



GOVERNMENT GAZETTE

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REPUBLIC OF NAMIBIA

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General Notice

COMMUNICATIONS REGULATORY AUTHORITY OF NAMIBIA

No. 104

2019

REGULATIONS PRESCRIBING PROCEDURES REGARDING APPLICATION FOR, AND AMENDMENT, RENEWAL, TRANSFER AND CANCELLATION OF SPECTRUM LICENCES: COMMUNICATIONS ACT, 2009

In terms of section 101(2), section 101(5), section 101(14) and section 101(16) read with section 129 of the Communications Act, 2009 (Act No. 8 of 2009) the Communications Regulatory Authority-

- (a) makes the Regulations set out in the Schedule;
- (b) amends the Regulations Regarding Licensing Procedures For Telecommunications and Broadcasting Service Licenses and Spectrum Use Licenses published under General Notice No. 272 of 29 August 2011;
- (c) repeals the Regulations Regarding License Exempt Spectrum published under General Notice No. 395 of 25 November 2011; and
- (d) repeals the Regulations Setting Out License Conditions For Spectrum Use Licenses published under General Notice No. 469 of 2 December 2013.

F. KISHI
CHAIRPERSON OF THE BOARD
COMMUNICATIONS REGULATORY AUTHORITY OF NAMIBIA

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**PART 1
INTRODUCTORY PROVISIONS****Definitions**

1. In these Regulations, any word or expression to which a meaning is assigned in the Act has that meaning, and -

“Act” means the Communications Act, 2009 (Act No. 8 of 2009);

“applicant” means a person applying for a spectrum license or for the amendment, renewal, transfer or withdrawal of a spectrum license;

“Bid” means the submission of the suite of documents required in terms of a Request to Bid;

“Bidder” means an applicant which has submitted a Bid following a Request to Bid;

“Frequency Band Plan” means the Frequency Band Plan of Namibia published under General Notice No. 424 of 28 October 2016;

“licensee” means any person to whom a spectrum license has been issued in terms of **Part 2 or 3**;

“Regulations Setting Out Fees For Spectrum Licenses, Certificates and Examinations” means the Regulations Setting Out Fees For Spectrum Licenses, Certificates and Examinations published under General Notice No. 155 of 1 June 2017;

“Regulations Prescribing Forms For Applications” means the Regulations Prescribing Forms For Applications published under General Notice No. 328 of 19 August 2013;

“Request to Bid” means an invitation issued by CRAN to prospective Bidders to submit a Bid complying with the qualification criteria for a spectrum auction stipulated by **regulation 7**;

“spectrum auction” means the process whereby the Authority uses an auction system to sell the rights to use any radio frequency or group of radio frequencies or radio receiver over specific bands of the radio frequency spectrum as determined by the Frequency Band Plan and to assign scarce spectrum resources; and

“spectrum license” means a spectrum license conferring on the licensee the right to use any radio frequency or group of radio frequencies or radio receiver under the Frequency Band Plan.

Objects and application of Regulations

2. (1) The objects of these Regulations are to-
 - (a) establish the framework through which the Authority allocates radio frequency spectrum under the Frequency Band Plan;
 - (b) to provide a long-term framework for conferring on a licensee the right to use any radio frequency or group of radio frequencies or radio receiver under the Frequency Band Plan;
 - (c) determine fair, efficient and transparent licensing procedures which an applicant must follow in applying for a spectrum licence;
 - (d) provide for circumstances in which the use and possession of radio apparatus does not require a spectrum license and for the categories of radio apparatus in respect of which a spectrum license is not required; and
 - (e) set up a formalized process for the amendment, renewal, transfer and withdrawal of spectrum licences.
- (2) These Regulations apply to all applicants, licensees and participants in a spectrum auction.

Submission of documents to Authority

3. Whenever documents are required to be delivered to the Authority, such documents must be delivered physically or electronically-
 - (a) by hand to an employee of the Authority at its principal place of business, being Communication House, No. 56 Robert Mugabe Avenue, Windhoek;
 - (b) by post mailed to Private Bag 13309, Windhoek;
 - (c) by electronic mail sent to operations@cran.na;
 - (d) by facsimile faxed to +264 61 222 790; or
 - (e) in any other manner or to any other address specified by the Authority from time to time.

PART 2
ADMINISTRATIVE SPECTRUM LICENSE

Application procedure for right to use radio frequency spectrum

4. (1) The Authority may from time to time in its sole discretion publish a notice in the *Gazette* notifying that a radio frequency spectrum band under the Frequency Band Plan as specified in the notice is open for application to be conferred on a first-come-first-served basis.

(2) Subject to the provisions of these Regulations, any person who intends to apply for the right to use radio frequency spectrum referred to in subregulation (1) must apply to the Authority for a spectrum licence.

(3) An application referred to in subregulation (2) must be made on a form that substantially corresponds to **Form CRAN 3** set out in the Regulations Prescribing Forms For Applications in respect of which the applicant must be particularly accurate in completing the technical portion supplying all the details required.

(4) The aforesaid application must be accompanied by the following information and documentation, namely-

- (a) the full and official name of the applicant, and if the applicant is a juristic person, the registration number of that person;
- (b) the name of a contact person responsible for liaison with the Authority on issues pertaining to these Regulations and the following contact details of that person-
 - (i) physical address;
 - (ii) postal address;
 - (iii) telephone number or numbers;
 - (iv) facsimile number or numbers; and
 - (v) electronic mail address or addresses;
- (c) full details of all ownership interests in the applicant, including the identity and nationality of holders of such ownership interests and if the holder of any ownership interests is a juristic person, full details of all ownership interests in the juristic person;
- (d) full details regarding foreign ownership interests in the applicant, if any;
- (e) where the applicant is a company or close corporation, a certificate incorporation issued by the relevant official employed by the Ministry responsible for Trade;
- (f) a complete, accurate and concise business plan setting out-
 - (i) a complete list of radio frequencies or groups of frequencies being applied for;
 - (ii) a complete, accurate and concise statement of the services the applicant intends to provide in exercising the right to use the radio frequency spectrum being applied for;

- (iii) any other services being provided or to be provided by the applicant in connection with the radio frequency spectrum applied for;
 - (g) any other information required by the Authority relevant to the application or that the applicant believes might be relevant to the Authority in considering the application.
- (5) The Authority may, after receiving an application referred to in subregulation (2), request the applicant by written notice to provide it with additional information reasonably required by the Authority in considering the application, which the applicant must provide to the Authority within a reasonable period specified by the Authority in that notice.
- (6) The aforesaid application must be accompanied by any fee payable in terms of the Regulations Setting Out Fees For Spectrum Licenses, Certificates and Examinations.
- (7) The Authority must forthwith publish a notice of the aforesaid application in the *Gazette* and invite the public to may make written comments to the Authority within the time set out in the notice, which time may not be less than 14 days from the date of the publication.
- (8) The Authority will provide the opportunity to an applicant to respond to any written comments contemplated in subregulation (7)
- (9) An applicant's response to public comments must be submitted in writing to the Authority within the time set out by the Authority, which time may be not less than 14 days from the deadline for the submission of public comments or if the notice for submissions of responses is published in a subsequent *Gazette*, not less than 14 days from the date of that publication.
- (10) The times for the submissions of public comments and applicant responses are to be determined by the Authority in lights of the nature of the application.
- (11) The Authority may consider written submissions not timeously filed if, in its opinion, it is practical to do so.
- (12) The Authority may request further written submissions, such as for further information or clarification, which must be provided to the Authority in the time and the manner set out by the Authority.
- (13) All written submissions must-
- (a) contain the name and contact details of the person making the written submissions or the name and contact details of the person for whom the written submission is made, if different;
 - (b) be clear and concise; and
 - (c) conform to any further requirements determined by the Authority from time to time.
- (14) After considering any application made in terms of this regulation and any written or oral submissions, if any referred to herein, the Authority may refuse or grant the application, in whole or in part.
- (15) If the Authority grants the license the Authority must issue to the applicant a spectrum license in the form determined and subject to the conditions imposed by the Authority.
- (16) The Authority must whether requested by an applicant or not, furnish reasons to the applicant for its decision to grant a spectrum license.

Application to use spectrum together with service licence exempt telecommunications service categories

5. (1) The following telecommunications services categories may be provided without a licence in terms of the Act:

- (a) amateur service;
- (b) aeronautical services;
- (c) citizen band service;
- (d) maritime service;
- (e) navigation and radar system service;
- (f) private ECS/ECNS; and
- (g) alarm system service and emergency response system service.

(2) Subject to these Regulations, a person who intends to apply for the right to use radio frequency spectrum under the Frequency Band Plan, in conjunction with the telecommunications services referred to in subregulation (1), must with the changes necessitated by the context comply with **regulation 4(2) to (5)**.

(3) After considering any application made in terms of this regulation, the Authority may refuse or grant the application, in whole or in part.

(4) If the Authority grants the license the Authority must issue to the applicant a spectrum license in the form determined and subject to the conditions imposed by the Authority.

(5) The Authority must whether requested by an applicant or not, furnish reasons to the applicant for its decision to grant a spectrum license.

PART 3 SPECTRUM AUCTIONS

Request to Bid

6. (1) The Authority may from time to time in its sole discretion publish by notice in the *Gazette* a notification that a radio frequency spectrum band under the Frequency Band Plan, as specified in the notice is to be conferred on a competitive basis by means of a spectrum auction, provided that -

- (a) no radio frequency spectrum to be used in accordance with **regulation 5** may be subject to a spectrum auction; and
- (b) only spectrum bands with a high market value or in high demand may be conferred by means of a spectrum auction.

(2) Where the Authority determines that a spectrum auction should take place in terms of subregulation (1), the Authority must issue a Request to Bid.

- (3) A Request to Bid must set out-

- (a) the subject-matter of the Request to Bid;
- (b) the date, time and place for the submission of any Bid;
- (c) the application fee;
- (d) applicable qualification criteria;
- (e) the terms and conditions relevant to the Request to Bid;
- (f) the proposed license conditions subject to which the spectrum license conferring the right to use radio frequency spectrum will be issued;
- (g) the procedures for submitting the Bid;
- (h) conditions and procedures for-
 - (i) the amendment of a Bid; or
 - (ii) the submission of supplementary information relating to the Bid;
 - (iii) the disqualification of a Bidder from the bidding process;
- (i) the selection process;
- (j) the evaluation criteria;
- (k) the spectrum auction rules or other bidding mechanism employed by the Authority for purpose of such auction;
- (l) the period of validity of the spectrum license that will be issued to a successful Bidder;
- (m) any other information or requirements the Authority deems necessary.

(4) The Authority must in accordance with the spectrum auction rules referred to in subregulation (3)(k) determine the reserve price applicable to each spectrum block intended to be auctioned as well as the auction method to be followed.

(5) In determining the radio frequency spectrum band under the Frequency Band Plan, which is to be conferred on a competitive basis by means of a spectrum auction, the Authority must consider and stipulate in the Request for Bids -

- (a) the size of spectrum blocks to be auctioned;
- (b) whether the spectrum blocks to be auctioned will be limited to one spectrum band or a combination of spectrum bands;
- (c) the number of spectrum licences that will be offered;
- (d) the imposition of network rollout obligations;
- (e) whether spectrum caps should be imposed to prevent uncompetitive market dominance;

- (f) special conditions to encourage -
 - (i) new entrants or smaller licensees to take part in spectrum auctions;
 - (ii) the provision of services not already offered in the market;
 - (g) an auction process and rules to prevent collusions and ensure transparency in the spectrum auction process; and
 - (h) the objects of the Act that the Authority aims to achieve in making the determination on spectrum blocks and the size of any spectrum blocks to be auctioned.
- (6) For purposes of subregulations (4) and (5) -
- (a) “reserve price” means the minimum price payable for a spectrum block to be conferred in terms of a spectrum auction; and
 - (b) “spectrum block” means the radio frequency spectrum band under the Frequency Band Plan, as determined by the Authority, which is to be conferred on a competitive basis by means of a spectrum auction.

Bidder qualification

7. (1) The Authority will permit only those Bidders who meet the qualification criteria referred to in subregulation (2) to participate in the bid award process.

- (2) The qualification criteria include that -
- (a) the Bidder complied with the procedures and manner in which to submit a Bid referred to in **regulation 6**;
 - (b) the Bidder has paid the applicable application fee;
 - (c) subject to paragraphs (d) and (e) a Bidder may comprise a consortium which may include the holder of a telecommunications service license or broadcasting license or comprise the holders of telecommunications service licenses or broadcasting licenses or a combination of such licensees;
 - (d) subject to paragraph (e), the Bidder must either be an established licensee in Namibia or the holder of a broadcasting license or a telecommunications license;
 - (e) if the Bidder does not meet the qualifications criteria set out in paragraph (d) or is a Bidder contemplated in paragraph (c), the Bidder demonstrated its ability to -
 - (i) meet applicable network coverage and quality of service obligations by the provision of an appropriately detailed technical network roll-out plan; and
 - (ii) provide telecommunications services or broadcasting services in Namibia through the provision of an appropriately detailed business plan;
 - (f) the Bidder is solvent and cannot be-
 - (i) in default of loan payments or in negotiations regarding debt settlement proceedings;

- (ii) insolvent or the subject of a liquidation or winding-up application; or
 - (iii) in the process of passing or in the position of having passed a resolution for a voluntary winding up;
- (g) the Bidder demonstrated its ability to meet the financial requirement of -
- (i) paying at least the reserve price for the radio frequency spectrum band, in respect of which it submitted a Bid;
 - (ii) building and operating a telecommunications network and providing telecommunications services or broadcasting services, as the case may be, by providing:
 - (aa) an appropriately detailed financial plan which indicates the annual and total funding requirement for the build and operation of the telecommunications network and provision of telecommunication services or broadcasting services until the business operation concerned becomes self-funding;
 - (bb) appropriately detailed financing plan which demonstrates the amount and timings of the sources of funds which will be used to meeting the funding requirement referred to in paragraph (bb); and
 - (cc) independent evidence of the availability of the funds identified in the financial plan; and
- (h) the Bidder provides an appropriate bank guarantee in the form and for the amount stipulated by the Authority in the Request to Bid.

Disqualification of Bidder

- 8.** A Bidder will be disqualified from the bidding process where such Bidder -
- (a) submitted a Bid and is an affiliate or business associate of another Bidder or has an ownership or financial interest in respect of another Bidder who submitted a Bid relating to the same Request to Bid;
 - (b) has been granted a spectrum license conferring the right to use radio frequency spectrum under the Frequency Band Plan within the designated frequency range stipulated in the Request to Bid, unless the Bidder has less than the maximum bandwidth made available in terms of the aforesaid Request, in which case the Bidder will only be allowed to Bid for the right to use additional radio frequency spectrum resulting in a total conferment not exceeding the maximum bandwidth available;
 - (c) submitted more than one Bid relating to the designated range of radio frequency spectrum stipulated in the Request to Bid;
 - (d) submitted a Bid containing false or misleading information;
 - (e) is colluding or attempting to collude with another Bidder in order to distort or manipulate information;
 - (f) obtained or acquired confidential information regarding another Bidder;

- (g) failed to comply with the terms and conditions relevant to the Request to Bid; or
- (h) failed to comply with a request by the Authority relating to a material aspect of the Bid.

Notice of Bids received

9. Once all Bids are received in accordance with a Request to Bid, the Authority must publish a notice in the *Gazette* and one newspaper with national circulation -

- (a) notifying the names of all Bidders; and
- (b) specifying the radio frequency spectrum in respect of which the spectrum auction will take place.

Award of Bid

10. (1) The Authority must, following a spectrum auction consequent to a Request to Bid and after having followed the procedures set out in **regulation 4(6) to (13)** notify any successful bidder and specify in such notice -

- (a) the spectrum block assigned to the Bidder;
- (b) the total auction price to be paid to the Authority; and
- (c) a payment schedule detailing the terms and conditions for payment including the amount and frequency of payment and the deadline by which the total auction price must be made in full.

(2) After payment of the auction price the Authority must issue the successful Bidder with a spectrum license in the form determined and subject to the conditions imposed by the Authority.

(3) The Authority must publish the results of a spectrum auction on its website and in the *Gazette*.

PART 4

DURATION, AMENDMENT, RENEWAL, TRANSFER AND CANCELLATION OF SPECTRUM LICENCES

Duration of and conditions pertaining to spectrum license

- 11.** (1) A spectrum license issued under-
- (a) **Part 2**, subject to regulation 2 of the Regulations Setting Out Fees For Spectrum Licenses, Certificates and Exams, No. 155 of 1 June 2017, expires on 31 December of the year of issue ; and
 - (b) **Part 3** is valid for the period stipulated in a Request for Bid.

(2) All spectrum licences awarded by the Authority will be subject to conditions as set out in the licensing conditions attached to the spectrum licence.

- (3) Conditions referred to in subregulation (2) may include but are not limited to-
 - (a) the efficient use of spectrum;

- (b) the shared utilization of spectrum;
- (c) roll-out obligations which licensees must meet;
- (d) the prohibition of trading or sub-leasing of spectrum licences;
- (e) the prohibition of hoarding of spectrum; or
- (f) reporting, monitoring and compliance matters in respect of the spectrum licence awarded.

(4) Without limiting any other conditions that the Authority may impose in terms of the provisions of the Act relating to a spectrum license, a license may specify-

- (a) guidelines, in accordance with applicable standards and requirements of the International Telecommunication Union and its Radio Regulations, as agreed to or adopted by Namibia in terms of section 99(2) of the Act, to be adopted by the licensee;
- (b) universal access and service obligations to be undertaken by the licensee; or
- (c) performance specifications to which the licensee must conform.

Amendment of spectrum license

12. (1) A licensee may apply to the Authority for amendment of that licensee's spectrum licence.

(2) An application referred to in subregulation (1) must be made on a form that substantially corresponds to **Form CRAN 7** set out in the Regulations Prescribing Forms For Applications.

(3) Notwithstanding subregulation (1), any changes to a licensee's name and details of contact persons do not require prior approval from the Authority, provided the ownership of the licensee is not affected by such change to the licensee's name, but the Authority must be notified in writing of the impending change at least 14 days prior to the effective date.

(4) An application referred to in subregulation (1) must -

- (a) specify the details of the spectrum licence and include a copy thereof;
- (b) set out the reasons for the proposed amendment; and
- (c) include any other information-
 - (i) the applicant believes might be relevant to the Authority in considering the application; or
 - (ii) the Authority may require.

(5) An application referred to in subregulation (1) must be accompanied by any fee payable in terms of the Regulations Setting Out Fees For Spectrum Licenses, Certificates and Examinations.

(6) The Authority may request further information or documents, which must be provided to the Authority at the time and in the manner set out by the Authority.

(7) Where the Authority proposes to amend a spectrum licence the Authority must notify the licensee in writing accordingly and in its notice specify -

- (a) the proposed amendment; and
- (b) the reasons for the proposed amendment; and
- (c) the date on which the Authority intends to effect the amendment, not being earlier than 30 days from the date on which the Authority serves the notice on the licensee.

(8) The licensee must respond to a notification in terms of subregulation (6) within 30 days from the date on which the Authority serves the notice on the licensee.

(9) If the licensee does not respond the Authority may within the period required in terms of subregulation (8), amend the licence in the manner specified in the notice.

(10) Where the licensee responds within the period required in terms of subregulation (8), the Authority may amend or refrain from amending the spectrum licence taking into consideration the representations made by the licensee.

Renewal of spectrum license

13. (1) A licensee to whom a spectrum license has been issued in terms of **Part 3** and that also holds a telecommunications or broadcasting licence may upon the expiry of the spectrum license apply to the Authority for renewal of that licensee's spectrum licence.

(2) An application referred to in subregulation (1) must be made on a form that substantially corresponds to **Form CRAN 8** set out in Annexure 3 of the Regulations Prescribing Forms For Applications.

(3) An applicant must, not earlier than six months and not later than 60 days before the date of expiration of a spectrum licence referred to in subregulation (1), submit to the Authority -

- (a) an application for renewal of such licence; or
- (b) written notice of the licensee's intention to terminate the licence.
- (4) The application must -
 - (a) specify the details of the spectrum licence and include a copy of the said licence;
 - (b) set out the full and official name of the applicant and if a natural person, the identity number of that person, and if a juristic person, the registration number of that person;
 - (c) set out the name of the contact person (if different from the applicant) and the following contact details -
 - (i) physical address;
 - (ii) postal address;
 - (iii) telephone number or numbers;

- (iv) facsimile numbers or numbers; and
 - (v) electronic mail address or addresses.
- (d) provide documented proof of adherence to the conditions attached to the spectrum licence for consideration by the Authority;
- (e) set out a complete and accurate statement detailing any action taken by the Authority or other entity with competent jurisdiction in relation to any breach or alleged breach by the licensee of the Act, these Regulations or the licensee's spectrum licence; and
- (f) include any other information the applicant believe might be relevant to the Authority in considering the application.
- (5) If the Authority has not reached a decision in connection with an application for the renewal of a spectrum licence referred to in subregulation (1) at the time when the period of validity of that license expires, such licence continues to be of effect pending such decision.
- (6) A spectrum license referred to in subregulation (1) may be renewed for the same period referred to in **regulation 11(1)(b)** except if the Authority decides to hold a spectrum auction in respect of the radio frequency spectrum conferred on the licensee concerned in accordance with Part 3.
- (7) An application referred to in subregulation (1) must be accompanied by any fee payable in terms of the Regulations Setting Out Fees For Spectrum Licenses, Certificates and Examinations.
- (8) The Authority may, when considering an application for the renewal of a spectrum licence in terms of subregulation (1), require any additional information as it deems necessary to make a finding.
- (9) The Authority may decline to renew a spectrum licence in terms of this regulation if-
- (a) the licensee has contravened the Act or one or more conditions of that licence; or
 - (b) the renewal of that licence will not be in accordance with the Act or these Regulations.
- (10) If a licensee referred to in **Part 2** -
- (a) fully settles the invoice issued by the Authority payable for the ensuing year in respect of the spectrum license issued to that licensee in terms of that Part, the licensee's spectrum license is automatically renewed for that ensuing year; or
 - (b) fails to settle the invoice referred to in paragraph (a), the licensee's spectrum license automatically lapses.

Transfer of spectrum license

14. (1) A spectrum license must be used solely by the holder thereof and such license or the control thereof is only transferable to another person with the prior approval of the Authority upon application for such transfer by such other person.

(2) An application for the transfer of a licence or control of a licence must be made on a form that substantially corresponds to **Form CRAN 6** set out in the Regulations Prescribing Forms For Applications.

(3) The Authority must be notified in writing of any transfer of ownership interests in a licensee not resulting in a transfer of control or a transfer of the license at least 14 days prior to the effective date of such transfer.

(4) The application referred to in subregulation (2) must be accompanied by the following information and documentation, namely -

- (a) the details of the spectrum licence and a copy thereof;
- (b) the full and official name of the applicant, and if the applicant is a juristic person, the registration number of that person;
- (c) the name of a contact person responsible for liaison with the Authority on issues pertaining to these Regulations and the following contact details of that person -
 - (i) physical address;
 - (ii) postal address;
 - (iii) telephone number or numbers;
 - (iv) facsimile number or numbers; and
 - (v) electronic mail address or addresses;
- (d) full details of all ownership interests in the applicant, including the identity and nationality of holders of such ownership interests and if the holder of any ownership interests is a juristic person, full details of all ownership interests in the juristic person;
- (e) full details regarding foreign ownership interests in the applicant, if any;
- (f) comprehensive reasons for the transfer of the license or control thereof;
- (g) where the applicant is a company or close corporation, a certificate of incorporation issued by the relevant official employed by the Ministry responsible for Trade;
- (h) a detailed statement of the expertise and experience of the applicant to render the services for which the spectrum license was issued (in this regulation referred to as “the services”) including but not limited to -
 - (i) evidence of the financial and human resources of the applicant necessary to render the services; and
 - (ii) a description of the key personnel of the applicant, including their detailed curricula vitae; and
- (i) any other information required by the Authority or that the applicant believes might be relevant to the Authority in considering the application.

(5) An application referred to in subregulation (2) must be accompanied by any fee payable in terms of the Regulations Setting Out Fees For Spectrum Licenses, Certificates and Examinations.

(6) The Authority must, after having satisfied itself that an applicant complies with subregulation (4) approve the transfer of the spectrum license in the form determined, and subject to the conditions imposed, by the Authority.

(7) If the Authority approves the transfer of spectrum license, it must endorse on such license the details of the new licensee having control of the license or to whom the license was transferred.

Refusal to issue or approve the transfer of a spectrum license

15. (1) If the Authority intends to refuse to issue or approve the transfer of a spectrum license, the Authority must inform the applicant of the reasons for such intended refusal and invite the applicant to make written submissions on why such issue or transfer should not be refused.

(2) After consideration of the written submissions referred to in subregulation (1), the Authority may, in the form determined, and subject to the conditions imposed, by the Authority -

- (a) issue to the applicant a spectrum license;
- (b) approve the transfer of the spectrum license to the applicant; or
- (c) refuse to issue or approve the transfer of the spectrum license, whereupon the Authority must inform the applicant of the reasons for such refusal.

Withdrawal and lapse of spectrum licence

16. (1) If a licensee intends to permanently discontinue providing the services for which the spectrum license was issued, it must request the Authority to withdraw its licence by submitting to the Authority an application on a form that substantially corresponds to **Form CRAN 9** set out in the Regulations Prescribing Forms For Applications.

(2) The application referred to in subsection (1) must -

- (a) specify the details of the spectrum licence and include a copy thereof;
- (b) the full and official name of the applicant, and if the applicant is a juristic person, the registration number of that person;
- (c) the name of a contact person responsible for liaison with the Authority on issues pertaining to these Regulations and the following contact details of that person -
 - (i) physical address;
 - (ii) postal address;
 - (iii) telephone number or numbers;
 - (iv) facsimile number or numbers; and
 - (v) electronic mail address or addresses;
- (d) set out a complete, accurate and concise statement of the reason or reasons for the proposed withdrawal;

- (e) set out the date the licensee intends to permanently discontinue providing service which date must be at least 60 days after the date the application is submitted;
 - (f) contain -
 - (i) a migration plan for any customer of the licensee that may be affected by the withdrawal of the spectrum license;
 - (ii) an analysis of the impact of such withdrawal on such affected customers;
 - (iii) a communication plan to affected customers;
 - (g) contain an inventory of radio apparatus employed by the licensee and an e-waste management plan;
 - (h) indicate whether the licensee has paid all fees payable to the Authority in relation to the spectrum licence; and
 - (i) include any other information the applicant believes might be relevant to the Authority in considering the application.
- (3) The Authority may before approving an application referred to in subregulation (1) -
- (a) request further information or documentation, which must be provided to the Authority in the time and the manner set out by the Authority;
 - (b) conduct a public hearing in terms of the Act; or
 - (c) following consultation with the licensee impose reasonable conditions on the licensee with respect to the migration of customers of the licensee or end-users.
- (4) Subject to subregulation (5), a spectrum license issued to a licensee -
- (a) who does not hold a telecommunications service license or broadcasting license automatically lapses after the end of the period referred to in **regulation 11(1)(b)** in which event subregulation (3) applies;
 - (b) who holds a telecommunications service license or a broadcasting license automatically lapses if that telecommunications service license or broadcasting license terminates or lapses; and
 - (c) in terms of these Regulations automatically lapses if the licensee fails to pay the applicable fees in terms of the Regulations Setting Out Fees For Spectrum Licenses, Certificates and Examinations by the due date indicated on the invoice the Authority issued to the licensee, in which event **regulation 17** applies.
- (5) Notwithstanding subregulation (4)(c), the Authority may, upon good cause shown, condone the late payment of the applicable fees payable in terms of that subregulation, in which event the spectrum license will subject to regulation 11(1)(a) continue to be valid.

Procedures where licensee does not renew spectrum license or license lapses

17. (1) In the event that a licensee failed to renew a spectrum license or that license lapses and the licensee continues to use the radio frequency spectrum after the end of that licensee's

license year, the Authority must prior to seizing or sealing radio apparatus or equipment used in rendering the services related to the license-

- (a) issue a notice to the person in question notifying the person -
 - (i) that continued use of any radio frequency spectrum is unlawful;
 - (ii) to desist from such continued use within 10 days of the notice;
 - (iii) to inform the person's end-users, customers or subscribers, if any, within seven days of receipt of the notice of the date on which the person will stop using the radio frequency spectrum; and
 - (iv) to make written representations to the Authority regarding the notice within five days of receipt thereof, should the person is so inclined.
- (b) consider any written representations the person has made in terms of paragraph (a)(iv) and inform the person of the Authority's decision and reasons for the decision.

(2) If after considering any written representations made in terms of subregulation (1)(a)(iv), the Authority's decision in terms of subregulation (1)(b) is that the person concerned is unlawfully making use of radio frequency spectrum, then such person must -

- (a) within 10 days of receipt of the Authority's decision cease making use of the radio frequency spectrum; and
- (b) within five days of receipt of the decision, inform the person's end-users, customers or subscribers, if any, of the date on which the person will stop using the the radio frequency spectrum.

(3) Failure by the affected person to comply with subregulations (1)(a) and (2) will cause the Authority to seize and seal any radio apparatus or equipment used by such person and instituting enforcement proceedings in terms of the Act and these Regulations.

Material breaches of spectrum license

18. (1) Without limiting any other grounds on which the Authority may cancel a spectrum licence in terms of the Act, the following events, whether specified as a licence condition or not, constitute material breaches of a spectrum licence by a licensee justifying the cancellation or suspension of the licence concerned:

- (a) failure by the licensee to -
 - (i) offer services within six months of the issue of the licence;
 - (ii) meet any material quality of service targets as may be determined by the license conditions applicable to the licence;
 - (iii) comply with any material roll-out obligations imposed by the Authority upon the licensee;
 - (iv) pay any penalty imposed by the Authority in terms of the Act or these Regulations;
 - (v) comply with a material license condition;

- (vi) comply with material obligations relating to the power output or location of radio frequency transmitters; or
 - (vii) pay any fees payable to the Authority in relation to a spectrum licence;
 - (b) insolvency of a licensee or its liquidation in terms of any laws in force in Namibia or any other country; or
 - (c) submission of false or deliberately misleading information to the Authority in respect of an applications for a spectrum license.
- (2) In considering whether there was a material breach of a spectrum license, the Authority must consider-
- (a) the severity of the breach;
 - (b) the circumstances giving rise to the breach; and
 - (c) any adverse impact occasioned by the breach.

Cancellation of spectrum licence

19. (1) If the Authority is satisfied that a licensee has in terms of **regulation 18** committed a material breach of its spectrum license the Authority may be written notice to that licensee inform the licensee that the Authority intends to cancel such spectrum licence and in such notice state the grounds for such intended action.

(2) A spectrum licensee may, within 30 days from the date of receipt of a notice referred to in subregulation (1), make written representations to the Authority in connection with this matter.

(3) After consideration of the representations referred to in subregulation (2) or, if no such representation have been made, upon expiry of the period mentioned in that subregulation the Authority may-

- (a) if it is satisfied that it is just and equitable to do so in a particular case, by written notice to the licensee withdraw the notice referred to in subregulation (1); or
- (b) by written notice to the licensee and by notice published in the *Gazette* cancel the spectrum licence referred to in subregulation (1) and prohibit such spectrum licensee with effect from a date specified in those notices, from providing services in respect of which such spectrum license was licensed.

PART 5

EXEMPTIONS FROM OBLIGATION TO OBTAIN SPECTRUM LICENSE

Categories of radio apparatus exempt from spectrum license

20. The use and possession of the categories of radio apparatus set out in **Annexure B** do not require a spectrum licence in Namibia, provided that the conditions imposed on those categories radio apparatus are adhered to.

Conditions of use of radio apparatus exempt from spectrum license

21. (1) The use and possession of the categories of radio apparatus set out in column B of the table included in **Annexure B**, must be in accordance with the frequencies, limitations, specifications and standards set out in columns A, C, D, and E of the table.

(2) Prior to use and possession of radio apparatus without a spectrum licence in Namibia, the radio apparatus must be type-approved by the Authority, or upon request to the Authority, by any other regulatory authority in a country other than Namibia in accordance with the Regulations In Respect of Type Approval And Technical Standards For Telecommunications Equipment published under General Notice No. 22 of 30 January 2015.

(3) The use and possession of radio apparatus without a spectrum licence in Namibia, may not cause interference to any person operating radio apparatus or otherwise using radio frequency spectrum in accordance with a licence issued or deemed to have been issued by the Authority under the Act or any Regulations made under the Act.

(4) The use and possession of radio apparatus without a spectrum licence in Namibia, must accept interference from any person operating radio apparatus or otherwise using spectrum in accordance with a licence issued or deemed to have been issued by the Authority under the Act or any Regulations made under the Act.

PART 7

AMENDMENT OF REGULATIONS REGARDING LICENSING PROCEDURES FOR TELECOMMUNICATIONS AND BROADCASTING SERVICE LICENSES AND SPECTRUM USE LICENSES

Definitions

22. For purposes of this Part, “the Regulations” means the Regulations Regarding Licensing Procedures For Telecommunications and Broadcasting Service Licenses and Spectrum Use Licenses published under General Notice No. 272 of 29 August 2011.

Amendment of title of the Regulations

23. The Regulations are amended by -

(a) the substitution for the title of the following title -

“Regulations Regarding Licensing Procedures For Telecommunications and Broadcasting Service Licenses”;

(b) the deletion of the words “spectrum use” wherever it occurs.

Amendment of regulation 3 of the Regulations

24. Regulation 3 of the Regulations is amended by the deletion of subregulation (3).

Deletion of regulation 6 of the Regulations

25. Regulation 6 of the Regulations are deleted.

Transitional arrangements

26. (1) Any spectrum license issued to a licensee in terms of the Regulations prior to the commencement of these Regulations is deemed to be issued in terms of these Regulations, subject to all conditions attached to such license.

(2) Any proceedings in connection with an application for a license still pending at the date of commencement of these Regulations must, with effect from that date, be deemed to be an application in terms of these Regulations and must further be administered, considered and completed by the Authority hereunder.

(3) A licensee to whom a spectrum license has been issued in terms of the Regulations is deemed to have been issued such license in terms of these Regulations.

PART 8 ENFORCEMENT

Regulatory actions

27. (1) The Authority may exercise any of the powers conferred upon it in terms of the Act for ensuring compliance of these Regulations.

(2) Without detracting from or limiting the generality of subregulation (1), the Authority-

- (a) shall prosecute regulatory offences and enforce the provisions of these Regulations in terms of sections 114 to 127 of the Act, where applicable;
- (b) may approach a court of law to obtain urgent interdictory or other suitable relief in respect of any licensee or other person who contravenes the provisions of these Regulations.

(3) In the exercise of its powers and functions in terms of these Regulations, the Authority may act of its own accord or upon a complaint from an aggrieved person.

Penalties

28. (1) Any licensee that fails to submit information or adhere to any regulation, is guilty of contravening these regulations.

(2) Without derogating from the generality of subregulation (1), where a licensee or any other person contravenes one or more of the regulations contained herein, the Authority may -

- (a) issue a written warning to that licensee or person for submitting outstanding information where the licensee or other person is guilty of not submitting information as required by these Regulations;
- (b) impose a penalty of not more than N\$500,000.00 for -
 - (i) every failure by a licensee or other person to comply with any requirement or obligation contained in these Regulations;
 - (ii) each submission or causing the submission of false or misleading information to the Authority; or
 - (iii) every failure to submit any documents or information as required pursuant to a written warning issued in terms of paragraph (a); or
- (c) take any other measure the Authority regards as reasonable in the circumstances.

(3) In considering whether to impose any penalty and the quantum thereof in terms of subregulation (1), the Authority must consider -

- (a) the severity of the contravention;
- (b) the circumstances that gave rise to the contravention; and

(c) any adverse impact occasioned by the contravention.

(4) Any amount of penalty payable in terms of paragraphs (b) or (c) of subregulation (2) constitutes a debt due to the Authority by the licensee or other person involved and may be recovered by the Authority by means of proceedings instituted in any competent court.

(5) Notwithstanding subregulations (2) and (4), the Authority may waive the payment of or refund the whole or any part of a penalty payable.

(6) Before imposing any penalty as contemplated by paragraphs (b), (c) or (d) of subregulation (2), the Authority must give an affected licensee or other person the opportunity to be heard, whereafter the Authority may -

(a) decide not to impose any penalty; or

(b) impose such penalty the Authority deems fit.

PART 9 GENERAL

Oral hearings and call for written submissions

29. (1) If the Authority considers it necessary or appropriate, it may hear oral submissions in respect of any application made in terms of these regulations.

(2) The Authority must invite the public to make oral submissions at least 14 days prior to any hearing convened in terms of this regulation.

(3) Unless otherwise specified by the Authority, hearings will be open to the public.

(4) The format and agenda of the hearing is at the discretion of the Authority, depending on the nature of the proceeding, provided however, that the hearing should be informal in nature.

(5) All oral submissions must -

(a) include a statement indicating the name and contact details of the person making the oral submission or the name and contact details of the person for whom the oral submission is made, if different;

(b) be clear and concise; and

(c) conform to any further requirements determined by the Authority from time to time.

(6) If the Authority considers it necessary, it will provide the opportunity to a licensee or applicant to respond to oral submissions.

(7) The Authority may request further oral or written submissions, for example, further information or clarification, which must be provided to the Authority in the time and the manner set out by the Authority.

(8) At the conclusion of the hearing, a concise report summarizing the oral submissions must be prepared and placed in the relevant application file by the Authority.

(9) The Authority may, in its sole discretion follow the procedures set out in **regulation 4(6) to (13)** in respect of any application for the amendment, renewal, transfer and cancellation of any spectrum licence.

Accounts

30. A licensee must comply with the such cost accounting procedures and reporting as the Authority may from time to time direct in writing.

Time frames for decisions

31. (1) If any applicant does not provide all of the information required by these Regulations in the time provided, the Authority may refuse to issue a spectrum license or approve the transfer of such license.

(2) The Authority must, in respect of any license application or application for transfer or amendment of a license make a decision within 60 days from the date of the last written submissions of the applicant.

(3) In the event the Authority is unable to render a decision within 60 days of the date of an applicant's last written submissions, the Authority will inform the applicant of its inability and the reasons for such inability and what measures are being taken to address the matter urgently, which matter must then be addressed within a further maximum period of 60 days, unless the Authority has identified extraordinary circumstances, beyond its reasonable control that makes it impossible to render its decision within the further maximum period of 60 days.

Confidential information

32. If a person has designated information or documentation submitted to the Authority as confidential, the provisions of section 28 of the Act apply.

Record of proceedings

33. All documents deemed relevant by the Authority for purposes of any license application proceedings contemplated by the Act and these Regulations must be maintained by the Authority separately for each application proceeding in files located at the head office of the Authority and if practicable, may be uploaded on the Authority's website.

Publication of licensing decisions and register of licenses

34. (1) All decisions made in terms of these Regulations and the relevant provisions of the Act must be communicated to applicants and licensees and other relevant parties in writing, and may be published in the *Gazette*.

(2) The Authority's register of licenses maintained in terms of section 27(3) of the Act and copies of all spectrum licenses, will be held at the head offices of the Authority and if practicable, will be uploaded on the Authority's website.

(3) Except for confidential information, any person may inspect the register of licenses, examine an issued spectrum license or review license application proceedings files at the head offices of the Authority during normal business hours and copies may be made on payment of a fee determined by the Authority.

Reporting, monitoring and compliance

35. (1) The Authority may, in the format determined by the Authority, request information from licensees which is reasonably necessary to enable the Authority to discharge its functions and duties and to monitor and ensure compliance with the Act and these Regulations.

(2) Without limiting the generality of subregulation (1) the Authority may request information from licensees to -

- (a) monitor and enforce roll-out obligations, a licensee's quality of service, or compliance with license conditions;
- (b) ensure that radio frequency spectrum is used appropriately and efficiently and is not hoarded, in accordance with applicable standards and requirements of the International Telecommunication Union and its Radio Regulations, as agreed to or adopted by Namibia in terms of section 99(2) of the Act; or
- (c) collect and compile sectoral analyses, for purposes of planning, reporting or conducting regulatory enquiries which are reasonably necessary to enable the Authority to discharge its functions and duties and to monitor and ensure compliance with the Act and these Regulations.

(3) When requesting information in terms of this regulation, the Authority must provide a detailed specification of such request together with the deadline for the response and identify a contact person to whom queries may be directed.

(4) All licensees must submit bi-annual reports to the Authority in July of each year for the period 1 January to 30 June and in January the next year for the period 1 July to 31 December of the preceding year, relating to -

- (a) location and coordinates of each site from which the licensee renders the services for which its spectrum license is issued;
- (b) the radio frequency spectrum used and the nature of technology employed in using the spectrum at each such site;
- (c) the power output of each transmitter, if any, installed at such site; and
- (d) any other information specified by the Authority, in the form specified by the Authority.

Reconsideration

36. (1) The Authority may in terms of section 31 of the Act reconsider any decision or order made in terms of these Regulations, within 90 calendar days from the date of making that decision or issuing that order.

(2) Any person (hereinafter "the requesting party") may within 30 days of receiving any decision or order made by the Authority request the Authority in writing to reconsider decision or order subject to the following:

- (a) The requesting party must comprehensively complete **Form 1** (hereinafter "the Reconsideration Form") and submit that form to the Authority within 30 days from date of receipt of the Authority's decision or order.
- (b) The Authority must within three days of receipt of the Reconsideration Form determine whether there are grounds for reconsideration.
- (c) Where there are no valid grounds for reconsideration, the Authority must forthwith notify the requesting party of its decision and close the file pertaining to the dispute.

- (d) Where the Authority considers that the request for reconsideration should be heard, the Authority must provide a copy of the Reconsideration Form to any party with a direct or substantial interest in the matter and simultaneously notify the requesting party of its decision within 7 days from the lapse of the period referred to in paragraph (b).
- (e) A party with a direct or substantial interest referred to in paragraph (d) must deliver a response in writing to the request for reconsideration within a period of 14 days of receipt of the Reconsideration Form.
- (f) Upon receipt of the response referred to in paragraph (e), the Authority must deliver that response to the requesting party and afford that party 14 days from receipt of the response to reply thereto.
- (g) The Authority must thereafter, subject to subregulation (3), make a determination on whether or not to reconsider its decision or order.

(3) The Authority may publish its determination on reconsideration without further submissions having been received, or it may provide an opportunity to the public to provide further written or oral submissions, prior to making a determination contemplated in subregulation (2)(g), in a manner stated by the Authority.

Condonation

37. (1) In the event that any party is unable to comply with any timeframe set out in these Regulations, it may request from the Authority an extension of time at least 14 days prior to the deadline set out or within such other timeframe agreed by the Authority upon good cause shown.

(2) The Authority will respond to the request for condonation as soon as practicable, and may either grant or deny the request, at its sole discretion, based on, amongst other things, the nature of the proceeding and the reasons for non-compliance.

***Ex parte* communications**

38. A person may not communicate with the members of the Board, the chief executive officer or any staff member of, or consultant of the Authority, to discuss the subject matter of an application pending in terms of these Regulations, except as provided for herein.

ANNEXURE A**FORM 1
RECONSIDERATION FORM (REGULATION 36(2))**

In terms of regulation 36(2) of the Regulations Prescribing Procedures Regarding Application For, And Amendment, Renewal Or Transfer Of Spectrum Licences, applications for reconsideration must be submitted on this form within thirty (30) days from date of receipt of the Authority's decision.

A. APPLICANT**APPLICANT:**

Physical Address: _____

Postal Address: _____

Telephone number(s): _____

Facsimile number(s): _____

Electronic mail address(es): _____

B. CONTACT PERSON (IF DIFFERENT FROM APPLICANT)

Contact Person: _____

Physical Address: _____

Postal Address: _____

Telephone number(s): _____

Facsimile number(s): _____

Electronic mail address(es): _____

C. RESPONDENT

Respondent: _____

Contact Person: _____

Physical Address: _____

Postal Address: _____

Telephone number(s): _____

Facsimile number(s): _____

Electronic mail address(es): _____

D. SUMMARY OF GROUNDS FOR RECONSIDERATION

Provide an accurate and concise statement of the grounds illustrating why the Authority should reconsider its decision.

E. RELIEF SOUGHT

Provide a clear and concise statement of the specific relief or remedy sought.

F. LIST OF DOCUMENTS SUPPORTING REQUEST FOR RECONSIDERATION

Provide a detailed list of the documents you wish to use in support of your request for reconsideration. Please further ensure that the listed documents are attached to this form.

G. ANY OTHER INFORMATION

Provide any other relevant information.

Signed by _____ at _____ in his/her/its capacity as _____, duly authorised and warranting such authority and warranting that the information provided herein is true and correct, on the _____ day of _____, 20 ____.

Signature

ACKNOWLEDGEMENT OF RECEIPT BY CRAN:

1.	Name:	
2.	Date:	
3.	Place:	
4.	Signature:	

ANNEXURE B
RADIO APPARATUS EXEMPT FROM SPECTRUM LICENSE

Explanation:

1. The use or possession of the radio apparatus listed in Column B below, in accordance with the specifications listed in Columns A, C, D and E of the Table below does not require a spectrum license.
2. Use and possession of all radio apparatus exempt in terms of the above table must comply with the following:
 - 2.1. All radio apparatus must be type-approved by the Authority or by the Independent Communications Authority of South Africa or, upon request to the Authority, by any other regulatory authority in a country other than Namibia or South Africa.
 - 2.2. The frequencies, transmitting power and external high-gain antenna of the radio apparatus must not be altered without a new type-approved certificate issued by the Authority or any other regulatory authority referred to in paragraph 2.1.
 - 2.3. The radio apparatus must be operated within, and not exceed, the technical parameters set out in each of the applicable Columns C and D of the Table with respect to the frequency band, maximum radiated power or field strength limits and channel spacing, relevant standards and duty cycles and antennas to be used and contained in Column E.
 - 2.4. The antenna of the radio apparatus must not be higher or above average ground level than the lowest point of the place where the radio apparatus operates effectively.
 - 2.5. The radio apparatus may not cause interference with any licensed radio frequency spectrum.
 - 2.6. The user of the radio apparatus in the license-exempt frequency spectrum operates on a non-interference and zero protection basis from interference.

Column A Frequency Bands K=kHz M=MHz G=GHz	Column B Type of Device	Column C Maximum Radiated Power or Field Strength Limits & Channel spacing	Column D Relevant Standard	Column E Additional Requirements
9-59.75K	Inductive loop system	72 dB μ A/m @ 10 m. No duty cycle restriction. No channel spacing.	EN 300 330 EN 301 489-1,3 EN 60950	CEPT/ERC/REC 70-03
9 – 315K	Ultra low power medical implants	30 dB μ A/m at 10 m	EN 302 195	CEPT/ERC/REC 70-03
59.75-60.25K	Inductive loop system, including RFID	42 dB μ A/m @ 10 m. No restrictions on duty cycle No channel spacing.	EN 300 330 EN 301 489-1,3 EN 60950 ISO/ IEC 18047-2	CEPT/ERC/REC 70-03 ASK, FSK, & PSK
60.25-70K	Inductive loop system	72 dB μ A/m @ 10 m. No restrictions on duty cycle No channel spacing.	EN 300 330 EN 301 489-1,3 EN 60950	CEPT/ERC/REC 70-03
70-119K	Inductive loop system, including RFID	42 dB μ A/m @ 10 m. No restrictions on duty cycle No channel spacing.	N 300 330 EN 301 489-1,3 EN 60950 ISO/ IEC 18047-2	CEPT/ERC/REC 70-03 ASK, FSK, & PSK
119-135K	Inductive loop system, including RFID	72 dB μ A/m @ 10 m. No restrictions on duty cycle No channel spacing.	EN 300 330 EN 301 489-1,3 EN 60950 ISO/ IEC 18047-2	CEPT/ERC/REC 70-03 ASK, FSK, & PSK
315 -600K	Active medical implants	-5 dB μ A/m at 10 m	EN 302 536	CEPT/ERC/REC 70-03
7400-8800K	Inductive loop system	9 dB μ A/m @ 10 m. No restrictions on duty cycle No channel spacing.	EN 300 330 EN 301 489-1,3 EN 60950	CEPT/ERC/REC 70-03
6.765-6.795M	Inductive loop system	42 dB μ A/m @ 10 m. No restrictions on duty cycle No channel spacing.	EN 300 330 EN 301 489-1,3 EN 60950	CEPT/ERC/REC 70-03

6.765-6.795M	Inductive loop system	42 dB μ A/m @ 10 m. No restrictions on duty cycle No channel spacing.	EN 300 330 EN 301 489-1,3 EN 60950	CEPT/ERC/REC 70-03
13.553-13.567M	Inductive loop system, including RFID	42 dB μ A/m @ 10 m. No restrictions on duty cycle No channel spacing.	EN 300 330 EN 301 489-1,3 EN 60950	CEPT/ERC/REC 70-03 ASK, FSK, & PSK
13.553-13.567M	RFID and EAS systems only	60 dB μ A/m @ 10 m.	EN 300 330 EN 301 489-1,3 EN 60950	CEPT/ERC/REC 70-03
26.957-27.283M	Inductive loop system	42 dB μ A/m @ 10 m. No restrictions on duty cycle No channel spacing.	EN 300 330 EN 301 489-1,3 EN 60950	CEPT/ERC/REC 70-03
26.957-27.283M	Non-specific SRDs	10 mW ERP No restrictions on duty cycle. No channel spacing.	EN 300 220 EN 301 489-1,3 EN 60950	CEPT/ERC/REC 70-03
26.995; 27.045; 27.095; 27,145; 27.195M	Surface model control	100 mW ERP No restrictions on duty cycle. 10 kHz channel spacing.	EN 300 220 EN 301 489-1,3 EN 60950	CEPT/ERC/REC 70-03
35.00 – 35.25M	Aircraft model control	100 mW ERP No restrictions on duty cycle. 10 kHz channel spacing.	EN 300 220 EN 301 489-1,3 EN 60950	CEPT/ERC/REC 70-03
36.65 – 36.75M	Wireless microphones	100 mW ERP 100% duty cycle No channel spacing.	EN 300 422 EN 301 489-9 EN 60950	CEPT/ERC/REC 70-03
40.65 – 40.70M	Wireless microphones	100 mW ERP 100% duty cycle No channel spacing.	EN 300 422 EN 301 489-9 EN 60950	CEPT/ERC/REC 70-03

40.665M 40.675M 40.685M 40.695M	Surface model control	100mW ERP No restriction on duty cycle. 10 kHz channel spacing.	EN 300 220 EN 301 489-1,3 EN 60950	CEPT/ERC/REC 70-03
40.66 – 40.7M	Non-specific SRDs	10 mW ERP No duty cycle restriction. No channel spacing.	EN 300 220 EN 301 489-1,3 EN 60950	CEPT/ERC/REC 70-03
46.61 – 46.97M 49.67 – 49.97M	CT0 cordless phones.	10 mW e.i.r.p.	The Authority TE-013	Government Gazette 22443 of 4 July 2001
53 – 54M	Wireless microphones	50 mW ERP for class 1 equipment 100 mW ERP 100% duty cycle No channel spacing	EN 300 422 EN 301 489-1,9 EN 60950	CEPT/ERC/REC 70-03
54.4500; 54.4625; 54.4750; 54.4875; 54.500; 54.5125; 54.5250; 54.5375; 54.5500M	Model control	5W ERP 12.5 kHz channel spacing	EN 300 220 EN 301 489-1,3 EN 60950	CEPT/ERC/REC 70-03
141 – 142M	Remote control industrial apparatus	100 mW ERP	EN 300 220 EN 301 489-1,3 EN 60950	
148 – 152M	Wildlife telemetry tracking	25 mW ERP	EN 300 220 EN 301 489-1,3 EN 60950	The use of this band is restricted to national game parks.
169.4 – 169.475M	Meter reading	500 mW ERP 50 kHz channel spacing < 10% duty cycle	EN 300 220 EN 301 489-1,3 EN 60950	CEPT/ERC/REC 70-03 ECC/DEC (05)02
173.2125 – 173.2375M	Non-specific SRDs –	10 mW ERP	EN 300 220	

	telecommand only	25 kHz channel spacing	EN 301 489-1,3 EN 60950	
173.2375 – 173.2875M	Non-specific SRDs	10 mW ERP 25 kHz channel spacing.	EN 300 220 EN 301 489-1,3 EN 60950	
173.965 – 174.015M	Wireless microphones and assistive listening devices	2 mW e.i.r.p. 100% duty cycle. No channel spacing.	EN 300 220 EN 301 489-9 EN 60950	CEPT/ERC/REC 70-03
401 – 406M	Medical implants	25 μ W ERP No duty cycle restriction for devices with LBT $\leq 1\%$ duty cycle for all other devices 25 kHz channel spacing.	EN 300 839 EN 301 489-1,3 EN 60950	ITU-R RS.1346 CEPT/ERC/DEC (01)17
402 – 406M	Doppler shift movement detectors, wireless microphones, garage door openers and motor car alarm systems	10 mW ERP No channel spacing. 100% duty cycle.	EN 300 422 EN 300 220 EN 301 489-1,3 EN 60950	
433.04 – 434.79M	Non-specific SRDs, including RFID	1 mW ERP No channel spacing. 100% duty cycle	EN 300 220 EN 301 489-1,3 EN 60950	CEPT/ERC/REC 70-03 ASK, FSK, PSK, & FHSS
433.04 – 434.79M	Non-specific SRDs, including RFID	10 mW ERP duty cycle < 10% No channel spacing	EN 300 220 EN 301 489-1,3 EN 60950	CEPT/ERC/REC 70-03 ASK, FSK, PSK, & FHSS
433.04 – 434.79M	Non-specific SRDs	10 mW ERP 100% duty cycle Up to 25 kHz channel spacing.	EN 300 220 EN 301 489-3 EN 60950	CEPT/ERC/REC 70-03

433.04 – 434.79M	Non-specific SRDs	100 mW ERP No duty cycle restriction No channel spacing	EN 300 220 EN 301 489-3 EN 60950	CEPT/ERC/REC 70-03
446 - 446.1 M Includes the following eight channels. 446.00625M; 446.01875M; 446.03125M; 446.04375M; 446.05625M; 446.06875M; 446.08125M; 446.09375M;	Public mobile radio (PMR)	500 mW 12,5 kHz channel spacing	EN 300 296 EN 301 489-5 EN 60950	
464.5375M	Security systems	1 W 25 kHz channel spacing.	EN 300 296 EN 301 489-5 EN 60950	
464.500 – 464.5875	Non-specific SRDs	100 mW No channel spacing	EN 300 220 EN 301 489-3 EN 60950	
463.975M; 464.125M; 464.175M; 464.325M; 464.375M;	Low power radio	500 mW. 12.5 kHz channel spacing	EN 300 296 EN 301 489-5 EN 60950	
863 – 865M	Wireless audio systems	10 mW ERP 100 % duty cycle. No channel spacing.	EN 300 357 EN 301 489-9 EN 60950	CEPT/ERC/REC 70-03 CEPT/ERC/DEC (01)18
863 – 865M	Wireless microphones	10 mW ERP 100 % duty cycle. No channel spacing.	EN 300 422 EN 301 489-9 EN 60950	CEPT/ERC/REC 70-03

865 -868 M	RFID	Channels 1, 2 and 3 100 mW ERP 200 kHz channel spacing	EN 302 208-2 EN 301 489-1,3 EN60950 ISO/IEC 18047-6	CEPT/ERC/REC 70-03 Listen Before Talk (LBT) is mandatory FHSS or other spread spectrum techniques shall not be used
865 – 868 M	RFID	Channels 4,7,10 and 13 2 W ERP 200 kHz channel spacing	EN 302 208-2 EN 301 489-1,3 EN60950 ISO/IEC 18047-6	CEPT/ERC/REC 70-03 Listen Before Talk (LBT) is mandatory FHSS or other spread spectrum techniques shall not be used
865 – 868 M	RFID	Channels 5,6,8,9,11,12,14 and 15 500 mW ERP 200 kHz channel spacing	EN 302 208-2 EN 301 489-1,3 EN60950 ISO/IEC 18047-6	CEPT/ERC/REC 70-03 Listen Before Talk (LBT) is mandatory FHSS or other spread spectrum techniques shall not be used
864.1 – 868.1M	CT2 cordless phones	10 mW e.i.r.p.	EN 301 797 EN 301 489-1,10 The Authority TE - 012	CEPT/ERC/REC 70-03
868 – 868.6M	Non-specific SRDs	25 mW ERP < 1% duty cycle or LBT.	EN 300 220 EN 301 489-1,3 EN 60950	CEPT/ERC/REC 70-03 CEPT/ERC/DEC (01) 04

868.6 – 868.7M	Alarms	10 mW ERP < 1 % duty cycle. 25 kHz channel spacing.	EN 300 220 EN 301 489-1,3 EN 60950	CEPT/ERC/REC 70-03 CEPT/ERC/REC (01) 09
868.7 – 869.2M	Non-specific SRDs	25 mW ERP < 0.1 % duty cycle or LBT. No channel spacing.	EN 300 220 EN 301 489-1,3 EN 60950	CEPT/ERC/REC 70-03 CEPT/ERC/REC (01) 04
869.25 – 869.3M	Alarms	10 mW ERP < 0.1 % duty cycle. 25 kHz channel spacing.	EN 300 220 EN 301 489-1,3 EN 60950	CEPT/ERC/REC 70-03
869.4 – 869.65M	Non-specific SRDs, including RFID	500 mW ERP < 10% duty cycle or LBT. 25 kHz channel spacing.	EN 300 220 EN 301 489-1,3 EN 60950	CEPT/ERC/REC 70-03
869.65 – 869.7M	Alarms	25 mW ERP 10 % duty cycle. 25 kHz channel spacing.	EN 300 220 EN 301 489-1,3 EN 60950	CEPT/ERC/REC 70-03
869.7 – 870 M	Non-specific SRDs	5 mW ERP 100% duty cycle. No channel spacing.	EN 300 220 EN 301 489-1,3 EN 60950	CEPT/ERC/REC 70-03
915.1 -915.2 M	Real time location systems (RTLS)	25 mW ERP	EN 300 086 EN 301 489-1,3 EN 60950	
915.2 – 915.4 M	Passive tags	100 mW ERP 10 x 20 kHz wide channels		

915.4-919 M	Modulating RFID systems (FHSS)	4 W e.i.r.p.	FCC CFR 47 Part 15.247 CISPR 16 EN 60950	200 kHz channel spacing
919 -919.2 M	Tag backscatter systems Guard band			
919.2 – 921 M	Non-modulating backscatter RFID systems	4 W e.i.r.p.; CW only @ 920 MHz (± 1.5 kHz frequency stability)	Spectral masks as in EN 302 208 – 2 EN 301 489 -1,3 EN 60950	
1880 – 1900M	DECT cordless phones	250 mW e.i.r.p. (peak). 1.728 MHz channel spacing.	EN 300 406 EN 301 489-1,6 EN 60950 The Authority TE 001	
2400 – 2483.5M	Non-specific SRDs	10 mW e.i.r.p. No duty cycle. No channel spacing.	EN 300 440 EN 301 489-1,3 EN 60950	CEPT/ERC/REC 70-03
2400 - 2483.5M	Wideband wireless systems WLAN Wideband data transmission applications (WBDTS) Model control	100 mW e.i.r.p. No duty cycle. No channel spacing. For wide band modulations other than FHSS, the maximum e.i.r.p. density is limited to 10 mW/MHz. Adequate spectrum sharing mechanisms shall be implemented by the equipment (e.g. Listen-before-Talk, Detect-and-Avoid)	EN 300 328 EN 301 489 -1,3 EN 60950	CEPT/ERC/REC 70-03 For wide band modulations other than FHSS, the maximum e.i.r.p. density is limited to 10 mW/MHz

2400 – 2483.5M	FDMA	25 mW e.i.r.p. No duty cycle. No channel spacing.	EN 300 440 EN 301 489-1,3 EN 60950	CEPT/ERC/REC 70-03
2400 – 2483.5M	Low power video surveillance	100 mW e.i.r.p. No duty cycle. No channel spacing.	EN 300 440 EN 301 489-1,3 EN 60950	CEPT/ERC/REC 70-03
2446-2454 MHz	RFID	500 mW e.i.r.p. No duty cycle 4 W e.i.r.p. < 15% duty cycle FHSS should be used	EN 300 440 EN 301 489 – 1,3 EN 60950	CEPT/ERC/REC 70-03
5150 – 5350M	Wireless access systems & radio local access networks (WAS & RLAN) – indoor use only	200 mW e.i.r.p. Dynamic frequency selection (DFS) & transmitter power control (TPC) obligatory.	EN 301 893 EN 301 489-1,17 EN 60950	ITU-R M.1625
5470 – 5725M	Wireless access systems & radio local access networks (WAS & RLAN)	1 W e.i.r.p.	EN 301 893 EN 301 489-1,17 EN 60950	ITU-R M.1625
5725 - 5875 M	Wireless access systems and radio local access networks (WAS & RLAN)	<ul style="list-style-type: none"> • A maximum of 4 watts e.i.r.p. • A maximum of 1 watt transmitter output power • A maximum transmitter output spectral density of 8 dBmW in any 3 kHz band • Digital modulation only 	FCC 15.247 FCC 15.249	<ul style="list-style-type: none"> • Fixed point-to-multipoint systems and point-to-point links. In any 100 kHz outside the band, the e.i.r.p. shall be at least 30 dB below the 100 kHz within the band that contains the highest level of desired power. <p><i>Note 1</i> Transmission towards the</p>

		<ul style="list-style-type: none"> Nominal bandwidth of transmissions must not be less than 1 MHz 		common node of a point-to-multipoint is regarded as point-to-point node
5725 – 5875 M	BFWA	<ul style="list-style-type: none"> A maximum of 200 watts e.i.r.p. A maximum of 1 watt transmitter output power A maximum transmitter output spectral density of 8 dBmW in any 3 kHz band Digital modulation only Nominal bandwidth of transmissions must not be less than 1 MHz 	FCC 15.247 FCC 15.249	<ul style="list-style-type: none"> Fixed point-to-point links only Point-to-multipoint systems, omnidirectional applications, and multiple co-located transmitters transmitting the same information are not permitted. (see note 1) In any 100 kHz outside the band, the e.i.r.p. shall be at least 30 dB below the 100 kHz within the band that contains the highest level of desired power. <p><i>Note 1: Transmission towards the common node of a point-to-multipoint system is regarded as point-to-point mode.</i></p>
5795 – 5805M	RTTT data	2 W e.i.r.p. No duty cycle restriction. No channel spacing.	EN 300 674 EN 301 489-1,3 EN 60950	ITU-R M.1453 CEPT/ERC/DEC (92)02
5805 – 5815M	RTTT data	2 W e.i.r.p. No duty cycle restriction. No channel spacing.	EN 300 674 EN 301 489-1,3 EN 60950	ITU-R M.1453 CEPT/ERC/DEC (92)02 CEPT/ERC/REC 70-03
9200 – 9500M	FDDA	25 mW e.i.r.p. No duty cycle restriction. No channel spacing.	EN 300 440 EN 301 489-1,3 EN 60950	CEPT/ERC/REC 70-03

9500 – 9975M	FDDA	25 mW e.i.r.p. No duty cycle restriction. No channel spacing.	EN 300 440 EN 301 489-1,3 EN 60950	CEPT/ERC/REC 70-03
10.025 – 10.145 G	Low power video surveillance	1W e.i.r.p. 8 MHz channel spacing, with first channel on 10.029 GHz.	ETS 300 440	
10.5 – 10.6G	FDDA	500 mW e.i.r.p. No duty cycle restriction. No channel spacing.	EN 300 440 EN 301 489-1,3 EN 60950	CEPT/ERC/REC 70-03
13.4 – 14G	FDDA	25 mW e.i.r.p. No duty cycle restriction. No channel spacing.	EN 300 440 EN 301 489-1,3 EN 60950	CEPT/ERC/REC 70-03
17.1 – 17.3G	HiperLAN	100 mW e.i.r.p.	EN 301 489-1,3 EN 60950	
24.00 – 24.25G	Non-specific SRDs	100 mW e.i.r.p. No duty cycle restriction. No channel spacing.	EN 300 440 EN 301 489-1,3 EN 60950	CEPT/ERC/REC 70-03
24.05 – 24.25G	FDDA	100 mW e.i.r.p. No duty cycle restriction. No channel spacing.	EN 300 440 EN 301 489-1,3 EN 60950	CEPT/ERC/REC 70-03
57 – 64G	Point-to-point links	55 dBm e.i.r.p.	EN 305 550	The maximum transmitter output power is 10 dBm. The minimum antenna gain is 30 dBi

57 -66G	Multi-gigabit wireless systems (MGWS)	40 dBm e.i.r.p.	EN 302 567	The use of these systems is as described in ITU-R Report ITU-R M.2227 and Recommendation ITU-R M.2003. Fixed outdoor installations are not allowed.
76-77G	RTTT radar	55 dBm peak No duty cycle restriction No channel spacing	EN 300 091 EN 301 489-1,3 EN 60950	CEPT/ERC/REC 70-03

ANNEXURE A

**SUMMARY OF COMMENTS RECEIVED IN RESPECT OF GOVERNMENT GAZETTE
NO. 6802, GENERAL NOTICE NO. 695 DATED 27 DECEMBER 2018**

1. Multichoice Namibia (Pty) Ltd

Multichoice Namibia (Pty) Ltd's submission submitted to the Authority on 11 February 2011 refers.

No.	Comment	Response
1	<p>SPECTRUM AUCTIONS</p> <p>Part 3 of the draft Regulations introduces spectrum auctions. It does not however, indicate the circumstances in which the Authority will assign spectrum by means of an auction.</p> <p>We understand that the Authority envisages auctions only for assigning high value and high demand spectrum, since the auction model is usually adopted in respect of scarce, high demand spectrum.</p> <p>As indicated in the Authority's draft Spectrum Assignment Strategy, the spectrum auction (flexible rights of use) model is mostly adopted when the demand for spectrum is higher than the amount of spectrum resources available.</p> <p>We are concerned that the basis on which the Authority will determine that spectrum licensing will be subject to auction is not included in the draft Regulations, thus creating an uncertain licensing environment, which we believe is not in the interest of the development of the sector.</p> <p>The draft Regulations should indicate that the Authority may decide to assign spectrum by means of an auction when the demand for particular spectrum is higher than the amount of spectrum resources available.</p> <p>We are also concerned that, in terms of Reg. 6(1), the decision whether to follow an auction process is in the Authority's sole discretion.</p> <p>In addition, the Authority's decision to adopt an auction process in respect of particular spectrum should follow a public process and a spectrum audit, to determine whether particular spectrum is indeed scarce, high demand spectrum</p>	<p>The Authority is mandated with the management, control and planning of spectrum as per section 99 of the Act and thus full oversight of the availability of spectrum and demand for spectrum in various spectrum and thus method of assignment is at the discretion of the Authority.</p> <p>The proposal by Multichoice is therefore not accepted.</p>

	<p>We propose that the Authority amend Reg. 6(1) to read as follows-</p> <p><i>“The Authority may from time to time, following a public consultation process and, if necessary a spectrum audit, publish by notice in the Gazette a notification that a radio frequency band under the Frequency Band Plan, which the Authority has determined to be scarce and in high demand, as specified in the notice is to be conferred on a competitive basis by means of a spectrum auction, provided that no radio frequency spectrum to be used in accordance with regulation 5 may be subject to a spectrum auction.”</i></p>	
2	<p>ADMINISTRATIVE SPECTRUM LICENCE APPLICATIONS</p> <p>The draft Regulations provide that the Authority must publish a notice that spectrum is open to be conferred on a first-come-first-served basis (Reg. 4(1)) or on a competitive basis by means of a spectrum auction (Reg. 6(2)).</p> <p>Since spectrum auctions should be limited to assigning only scarce, high demand spectrum, we assume that spectrum auctions will be the exception and not the rule. The Authority’s default positions should therefore be that spectrum is to be conferred on a first-come-first-served basis, unless a spectrum auctions notice is issued in respect of particular spectrum.</p> <p>This would reduce the administrative burden on the Authority, relieving it of the obligation to publish notices in the Gazette in respect of the default position. It would also allow operators to apply for spectrum as and when it is required, which would contribute to an enabling environment that is responsive to the needs of operators, and avoid unnecessary bottlenecks in respect of routine spectrum applications</p> <p>In order to make administrative spectrum licensing the default position, we propose replacing Reg. 4(1) with the following:</p> <p><i>Unless the Authority has published a notice in the Gazette in terms of regulation 6 notifying that a radio frequency spectrum band under the Frequency Band Plan as specified in the notice is to be conferred on a competitive basis by means of a spectrum auction, spectrum is open for application to be conferred on a first-come-first-served basis in accordance with Part 2 of these Regulations.</i></p>	<p>The Authority is of the opinion that the proposal by Multichoice is already provided for in Regulation 6 (1) making provisions that spectrum auctions only take place where there is a high demand and where spectrum has high market value.</p> <p>There is thus no need to amend Regulation 4(1).</p>

3	<p>INFORMATION REQUIRED FOR SPECTRUM LICENCE APPLICATIONS</p> <p>In terms of Reg. 4(4), a spectrum application must include, amongst other things, full ownership interest, including foreign ownership interest, a certificate of incorporation, a detailed statement of the expertise and experience of the applicant, including evidence of its financial and human resources and a description of its key personnel (including their CVs), and any other information required by the Authority.</p> <p>We are concerned that these requirements are extremely broad and unnecessary in circumstance where an applicant already holds a service licence in respect of which the frequency spectrum is intended to be used.</p> <p>Such an applicant is already known to the Authority and has met the criteria for the granting of that service licence. The requirement to include all of this information would create an unduly burdensome application process, which is not in the interest of the Authority or the applicants.</p> <p>We suggest that this be addressed by amending Reg. 4(4) to specify that the information listed in paragraphs (c), (d), (e) and (g) is required to be provided by applicants who do not already hold a service licence in respect of which the spectrum is intended to be used.</p> <p>Reg 4(4)(h) provides that the application must include <i>“any other information required by the Authority”</i>.</p> <p>This requirement is vague, in that it does not specify what type of other information the Authority may require, nor that the information must be relevant. Moreover, unless an application is made pursuant to a specific invitation to apply, an applicant would not be in a position to know, when applying for the spectrum, which other information might be required by the Authority. An applicant can therefore not be expected to provide other information which has not been requested/required by the Authority in advance of the application.</p> <p>In order to ensure that the Authority is provided with appropriate and relevant information, and that it is clear to applicants up front what will be expected of them, we propose that any other information required by the Authority must be requested by the Authority within a specified reasonable period and must be relevant for the purposes of the spectrum application. We suggest that this can be achieved by amending Reg. 4 (4)(h) to read as follows:</p>	<p>The Authority has considered the comments as submitted and deleted draft regulation 4(4)(g) in respect of submissions of financial and human resources together with CVs .</p> <p>The remainder of the draft regulation has been retained as is.</p>
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	<p><i>“any other <u>relevant</u> information required by the Authority for the purposes of the application or that the applicant believes might be relevant to the Authority in considering the application.”</i></p> <p>We also suggest adding a new regulation after Reg. 4(4) which provides: <i>“After receiving an application, the Authority may request the applicant to provide it with additional information reasonably required by the Authority in considering the application, which the applicant shall provide to the Authority within a reasonable time period specified by the Authority.”</i></p>	
4	<p>APPLICANT SHOULD HAVE RIGHT TO REPLY TO COMMENTS MADE ON ITS APPLICATION</p> <p>In terms of Reg 4(6), the Authority will provide an applicant with an opportunity to respond to any public comments <i>“if the Authority considers it necessary”</i>.</p> <p>This could unfairly disadvantage applicants, who would not necessarily be afforded an opportunity to respond to all comments made in respect of their applications.</p> <p>In the interests of due process and fair procedure, an applicant should be afforded, as a right, an opportunity to respond to all comments made in respect of its application.</p> <p>We therefore propose amending Reg. 4(6) to read as follows: <i>“The Authority will provide the opportunity to the applicant to respond to any public comments contemplated in subregulation (5).”</i></p>	<p>The Authority has considered the comments as submitted and inserted a new regulations 4(5) that reads as follows- <i>“The Authority may, after receiving an application referred to in subregulation (2), request the applicant by written notice to provide it with additional information reasonably required by the Authority in considering the application, which the applicant must provide to the Authority within a reasonable period specified by the Authority in that notice. “</i></p>
5	<p>SPECTRUM AUCTION BIDDER QUALIFICATIONS</p> <p><u>Existing licensees should not be disqualified from bidding</u> Reg 7 (1)(c) provides that a Bidder comprising a consortium that includes an existing licensee will not meet the qualification criteria to participate in a bid award process.</p> <p>It is not clear why a Bidder comprising consortium that includes an existing licensee should be ineligible to participate. We are of the view that merely including a member which is an existing licensee should not disqualify a consortium from participation in the bid award process.</p> <p>To the extent that there are other material or substantive grounds for disqualifying persons from being members of a consortium, such as ensuring that persons not able to bid on multiple lots through different consortia, we suggest that the draft Regulations prescribe these grounds. The</p>	<p>The Authority has considered the comments as submitted and amended (i) Regulation 7(1)(c) as follows- <i>“subject to paragraphs (d) and (e) a Bidder may comprise a consortium which may include the holder of a telecommunications service license or broadcasting license or comprise the holders of telecommunications service licenses or broadcasting licenses or a combination of such licensees;”</i></p> <p>(ii) Regulation 8(h) as follows <i>“failed to comply with a request by the Authority relating to a material aspect of the Bid.”</i></p>

	<p>Authority may wish to consider inserting wording into the draft Regulations which specifies that a person may bid only once in an auction on its own or as part of a consortium.</p> <p><u>Failure to comply with the Authority's request relating to the Bid</u></p> <p>Reg.8 (h) provides that a Bidder will be disqualified where that Bidder failed to comply with a request by the Authority relating to the bid.</p> <p>Disqualification is a significant penalty, and ought only to apply where the failure to comply relates to a material request, and where there are no reasonable grounds for a Bidder's failure to comply with the request.</p> <p>We therefore suggest the Reg. 8 (h) be reworded to read-</p> <p><i>"failed to comply with a <u>material</u> request by the Authority relating to the bid if there is no reasonable basis for such failure."</i></p>	
6	<p>RENEWAL OF SPECTRUM LICENCES</p> <p>We support the automatic renewal of spectrum licences, as a compliant licensee should have the expectation that it will continue to be able to use the relevant spectrum.</p> <p>Broadcasting licensees in particular roll out their networks and provide their broadcasting services in reliance on particular spectrum, and they should be entitled to continue to do so as long as they haven't materially failed to comply with their applicable licence conditions. We therefore support the automatic renewal of the spectrum licence, subject to payment of the applicable fees.</p> <p>Reg. 16(4)(c) provides that a spectrum licence lapses automatically if a renewal fee is not paid. Reg. 17 sets out the applicable procedures for when a licence lapses.</p> <p>Given the availability of other, less restrictive means by which to ensure timely payment of licence fees, such as sending reminder notices to licensees, allowing for a limited grace period for payment, and the charging of interest on outstanding fees, we are concerned that automatic lapsing in all instances of failure to pay a licence renewal fee timely is a harsh consequence that may not be appropriate to all instances of late payment. Delays in payments due to, for example, technical reasons or bona fide error, ought not to attract the same penalty as wilful failure to pay a renewal fee.</p>	<p>The Authority has considered the comments as submitted and inserted regulation 16(5) that reads as follows-</p> <p><i>"Notwithstanding subregulation (4)(c), the Authority may, upon good cause shown, condone the late payment of the applicable fees payable in terms of that subregulation, in which event the spectrum license will subject to regulation 11(1)(a) continue to be valid."</i></p>

	<p>We therefore propose that the draft Regulations provide for automatic lapsing after the expiry of the grace period, or for the charging of interest at the prevailing rate on outstanding fees for a limited period, after which the spectrum licence would lapse.</p> <p>We suggest that the Authority considers addressing this by inserting a new Reg. 16(5) to read as follows <u><i>“The Authority may, upon good cause shown, condone the late payment of the spectrum renewal fees payable in terms of regulation 16 (4)(c), in which event the spectrum licence will continue to be a valid force and effect and shall be renewed for another term.”</i></u></p>	
7	<p>WITHDRAWAL OF SPECTRUM LICENCE</p> <p>Reg. 16 introduces various requirements to be met when a spectrum licensee intends to permanently discontinue the services for which the spectrum licence was issued.</p> <p>Reg. 16 (2)(f) requires the spectrum withdrawal application to contain a migration plan for any customer of the licensee that may be affected by the withdrawal of the spectrum licence, an analysis of the impact of such withdrawal on such affected customers, and a communication plan to affected customers.</p> <p>Reg 16(3)(c) empowers the Authority to impose conditions on the licensee with respect to migration of customers and end-users.</p> <p>These requirements relate to the discontinuation of the service in respect of which the spectrum licence was issued, rather than to the withdrawal of the spectrum <i>per se</i>. Since this relates to the discontinuation of the service, the spectrum withdrawal is incidental, and may in fact be irrelevant. These requirements may not always be necessary.</p> <p>For example, a migration plan, as contemplated in Reg. 16(f), might be appropriate when a service is discontinued, but not if spectrum is surrendered which does not affect the provision of the service or the customer experience.</p> <p>For example, if a licensee seeks withdrawal of a spectrum licence because it intends to use alternative spectrum for delivery of its service, the transition from the old spectrum to the new spectrum may well be seamless, and the information required by Reg. 16 (e) and (f) is not necessarily applicable.</p> <p>We therefore suggest that the proposed Reg. 16(2)(f) and 16(2)(c) rather be included in the Regulations regarding Licensing Procedures for</p>	<p>The Authority has considered the comments submitted and amended Regulation 16(3)(c) as follows-</p> <p><i>“following consultation with the licensee impose reasonable conditions on the licensee with respect to the migration of customers of the licensee or end-users.”</i></p>

	<p>Telecommunications and Broadcasting Service Licences 011 (as proposed to be amended). Reg. 10 of those Regulations deals with the situation where a licensee intends to permanently discontinue providing its service in accordance with its licence. Draft Reg. 16(2)(f) and 16(3)(c).</p> <p>We also submit that it is in the interest of fairness, efficiency and due process that the Authority consult with a licensee in order to determine the reasonableness and practicability of conditions to be imposed and the requirements to be met in term of Draft Reg. 16(2)(f) and 16(3)(c).</p> <p>We suggest that this be addressed by-</p> <p>(i) Inserting the words <i>“to the extent applicable”</i> after the words “referred to in subsection (1)” in Reg 16(2); and</p> <p>(ii) Amending Reg 16(3)(c) to read: <i>“following consultation with the licensee, impose reasonable and practicable conditions on the licensee with respect to the migration of customers of the licensee of end-users.”</i></p>	
8	<p>SPECTRUM LICENCE CONDITIONS</p> <p>Reg 11(3) and (4) reflect the type of conditions that the Authority may include in a spectrum licence.</p> <p>Not all of the conditions are appropriate to a spectrum licence. It is our view that detailed technical and certain other specifications would be better contained in a schedule to a service licence. These included conditions relating to the roll-out obligations (Reg. 11(3)(c)), universal access and service obligations (Reg. 11(4)(b)) and performance specifications (Reg. 11(4)(c)).</p> <p>We thereby propose that the potential licence conditions be clarified by-</p> <p>(i) Deleting Reg. 11(3)(c), Reg. 11 (4)(b) and Reg. 11(4)(d); and</p> <p>(ii) Including the relevant conditions in a schedule to the service licence to which the spectrum licence relates.</p>	<p>Section 101(2) of the Act provide as follows- <i>“(2) The Authority may issue a licence conferring on the licensee the right to use, or to cause any person in his or her employ or under his or her control to use a transmitter for any prescribed purpose or to use any radio frequency or group of radio frequencies or radio receiver for any purpose and in the manner prescriber or determined in the licence concerned”</i></p> <p>Further thereto the Authority is of the opinion that the imposition of licence conditions as contained in Regulation 11 is discretionary.</p> <p>The comments and suggestions submitted is therefore not considered to be included in the regulations</p>
9	<p>MATERIAL BREACHES OF SPECTRUM LICENCES</p> <p>Reg. 18 lists events which, whether specified as a licence condition or not , constitute material breaches of a spectrum licence which justify the cancellation or suspension of the licence.</p> <p>It is of concern that an event that is not listed as a licence conditions may constitute a material breach of a licence. On this basis, a licence could be suspended or cancelled due to non-compliance with an event which is not a licence condition. To do so would be arbitrary and unfair. We submit</p>	<p>The Authority has considered the comments as submitted and is of the opinion that its view is already provided for in the wording of the preamble to Regulation 18.</p> <p>Further thereto the Authority has amended Regulation 18(a)(ii) and (iii) and Regulation 18(a)(v) and (vi) by insertion of the word <i>“material”</i>.</p>

<p>that only breaches of events specified as licence conditions ought to constitute a breach.</p> <p>We suggest deleting the phrase <i>whether specified as a licence condition or not</i>” from Reg. 18.</p> <p>We are also concerned that the events listed are very wide, such as the failure to comply with <i>“any quality of service targets”, any licence conditions, or any roll-out obligations or power output/transmitter locations, regardless of the nature, extent or seriousness of the failure. The draft Regulations do not distinguish between for example a licensee which falls shorts of a quality of service target by 1% and one which falls short of the target by 15%.</i></p> <p>We suggest that this be addressed by requiring the breach to be material, and requiring the Authority to consider the severity of the event, the circumstances giving rise to the breach, and any adverse impact on the relevant services.</p> <p>We support the requirement for a consultation process to be followed before a licence is cancelled or revoked, as set out in Reg. 19. However, we believe that it would be to the benefit of licensees and the Authority if licensees were first afforded an opportunity to remedy a failure set out in Reg. 18 (a) before triggering a revocation/cancellation process.</p> <p>This would reduce the administrative burden on the Authority and facilitate an optimal outcome for all concerned, including customers.</p> <p>We therefore propose amended Reg. 18 as follows- <i>“Without limiting any other grounds on which the Authority may cancel a spectrum licence in terms of the Act, the following events constitute material breaches of a spectrum licence by a licensee justifying the cancellation or suspension of the licence concerned.”</i> <i>(a) <u>material repeated failure by the licensee, after having first been afforded a reasonable opportunity to remedy such failure, to</u>”</i></p> <p>We further suggest inserting the word <i>“material”</i> after the word <i>“any”</i> in Reg. 18(a)(ii) and (iii), and similarly to refer to <i>“a material licence condition”</i> and <i>“with material obligations”</i> in Reg. 18(a)(v) and (vi) respectively.</p>	
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10	<p>USE OF RADIO APPARATUS EXEMPT FOR SPECTRUM LICENCE</p> <p>We support the provisions of Reg. 21 as regards the use of radio apparatus exempt from spectrum licence.</p> <p>Reg. 21 (3) and (4) deal with protection from interference, in this regard, we note that certain spectrum bands are not governed by domestic legislation or rules because the bands are used across multiple territories, and we are therefore governed at international level. An example of this is where the transmission does not occur within Namibia, but where for example a satellite signal in a particular band is received in Namibia. It is important to ensure protection from interference for such legitimate services. This could be achieved by referring to any international treaty or convention that govern spectrum bands which are not subject to in-country regulation.</p> <p>In order to take this situation into account, we suggest inserting the words <u>“except where governed by any international treaty or convention, to which Namibia is a signatory”</u>, after the words “or any Regulations made under this Act” in both Reg. 21(3) and Reg. 21(4).</p>	<p>The Authority is of the opinion that section 99 of the Act already makes provision for adherence to international treaties and agreements entered into by the Namibian Government. There is thus no need to insert the proposed text in these regulations.</p>
11	<p>INFORMATION REQUESTS</p> <p>Reg. 35 empower the Authority to request any information from licensees to, amongst other things, collect and compile sectoral analyses or conducting regulatory inquiries.</p> <p>While we do not object to the Authority’s power to request relevant information, we are concerned that this power is too broad. Requests for information should be relevant to the Authority’s regulatory functions and duties.</p> <p>We therefore propose that the Authority be empowered to request information that is relevant and related to specific provisions of the relevant legislation, and that is reasonably required by the Authority in order to discharge its duties and functions</p> <p>We suggest that Reg. 35(1) be amended as follows- <i>“The Authority may, in the format determined by the Authority, request any information from licensees which is reasonably necessary for the discharge of its functions and duties to monitor and ensure compliance with the Act and these Regulations.”</i></p>	<p>The Authority has considered the comments as submitted and amended Regulation 35(1) as follows- <i>“ Authority may, in the format determined by the Authority, request information from licensees which is reasonably necessary to enable the Authority to discharge its functions and duties and to monitor and ensure compliance with the Act and these Regulations.”</i></p>

	<p>We suggest the Reg. 35(2)(c) be amended as follows-</p> <p><i>“Without limiting the generality of subregulation (1) the Authority may request <u>relevant information from licensees which it reasonably requires in order to administer the Act to.... collect and compile sectoral analyses, for the purpose of planning, reporting or conducting regulatory enquiries in accordance with the Act.</u>”</i></p> <p>We suggest that Reg. 35(3) be amended as follows-</p> <p><i>“When requesting information in terms of this regulation, the Authority must provide a detailed specification of such request together with <u>the purpose for which it is requested in terms of the Act, and a reasonable deadline for the response, and identify a contact person to whom queries may be directed.</u>”</i></p>	
12	<p>PENALTIES</p> <p>Reg. 28(1) and (2) provide that any licensee that fails to submit information or adhere to any regulations is guilty of contravening the regulations and liable to a penalty of up to N\$ 500,000 for each contravention.</p> <p>The draft Regulations do not distinguish between egregious and minor contraventions of the draft Regulations and nor do they afford a licensee an opportunity to remedy a contravention prior to the imposition of a penalty.</p> <p>We propose that the Authority be required to consider the nature of the contravention in each case, and apply a penalty that is fair, just and equitable taking into account various factors such as the severity of the contravention, whether the licensee could be directed to remedy the contravention, whether the licensee has taken steps to remedy the contravention of its own accord, and whether the licensee is a first-time or repeat offender.</p> <p>In this regard we propose inserting the following new sub-paragraph after Reg. 28(2) to read-</p> <p><i><u>In determining the penalty to be imposed, the Authority shall take into account the circumstances of the contravention, which may include the nature and severity of the contravention, the steps that could be taken by the licensee to remedy the contravention, whether the licensee has taken such steps to remedy non-compliance and the availability to the Authority of other means to secure compliance.</u></i></p>	<p>The Authority has considered the comments as submitted and inserted Regulation 28(3) that read as follows-</p> <p><i>In considering whether to impose any penalty and the quantum thereof in terms of subregulation (1), the Authority must consider-</i></p> <p>(a) <i>the severity of the contravention;</i> (b) <i>the circumstances that gave rise to the contravention; and</i> (c) <i>any adverse impact occasioned by the contravention.”</i></p>

2. Mobile Telecommunications Limited

Mobile Telecommunications Limited (MTC) submission submitted to the Authority on 11 February 2019 refers

No.	Comment	Response
1	<p>AD REGULATION 2(c)</p> <p><i>“determine fair efficient and transparent licensing procedures”</i></p> <p>Fair should be regarded in terms of the Regulations prescribing Quality of Service Standards applicable to Service Licences and in correlation of the market share.</p>	<p>The draft regulations is procedural in nature and sets out the regulatory process to be followed in respect of spectrum licences.</p> <p>The Authority is thus of the opinion that there is no correlation with the Quality of Service regulations nor the market share of a licensee.</p>
2	<p>AD REGULATION 4(1)</p> <p>We propose to add to Regulation 4(1),- <i>“and with due regard to the industry needs”</i> and after <i>“at its sole discretion”</i> and before <i>“publish a notice in the Gazette”</i></p> <p>We further propose to add a sub clause hereunder that would allow for the Authority to consider a band open for application upon request by a licensee and such licensee providing reasons in the interest of the consumer.</p>	<p>The Authority has considered the comments and conclude that no changes are required to the draft regulations in respect to spectrum licence to be awarded on a first-come-first-serve basis.</p>
3	<p>AD REGULATION 4(4)(g)</p> <p>The entire Regulation is irrelevant, in that in order to apply for a spectrum licence, an Applicant must have an operating licence conferred by the Authority. Surely, the Authority upon issuing of such licence would be satisfied that the licensee meets requirements to provide a telecommunications service.</p> <p>Alternatively, the Authority could consider amplifying the definition of Applicant to read: <i>“Applicant means a telecommunications service licence holder applying for spectrum licence.”</i></p>	<p>The Authority has considered the comments as submitted and deleted draft regulation 4(4)(g) in respect of submissions of financial and human resources together with CVs .</p>
4	<p>AD REGULATION 4</p> <p>We propose to add Regulation 4(14)- <i>“If the Authority refuses to grant the licence, the Authority must issue the Applicant with reasons for its decision.”</i></p>	<p>The Authority has considered the comments as submitted and inserted Regulation 4(16) that read as follows- <i>“The Authority must whether requested by an applicant or not, furnish reasons to the applicant for its decision to grant a spectrum license.”</i></p>
5.	<p>AD REGULATION 5</p> <p>We propose to add Regulation 5(5)- <i>“If the Authority refuses to grant the licence, the Authority must issue the Applicant with reasons for its decision.”</i></p>	<p>The Authority has considered the comments as submitted and inserted Regulation 5(5) that read as follows- <i>“The Authority must whether requested by an applicant or not, furnish reasons to the applicant for its decision to grant a spectrum license.”</i></p>

6.	<p>AD REGULATION 7(2)(c)</p> <p>Kindly advise whether it is the intend of the Authority for spectrum to be shared between licensees. In the event that the provision excludes existing licensees, kindly advise in terms of which provisions of the Act, it is permissible to issue spectrum licences to non-licensees.</p>	<p>The Frequency Band Plan allows for sharing of spectrum in respect of allocation of spectrum to more than one service in the same band.</p> <p>Section 101(1) of the Act make provision that no person may use spectrum unless that person has a spectrum licence.</p> <p>Section 101(2) states- <i>The Authority may issue a licence <u>conferring on the licensee the right....to use any radio frequency or group of radio frequencies or radio receiver for any purpose and in the manner prescribed or determined in the licence concerned</u></i></p> <p>The Authority is therefore of the opinion that it is clear that any person may apply for a spectrum licence. The use of spectrum is no exclusively reserved for service licence holders providing telecommunications or broadcasting services, but also applies to those persons providing services in relations to licence exempt service categories as set out in Regulation 5(1).</p>
7	<p>AD REGULATION 7(2)(e)</p> <p>Assuming the “<i>paragraph (e)</i>” reference is a typo and should be <i>paragraph (d)</i>” kindly advise whether it is the intende of the Authority to issue spectrum licences to non-licensees and if so, on what premise and interms of which section in the Act.</p>	<p>The Authority corrected the reference to paragraph (d).</p>
8	<p>AD REGULATION 7 (2)(g)(ii)</p> <p>Spectrum licences should only be awarded subsequent to an operating licence being awarded, otherwise it assumes that an operating licence will be automatically awarded, which negates the right of the public to object against n applications as provide for in terms of the Act.</p>	<p>Please refer to the Authority’s position in respect of Regulation 7 (2)(c).</p>
9	<p>AD REGULATION 8(b)</p> <p>This Regulations is not clear, kindly elaborate, in terms of the Act and exisiting Regulations there is no limit on maximum bandwidth. Further, to impose a maximum bandwidth without consideration of the Licensee’s customer base and effect that such a limited would have on the consumer. Consideration should be on a case by case basis, on the Authority’s discretions based on facts.</p>	<p>Section 101(2) of the Act provide as follows- “(2) <i>The Authority may issue a licence <u>conferring on the licensee the right to use, or to cause any person in his or her employ or under his or her control to use a transmitter for any prescribed purpose or to use any radio frequency or group of radio frequencies or radio receiver for any purpose and in the manner prescriber or determined in the licence concerned</u></i>”</p>

		The Authority is thus empowered to consideration that amount of spectrum to be made available for assignment taking into consideration the demand for spectrum by all persons concerned to ensure adherence to the objects of the Act.
10	AD REGULATION 11(1)(a) We propose to add at the end of sentence the following- <i>“and renewable annually on payment of application fee and licence fees”</i> This addition is in line with the provisions of the Act.	The Authority has considered the comments as submitted and concluded that the matter has been address in Regulation 13.
11	AD REGULATION 18(a) We propose that any breaches for which a spectrum licence can be revoked be limited to breach in terms of the spectrum licence only, in the interest of fairness. It is trite in law that material breach (warranty repudiation) can only be in terms of the conditions placed upon by nature of such instrument. As such we propose to delete Regulation 18(a)(ii) if same refers to the general operating licence; (iv) and (vi) alternative limit these to applicability to the spectrum licence awarded.	The Authority is of the opinion that Regulation 18 already pertains to spectrum licences on as contained in the preamble to this regulation.
12	AD REGULATION 18(c) We propose to add at the end of the sentence the following- <i>“in respect of the application for spectrum licence”</i> .	The Authority has considered that comments as submittd and amended regulation 18(c) accordingly