

REPUBLIC OF NAMIBIA

NATIONAL ASSEMBLY

COMMUNICATIONS BILL

(As read a First Time)

*(Introduced by the Minister of Information
and Communication Technology)*

BILL

To provide for the regulation of telecommunications services and networks, broadcasting, postal services and the use and allocation of radio spectrum; for that purpose the establishment of an independent Communications Regulatory Authority of Namibia; to make provision for its powers and functions; the granting of special rights to telecommunications licensees; the creation of an Association to manage the .na internet domain name space and for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of Namibia, as follows:

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CHAPTER I
INTRODUCTORY PROVISIONS

Definitions and interpretation

1. (1) In this Act, unless the context indicates otherwise –

“Association” means the .na Domain Name Association established by section 103;

“Authority” means the Communications Regulatory Authority of Namibia established by section 4;

“Board” means the Board of the Authority referred to in section 8;

“broadcast” means to disseminate electronic communications –

- (a) by radio waves if that communications are intended to be received by the public or the subscribers to a particular service, directly or by the intermediary of relay stations; or

- (b) by any other means if that communications are intended to be received by the public or the subscribers to a particular service and the Authority has after following a rule-making procedure, by regulation prescribed that the specified services are broadcasting services;

“broadcasting code” means the broadcasting code made in terms of section 89;

“broadcasting licence” means a broadcasting licence issued in terms of section 85;

“Chairperson” means the Chairperson of the Board appointed under section 13;

“class licence” means a telecommunications licence referred to in section 38(1)(c);

“communications” means electronic communications and communications by means of postal services;

“customer” means any person who concluded a contract with the provider of telecommunications services for the provision of such services;

“Director-General” means the Director-General defined in section 1 of the Namibia Central Intelligence Service Act, 1997 (Act No. 10 of 1997);

“domestic telecommunications service” means a telecommunications service that both originate and terminate within Namibia;

“dominant” means determined to be dominant as contemplated in section 78;

“electronic communications” means any emission, transmission or reception of sound, pictures, text or any other information by wire, radio waves, optical media, electromagnetic systems or any other means of a like nature;

“fixed line telephone service” means the commercial provision to the public of a service consisting of the transport and switching of speech in real time over its network, enabling any user to use equipment connected to termination points of that network so as to communicate with another termination point or any termination point on a network interconnected with the network of the carrier concerned;

“individual licence” means a telecommunications licence referred to in section 38(1)(a) or (b);

“international telecommunications service” means any telecommunications service provided between Namibia and foreign countries;

“interconnection” means the linking of two telecommunications so that users of either network may communicate with users of, or utilise services provided by means of, the other network or any other telecommunication network connected to the other network;

“member” means a member of the Board;

“Minister” means the Minister responsible for Communications;

“number portability” means the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability or convenience when switching from one carrier to another;

“postal services” means the business of receiving, collecting, dispatching, conveying and delivering postal articles and of transmitting and delivering telegrams and of performing all incidental services;

“private line service” means a telecommunications service in which certain telecommunications facilities or an agreed upon amount of capacity between or among fixed points is reserved for the exclusive use of a particular customer for an agreed upon period of time, for which the customer compensates the provider based on the total amount of capacity leased rather than actual usage by the customer;

“public pay-telephone” means a telephone terminal available for the use of the public and for the use of which the methods of payment are coins, credit or debit cards or pre-payment cards or other means of direct payment at the fees charged by the provider of such public telephone terminal;

“radio waves” means electromagnetic waves which are propagated in space without artificial guide and having frequencies of lower than 3 000 Ghz, “radio frequency” and “radio frequency spectrum” is construed accordingly;

“radio apparatus” means a telecommunications device which is capable of transmitting or receiving any signal by radio waves, other than –

- (a) a sound radio set or other device capable of receiving only frequencies reserved for broadcasting by radio waves in the form of sound; and
- (b) a television set;

“regulation” means a regulation made under this Act or deemed to have been made under this Act;

“resale” means the commercial offering to the public of telecommunications services obtained from another carrier and “reseller” will be construed accordingly;

“rule-making procedure” means a procedure prescribed in terms of section 30(3);

“tariffs” means the published rates and other terms and conditions under which a customer may receive telecommunications services;

“Telecom” means Telecom Namibia Limited established by section 2(1)(b) of the Posts and Telecommunications Companies Establishment Act, 1992 (Act No. 17 of 1992);

“telecommunications licence” means a licence referred to in section 38(1);

“telecommunications services” means services whose provision consists wholly or partly in the transmission or routing of information on telecommunications networks by means of telecommunications processes but does not include broadcast services;

“universal service” means the services prescribed in terms of section 57(1);

“Universal Service Fund” means the Fund established by section 56;

“user” means any natural or juristic person, including customers, who uses or requests a telecommunications service, whether or not that person pays for such service.

- (2) For the purposes of this Act, one person is an affiliate of another person –
- (a) if one of them directly or indirectly controls the other one of them;
 - (b) if one of them holds directly or indirectly, an interest of 10% or more in the other of them;
 - (c) if they are both controlled directly or indirectly by the same person; or
 - (d) if any person holds directly or indirectly an interest of more than 10% in both of them.

(3) For the purposes of this Act, one person is deemed to control another person if the former has the power to direct or cause the direction of the management of the latter person, whether through ownership of shares, voting, securities, partnership or other ownership interest, whether by contract or otherwise and whether directly or indirectly.

Objects of this Act

2. The objects of this Act are –
- (a) to establish the general framework governing the opening of the telecommunication sector in Namibia to competition;
 - (b) to provide for the regulation and control of communications activities by an independent regulatory authority;
 - (c) to promote the availability of a wide range of high quality, reliable and efficient telecommunications services to all users in the country;
 - (d) to promote technological innovation and the deployment of advanced facilities and services in order to respond to the diverse needs of commerce and industry and support the social and economic growth of Namibia;
 - (e) to encourage local participation in the communications sector in Namibia;

- (f) to increase access to telecommunications and advanced information services to all regions of Namibia at just, reasonable and affordable prices;
- (g) to ensure that the costs to customers for telecommunications services are just, reasonable and affordable;
- (h) to stimulate the commercial development and use of the radio frequency spectrum in the best interests of Namibia;
- (i) to encourage private investment in the telecommunications sector;
- (j) to enhance regional and global integration and cooperation in the field of communications;
- (k) to ensure fair competition and consumer protection in the telecommunications sector;
- (l) to advance and protect the interests of the public in the providing of communications services and the allocation of radio frequencies to the public.

Establishment of Communications and Information Policy Unit

3. (1) Subject to the laws governing the Public Service in Namibia, The Minister may establish a Communications and Information Policy Unit in the Ministry for which he or she is responsible and designate such staff members in the Public Service to perform such duties in that unit as he or she thinks fit.

(2) The unit must advise the Minister in the performance of his or her duties in terms of this Act and may advise him or her in relation to any matter relating to communications.

CHAPTER II COMMUNICATIONS REGULATORY AUTHORITY OF NAMIBIA

Establishment of Authority

4. (1) The Communications Regulatory Authority of Namibia (for which the abbreviation CRAN may be used) is hereby established.

(2) The Authority is a juristic person with the objects and powers provided for in this Act.

Objects of Authority

5. The objects of the Authority are to regulate the communications industry in Namibia in accordance with the provisions of this Act.

Powers of Authority

6. In order to achieve its objects the Authority has, in addition to the powers granted to it elsewhere in this Act, the power to –

- (a) own movable and immovable property and to deal with such property in the manner that it thinks fit: Provided that the Authority may only acquire, alienate or mortgage immovable property with the approval of the Minister;
- (b) conclude any contract;
- (c) institute and defend legal proceedings in its own name.

Minister may issue policy guidelines to Authority

7. (1) The Minister may issue general policy guidelines to the Authority, not inconsistent with the provisions of this Act, subject to which the Authority must exercise the powers vested in it by virtue of the provisions of this Act.

(2) The policy guidelines referred to in subsection (1) must be prepared after consultation with the Authority.

(3) The Minister must follow such process as he or she considers expedient to obtain the views of stake holders in the communications industry before issuing guidelines in terms of subsection (1).

(4) Any guidelines issued in terms of subsection (1) must be published in the *Gazette*.

Board of Authority

8. The Authority is managed by a Board that consists of five members unless a different number is determined in accordance with section 14(1)(a) of the State-owned Enterprises Governance Act, 2006 (Act No. 2 of 2006).

Appointment of members

9. (1) The Board must be constituted, and its members, including the chairperson and the vice-chairperson of the Board, must be appointed in accordance with, and for a period as determined under sections 14 and 15 of the State-owned Enterprises Governance Act, 2006 (Act No. 2 of 2006).

(2) The members of the Board must, when viewed collectively, be persons who represent a broad cross-section of the population of Namibia including with reference to gender, and who possess proven qualifications, expertise and experience in the fields of information and communication policy and technology, radio services, law, economics, business practice and finance.

Disqualification for appointment as member

10. A person is not eligible for appointment as a member of the Board, if he or she –

- (a) is not a Namibian citizen and not lawfully admitted to Namibia for permanent residence;
- (b) is not resident in Namibia;
- (c) is a member of Parliament, a regional council or a local authority;
- (d) manages, is employed by or has any financial interest in any provider of telecommunications services or any business having a financial interest in any product or industry that is or may be regulated by the Authority;
- (e) has been convicted of an offence, other than a political offence committed before the date of Independence of Namibia, in any country and sentenced to a term of imprisonment without the option of a fine;
- (f) has any other financial or other interest likely to prejudicially affect the performance of his or her duties as member of the Board;
- (g) has been declared as mentally ill under any law relating to mental health; or
- (h) is an unrehabilitated insolvent.

Term of office of member

11. (1) Unless a different determination has been made in terms of section 14 (1)(d) of the State-owned Enterprises Governance Act, 2006 (Act No. 2 of 2006), and subject to subsection (2), the term of office of a member is three years.

(2) A member whose term of office has expired, may be re-appointed as a member.

(3) When a vacancy arises on the Board, the Minister must appoint a member for the unexpired portion of the term of office of the member who has vacated his or her office.

Vacation of office

- 12.** (1) A member vacates his or her office as member, if he or she –
- (a) resigns as a member by giving not less than one month's written notice to the Minister;
 - (b) has without the leave of the Board, been absent from three consecutive meetings of the Board;

- (c) has become subject to any disqualification referred to in section 10; or
 - (d) is removed from office under subsection (2).
- (2) The Minister may remove any member from his or her office, if –
- (a) the Minister is satisfied that such member is by reason of his or her physical or mental condition or for any other reason incapable of acting as such member;
 - (b) such member is guilty of conduct which renders him or her unable or unfit to efficiently discharge the functions of the office as a member or has taken part in the discussion of, or has voted in connection with, any matter in which he or she has an interest; or
 - (c) such member is guilty of conduct prejudicial to the objectives of the Authority.
- (3) The Minister may only so remove a member from office after giving notice to such member and after affording him or her a reasonable opportunity to be heard.
- (4) Where a member has vacated his or her office such member may not represent nor appear before the Authority on behalf of a party for a period of twelve months after leaving office.
- (5) A member who participated as a member in the consideration of any matter may not represent nor appear before the Authority on behalf of a party in relation to such matter.

Chairperson of Board

13. (1) The Minister must appoint a chairperson and a vice-chairperson from among the members of the Board.
- (2) The chairperson or in his or her absence, the vice-chairperson must preside at a meeting of the Board.
- (3) If both the chairperson and the vice-chairperson is for any reason unable to preside over a meeting of the Board, the members present must elect a member from among themselves to act as chairperson of the Board, for that meeting.

Remuneration of members

14. (1) A member, who is not in the full time employment of the State, must be paid out of the funds of the Authority such allowances or other remuneration in respect of his or her service as member, as the Minister in consultation with the Minister of Finance may determine in respect of the chairperson and other members.
- (2) Allowances or other remuneration determined under subsection (1) may differ according to the different offices held or functions performed by members.

Meetings of the Board

15. (1) The first meeting of the Board must be held at such time and place as the Minister may determine, and subsequent meetings of the Board may be held at such time and place as the Board or the chairperson may determine, but in no case less than once every two months.

(2) The chairperson or a majority of the members may at any time, and must at the written request of the Minister convene a special meeting of the Board.

(3) The majority of the members constitute a quorum at a meeting of the Board.

(4) The chairperson must cause reasonable notice of every meeting of the Board to be given to the members.

(5) The decision of a majority of the members present and voting at a meeting of the Board constitutes a decision of the Board, and in the event of an equality of votes the person presiding at such meeting has a casting vote in addition to his or her deliberative vote.

(6) A decision of the Board or an act performed under the authority of the Board is not invalid only by reason of -

(a) a vacancy on the Board; or

(b) the fact that a person not entitled to sit as a member of the Board was in attendance when the decision was taken or act authorised,

if the decision was taken or act authorised by a majority of the members who were present and entitled to vote at such meeting.

(7) Subject to the provisions of this Act, the Board may regulate its procedures and the procedures that must be followed when a meeting of the Board is convened.

(8) The Board must cause minutes to be kept of the proceedings at its meetings and the meetings of its committees.

(9) Subject to subsection (10), all meetings of the Board where any person makes representations to the Board or presents arguments on a question of law or fact to the Board as well as any hearing before any organ of the Authority must be open to the public: Provided that in the case of a meeting or part of a meeting where the members of the Board only deliberate among themselves may be open or closed to the public as the Board may decide.

(10) The Board may decide to close the whole or part of any meeting or hearing that in terms of subsection (9) must be open to the public, on the grounds that such meeting or part of a meeting will relate to or disclose

- (a) matters that must be kept secret in the interest of national security;
- (b) matters relating to the internal personnel rules and practices of the Authority;
- (c) trade secrets or commercial or financial information that is privileged or confidential; or
- (d) information of a personal nature the disclosure of which would constitute an unwarranted invasion of personal privacy.

(11) In determining whether to close a meeting to the public the Board may require a person requesting such action to demonstrate the reasons why such meeting must be closed to the public in a meeting of the Board that is closed to the public.

(12) The grounds for closing a meeting to the public must be recorded and such recording must state the provision of this section authorising such closing.

(13) Notwithstanding the provisions of subsection (5), a written resolution not passed at a meeting of the Board but signed by all the members of the Board at that time present in Namibia and sufficient to constitute a quorum is as valid and effectual as if it had been passed at a meeting of the Board duly convened and constituted, and such resolution must be recorded in the minutes of the next ensuing meeting of the Board.

Committees of the Board

16. (1) The Board may from time to time establish a committee to –
- (a) advise the Board in the exercise of its powers and performance of its duties;
 - (b) perform any function that the Board may delegate to such committee.

(2) A committee established under subsection (1) must consist of at least one member and such other person or persons as the Board may determine, and such committee may, with the approval of the Board, co-opt persons of special expertise to advise it in the performance of its functions, but such co-opted person is not entitled to vote at any such meeting.

(3) The Board must designate a member as chairperson of each committee.

Disclosure of interests

17. (1) A member or committee member who has a direct or indirect interest in any matter pending before the Board or which is likely to conflict with any matter that may be regulated by the Authority, must as soon as possible after the relevant facts have come to his or her knowledge, in writing disclose the nature of his or her interest in a meeting of the Board or of a committee, as the case may be.

(2) The member or committee member who has the interest to which the disclosure relates may not be present during or take part in the deliberations or decision on such matter by the Board or committee, as the case may be.

Delegation of powers, and assignment of duties and functions

18. (1) The Board may delegate any power, or assign any duty or function conferred or assigned to it by or under this Act, except a power to make regulations, issue an individual telecommunications service licence or a broadcasting licence and to reconsider a decision of the Authority as contemplated in section 31, to –

- (a) a member of the Board;
- (b) a committee of the Board; or
- (c) a staff member or consultant of the Authority.

(2) A power, duty or function delegated under subsection (1) must be exercised or performed subject to the direction of the Board and the Board is not divested of such delegated power or function, and may –

- (a) issue such guidelines or instructions or may place such limitations relating to the exercise of the power function or duty as may be necessary;
- (b) may at any time withdraw or amend such delegation;
- (c) authorise or issue instructions relating to, the further delegation of such power, function or duty.

(3) The Board may instruct any member, committee or staff member to determine any question, to investigate any matter, to conduct any hearing or to perform any function relating to a power, duty or function whether such power duty or function may be delegated or assigned in terms of subsection (1) or not.

(4) When the Board acted under subsection (3), the member, committee or staff member concerned must prepare a report which must contain all relevant information relating to the instruction referred to in subsection (3).

Indemnity of members and employees of Authority

19. No member, committee member or staff member of the Authority will be personally liable for any damage or loss arising out of any act done by himself or herself in good faith and in the course of his or her duties to the Authority unless such loss or damage is due to his or her wilful misconduct, dishonesty or gross negligence.

Chief executive officer

20. (1) Subject to subsection (3) and section 22(3) of the State-owned Enterprises Governance Act 2006, (Act No. 2 of 2006), the Board must appoint a

suitably qualified person as the chief executive officer of the Authority who will act as the chief executive officer of the Authority.

(2) The appointment of the chief executive officer must be for a term of five years, renewable on expiry, but he or she may be removed from office before the expiry of the term of office in accordance with the provisions of his or her contract of employment, section 21(2) of the State-owned Enterprises Governance Act, 2006 (Act No. 2 of 2006), and the law of Namibia.

(3) The Board may not appoint any person as chief executive officer who is subject to a disqualification for appointment as a member of the Board referred to in section 10.

(4) The Chief executive officer –

- (a) must be in the full-time employment of the Authority and may not engage in any other occupation or employment, whether for remuneration or not, without the prior written approval of the Board;
- (b) may exercise such powers and must perform such functions as are conferred upon him or her by this Act or assigned or delegated to him or her by the Board, in accordance with the policies, rules and procedures determined by the Board;
- (c) must, when so requested by the Board attend any meetings of the Board, but does not have the power to vote thereat;
- (d) is responsible for the work of the Authority and the performance of its functions in terms of this Act;
- (e) is responsible for the supervision and control of the staff of the Authority;
- (f) is the accounting officer of the Authority charged with the accounting of moneys received and payments made by the Authority, and must keep or cause such proper accounts and records of account to be kept as are necessary to represent fairly the state of affairs and business of the Authority;
- (g) must report to the Board on the activities of the Authority once every six months and at the end of each financial year.

(5) If the chief executive officer is temporarily unable to perform his or her duties the Board may designate any member or employee of the Authority to temporarily act as chief executive officer, and such person must exercise the powers and perform the duties of the chief executive officer during that period.

Staff of the Authority and transfer of service

21. (1) Subject to the State-owned Enterprises Governance Act, 2006 (Act No. 2 of 2006), the Board may on the recommendation of the chief executive officer

and upon such remuneration and conditions of service as it may determine, appoint as employees of the Authority, such persons as it deems necessary in order to assist the Authority with all such work as may arise through the exercise and performance of its powers, duties and functions in terms of this Act.

(2) A staff member who leaves the employment of the Authority may not represent any person in any matter pending before the Authority if he or she has performed any significant function in relation to that matter.

(3) The Board and the Minister may conclude an agreement whereby staff members in the Public Service whose duties relate to the functions of the Authority are transferred to the Authority under such conditions as are contained in the agreement in question.

Funds of Authority

22. (1) Subject to subsection (2) the funds of the Authority consist of —
- (a) an initial amount appropriated by Parliament for the benefit of the Authority;
 - (b) fees received by the Authority in relation to the grant, renewal or transfer of any licence or authorisation in terms of this Act or any other law;
 - (c) any fees received by the Authority in relation to the regulation and control of the radio wave spectrum;
 - (d) any other fees or levies prescribed under this Act or any other law for the benefit of the Authority;
 - (e) any revenue received for services provided in the course of its activities;
 - (f) fines and other monetary sanctions imposed by the Authority in accordance with the provisions of this Act or any other law;
 - (g) proceeds from auctions of radio frequencies;
 - (h) interest derived from the investment of moneys standing to the credit of the Authority; and
 - (i) moneys accruing to the Authority from any other source, including donations or grants made for the benefit of the Authority.

(2) The moneys paid to the Authority pursuant to a universal service levy imposed under section 56(2) and any interest derived from the investment of such moneys do not form part of the funds of the Authority.

(3) The Board must adopt such rules and procedures relating to the accounting for the funds of the Authority and the Universal Service Fund as may be necessary to ensure proper administration of and accounting for those funds.

(4) The rules and procedures adopted under subsection (3) must be in accordance with internationally accepted accounting practice.

(5) The Board may, with the approval of the Minister and with the concurrence of the Minister of Finance, invest any moneys standing to the credit of the Authority or the Universal Service Fund which is not required for immediate use under this Act with any banking institution or building society registered in terms of the laws governing banking institutions and building societies in Namibia.

(6) The accounts of the Authority and the Universal Service Fund must be audited annually by an independent person who is registered as an accountant and auditor in terms of the Public Accountants' and Auditors' Act, 1951 (Act 51 of 1951) appointed by the Board, which will rely on internationally-accepted accounting practices and that person must submit his or her report to the Board.

Regulatory levy

23. (1) The Authority may by regulation after having followed a rule-making procedure, impose a regulatory levy upon providers of communications services in order to defray its expenses.

(2) Regulations made in terms of subsection (1) may impose the levy in one or more of the following forms:

- (a) A percentage of the income of providers of the services concerned (whether such income is derived from the whole business or a prescribed part of such business) specified in the regulations concerned;
- (b) as a percentage of the profit of the provider concerned (whether in respect of the whole business or in respect of a prescribed portion of such business), calculated in the manner prescribed in the regulations concerned;
- (c) a fixed amount per year in respect of such services as may be specified in the regulations concerned;
- (d) a fixed amount in respect of any call made, any line made available, or a specified amount of capacity or bandwidth made available in respect of a particular service; or
- (e) in any other manner that is not unreasonably discriminatory.

(3) Regulations made in terms of subsection (1) may –

- (a) prescribe the periods and methods of assessment of the regulatory levy;

- (b) prescribe the information to be provided to the Authority for the purpose of assessing the regulatory levy;
- (c) prescribe penalties for the late payment of the regulatory levy, or for providing false information or for the failure to provide information to the Authority relating to the assessment of the levy.

Transfer of assets and liabilities to Authority

24. (1) The Minister must as soon as possible after the date on which this Act comes into force, transfer such assets and liabilities to the Authority as in his or her opinion is related to the performance of any task that in terms of the provisions of this Act, must be performed by the Authority.

(2) No transfer duty, stamp duty or any other duty or tax is payable in respect of such transfer.

Financial year

25. The financial year of the Authority is from 1 April to 31 March in the following year.

Annual Report

26. (1) As soon as possible after the end of each financial year the Chief executive officer must produce an annual report of the Authority for the preceding financial year.

- (2) The report must contain –
 - (a) a full description of the actions taken in the previous financial year in order to achieve the objects of this Act set out in section 2;
 - (b) recommendations for legislative and regulatory changes that are appropriate to address the condition of the development of telecommunications and the development of competition in the sector or otherwise further the purposes of this Act;
 - (c) a balance sheet, an income statement and a cash-flow statement which is a true and correct reflection of the state of affairs of the Authority as at the end of that financial year; and
 - (d) a report by the auditor who audited the accounts of the Authority stating whether the Authority's report fairly represents the financial position and results obtained by the Authority in accordance with generally accepted accounting practice.

(3) The annual report must be submitted to the Board, which may make such amendments to the report as it thinks fit.

(4) The Board must approve the annual report within six months from the end of the financial year to which the report relates.

(5) After the annual report has been approved by the Board, it must be submitted by the Chief executive officer to the Minister.

(6) The Minister must table the annual report within 14 days from the receipt thereof in the National Assembly, if it is then in ordinary session or within 14 days from the commencement of the next ordinary session, if the Assembly is not in ordinary session.

CHAPTER III PROCEDURAL MATTERS

Public availability of information

27. (1) The Authority must take such measures as are necessary to ensure that the public has access to documents containing information relating to –

- (a) its organisation and the places at which, the employees from whom, and the methods whereby the public may obtain information, make any submission or request, or obtain copies of decisions, regulations and orders of the Authority;
- (b) the general course and method by which its functions are performed, including the nature and requirements of all formal and informal procedures available;
- (c) rules of procedure, descriptions of forms available and the places at which forms may be obtained, and instructions as to the scope and contents of all non confidential or proprietary papers, reports or examinations;
- (d) statements of general policy or interpretations of general applicability formulated and adopted by the Authority;
- (e) orders and decisions of the Authority in furtherance of this Act; and
- (f) minutes of public meetings of the Authority.

(2) The information contained in the documents referred to in subsection (1)(d) and (1)(e) must be included in the annual report of the Authority referred to in section 26.

(3) Subject to subsection (4), the Authority must maintain a public register of every licence issued or renewed under this Act which must state all the terms and conditions attached to each licence.

(4) The Authority may exclude any information relating to a licence issued to the Government, if the disclosure of such information may prejudice the combating or prosecution of crime, or may harm the national interest of Namibia.

(5) The Authority must make publicly available copies of all documents and information submitted to it in proceedings before it, including, but not limited to, applications, submissions relating thereto, orders and other decisions with respect to licensees of the Authority, and all tariffs required to be submitted to the Authority, unless such information has been designated to be confidential in terms of section 28.

(6) The documents and information required to be made publicly available under this section must be made available for inspection during the normal business hours of the Authority, and for copying upon payment of such fee as the Authority may determine.

(7) In addition to documents and information otherwise required to be made publicly available under this section, the Authority may make all documents and information in its files available to any person who requests such document or information, if –

- (a) the disclosure of that information is in the public interest or will promote the objects of this Act; and
- (b) the advantage of revealing the information to the person requesting that information outweighs the interest of any person affected by that information.

(8) The request for documents or information referred to in subsection (7) must be made in writing and reasonably describe the documents or information sought.

(9) Requests referred to in subsection (8) may be sent by mail, telefax or any other appropriate means.

(10) The Authority may prescribe procedures for making requests referred to in subsection (8), which procedures may include the payment of reasonable fees.

(11) Documents requested in terms of subsection (8) must be furnished without charge or at a charge less than the fees referred to in subsection (10), if disclosure of the information is likely to contribute significantly to public understanding of the operations or activities of the Authority and is not primarily in the commercial interest of the requesting party.

Confidential information

28. (1) Any submission to the Authority may designate such information contained in the submission as may be specified in the designation concerned as a business secret or as other financial, commercial, scientific or technical information that is confidential.

(2) If the Authority has reason to believe that information designated in terms of subsection (1) is not confidential as contemplated in that subsection, it must inform the person who submitted that information of the reasons for its belief.

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- (3) A person who is informed as contemplated in subsection (2), may –
- (a) withdraw the information;
 - (b) consent that the information must not be regarded as confidential;
 - (c) request that the Authority conducts a hearing that is closed to the public, to determine whether the information is confidential.

(4) In a hearing referred to in subsection (3)(c), the person who claims that the information is confidential has the burden of proving that the information is confidential.

(5) If the Authority finds after a hearing referred to in subsection (3)(c) that the information concerned is not confidential, that information may not be regarded as confidential and must be dealt with as provided in section 27, unless the person who submitted that information withdraws it.

(6) Information withdrawn as contemplated in subsection (3)(a) or subsection (5) –

- (a) may not be revealed under section 27;
 - (b) must be disregarded in the consideration of any matter considered by the Authority.
- (7) Any person who discloses –
- (a) any information designated as confidential as contemplated in subsection (1) and in respect of which the person who submitted the information was not informed as contemplated in subsection (2);
 - (b) any information withdrawn in terms of subsection (3)(b) or (5); or
 - (c) any information in respect of which the Authority has made a finding that such information is confidential as contemplated in subsection (5),

is guilty of an offence and, on conviction, liable to a fine not exceeding N\$5000 or imprisonment for a period not exceeding one year or both such fine and such imprisonment.

Confidential communications with Authority

29. (1) Any person may submit a request to the Authority requesting that a confidential meeting must be held between that person and the Authority.

(2) A request referred to in subsection (1) must contain a brief summary of the issues that the person who makes the request intends to discuss with the Authority as well as any other information that may be prescribed.

