



# GOVERNMENT GAZETTE

## OF THE

# REPUBLIC OF NAMIBIA

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## General Notice

### COMMUNICATIONS REGULATORY AUTHORITY OF NAMIBIA

No. 103

2019

#### UNIVERSAL SERVICE OBLIGATIONS GUIDELINES

The Communications Regulatory Authority of Namibia in terms of regulation 11(1) of the Regulations Regarding Rule-Making Procedures published as General Notice No. 334 of 17 December 2010 publishes these Guidelines on Universal Service Obligations, as set out in the Schedule.

**F. KISHI**

**CHAIRPERSON**

**COMMUNICATIONS REGULATORY AUTHORITY OF NAMIBIA**

#### SCHEDULE

##### 1. PURPOSE

- 1.1. The purpose of these Universal Service Obligations Guidelines (hereafter “the Guidelines”) is to clarify the position of the Communications Regulatory Authority of Namibia (hereafter “CRAN”) with regard to the obligations of telecommunications service licensees in setting and complying with their universal service obligations contemplated under the Communications Act, 2009 (Act No. 8 of 2009, hereafter “the Communications Act” or “the Act”).

- 1.2. The Guidelines provides guidance to CRAN regarding the manner in which universal service obligations will be imposed, managed and administered to ensure the optimal provision of telecommunications services to locations and populations in Namibia that are not adequately covered by existing network infrastructure and service options.

## 2. LEGAL FRAMEWORK

- 2.1. The Communications Act defines **universal service** as the services prescribed in terms of section 57(1) of the Act.
- 2.2. Consequently, CRAN after following a rule-making procedure published Regulations Prescribing the Provision of Universal Service by Telecommunications Service Licensees” in General Notice No. 178 of 8 May 2018 (hereafter the “Universal Service Regulations”) in terms of section 57(1) of the Act.
- 2.3. The Universal Service Regulations stipulate that the following telecommunications services are the minimum set of services that a telecommunications service licensee must make available:
- (a) fixed, mobile or broadband data services;
  - (b) fixed and mobile voice services; or
  - (c) any electronic communications service that the Authority determines in writing.
- 2.4. The services referred to in paragraph 2.3 are collectively and individually referred to herein as the minimum universal services.
- 2.5. In terms of Regulation 4(1) of the Universal Service Regulations all telecommunications service licensees must, subject to their license conditions make the minimum universal services available to a community of more than 50 persons. Those licensees must also avail the infrastructure and facilities as well as the equipment and user devices necessary to support the provision of the minimum universal services. Moreover, the licensees should also provide end user training and skills development to members of the communities in question.
- 2.6. In terms of Regulation 4(2), CRAN may also, if there are funds available for that purpose, grant subsidies to telecommunications service licensees to provide the minimum universal services to communities comprising less than 50 persons, but consisting of-
- persons with disabilities;
  - elderly persons and other recipients of social grants; and
  - any other categories of users able to justify the need for universal service access on merit.
- 2.7. As specified by Regulation 5 of the Universal Service Regulations, telecommunications service licensees must also provide the minimum universal services to -
- small and medium enterprises and other informal business entities in both urban and rural communities;
  - non-governmental organizations engaged in promoting democratic participation and social welfare;

- workers and communities in mines, farms, nature reserves and conservancies;
  - registered and recognized organizations representing persons with disabilities; and
  - households in both urban and rural areas.
- 2.8. Those licensees must also avail the equipment and end-user devices, duly type-approved by CRAN, which are necessary to support the provision of the minimum universal services to provide in the telecommunications needs of the categories of communities and customers referred to in paragraph 2.7.
- 2.9. Regulation 6 further requires telecommunications service licensees to avail the minimum universal services to the general public or to schools, higher education institutions, libraries, hospitals, clinics, health facilities, or any similar public institutions, which serve the needs of the general public or that are available for use by the public.
- 2.10. Section 38 of the Communications Act regulates the granting of telecommunications service licenses. Section 38(10) provides that CRAN may impose specific obligations and requirements on a telecommunications service licensee regarding the mandatory provision of the minimum universal services.
- 2.11. In this regard section 42(2) provides that CRAN may modify a telecommunications service licence upon a finding by the Authority that such modification would serve the objects of the Act. Before CRAN modifies such license, though, the Authority must give the licensee adequate advance notice of such modification and state the grounds for such modification. The Authority must further give the licensee an opportunity to object to such modification.
- 2.12. In addition, section 40 of the Act makes provision for the renewal of telecommunications service licenses, which presupposes that such licenses may be granted for a fixed period whereupon an application for renewal has to be made by the licensee.
- 2.13. Moreover, section 39 of the Communications Act is concerned with selection criteria for telecommunications service licences. In particular, section 39(4) provides that CRAN may consider a licensee's commitments to meeting its universal service obligations when the Authority is considering the granting of an individual licence.
- 2.14. Section 57 of the Act deals with the provision of the minimum universal services by a telecommunications service licensee.
- 2.15. In terms of section 57(3) of the Act, CRAN may issue an order (hereafter "a universal service order") instructing a licensee to provide a specified form of universal service in a specified area, subject to specified conditions. The issuance of such order is subject to the provisions of section 57(4), 57(5) and 57(6).
- 2.16. Section 57(4) of the Act provides that a universal service order must state whether subsidies will be paid by the Authority from the Universal Service Fund and if subsidies will be paid, it must state the amount thereof or the basis on which the subsidies must be calculated.
- 2.17. The Universal Service Fund is established by section 56 of the Act, but awaits operationalization. At this juncture, and until further notice, no subsidies will be paid or payable from that Fund.
- 2.18. In terms of section 57(5) of the Act and in the absence of any subsidies from the Universal Service Fund, a universal service order may only be issued if the services which the order compels the licensee to render are within the scope of a condition imposed on its telecommunications service licence.

- 2.19. Section 57(6) states that when CRAN issues a universal service order, it must consider any minimum universal services which a particular licensee has rendered. The Authority must also consider the repayment of money by a licensee that was borrowed to render minimum universal services before the commencement of the Communications Act on 18 May 2011.
- 2.20. Section 57(7) allows CRAN to request tenders or institute a system of competitive bidding for the rendering of any minimum universal services. In such case, the provisions of section 41 of the Act applies which allows CRAN (under the circumstances determined by regulation and subject to the conditions and procedures, similarly determined by regulation) to invite tenders for the provision of the class of telecommunications services specified in a notice published in the Government Gazette.
- 2.21. Section 57(9) provides that after a tender or bid for the provision of minimum universal services are accepted, CRAN may conclude a contract with the successful licensee, subject to those conditions which were included in the requests for bids or tenders.
- 2.22. In terms of section 57(10) CRAN may after a rule-making procedure determine an accounting system by regulation, which a licensee must follow to calculate the cost of complying with a universal service order. Section 57(11), however allows CRAN, if there is no prescribed accounting system, to agree with a telecommunications service licensee on an accounting system to be followed in a specific case, if CRAN is of opinion that such a system will accurately reflect the cost of providing the minimum universal services to which the system concerned will apply.
- 2.23. Section 57(12) requires that the accounting system used to determine the costs of complying with a universal service order, must be audited in respect of every licensee at the expense of that licensee by a registered accountant and auditor in terms of the Public Accountants' and Auditors' Act, 1951 (Act No. 51 of 1951).
- 2.24. In terms of section 57(13) a licensee must submit to CRAN the audited statements concerned, as well as any interim statements relating to the provision of minimum universal services which the Authority may request.

### **3. OPERATIONALIZATION OF PART 4 OF CHAPTER V OF THE ACT**

- 3.1. The Minister of Information And Communications Technology enacted Part 4 (entitled "Universal Service") of Chapter V of the Communications Act with effect from 1 December 2016.
- 3.2. The Universal Service Regulations are administered by the Board of CRAN and administratively managed by the Universal Access and Services (UAS) Department.

### **4. MARKET GAP ANALYSIS**

- 4.1. It is important to identify -
  - (a) the current status of access to the minimum universal services that determines national points of interest serving to prioritize key areas in Namibia; and
  - (b) what is considered to be a basic and essential service in the determined points of interest.
- 4.2. For that reason, CRAN is in the process of conducting a Market Gap Analysis aimed at examining the following:

- (a) Availability – what type and level of telecommunications services, facilities and infrastructure is available for users? Do all areas in the country receive the same service without geographical discrimination?
  - (b) Accessibility – can all people in Namibia access or reach telecommunications services, facilities and infrastructure in a non-discriminatory manner at all places?
  - (c) Affordability – can all people afford usage of the basic and essential telecommunications services, facilities and infrastructure allowing them to derive and generate socio-economic benefits?
- 4.3. The results of the Market Gap Analysis will best be quantifiable in terms of the extent to which a licensee achieves the implementation of the minimum universal services and more particularly the extent of national coverage of such minimum services with reference to schools, higher education institutions, libraries, hospitals, clinics, health facilities, or any similar public institutions.
- 4.4. Consultations with the telecommunications industry regarding strategies of licensees to expand their minimum universal service plans and their view of how far the telecommunications market will be able to close gaps in the provision of the minimum universal service obligations will be conducted along with the Market Gap Analysis.
- 4.5. CRAN may consult with various telecommunications service license and other key stakeholders, including utility companies to determine service provisions and regulatory enhancements able to improve the provision of the minimum universal services.
- 4.6. Before obligating any licensee, CRAN must apportion the obligation to provide the gap or minimum universal services according to what each licensee has done of its own accord.

## **5. OBJECTIVES OF UNIVERSAL SERVICE OBLIGATIONS**

- 5.1. Vast areas in Namibia are not enjoying reasonable access to telecommunications services on an equitable basis.
- 5.2. The use of universal service obligations to achieve the widest amplitude of telecommunications services is increasingly the norm globally, even in public monopolies as they gradually commercialize and their relationship to national government and economic objectives becomes more explicit and formalized.
- 5.3. CRAN seeks to implement the active imposition of universal service obligations on telecommunications service licensees in terms of the Communications Act. This has three broad objectives:
- (a) To ensure that all citizens have access to a set of basic yet essential telecommunications services throughout Namibia at affordable costs.
  - (b) To assist population groups and areas which are beyond the reach of the communications market to have access without distorting the market; and
  - (c) To enable people to develop the capacity to use telecommunications services and take advantage of its many opportunities and benefits.
- 5.4. More specifically universal service obligations should -

- (a) promote increased access to telecommunications services, facilities and infrastructure by under-served and unserved areas of Namibia;
- (b) ensure increased access for schools, higher education institutions, libraries, hospitals, health clinics, health facilities, or similar public institutions to schools, higher education institutions, libraries, hospitals, clinics, health facilities, or any similar public institutions, to telecommunications services, facilities and infrastructure;
- (c) promote and encourage socio-economic development by making access to telecommunications services, facilities and infrastructure easier for -
  - small and medium enterprises and other informal business entities in both urban and rural communities;
  - non-governmental organizations engaged in promoting democratic participation and social welfare;
  - workers and communities in mines, farms, nature reserves and conservancies;
  - registered and recognized organizations representing persons with disabilities; and
  - households in both urban and rural areas;
- (d) facilitate and improve capacity building in the optimal use of telecommunications services, facilities and infrastructure; and
- (e) encourage and incentivize telecommunications service licensees to ensure access to telecommunications services in uneconomical areas and to initiate, manage and oversee the implementation of universal service programs, projects, research and initiatives.

## **6. CONSIDERATIONS APPLICABLE TO UNIVERSAL SERVICE OBLIGATIONS**

- 6.1. CRAN will take into account the following considerations relating to the imposition of universal service obligations:
  - (a) sustainability of the obligations;
  - (b) practicality of implementation of the obligations;
  - (c) probable impact of the obligations; and
  - (d) the services a licensee has provided or is providing to remote areas that are not commercially viable.
- 6.2. Obligations may be designed and prioritized by CRAN according to a commercial viability analysis described more fully hereunder. This applies mainly to supply-side oriented projects which are aimed at building and operating infrastructure by licensees to supply specific services. These obligations are to be economically viable, or at times are close to becoming viable. A commercial viability analysis can be used to categorize, group and prioritize individual project clusters.
- 6.3. Some obligations might not be commercially viable, such as capacity building or technology upgrades where the focus is mainly on sustainability of existing projects to better provide telecommunications services.

## 7. COMMERCIAL VIABILITY ANALYSIS AND PRIORITISATION

7.1. CRAN estimates revenues and costs for 5 to 10 years and determine the commercial viability and investment return expected of providing minimum universal services considered for implementation. The following includes typical inputs to the model:

- Population numbers and their demand or projected expenditures on telecommunications services;
- per capita and household incomes to cross-check reasonable telecommunications expenditure as a percentage of income;
- geographic areas that are unserved or under-served by telecommunications service licensees; and
- Infrastructure and service supply costs.

7.2. The output of the commercially viable model will produce a viability rating as a percentage for each project or project area. The viability rating is the amount that the model calculates as the amount of subsidy compared to the overall investment needed. For example: assuming to serve an area with telecommunications requires a N\$1 000 000.00 investment, and the subsidy required to make this investment profitable is N\$200 000.00. The licensee invests N\$800 000.00 and the subsidy is N\$200 000.00, this area would be deemed 80% viable.

7.3. The table below shows a typical categorization of viability ratings.

Category	Viability Factor	Project Description and Priority Implication
Category 1	>100%	Definitely commercially viable and will be served by existing licensees soon, no subsidy required
Category 2	76-100%	Project is close to viable under optimistic or <i>strategic Assumptions</i> . <i>Not yet specifically targeted by existing licensees, but could be targeted commercially soon without financial incentive. Predicted subsidy less than 25% of Capex. UAS Program could accelerate investment, but there is a risk that it will be served soon anyway.</i>
Category 3	51-75%	Commercially unviable without a subsidy in the range of 25-50% of overall investment. Good target for UAS Program.
Category 4	26-50%	Unviable and very unlikely to be served without subsidy in the range 50-75% of overall investment. Should be targeted for UAS Program subsidy
Category 5	0-25%	Definitely unviable without major subsidy, e.g., requiring more than 75% of overall investment. Also may require an ongoing operating cost subsidy. Should be targeted later when the market has expanded.

7.4. In accordance with UAS's objective of issuing obligations to telecommunications licensees, leveraging commercial sector participation and supporting sustainable development of services with no subsidy needed, the UAS would focus on projects with a viability of 76% -100% in category 1 & 2.

## 8. METHODS OF IMPOSING UNIVERSAL SERVICE OBLIGATIONS

### 8.1. *Modification of licenses*

8.1.1. CRAN may impose **specific obligations and requirements on a telecommunications service licensee** regarding the mandatory provision of the minimum universal services.

- 8.1.2. In this regard CRAN may in terms of section 42(2) of the Act require a telecommunications service licensee to modify its licence to impose on the licensee the mandatory provision of one or more minimum universal services.
- 8.1.3. Such license modification may include -
- (a) placing obligations on telecommunications service licensees to provide minimum universal services in unserved and under-served areas that are considered to be commercially viable;
  - (b) imposing conditions on such licensees to provide minimum universal services in areas which although not deemed commercially viable, but in respect of which important gaps in access to telecommunications services could be bridged; and
  - (c) imposing roll-out, quality of service and reporting obligations.
- 8.1.4. Before CRAN modifies a telecommunications license in the manner stated above, the licensee concerned will be given adequate advance notice of such modification and the Authority will state the grounds for such modification. The Authority must further give the licensee an opportunity to object to such modification.
- 8.1.5. CRAN may incentivize the modification of a telecommunications license to impose mandatory provision of the minimum universal services by a telecommunications licensee in the following ways:
- (a) The reduction of regulatory fees and taxes (licensing, spectrum, import, airtime);
  - (b) removing restrictions on the use of certain LTE spectrum frequencies in rural areas;
  - (c) having a technology neutral licensing regime;
  - (d) simplifying licensing processes that would allow the entrée of regional and/or rural telecommunications service providers;
  - (e) facilitating interconnection (possibly asymmetrical);
  - (f) simplifying and facilitating the process of obtaining rights-of-way; and
  - (g) requiring infrastructure-sharing between telecommunications operators, and facilitating a framework that enables sharing across sectors.

## 8.2. *Renewal of licenses*

- 8.2.1. CRAN may amend its licensing conditions for telecommunications service licenses to make provision for fixed-term licenses and require periodic renewal of such licenses.
- 8.2.2. As part of the renewal process, the Authority may impose conditions on telecommunications service licensees in the manner contemplated in paragraph 8.1 above.



### 8.3. *Application for new licenses*

8.3.1. CRAN may impose conditions on all new entrants holding telecommunications services licenses to mandatorily make provision for the minimum universal services in designated areas in the manner contemplated in paragraph 8.1 above.

### 8.4. *Imposing of a universal service order*

8.4.1. After CRAN has imposed an obligation on a telecommunications service licensee to provide minimum universal services, irrespective if the obligation was imposed as a result of a modification of the license, a renewal thereof or at the granting thereof, CRAN may issue a universal service order to such licensee instructing the licensee to provide a specified form of the minimum universal services in a specified area, subject to specified conditions.

### 8.5. *Tendering and submission of bids*

8.5.1. CRAN may invite tenders for the provision of minimum universal services in designated under-served or unserved areas and award individual telecommunications service licences to any of the persons who submitted tenders to it as in its opinion will promote the objects of the Act. Such licence offers licensees an opportunity to expand beyond the under-served or unserved areas or to provide additional services once the universal service obligations are met.

8.5.2. CRAN may also grant telecommunications services licensees access to IMT spectrum as part of the license tendering strategy limited to the designated under-served and unserved areas in order to enhance the provision of the minimum universal services to these areas.

### 8.6. *Subsidies from the Universal Service Fund*

8.6.1. Upon operationalization of the Universal Service Fund, CRAN will ensure the provision of subsidies to telecommunications service licensees to make provision for the minimum universal services in designated areas and for specified purposes in accordance with the Communications Act.

## 9. **REPORTING OBLIGATIONS**

9.1. CRAN requires periodic reports and returns from telecommunications service licensees regarding the implementation of their universal service obligations showing project and service status and rollout statistics.

9.2. Furthermore, CRAN will keep record of total project achievements and will monitor licensees' performance against their service contracts.

## 10. **QUALITY OF SERVICE OBLIGATIONS**

10.1. CRAN will also maintain a database of service quality requirements and licensee compliance, in order to-

- (a) ensure the licensees comply with their universal service obligations;
- (b) determine the need for remedial action; and
- (c) create competitive pressure towards good performance.

## 11. ENFORCEMENT OF UNIVERSAL SERVICE OBLIGATIONS

- 11.1. Telecommunications service licensees issued with universal service obligations are subject to all the requirements of their licences.
- 11.2. CRAN may exercise whatever rights and perform any functions determined under the Communications Act in the event of violations by of license conditions by telecommunications service licensees.

### ANNEXURE A

#### SUMMARY AND ANALYSIS OF COMMENTS RECEIVED

##### 1. BACKGROUND

The Notice of Intention to make Universal Service Obligations Guidelines was published in the Government Gazette No. 6800, General Notice No. 694. The Authority received written comments submission from MTC. A public hearing was held on 12 February 2019 during which verbal comments and input were received. The notice also called for written submissions which were received from Mobile Telecommunications Limited. The input and comments received are summarized and responded to below.

##### 2. STAKEHOLDER INPUT

###### 2.1 *Written submission from MTC*

- a) MTC Submitted that paragraph 2.5 of the Guidelines contradicts regulation 4(1) of the Regulations Prescribing the provision of Universal Service in that it omits the words ..... *subject to its licence conditions*.... It is MTC's submission that the Guidelines cannot supersede the Regulations to the Act which is law.

###### Authority response

The Authority noted the comment and paragraph 2.5 of the guidelines will be amended to ensure consistency with the Regulations.

- b) *MTC propose the addition of the following paragraph:*

*4.6 CRAN shall apportion the obligation to provide the gap or minimum universal services according to what each licensee has done on its own accord, prior to being obligated."*

###### Authority response

The Authority accepts the proposed insertion as it is in line with the principles of section 57(6) of the Communications Act.

- c) *MTC further propose the addition of the following paragraph:*

*"(d) What services the Licensee has provided in aid of providing services to remote areas that are not commercially viable"*

###### Authority response

The Authority accepts the proposed paragraph as it is in line with the provisions of section 57(6) of the Communications Act.

**d) MTC propose the addition of the following paragraph:**

*“8.1.6 CRAN shall incentivize the modification of a telecommunications licence by reduction or foregoing the universal service levy were the licensee has shown that it has provided the minimum universal services prior to the Regulation being effective.”*

**Authority response**

The Authority does not accept this proposal as it will make the levying process cumbersome. Services rolled out prior to the commencement of the regulations will however receive recognition but during the imposition of a UAS order and the allocation of subsidies thereto as contemplated in section 57 (4), (5) & (6).

**2.2 Oral submissions**

At the public hearing the Authority received the following comments:

**a) Mixed Radio**

Mixed Radio queried whether the Authority is opposed to public, private partnerships where organisations stand together to provide funding and the necessary services

**Authority response**

It was advised that the Communications Act sets out the funding mechanisms for the fund which is by imposition of a universal service levy. The Authority however noted the comment and agreed to investigate other funding mechanisms to ensure that there is money in the fund to roll out the projects. The Authority will also look at the legal framework on private, public partnerships to ascertain whether the PPP framework may be utilized to fund the universal service fund.

**Views by other licensees in response to MTC comments**

The Chairperson of the hearing opened up a discussion to hear from other licensees on comments by MTC regarding the recognition of universal services rolled out by licensees at own cost prior to the commencement of the regulations.

**b) Powercom**

Powercom is of the view that roll out at own costs before the operation of the fund is a typical business investment and a pro-active initiative to gain competitive edge in the market and should therefore, not be mixed with universal service obligations. Powercom concluded that the two should be considered separately. However, credit should be given to operators who have undertaken such initiative on their own.

**c) Telecom Namibia**

Telecom concurred with Powercom and highlighted the intention of UAS is to focus on the areas where there are gaps in order to achieve the desired coverage.

**d) Paratus**

Paratus posed a question on, whether the licence conditions of the operator responsible for the roll out on their own accord will be different from the general conditions that will be imposed after the finalization of the market gap analysis.

**Authority response**

The Authority responded that licensees currently have generic license conditions and the universal service obligations will be an addition to the current licence conditions.

e) **MTC**

MTC is of the view that spectrum will play a vital role in meeting universal service obligations as well as transmission and the Authority should take that into consideration when imposing obligations.

**3. WAY FORWARD**

The Authority noted the stakeholders' comments, and is addressed as follows:

- a) The Guidelines are aligned with the provisions of the Regulations;
  - b) When imposing universal service obligations, the following factors will be considered:
    - i. Services rolled out by licensees on their own accord;
    - ii. The cost of provision of such services prior to the commencement of the Regulations.
-