

AUCTION FOR RADIO FREQUENCY SPECTRUM 703-788 MHZ AND 790-862 MHZ

RESPONSE TO COMMENTS RECEIVED IN RE SPECTRUM AUCTION REQUEST TO BID DOCUMENT

On 15 May 2023, the Authority published a notice that it intends to award the radio frequencies **703-733 MHz paired with 758-788 MHz** and **791-821 MHz paired with 832-862 MHz** on a competitive basis by means of a spectrum auction. The public was requested to submit written comments on the Request to Bid Document by 29 May 2023 @ 16h00.

This document contains all comments received from industry, as captured verbatim. The only change is replacement of the licensees' names with "the licensee". Below find all comments received and the Authority's response to the said comments.

No.	Comment	Response from the Authority
1	The licensee notes the application fee of N\$ 10,000 and proposed that there be no application fee payable in this round by bidders who had already paid the application fee in the same auction that was cancelled.	<ul style="list-style-type: none"> • The first auction was not cancelled, it simply concluded since all bids were non-responsive. • The Application fee is to cover the administrative costs of handling the applications and hence may not be waived. The Authority has however, resolved to reduce it from the N\$ 50 000 (of the prevision cycle) to N\$ 10 000.
2	What is the criteria that the Authority uses to evaluate the reliability and sustainability of the business case	<ul style="list-style-type: none"> • Applicants must demonstrate their ability to construct, maintain and operate a network either through previous experience or by partnering with an entity that has the technical knowledge and know-how to construct and operate such a network. At the same time bidders must illustrate that the financial resources are available to sustain the network. The bid document will be revised to title this criterion as "Demonstrate ability, to construct, operate and maintain a network"
3	It is important to distinguish between criteria relating to the qualification of an applicant in a licensing process and the criteria for the selection of a successful licensee among the qualified applicants. The licensee notes that there is a level of	<ul style="list-style-type: none"> • The criteria on p.8 sets out the requirement that must be complied with to qualify to participate in auction process. The expectation is that there must be full compliance and non-compliance, or minimum compliance will lead to ineligibility.

Board Members:

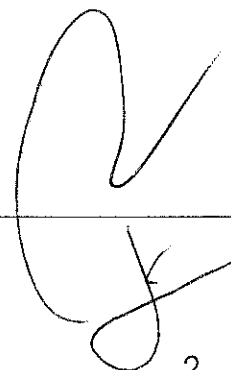
Mr. Heinrich M. Gaomab II (Chairperson); Ms. Vivienne E. Katjiuongua (Vice-Chairperson); Mr. Thomas Mbome (Member);
Dr. Tulimevava Mufeti (Member); Mr. Gerhard Coeln (Member); Ms. Dorethy Smit (Member)

Chief Executive Officer: Mrs. Emilia Nghikembua

Governance Executive: Mr. Tanswell Davies

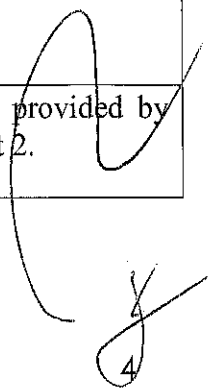


	<p>qualification criteria set out in the bidding document on page 8, however the licensee remain of the view that it lacks much-needs clarity. Transparency requires that applicants be told whether minimum compliance with qualification criteria is sufficient or whether any non-compliance with one or more of the qualification criteria will result in ineligibility. This is not clear from the bidding document, and the licensee request that the Authority clarifies this aspect. There has been litigation against regulators in some countries where certain qualification criteria were specified, and then some qualified applicants were rejected on the basis that they were less qualified than others. We would want to avoid such an incident from occurring in Namibia too.</p>	<ul style="list-style-type: none"> • The Authority resolved to move criteria (e) and (g) from the qualification criteria to the evaluation of the business case in round 1 of the auction. The final bid document will be updated.
4	<p>Page 6.2 (a) states that a bidder will be disqualified if such bidder does not comply with the criteria set out in section 5.1. No criteria have been defined in section 5.1. Kindly align with the relevant section. In doing so please note and consider our comments regarding the ambiguity and the lack of transparency with regard to the qualification criteria.</p>	<ul style="list-style-type: none"> • The numbering has been aligned in the final bid document and the correct reference 6.1. • Kindly refer to the Authority's reply to comment 3 above in respect of the qualification criteria.
5	<p>Qualification Criteria (e) (ii) in the table on page 8 requires the bidder to demonstrate ability to provide telecommunications services or broadcasting services, although criteria (d) clearly states that the spectrum is for telecommunications services. In the licensee's view that the effect of the wording in this criterion implies that broadcasting services are an alternative to telecommunications services. In the licensee's view this will mean that, if the bidder can demonstrate the ability to provide either telecommunications or broadcasting services then a demonstration of either shall be sufficient. The licensee is of the view that bidders do not need to demonstrate ability to provide broadcasting services because the ability required is that of providing telecommunications services. The licensee propose the deletion of the reference to</p>	<ul style="list-style-type: none"> • The view of the licensee is correct. The spectrum is to be awarded for provisioning of IMT services based on 4G and 5G technology. The Authority has removed the reference to broadcasting services from the final bid document. As indicated above, criteria (e) will also be moved to the evaluation criteria. However as will be clarified below, the regulations do allow for a consortium with broadcasters.

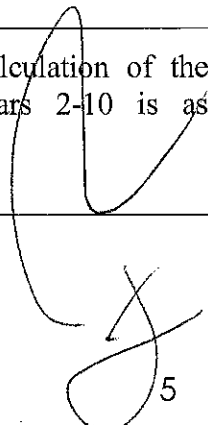


	broadcasting services.	
6	Selection criteria and scoring criteria page 10 and Annexure B: The licensee note that the score allocation does not put much emphasis and weight on universal service roll out although the objective of this spectrum was indicated to be for expansion of coverage to rural areas. In terms of the set criteria the licensee note that a bidder can still obtain 80% without achieving and demonstrating the universal service rollout targets because 20% is allocated to these criteria.	<ul style="list-style-type: none"> • The advantage of this spectrum is that it would increase rural coverage without being too capital intensive. It would, however, be expected of the applicant to demonstrate how the spectrum will be utilised to meet its roll out obligations. • To accommodate the view of the licensee, the weight for deployment of a network that will meet the roll out obligations will be increased from 20 to 30 points. The bid document will be updated.
7	In regard to category (a), how will the score be ranked? Is the 5G use case already a separate evaluation criteria? Is the objective perhaps to assess whether the network rollout proposed (whether 4G, 5G, or both) is designed to meet the minimum download speed specified? There is no proper ranking or breakdown in terms of how one will achieve twenty-five points or less in this category. For instance, how much will a bidder score if only some areas achieve the minimum downlink speed but not all	<ul style="list-style-type: none"> • Having considered this comment, the Authority has resolved to split criteria (a) into two distinct criterion: <ul style="list-style-type: none"> (a) Deployment of a 4G and 5G network (15 points); and (b) Network with a minimum downlink data speed of not less than 20 Mbps (10 points). • The network deployment will be scored as follows: <ul style="list-style-type: none"> ✓ Only 4G network rollout: 5 points ✓ 4G and 5G network rollout: 10 points. • The minimum download speed of 20 Mbps will attract a full 10 points and anything less than 20 Mbps will score 0 points.
8	In regard to criteria (b), kindly align the cross-reference numbering, there is no section 7.3. How will the score be assigned? Should this not only be a qualification criteria that is not weighted since the bidders are required to provide a declaration that they will comply?	<ul style="list-style-type: none"> • The Authority resolved to move criteria (b) to the bidder qualification criteria as it simply requires an undertaking to comply to the technical conditions which are already set. The bid document will be updated. • The 10 points initially allocated to this criteria will be moved to the criteria on rollout obligations to increase those points from 20 to 30 as indicated in comment 6 above.
9	In regard to criteria (c), the criteria state that the more regions below 80 covered the better the score, but no such scoring scales have been provided. How will a score of 10 be assigned? For instance how many points will a person who proposes to	<ul style="list-style-type: none"> • The score will be assigned as follows: <ul style="list-style-type: none"> ✓ A business case that seeks to cover all 7 regions to attain 80% population coverage will score a full 30 points. ✓ Anything lower than 7 will be

	only cover one region score?	<p>scored as per the following example: If for instance only 6 will be covered it would be $6/7 \times 30 = 25$ points.</p> <p>✓ This formula will then be applied to any number of regions as stipulated in the business case.</p>
10	<p>In regard to criteria (d), how will the score of 15 be assigned? If the bidder submits a financial statement will that be included in the score of 15? Alternatively, how will the scoring be done if no financial statement is provided, but there is clear evidence of funding requirements, which is not independent.</p>	<ul style="list-style-type: none"> • The content indicated in this comment refers to criteria (d), but the Authority assumes this is an error and should be (e). • The intention here is for the bidder to submit detailed financial plan outlining the requirements as set out in the description of the criteria. • The bidder must also submit independent evidence of availability of funds identified in the plan and its financial statements to substantiate, its financial position. • Hence if no financial plan is submitted the scoring will be zero. • The scoring is not about the financial statements, but the information provided within the financial plan which meets the description of the criteria i.e. does the licensee have the financial resources to construct and maintain a network and provide services to efficiently utilise this spectrum. • The Annual Financial Statements (AFS) must also be utilised to demonstrate the ability of the applicant to roll-out a network, maintain it and provide services. • The bid document will be amended to add the mandatory submission of the AFS, and the explanation contained herein.
11	<p>The licensee notes that there is a preference being given in respect of the spectrum below 1 GHz band, however the evaluation criteria for this preference are not clear. This is a material issue that should be addressed for the certainty of all bidders and stakeholders to ensure that the process is transparent and objective. How will the score be assigned? For instance, the Authority can consider:</p>	<ul style="list-style-type: none"> • The Authority accepts the suggestion made by the licensee and will incorporate the evaluation criteria in the final bid document, as follows: <ul style="list-style-type: none"> ✓ No spectrum below 1 GHz = 5 ✓ 1-10 MHz below 1 GHz = 3 ✓ 10 MHz below 1 GHz = 1
12	<p>In regard to criterion (g), again we request the Authority to provide a breakdown of the scoring for this criterion to ensure that</p>	<ul style="list-style-type: none"> • Please refer to the response provided by the Authority under comment 2.



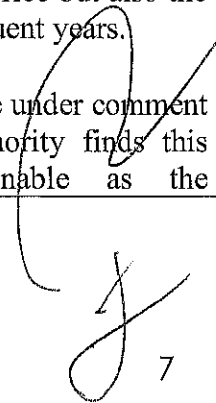
	the scoring is transparent.	
13	Spectrum is a commodity and finite. The spectrum in question is IMT spectrum as per the ITU and CRAN spectrum plan and therefore the licensee submits that broadcasters should not be permitted to bid even as a consortium. The Authority is accommodating a broadcaster, but broadcasters do not meet the bid requirements. Page 4 of the document must be updated to remove reference to broadcasters and their eligibility to bid.	<ul style="list-style-type: none"> • Regulation 7(1) (c) of the spectrum licensing regulations states that 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. • As per the above regulation, consortiums are allowed on condition that all services must be provided by the telecommunications service licensee under this consortium, given that the spectrum is allocated for mobile telecommunication services in the frequency band plan.
14	How will the alternative lot be allocated? (Section 7 states that one cannot make multiple bids – please clarify the alternative process as this is contradictory)	<ul style="list-style-type: none"> • Licensees will be required to indicate their preferred and alternative lot for the Auction on their application. • The Authority will commence the auction by considering the preferred lots.
15	What is the sequency of allocating the alternative if there are multiple bids for the same structure?	<ul style="list-style-type: none"> • Once consideration of the preferred lots is finalised, the Authority will then consider the alternative lots – if they have not been allocated during the round of considering preferred lots.
16	Are two offers made in the bid for option 1 and option 2?	<ul style="list-style-type: none"> • Bidders will only be considered for alternative lots if they have passed the qualification criteria and the Round 1 evaluation criteria. • The Authority will require the bidder to then submit a financial offer for the alternative bid, which may not be lower than the reserve price. • If more than one bidder qualifies for the alternative lot, the bidder with the highest offer will be assigned the frequency. • Alternative bids will only be considered if there are lots left after the consideration of preferred bids.
17	Kindly indicate the broad outline of the spectrum price and calculation that will be reviewed for year 2-10. The business case relies on these costs unless it is guaranteed to decrease and not increase	<ul style="list-style-type: none"> • The formula for the calculation of the spectrum price for years 2-10 is as follows:



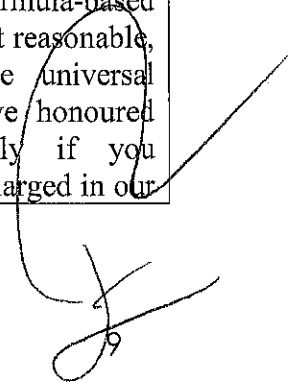
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		<p>Price of spectrum =</p> <p>BW x FBF x CF x SRHF x GEO x TF</p> <p>= 40 x 2.5 x 30 x 1 x 1 x 2,170 = N\$ 6,510,000</p> <ul style="list-style-type: none"> • Years 2-10 will be calculated according to the new spectrum fees as published in the <i>Government Gazette</i> from time to time. The Authority is in the process of revising the Spectrum fees and from this, licensees can expect lower spectrum fees once the new regulations are finalised. The proposed new base value is N\$ 1,210. Please see also reply to comment 18.
18	<p>The Request to Bid indicates that the spectrum fees shall be set for a year and the remaining fees shall be determined upon review of the Spectrum Fees Regulations. However, Regulation 10 (1) (b) of the Regulations Prescribing Procedures Regarding Application for, and Amendment, Renewal, Transfer and Cancellation of Spectrum Licences requires the Regulator to provide licensees with the total auction price payable. The Regulator determining the spectrum fee for the remaining nine years at a later stage makes it hard for licensees to provide an accurate business plan, as all fees are not disclosed, in addition to contravening the aforementioned regulations</p>	<ul style="list-style-type: none"> • The reserve price for the auction is set out on page 13 of the bid document. • The proposed new spectrum fees (per annum) for years 2-10 will be as follows: <ul style="list-style-type: none"> ✓ Lot 1: N\$ 3,267,000 ✓ Lot 2: N\$ 2,858,625 ✓ Lot 3: N\$ 2,450,250 • These are of course subject to normal review as all other formula-based fees. • Therefore, total spectrum auction price can be calculated based on the spectrum fees as indicated above. Of course, these fees are formula based, which means that the spectrum auction is just a methodology of assignment but the fees payable thereafter would be the same if the spectrum were issued on a first come, first serve basis. • The Authority finds this approach more reasonable as the alternative would be that operators bid for the full ten years and whatever the outcome of the competitive bidding then becomes the yearly payment. This was used in previous auctions. This will obviously defeat the objective of the auction i.e. universal

		access.
19	The reserve price for the spectrum states "per year. However, this should be once off and then the normal gazetted rates apply annually as correctly set out on page 19.	<ul style="list-style-type: none"> The observation by the licensee is correct. The final bid document will reflect the reserve price as a <u>once off amount</u>.
20	Seeing that this spectrum is aimed at universal access and was to be awarded based on a beauty contest, it ought to be free and the only amount payable should be the license fees. The proposed reserve price is extremely high, it is not related to cost recovery for spectrum management and is indeed not cost based in our humble view. Administrative charges and especially licence fees should not act as a barrier to market entry or hinder competition, with the negative effect of disadvantaging financially constrained operators, especially where the objective is supposed to be universal access. A distinction should therefore be made between administrative licence fees related to spectrum management from other regulatory fees, to improve transparency and accountability.	<ul style="list-style-type: none"> The idea of allocating spectrum for free is neither conceivable from a spectrum management perspective, nor is it supported by the legislative framework. Additionally, there are multiple interests in the spectrum and the only way to fairly and equitably assign the spectrum is through a competitive process. Secondly the Authority concedes that indeed the industry had resolved that the spectrum may be issued <i>via</i> beauty contest. This was also the methodology included in the first bid document. Subsequently, the Authority received legal advice that a beauty contest does not amount to an auction as contemplated in the Communications Act and its regulations. To this end, proceeding with a beauty contest would have led to procedural and substantive flaws in the assignment process. To avoid any potential irregularities, the Authority thus resolved to utilise a pure auction methodology as contemplated in the Communications Act. The Authority fully agrees with the notion that license fees may not become barriers to market entry nor hinder competition and therefore resolved to utilise the formula-based methodology to set not only the reserve price but also the spectrum fees for subsequent years. We reiterate our response under comment 18 above that the Authority finds this approach more reasonable as the



		<p>alternative would be that operators bid for the full ten years and whatever the outcome of the competitive bidding then becomes the yearly payment.</p> <ul style="list-style-type: none"> • Operators are also invited to observe the spectrum auction prices in other jurisdictions with similar economies of scale as Namibia in this regard.
21	<p>It is generally accepted that administrative fees should not impose unnecessary costs on the telecommunications sector. The most transparent manner to achieve a cost recovery scheme would involve establishing whether the proposed licence fees from all three lots in question are based on the project and actual costs of the Authority. Once the overall level of cost recovery for this spectrum management has been set, it is necessary to allocate the costs among licensees or market participants. Based on the foregoing, we are of the view that the proposed fees to be received from the operator's who will win the auction are not cost-based, are too high and in turn undermines the objective of ensuring universal access.</p>	<ul style="list-style-type: none"> • Licensees are fully aware that the entire fee and levy structure of the Authority is cost-based and hence any suggestions to the contrary, places an onus on the operator to fully substantiate its claims.
22	<p>We submit that the financial viability of the requested business cases should also be a key factor in respect of the proposed reserve price. If financially non-viable rural or high-cost areas are targeted, in the absence of a universal fund, or similar mechanism, the proposed reserve prices and spectrum costs are not proportional to the estimated turnover from the rural areas where services are targeted. The business case will not be viable due to the proposed reserve price and the Authority should consider this in line with its role in the achievement of universal service obligations. These reserve prices may also result in the operators cross-subsidising from more profitable areas to less profitable ones which will have unwanted anti-competitive effects, to the detriment of small incumbents.</p>	<ul style="list-style-type: none"> • The reserve prices were set utilising the formula and considering the demand for the spectrum, scarcity and the fact that the objective of the roll out obligations is universal connectivity. A quick comparison of these reserve prices and those of previous auctions held by the Authority demonstrates this point. • Since the Universal Service Fund is held up in litigation it cannot be utilised. Once the fund is established ways to assist licensees with rural connectivity will be investigated. • The utilisation of the spectrum is not restricted to rural and unprofitable areas. since it will be assigned on a national basis the spectrum can be utilised in profitable and unprofitable areas.
23	<p>Currently the reserve prices are set as follows:</p> <ul style="list-style-type: none"> • Lot A: minimum works out to N\$ 	<ul style="list-style-type: none"> • As indicated in comment 18 above, the fees for years 2-10 are as follows:

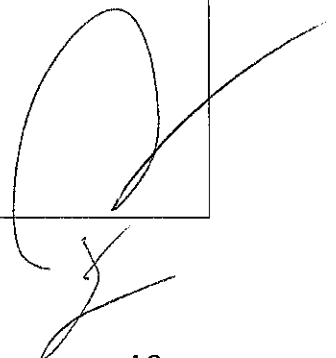
	<p>43,942,500 over 10 years;</p> <ul style="list-style-type: none"> • Lot B: minimum works out to N\$ 51,266,250 over 10 years; • Lot C: minimum works out to N\$65,100,000 over 10 years <p>The proposed reserve price came as a shock to the licensee because, when the Authority first published the discussion paper for 700 MHz and 800 MHz in September 2022, the discussion paper indicated that this spectrum was going to be awarded as a way to assist and incentivize licensees into rolling out services for purposed of achieving universal services in the absence of the universal service fund which is currently affected by the ongoing litigation setting low reserve prices for the spectrum auction or use a clearly transparent defined beauty contest to ensure that more money for investment is available in the sector. In keeping with this intention, the Authority and the industry resolved to have the spectrum assigned via the beauty contest method, which was the alternative to low reserve prices in our view.</p>	<p>Lot 1: N\$ 3,267,000 Lot 2: N\$ 2,858,625 Lot 3: N\$ 2,450,250</p> <p>The reserve prices are a once off amount and will not be charged yearly. This will be corrected on page 13 of the bid document. Hence the calculations made by the operator are not correct.</p> <ul style="list-style-type: none"> • The initial bid document issued for comments did not contain a reserve price, but a spectrum fee, as the intention was to do a beauty contest and simply had a price to be paid- • The spectrum fee in that bid document was on average much higher than the current reserve prices. Therefore, the presumption that a beauty contest would attract a low price is simply not correct. Due to the legalities explained in part 20, the methodology of a pure auction had to be utilised. • The operators have for many years kept the operationalisation of the UAS fund in court and should thus not cry foul due to a lack of subsidies for universal connectivity. • The licensees agreed at the said meeting that the spectrum fees must be formulae based. The Authority utilised the formulae to determine the price of the spectrum. However, this is high value spectrum and therefore the frequency band factor was set at 2.25 to take into consideration the high demand for this spectrum. This has been used in previous auctions as well.
24	<p>The proposed reserve prices are not in line with what the Authority agreed with the industry on 18 November 2022. The operators are required to upgrade existing sites, target rural areas and also roll out of new sites in rural areas, as per the objective of this spectrum auction, while also paying the above-mentioned high reserve price. It is common cause that</p>	<ul style="list-style-type: none"> • No specific reserve prices were agreed to at the meeting with the operators. Our sincere undertaking was that the price will be set utilising the formula-based methodology and will be kept reasonable, taking into cognisance the universal service imperative. We have honoured that undertaking; especially if you consider the reserve prices charged in our 

	<p>some operators may take part in this bid with costly infrastructure sharing agreements and some will use external funding due to financial constraints. The proposed reserve price in a high cost of telecommunications services to consumers in rural areas, but it will also create a unique challenge where funders will not agree to fund a business case that is not bankable and does not demonstrate a return on investments.</p>	<p>previous auctions or even those charged in neighbouring countries.</p>
25	<p>The licensee therefore urges the Authority to waive the proposed reserve price and put more emphasis on achieving universal access objectives as per the various National Policies cited in the bid document, by allocating the spectrum to the operators whose business cases demonstrates coverage of these targeted rural areas better. The licensee implores the authority to hold a bid clarification session on this aspect to better address this issue and hear from the industry on this matter. We look forward to the meeting invite from the Authority in this regard.</p>	<ul style="list-style-type: none"> • Please refer to the Authority's response under comments 20, 23 and 24.
26	<p>In terms of the bidding document, it is not clear whether the proposed license fees and/or reserve price is the amount to be paid to CRAN, to compensate the Authority for its cost in managing and supervising the use of this spectrum (annual spectrum fees) or whether it is the purchase price (reserve price) to acquire the right to use the spectrum.</p>	<ul style="list-style-type: none"> • Kindly have regard to the spectrum licensing procedure regulations and the Communications Act, which sets out the fees due to the Authority and rationale thereof. • The reserve price is set to acquire the right to use the spectrum by way of spectrum auction due to multiple interests in the frequency band.
27	<p>The bid document appears to use the word spectrum fees interchangeably with the word reserve price. It creates confusion as to whether the price cited in the bidding document as the reserve price is the same price that will serve as spectrum licence fees, especially when one has regard to the statement by the Authority that the spectrum license fees for this spectrum, are yet to be set and will be gazetted at a late stage. The Authority in its response</p>	<ul style="list-style-type: none"> • The amount indicated in the bidding document is the reserve price payable for the first year. Thereafter, licensees will be invoiced according to the new base value as per the spectrum fees regulations and set out above. • The comments on the March 2023 document are not applicable to this process. • Nothing is on sale, hence there is no purchase price. Only a reserve price and

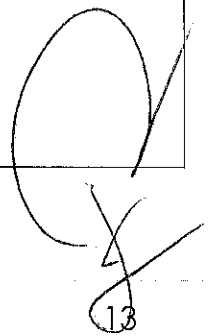
	<p>comments that were provided in March 23 under column 8 also stated that the licence fees for years two to ten, will be the price offered by the successful bidder for year one. It therefore, become confusing, and it is not clear if the reserve price is the purchase price of this spectrum which will be paid by the successful bidder in addition to the spectrum licence fees that will be determine at a later stage once the spectrum fee regulations have been amended. The confusing interchangeable use is also not in line with the definition of reserve price contained in Regulation 6(6) of the spectrum licensing regulations of 2019.</p> <p>The licensee therefore requests the Authority to clarify the above-mentioned aspect. In other words, is the spectrum reserve price that is payable for 10 years also the spectrum fees for the purpose of this auction, or are there further fees that will be set later and be paid by the licensees in addition to this proposed reserve price or the price offered by the licensees in this bid?</p>	<p>spectrum fees.</p> <ul style="list-style-type: none"> The reserve price is the minimum price that the Authority will accept for a specific lot in the auction process. The spectrum fee is the price that the licensee will pay from year 2-10. The spectrum fee is the only price that the operator will pay in addition to the price determined by the outcome of the auction process.
28	<p>We note that the Authority used the formula for calculating the annual spectrum fee as contained in the spectrum fee regulations for 2020 to determine the reserve price for the three lots in question. We reiterate that the definition of the reserve price as contained in regulation 6 of the spectrum licensing regulations and the definition of annual spectrum licence fees differ and for that reason the Authority is requested to clarify the following: why was the reserve price set using the annual spectrum fee formula.</p>	<ul style="list-style-type: none"> Licensees agreed that the price of the spectrum should be determined utilising the formulae as contained in the Spectrum Fee Regulation published in 2020 at the meeting held on 18 November 2022.
29	<p>Regarding the formula itself, the Authority set the frequency band factor at 2.25 for this spectrum, supposedly due to scarcity. We could not establish from the spectrum fee regulations and the formula provided therein where the Authority got this figure from. It is also not clear which the 20 MHz in the 700 MHz and 800 MHz are resulting in this high proposed price compared to all other spectrum fees for</p>	<ul style="list-style-type: none"> Multiple interests in a scarce resource denotes scarcity. This is the very reason why a competitive methodology is been utilised. The formula used to set the reserve price is as follows: <ul style="list-style-type: none"> ✓ 800 MHz band = $40 \times 2.5 \times 30 \times 1 \times 1 \times 2,170 = \text{N\\$ } 6,510,000$ ✓ 700 MHz = $40 \times 2.25 \times 30 \times 0.75 \times 1 \times 2,170 = \text{N\\$ } 4,394,250$

11

	<p>other bands that were also determined using the same prescribed formula. Kindly indicate the price differentiation and the rationale in this regard, clearly spelling out the cost-based evidence in this regard.</p>	<p>✓ $700 \text{ MHz and } 800 \text{ MHz} = ((20 \times 2.25 \times 30 \times 0.75 \times 1 \times 2,170) + 20 \times 2.25 \times 30 \times 1 \times 1 \times 2,170)) = \text{N\\$ } 5,126,625$</p> <ul style="list-style-type: none"> • The differentiation comes from the fact that for the first year the 700MHz band will be shared with NBC and that the 800 MHz band is a very high demand band. • The spectrum is indeed scarce since there is multiple interest and therefore the factor of 2.5 and 2.25 was used to take into consideration this scarcity.
30	<p>The licensee further requests the Authority to share the entire numerical input into the formulae that was used to arrive at these proposed reserve prices. And this should be highlighted to the industry in the bid clarification session that we are proposing to be host by the Authority.</p>	<ul style="list-style-type: none"> • Please refer to the Authority's reply under comment 29.
31	<p>The Authority on page 4, states that the objective is to provide services to underserved areas. If the objective is to provide services to unserved and underserved areas as a minimum requirement, why is the spectrum reserve price being set so high? Why is the spectrum being awarded to the highest bidder and not to the bidder that has the best network rollout plan to provide services to unserved and underserved areas?</p>	<ul style="list-style-type: none"> • The Authority has dealt with the reasonability of the reserve price extensively.
32	<p>The document states that the industry agreed that the assignment method be a spectrum auction. This statement is not quite accurate, and we refer the Authority to page 8 of the minutes of the public consultative meeting that was held on 18 November 2022, which minutes clearly and accurately capture what was agreed to by the industry. Page 8 states that on that day, it was resolved that the more favourable notion is concept one, the assignment of the spectrum via auction based on the beauty contest model. The licensee is of the view that based on the intended objectives of the spectrum and</p>	<ul style="list-style-type: none"> • The Authority has dealt with this matter already above.



	<p>the chosen assignment method, the auction should put more emphasis on the business cases and not set such high reserve prices. There should be no reserve prices at all and all that the licensees should pay to the Authority, should be the spectrum license fees.</p>	
33	<p>Page 14 paragraph (d) states that the licensee awarded this spectrum can engage NBC to prevent spectrum interference. We submit that it is the Authority's duty to manage the spectrum and supervise the use of the spectrum. Notably, the operators are required to invest millions to be allocated this spectrum before its is even available for usage and the Authority has to date not provided any proposed methodology to protect the rights of the licensee awarded this spectrum from interference. The Authority has not even highlighted when NBC is expected to vacate this spectrum or what the progress is in respect of this engagement.</p> <p>What protection is there for a licensee if the spectrum is not returned for the next 10 years? What methods will the Authority employ to prevent interference and allow the licensee who has invested in this spectrum to fully enjoy it? Why could the Authority not first obtain the spectrum from NBC before auctioning it? The licensee is therefore of the view that even the reduced price still does not cater for this risk which can have a grave financial impact on the licensee, not only in terms of operations, but also in terms of CAPEX required.</p>	<ul style="list-style-type: none"> • As per page 14 paragraph 14 (d) the Authority states the NBC is to discontinue broadcasting services in the 4 geographical areas specified by 24 June 2024. The Authority is ceased with the regulatory process to ensure that the NBC vacates the band by 24 June 2024. • The Authority has provided multiple lots of spectrum which an applicant may choose from. The onus rests on the Applicant to determine which lot to bid for based on its own risk analysis.
34	<p>The Request to Bid states: "The Licensee shall utilise the assigned frequencies specified to 4G and 5G mobile services in accordance with the frequency channelling plans gazetted for the spectrum bands assigned. The utilisation of assigned spectrum to provide 2G or 3G services is strictly prohibited." The Regulator to advise whether licensees may provide services for either 4G and/or 5G services or whether licensees are required to provide both 4G and 5G services in</p>	<ul style="list-style-type: none"> • The successful bidder may use the spectrum assigned for 4G and 5G network rollout in that it is envisage the 5G will not be rolled out on a national basis but rather in geographical areas where the use case requirements drive 5G technology implementation in addition to the 4G network layer.



13

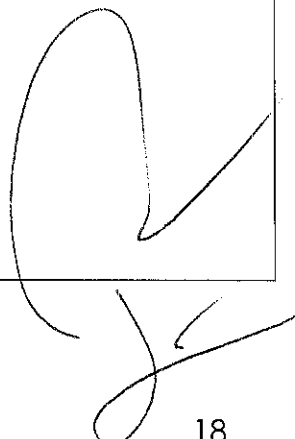
	utilization of the spectrum available for auction. The licensee is able to provide 5G in rural areas, however, investment in transmission for fibre would have to be made, as such would require an additional time to deploy 5G, perhaps set 5G deployment for year (3) three.	
35	The Request to Bid requires licensees to provide a rollout plan for seven regions identified as having less than 80% 4G coverage. However, in terms of licensee's coverage maps, four of the identified regions namely Hardap, Kavango West, Otjozondjupa and Zambezi and have 80% coverage. The Regulator to advise whether all of licensee's towers have been considered in the Regulator's coverage map. Additionally, would the licensee be required to rollout more sites in those regions, despite the 80% 4G coverage already attained.	<ul style="list-style-type: none"> The Authority appreciates this observation, and a new updated table will be shared in the final bid document as per the information received from licensees in their coverage reports of March 2023.
36	The Request to Bid requires the provision of broadband services with a download speed of not less than 20 Mbps, however, the licensees are required to provide 80% population coverage. The spectrum to be assigned will not be sufficient to ensure nationwide coverage.	<ul style="list-style-type: none"> The successful bidder will be authorised to utilise the said spectrum on a national basis within the border of the Republic of Namibia. 100% of the population resides within the borders. The spectrum is sufficient to ensure compliance with the roll out obligations and any other business case that an operator may want to roll out.
37	The minimum recommended speed would only be able to service limited customers due to shared services. Bandwidth, i.e. 20MHz can theoretically supply 150mbps. Modulation Coding Scheme (MCS) depends on channel quality and defines how many bits can be carried by a single Resource block (RB). In some rural applications the MCS can be low, as such will influence cell throughput. Higher order MIMO technologies like 4T4R can improve throughput but it comes at an extremely high cost.	<ul style="list-style-type: none"> The main objective of this spectrum allocation is to improve access to quality telecommunications services and ensure meaningful connectivity to consumers. The technologies to be deployed, namely 4G and 5G offers a wide array of applications and use cases that requires a minimum downlink data speed of not less than 20 Mbps to ensure an acceptable quality of services offered to the consumers and health and education facilities. As per data submitted to the Authority operators currently achieve in the excess of 21 Mbps for 4G services on average. The Authority is therefore of the opinion that it is not an unreasonable burden placed on Bidders to provide meaningful connectivity to all Namibians on a national basis.

38	The licensee intends to utilize the spectrum in conjunction with existing spectrum in order to alleviate congestion, is this required to be provided for in the business case.	<ul style="list-style-type: none"> • Yes, that will be permitted provided the licensee also complies with the roll out obligations and the network deployment criteria as set out in the bid document. • However, note that the use of other spectrum bands shall not be used as a reason to provide a data speed of less than 20 Mbps
39	The Request to Bid requires the provision of a signed declaration declaring the licensee's solvency. The licensee provides a letter from the bank indicating available resources. The Regulator to advise, whether the provision of a bank letter suffices in this regard and why licensees are being required to sign the solvency and financial declaration.	<ul style="list-style-type: none"> • The affirmations contained in a signed declaration are of such a nature that they confirm a licensee's solvency and the fact that there are no judicial proceedings pertaining to its liquidity or debts. Hence it is compulsory that the declaration be completed and a bank confirmation letter would not suffice.
41	The licensee note with concern that the Authority's conduct in this auction does not appear to be consistent and transparent. The Authority is changing its position and not sticking to its undertaking or industry solutions, and the explanations from the authority in respect of serious industry matters pertaining to this auction appear to be contradictory, in our letter dated 17 April 2023, the licensee raised serious objections to the reserve prices and advised the Authority that the setting of a reserve price was not the intention and the tone set by the Authority from the beginning and was not part of the briefing that the Authority provided to the industry on 18 November 2022 at the public hearing. The licensee further demonstrated in that letter by referring to various documents from the Authority as cited in that letter, how the Authority's position continues to be shifting in as far as the reserve price is concerned, that was not initially indicated but now appears to have become apparent.	<ul style="list-style-type: none"> • The letter of 17 April 2023 was submitted after closure of the commenting period on the bid document and after submission of bids and was thus not considered. • It cannot be that the Authority's transparency is questioned based on a letter that was filed out of time and by an operator who did not even participate in the process. • Operators that choose not to participate or are tardy in their approach, should reconcile themselves to the outcome of the process as influenced by those operators who are timely and not blame this on the regulator.
42	When one considers the original bidding document as published by the Authority, if it did not have a reserve price proposed or if it did, it was not expressly stated and not referenced as such and was perhaps what was called licence fees for year one in that version. The responses received from the Authority do not indicate that anyone	<ul style="list-style-type: none"> • The Authority has extensively dealt with this matter.

	proposed the introduction of a reserve price that we later came to see in the final draft and contained in this draft.	
43	Column 8 of the Authority's reply comments were clear, in that only the application fee, and annual fees (which were to be determine by amending the spectrum fee regulations were payable. Column 8 stated that no other fees were payable. Today as we have it, bidders are liable for application fees, licence fees and the reserve price, especially because the words reserve price and licence fees are used loosely and ambiguously much to the uncertainty of the licensees. Is there a reserve price or is it the same as the annual licence fees or will the annual spectrum fees for years two to ten, be set once the spectrum fees regulations is revised and be payable, in addition to the reserve price that we see being payable over a period of ten years?	<ul style="list-style-type: none"> • Please refer to the Authority's reply under comments 17 and 18.
44	The Authority seems to have abandoned its undertaking to the industry that the allocation will be a beauty contest. While cognizant of the fact that a beauty contest may, not necessarily, have a small element of price, the licensee disagree that it should include a set, strict reserve price. The licensee are of the view that this method is simply supposed to be a matter of what bidders offer, not a strict reserve price and too high a price at that.	<ul style="list-style-type: none"> • Please refer to the Authority's reply under comment 18.
45	A pure auction employs a price mechanism to allocate spectrum. From the document, it appears the goal is revenue maximization (selling to the highest bidder) in round two. In round one, a bidder needs to score above 80%, however, the criteria to deploy in regions with less than 80% is only awarded twenty points. A bidder can score zero for this criteria and still make it pass round one, and the objective of deploying to unserved and underserved areas will not be met. Is this still consistent with the mantra of the "digital dividend" spectrum? Is this still a beauty contest or a normal auction to the highest bidder?	<ul style="list-style-type: none"> • Please refer to the Authority's reply under comment 23.
46	Page 10 paragraph (c) and (d) are also not	<ul style="list-style-type: none"> • Noted, this will be aligned.

	aligned. Paragraph 7.3 does not set out technical conditions as referred in that paragraph. The entire document seems to be misaligned in terms of cross-referencing. Kindly double-check this and correct same	
47	<p>The licensee note that the spectrum is aimed at achieving universal access. We are of the view that, given the financial circumstances of the operators and the country at large, we propose that the Authority also consider funds such as seeking funds from Government budget because telecommunications universality objectives are also an aspect of the Government's National Broadband Policy and as such it should therefore be funded by Government.</p> <p>Further and given the high cost of spectrum and large sums of money collected from the industry through spectrum auction, the Authority should consider funding the universal services from the proceeds of spectrum auctions. The licensee are of the view that the funds generated from these auctions should not form part of the money required to defray the Authority's expenses or to cover the spectrum management costs because these two items are already covered by the regulator levy and spectrum licence fees.</p> <p>The licensee reiterate that the Authority in conjunction with the Government should consider seeking funding from International development agencies such a the World Bank, because current trajectory is not sustainable and will result in an increase in the cost of telecommunications services.</p>	<ul style="list-style-type: none"> • Government provided that UAS levies must be charged to fund universal services under the General Policy Guidelines on Universal Access and Service and section 56 of the Communications Act, 2009. There is no framework which supports the utilisation of spectrum fees to fund universal services.
48	<p>Bid evaluation committee vs bid preparation committee and bid approval committee:</p> <p>It is good practice to have checks and balances in a process of this nature. For instance, in the bidding process undertaken under the Procurement Act, the people involved in drafting and preparing</p>	<ul style="list-style-type: none"> • The Authority grants rights for the use of spectrum resources in terms of the Communications Act, No. 8 of 2009. The provisions of the Public Procurement Act, No. 15 of 2015, and its supporting regulations regarding the granting of any rights, do not prevail over the provisions of the Communications Act, 2009. • Please see section 3(2) of the Public

	<p>the bidding document are not legally allowed to be the same people who are involved in the evaluation and selection process of the successful Bidder.</p> <p>While noting that this processes is not being conducted in terms of the Procurement Act, given the Ministerial Directive issued for granting rights, we do however recommend that the Authority conducts the process in line with the accepted best practices and standards, as stated above. It is therefore not good governance for the people who prepared the bid to be involved in the bid evaluation. This may undermine the governance of the bidding process, and we reserve the right to legally object to this, in the near future.</p>	<p>Procurement Act, 2015, and sections 99(1) and 101(2) of the Communications Act, 2009. All necessary checks and balances are an integral part of the Authority's governance framework.</p>
49	<p>Are the comments to the bidding document due on 29 May 2023 as per the table on page 6 or on 9 June 2023 as stated on page 23?</p>	<ul style="list-style-type: none"> • This is an historic matter as all comments were received on 29 May 2023.
50	<p>Page 24, first paragraph states the Authority will respond and provide reply comments to parties that submitted comments without identifying the party that made the comments.</p> <p>The licensee proposes that for transparency, all comments received from the industry be shared as is, and not just the summarized version and further that the Authority's reply comments should be shared with all relevant stakeholders and not only those that gave comments as stated proposed in the bid document.</p> <p>Procedural transparency is one of the fundamental requirements of a successful licensing process. The absence of transparency undermines investor confidence in the fairness of the entire regulatory process and in the telecommunications market itself. Lack of transparency can significantly slow the process of liberalization and reduce the benefits of privatization. It is therefore, good practice for a regulator to take all reasonable steps to ensure that all</p>	<ul style="list-style-type: none"> • The Authority is cognisant of the fact that that same entities may not be in favour of being named during the initial stages of the auction process until submission of bids due to competitive reasons, for that reason comments are anonymised. • All comments are captured verbatim as submitted. • Comments and the reply from the Authority is send to those parties that submitted comments and uploaded to the Authority's website, where it is also accessible to any industry player, interested stakeholder and the public. • The allegations on lack of transparency are unfounded and unfortunate.



	stakeholders in the licensing processes, including applicants, as well as general public, view the process to be fair.	
51	Page 24 (c), the licensee requests the Authority to consider allowing the coverage maps and simulations per site to be provided in soft copy only. It is cumbersome to print coverage maps for each site in meaningful detail.	<ul style="list-style-type: none"> This suggestion is accepted by the Authority and will be incorporated in the final bid document.
52	Page 27 mentions a minimum of 3 years for spectrum fees and again a minimum of 5 years for OPEX and CAPEX in paragraph (ii). Kindly confirm if this difference in the number of years is correct	<ul style="list-style-type: none"> The five year refers to the business plan to be provided and the 3 years to the spectrum fees payable to receive a discount.
53	Page 27 (iv) the Authority in its reply comments to the last bidding document indicated that the financial statements of the entity will suffice for the purposes of satisfying the requirement of independent evidence to the availability of funds. Is this still the case, or what type of evidence will suffice? Kindly clarify.	<ul style="list-style-type: none"> The latest AFS will suffice except if the licensee will take out a loan to pay for the capital investment or obtain the money from any other source or any other information that the applicant deems important for consideration.
54	Page 29, can the Authority kindly clarify what is meant by the spectrum auction model that the bidders will be informed of in the notice of qualification that will be issued to qualifying bidders? Is the spectrum auction model not already certain at this stage?	<ul style="list-style-type: none"> Please refer to the Authority's reply under comments 13 to 15.
55	Page 30. The licensee proposes that for transparency, and in line with best practice, the publication of the results of the auction should also contain the award price in respect of the successful bidders	<ul style="list-style-type: none"> This suggestion is accepted by the Authority and will be implemented.



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