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General Notice

COMMUNICATIONS REGULATORY AUTHORITY OF NAMIBIA

No. 180

2022

IMPOSITION OF FURTHER CONDITIONS ON TELECOMMUNICATIONS SERVICE LICENSEES IN TERMS OF SECTION 72(4) OF THE COMMUNICATIONS ACT, 2009 RELATING TO MATTERS PRESCRIBED BY THE MINISTER RESPONSIBLE FOR COMMUNICATIONS BY VIRTUE OF THE REGULATIONS IN TERMS OF PART 6 OF CHAPTER V OF THE COMMUNICATIONS ACT, 2009

The Communications Regulatory Authority of Namibia in consultation with the Minister of Information and Communication Technology in terms of section 72(4) of the Communications Act, 2009 (Act No. 8 of 2009) imposes further conditions on telecommunications service licensees, pursuant to the Regulations made in terms of Part 6 of Chapter V of the Communications Act, 2009 (Act No. 8 of 2009), as published in the Government Gazette No. 7481, General Notice No. 40, on 15 March 2021, as set out in Schedule 1 below.

H. M. GAOMAB II
CHAIRPERSON OF THE BOARD
COMMUNICATIONS REGULATORY AUTHORITY OF NAMIBIA

SCHEDULE 1

Introduction and legal context

1. The Minister responsible for Communications on 15 March 2021 published Regulations in terms of Part 6 of Chapter V of the Communications Act (hereafter “the Regulations”).
2. The functions of the Authority relevant to the Regulations are set out in Part 6, Chapter V of the Act.
3. Section 72(4) of the Act stipulates:

“The Authority may after consultation with the Minister impose further conditions on licensees relating to any matter contained in the regulations referred to in subsection (1) which conditions may regulate anything prescribed in these regulations in more detail or which may be necessary in order to facilitate any matter prescribed in the regulations.”
4. Consequently, the purpose of the Conditions is to impose further conditions in accordance with the aforesaid section 72(4) on the service providers defined by regulation 1 of the Regulations.
5. Furthermore, section 74(1) of the Act states:

“Any duty imposed by this Part or any regulation made in terms of this Part may be enforced as if such duty were a licence condition imposed under this Act.”
6. These Conditions must therefore be regarded as part of the license conditions of the service providers to whom the Regulations apply.
7. Failure to adhere to the Conditions bears the same consequences to service providers as failure to adhere to any licence conditions stipulated by or in terms of the Act.
8. The Authority will invoke the provisions of the Act pertaining to non-compliance of its license conditions by a service provider should such service provider be in contravention or non-compliance of these Conditions.
9. These Conditions must be read with the Regulations and Part 6 of Chapter V of the Act.
10. In the event of a conflict between these Conditions and the Regulations, the provisions of the Regulations override the Conditions.
11. These Conditions enter into force with effect from the date communicated by the Authority by written notice to all service providers.
12. In terms of regulation 3 of the Regulations, service providers must store information related to telecommunications for a period of five years from the date the telecommunications occurred.
13. The information include:
 - 13.1. the telephone number or other identification of the customer concerned;
 - 13.2. the internet protocol address allocated to a customer (irrespective of whether that address is allocated only for the duration of a telecommunications session or whether it is allocated permanently to a specific customer) in addition to any information that might be necessary to link a specific packet to a specific customer;

- 13.3. the called number if the call is generated by the user of the service of the service provider and the calling number if the call is initiated by another party than the user of the service of the service provider;
 - 13.4. the source and destination of any other telecommunications in a form that is appropriate for the protocol or application in question: Provided that when a packet-based protocol is used, it is not necessary to store the data relating to every packet, as long as a summary containing the total amount of data transferred and the source and destination of the transfer, is stored;
 - 13.5. the date, time and duration of the telecommunications;
 - 13.6. particulars similar to the information referred to in regulation 3(1) relating to supplementary services or facilities used in association with the telecommunications such as multi-party conferencing, call diversion, abbreviated dialling and voice mail;
 - 13.7. intermediate numbers where the customer establishes conference calling or calls to link through services;
 - 13.8. identification of base station and cell site, in respect of all cellular phones or similar devices in such detail and at such resolution as is normally required to render an efficient service;
 - 13.9. the nature of the telecommunications whether it is voice, fax, a message service or any other form of data.
14. In terms of regulation 7 of the Regulations, a service provider must -
- 14.1. obtain the information and documentation referred to in that regulation in the manner prescribed in regulation 8 or 9 of the Regulations, from each customer, including foreign nationals, prior to providing a service to that customer;
 - 14.2. in respect of a customer who is a natural person, obtain the name, address and identification document and number, in accordance with regulation 7(5);
 - 14.3. in respect of a customer who is a juristic person obtain the information specified in regulation 7(6), including the name, registration number (if any), business address, letterhead and information to identify a natural person representing the juristic person in concluding the contract with the service provider to provide telecommunication services.

The Conditions

SIM registration

15. For purposes of these Conditions, a “SIM Card” means a subscriber identification module, which is an integrated circuit chip, whether structurally embedded in a mobile telephony device or able to be removed from such device, which is intended to securely store an international mobile subscriber identity number and its related key to identify and authenticate subscribers on mobile telephony devices and which contains a unique serial number, international mobile subscriber identity number, security authentication and ciphering information, data relating to the service provider’s network, a list of services the customer has access to and passwords and which enable the user of the mobile telephony device to transmit and receive indirect communications by providing access to telecommunication systems and enabling such telecommunication systems to identify the particular subscriber identity module and its installed information.

16. Where a person resides in an informal settlement and cannot provide an address contemplated in regulation 7(5) the service provider may accept any other address, including that of a school, church or retail store, where a person usually receives his or her post. An “informal settlement” refers to a place in an urban or rural setting used for residential purposes and in respect of which no physical addresses or street particulars are officially assigned.
17. Service providers that provide telecommunications services to a customer by means of a SIM Card must ensure that such customer is registered as the holder of such SIM Card.
18. Service providers must for the purposes set out in regulations 3 and 7 of the Regulations comply with the following:
 - 18.1. No SIM Card may be distributed to a customer or activated unless such customer is registered as the holder of such SIM Card.
 - 18.2. A service provider may not refuse to register a customer’s SIM Card if such customer submitted a correctly completed application complying with all applicable requirements set out in the Regulations.
 - 18.3. A service provider must inform their customers that no customer may be registered as the holder of a SIM Card if that customer does not intend to use such SIM Card personally.

Minors and persons under legal disability

19. If a natural person seeking to conclude a contract with the service provider is a minor or person under legal guardianship, the following conditions apply:
 - 19.1. A service provider may not conclude a contract allowing a minor or a person under legal guardianship to obtain a SIM Card, unless the minor or person under legal guardianship is accompanied by -
 - 19.1.1. his or her parent or legal guardian, as the case may be, with authentic proof of such parenthood or guardianship, such as a certified copy of a full birth certificate or a court order to that effect;
 - 19.1.2. where the minor does not have a parent or legal guardian, a teacher from the school the minor attends, a community leader from the area where the minor resides, a religious leader from a church which the minor attends or a caretaker of the minor and such teacher, community leader, religious leader or caretaker has made a sworn statement declaring that the minor does not have a parent or legal guardian and stating the capacity in which he or she accompanies the minor.
 - 19.2. A SIM Card meant for the use of minors or persons under legal guardianship must be registered in the name of such minor or person using the SIM Card and the person contemplated in condition 19.1.1 or 19.1.2.

Loss and replacement of SIM Cards

20. Service providers must inform their customers that if a customer loses possession of a SIM Card registered to that customer, the customer must apply in writing to the service provider for a SIM Card replacement, whereupon the service provider will cancel the previous SIM Card and register that customer as the holder of a new SIM Card.

21. A service provider may issue a SIM Card replacement only if the customer supplies a signed statement detailing the circumstances that led to the loss of the SIM Card.
22. Upon receiving a SIM Card replacement application, a service provider must immediately deactivate such SIM Card, which must remain deactivated and may not be activated until the service provider approved the application for a SIM Card replacement.
23. Service providers must inform their customers that no customer may, allow any SIM Card issued to that customer, to be used or transferred to another person's mobile telephony device without first applying in writing to the service provider that the SIM Card be delinked from the customer.

Conditions relation to natural persons

24. A natural person may not be registered or remain registered as a customer of a service provider if that person -
 - 24.1. is deceased;
 - 24.2. is fictional;
 - 24.3. does not intend to use telecommunications services;
 - 24.4. did not consent to be registered as a customer; or
 - 24.5. is a minor or a person under legal guardianship and the applicable requirements of these Conditions have not been met.

Conditions relating to security and confidentiality of telecommunications

25. In obtaining and storing the information set out in regulation 3 of the Regulations, a service provider must ensure that its equipment, facilities, or services that provide a customer with the ability to originate, terminate, or direct telecommunications are capable of expeditiously -
 - 25.1. isolating to the exclusion of any other telecommunications, all telecommunications carried by the service provider within a service area to or from equipment, facilities, or services of a customer of such provider;
 - 25.2. isolating and enabling a person entitled to information in terms of regulation 5 of the Regulations, to access information referred to in regulations 3 and 7 of the Regulations -
 - (a) before, during, or immediately after the transmission of telecommunications (or at such later time as may be acceptable to that person); and
 - (b) in a manner that allows it to be associated with the telecommunications to which it pertains;
 - 25.3. delivering intercepted telecommunications to a person entitled thereto in terms of regulation 5 of the Regulations, in a format capable of being transmitted by means of equipment, facilities, or services to a location other than the premises of the service provider; and

- 25.4. facilitating telecommunications interceptions and access to telecommunications information as may be authorised in terms of regulation 5(1) with a minimum of interference with any customer's telecommunications and in a manner that protects -
- (a) the privacy and security of telecommunications and call-identifying information not authorised to be intercepted; and
 - (b) information regarding the State's interception of communications and access to call-identifying information.

Forms of assistance and compensation

26. An institution requesting information in terms of regulation 6 of the Regulations must compensate the service provider in accordance with the provisions of that regulation.
27. Payments made in accordance with regulation 6 must be effected by electronic payment to the bank account designated by the service provider rendering the assistance contemplated by that regulation.
28. A service provider must upon request of the Authority submit to the Authority all policies and procedures adopted to comply with the requirements established in terms of regulations 3 and 7 of the Regulations.

General

29. The absence of technical requirements or standards for implementing the requirements of regulations 3 and 7 of the Regulations does not -
- 29.1. preclude a service provider from deploying a technology or service; or
 - 29.2. relieve a service provider of the obligations imposed by those requirements.
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