits a complaint;

“complaint” means a written complaint submitted by complainant to service provider or to the Authority as the case may be -

- (i) in accordance with section 131 of the Act relating to quality of service rendered by a service provider; or
- (ii) arising from the Broadcasting Code, as contemplated in section 90(1) of the Act, published by the Authority from time to time in the *Gazette* in accordance with the Act;

“dispute” means a dispute which is the subject of a request for adjudication referred to the Authority for determination in terms of sections 50, 69, 74, 90(1) or 132 of the Act;

“service provider” means a licensee as contemplated by Chapters V, VI and VII of the Act;

Substitution of regulation 8(3) of the Regulations

3. Regulation 8(3) of the Regulations is hereby amended by the substitution of that paragraph with the following paragraph:

“(3) Service providers must annually by not later than 31 January (for the previous calendar year) submit to the Authority -”

Substitution of Form C of the Regulations

4. Form C of the Regulations is hereby substituted with the following insertion:

FORM C**Regulation 8(3)(a)****CONSUMER COMPLAINT REPORT FORM**

In terms of Regulation 8(3) of the Regulations Regarding Procedures for the Adjudication of Disputes, a service provider must maintain records of all complaints and provide an annual report to the Authority on this form.

After completion of the form in full, sign it and submit the form to the Authority by not later than 31 January of each year.

A. LICENSEE OR PERSON PROVIDING A SERVICE WITHOUT A LICENCE

Name	
Indicate whether the person is a licensee or a person providing a service without a licence	

B. CONTACT PERSON

Contact Person	
Physical address	
Postal address	
Telephone number(s)	
Facsimile number(s)	
Electronic mail address(es)	

C. STATISTICS OF COMPLAINTS

Number of complaints received	
Number of complaints resolved within 14 days from date of receipt	
Number of complaints resolved after 14 days from date of receipt	
Number of complaints not resolved within 14 days from date of receipt	
Number of complaints not resolved after 14 days of receipt	
Number of complaints not resolved after 14 days which were subsequently submitted to the Authority	

Nature of complaints most received (e.g. billing, charges, service and product delivery, confidential information, customer service, service interruptions, dropped calls, advertisement, broadcasting content, reception or signal of broadcasting and complaints relating to postal)	
Any preventative measures taken in response to complaints	
Any other relevant information	

D. COMPLAINTS SUBMITTED TO CRAN

Complainant	Nature of complaint	Date received	Resolution or status

E. UNRESOLVED COMPLAINTS NOT SUBMITTED TO CRAN

Complainant	Nature of complaint	Date received	Resolution or status

Signed by _____ at _____ in his or her capacity as _____, duly authorized and giving warranty to the Authority that the information herein is true and correct, on the _____ day of _____ 20_____

Signature

ACKNOWLEDGEMENT OF RECEIPT BY CRAN

Name	
Date	
Place	
Signature	

ANNEXURE A

SUMMARY AND ANALYSIS OF COMMENTS RECEIVED

1. BACKGROUND

The Notice of Intention to amend the Regulations regarding Procedures for the Adjudication of Disputes was published in the Government Gazette no. 6798, General Notice 688. The Authority received written comments submission from Multichoice Namibia, Paratus Telecommunications (Pty) Ltd and DHL. The input and comments received are summarized and responded to below.

2. STAKEHOLDERS COMMENTS

2.1 WRITTEN SUBMISSIONS BY MULTICHOICE NAMIBIA

2.1.1 Conflation of disputes and complaints

Multichoice Namibia raised a concern that the existing Regulations conflate the adjudication of disputes and complaints. MCN states that in terms of the provision empowering the Authority to make regulations, these Regulations relate to the resolution of disputes in the telecommunications context. They further state that a dispute is defined to mean a dispute in connection with a complaint or a request for adjudication referred to the Authority for determination. MCN is of the view that this is inappropriate as the statutory regime differs for complaints and disputes.

MCN further states that the Communications Act contains limited provisions regarding the adjudication of disputes in the telecommunications context and that there are no provisions in the Act empowering the Authority to adjudicate disputes in respect of broadcasting services.

MCN proposes that the definition of disputes is amended so state that “dispute means a dispute which is subject of a request for adjudication referred to the Authority for determination in terms of section 69, 74 or 132 of the Act”.

Authority response

The Authority accepts this proposal and shall amend as follows:

‘dispute means a dispute which is subject of a request for adjudication referred to the Authority for determination in terms of section 69,50,74,90(1) or 132 of the Act’.

2.1.2 Definitions of Complaint and Complainant

- (a) MCN raised a concern with regards to the definitions of “complaint” and “complainant”. MCN states that the definition of a complaint is limited to a complaint relating to the quality of service standards prescribed in the Quality of Service Standards Regulations. They propose that the definition of complaint should be amended to:

“Complaint means a written complaint submitted by complainant by a complainant to service provider or to the Authority, as the case may be

- i) *In accordance with section 131 of the Act relating to quality of service rendered by a service provider; or*
- ii) *Arising from the Broadcasting Code, as contemplated in section 90(1) of the Act, published by the Authority from time to time in the Gazette in accordance with section 89 of the Act.”*

Authority response

The Authority accepts the proposed paragraph to add reference to complaints emanating from the Broadcasting Code to the definition of complaints. We however do not agree with the proposal to delete Regulation 3(1)(d), especially in light of the addition of broadcasting complaints to the definition of complaints.

- (b) MCN further proposed that the definition of Complainant be clarified as it does not reference a complaint. MCN proposes the following:

“Complainant means any person, who is a customer of a service provider, who submits a complaint”.

Authority response

The Authority accepts the proposed paragraph and the Authority shall also accordingly amended the definition of service provider to mean “Service provider means a carrier, licensee, a telecommunications service provider contemplated in Chapter V of the Act and Broadcasting Licensees as contemplated in Chapter VI of the Act”.

2.1.3 Deadline for submission of response to a complaint or request for adjudication

MCN raised another concern that the deadline for submission of response to a complaint or request for adjudication requires the respondent to submit a response to a complaint or request for adjudication within seven days and thus submit that the period of seven days is not sufficient and that the period be increased to 14 days.

Authority response

This comment is noted but in terms the Regulation 18, should a party to a dispute be unable to comply with any time limit stipulated in these Regulations, that party may prior to the lapse of the stipulated time period request for an extension from the Authority. The Authority is of the view that the period of 7 days is sufficient and parties who are unable to comply should request for an extension.

2.1.4 Deadline for submission of consumer complaints report

MCN proposed that the deadline for submission of consumer complaint reports in terms of Regulation 8(3) should be rectified from “Service providers must annually by not later than 31 January of each financial year...” to must be “in respect of the preceding calendar year”.

Authority response

This comment is noted and in terms of the amended regulations “financial year” has been removed, but the proposed insertion of “in respect of the preceding calendar year” is accepted.

2.2 WRITTEN SUBMISSIONS BY PARATUS TELECOMMUNICATIONS

2.2.1 Complaints submission procedure

Paratus is of the view that the current procedure of complaints whereby the Authority pass on correspondence from one party to the next creates a post office effect and therefore proposes that the procedure should be re-looked. They further propose that the Authority must scrutinize the complaint and request for further information if needed and only thereafter should notify the relevant party by briefly setting out the complaint lodged and request the respondent to respond. To avoid animosity and a back and forth situation, the complaint should not be forwarded as it is.

Authority response

Please note that the amendment notice did not seek to amend Regulation 10.

But that as it may, Regulation 10(2) the Authority first determines whether or not the complaint is frivolous and/or vexatious before delivering the copy of the complaint or request for adjudication to the respondent. It is at this stage that the Authority request for further information if it is of the view that the information submitted by the Complainant is not sufficient to warrant a response from the Respondent. The proposal is therefore, not accepted.

2.2.2 Complaints exchange procedure

Please note that the amendment notice did not seek to amend Regulation 10(5)(a).

Paratus further submits that the back and forth sending of correspondences between the parties in terms of Regulation 10(5)(a) is long winded and not effective in resolving complaints.

Authority response

The Authority is of the view that the procedure set out in the Regulations provides the party a chance to be heard before a determination can be made. Regulation 10(5)(a) is crucial in giving the submitting party the chance to respond to the respondent's response as this assists the Authority in making the decision as provided for under Regulation 11. The proposal is therefore, not accepted.

2.2.3 Disproportionate regulations

Please note that this proposal is to Regulation 10(5)(a), which was not included in the amendment notice.

Paratus submits that Regulation 10(4)(b) and 10(5)(c) are not proportional.

Authority response

Please note that the amendment notice did not seek to amend Regulation 10(5)(a).

Although Paratus does not provide the reasons for submitting that the regulations are not proportional, the Authority is of the view that Regulation 10(4)(b) and 10(5)(c) are proportional in that they both provide the Authority with the power to dispose of and finalize matters in instances where parties have failed to give their responses as requested. Regulation 10(4)(b) deals with the failure of the Respondent to provide a response to the complaint, whereas Regulation 10(5)(c) deals with the instance in which the submitting party fails to respond. The proposal is therefore, not accepted.

2.2.4 Regulations 10 and 11

Paratus Proposes that Regulation 11 and Regulation 10 should be concluded simultaneously. They further state that the Authority seems to take up more of a mediating role rather than a regulatory role by not actively investigating the complaint from inception.

Authority response

Please note that the amendment notice did not seek to amend Regulations 10 and 11.

Regulation 10 and Regulation 11 cannot be completed simultaneously as Regulation 10 sets out the procedure prior to adjudication, whereas Regulation 11 deals with the decision making process of the Authority after all the necessary documentation has been exchanged. In terms of Regulation 11, the

Authority may refer the matter for mediation which is conducted by an independent third party. The mediation proceedings are without prejudice and not even the record is revealed to the Authority. The only role that the Authority plays is that of administrative role. The proposal is therefore, not accepted.

2.2.5 Regulation 12

Paratus inquired in respect of Regulation 12(4) - what would constitute lawful excuse and what happens if the Authority exercises its discretion and no legal practitioners are permitted as per Regulation 12(8)?

Authority response

Please note that the amendment notice did not seek to amend Regulation 12.

In terms of the first issue raised as to what would constitute lawful excuse, this refers to the right an individual has not to self-incriminate and the right to remain silent. In terms of no legal practitioners being permitted, the Authority will not unnecessarily deny the representation by a legal practitioner and the Authority will take into consideration whether the representation by a legal practitioner may or may not prejudice the other party.

2.2.6 Regulation 13

Paratus further proposes that Regulation 13(1) allows for a 60-day period to make a determination and that this is disproportionate and thus should be shortened to 30 days.

Authority response

Please note that the amendment notice did not seek to amend Regulation 13.

The Authority notes the comment. It should be noted that the Authority's decisions are made by its Board of Directors. In terms of Section 15 of Communications Act, the Board of Directors may hold at such time and place as the Board or the chairperson may determine, but in no case less than once every two months. Therefore the Authority will require more time in order for the decision to be made.

2.3 WRITTEN SUBMISSIONS BY DHL NAMIBIA

2.3.1 DHL proposes that the amendment to the Regulations should solely be extended to "Postal Services" and that it should be clarified that private courier company's fall outside this ambit.

Authority response

This comment is noted. As communicated to the stakeholders, the Authority is busy conducting a Regulatory Impact Assessment Study to determine the regulation of courier services. Until such time that the study is completed, the regulation of such services will not be commence. This will be provided for in the Postal Licensing Regulations.

2.3.2 DHL further submitted that should the amendment of the Regulations be extended to courier companies, it should be noted that Regulation 8(3) in particular imposes a disproportionate and unnecessary burden, requiring the collection and compilation of information over and above the information already furnished to governmental authorities.

Authority response

The Authority rejects the submission that the collection and compilation of information imposes a disproportionate and unnecessary burden. The Authority is mandated by the Communications Act to ensure protection of consumers. The submission of annual reports is vital for the trend analysis in order to improve interventions for consumer protection and ensure compliance with the provisions of the Communications Act and the Regulations.

3. Way Forward

The Authority noted the stakeholders' comments, and the cumulative effect will result in the following changes to the amendment notice:

- a) The definition of Complaint will be amended;
 - b) The definition of Complainant will be amended;
 - c) The definition of Service Provider will be amended;
 - d) Regulation 8(3) will be amended to exclude "financial year" and rephrase it as "each year preceding year";
 - e) The Mediation proceedings for the Adjudication of disputes will be conducted by a third party.
 - f) A Regulatory Impact Assessment will be conducted to determine the regulation of courier services and in the meantime the adjudication regulations will not be applicable to unlicensed postal service operators.
-