

## **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 Namibian Communications Regulatory Authority; 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.**

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

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

## **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 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 Act, 1997 (Act 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 by a carrier 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
- (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

(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 the 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 the 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 the 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.

### **The Minister may issue policy guidelines to the Authority**

7. (1) The Minister may issue general policy guidelines to the Authority 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 in 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.

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

(4) 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 must vacate 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 the 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 telecommunications services and broadcasting 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 licence holders 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.

(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.

(8) 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 the 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.

(3) The Authority may grant or refuse a request referred to in subsection (1) as it may consider desirable.

(4) If the Authority grants a request referred to in subsection (1), it must issue a notice that is made known in the prescribed manner, which -

(a) must indicate the topic of the meeting; and

(b) must indicate which parties will attend the meeting.

(5) Any information that comes to the notice of the Authority as a result of a meeting contemplated in subsection (1), must be treated as confidential and the provisions of section 28 apply to such information with the necessary changes, unless -

- (a) the Authority has obtained the same information from another source; or
- (b) the Authority intends to take any action against a person and the person to whom the information relates cannot be given a fair hearing, if the information concerned is not revealed to him or her.

### **Procedural regulations**

30. (1) As soon as possible after the commencement of this Act, the Authority must make regulations that prescribe the procedures to be followed at a hearing by the Authority and that may -

- (a) prescribe the manner in which evidence must be presented at such hearings;
- (b) prescribe the circumstances under which and the procedure to be followed when the Authority must determine if, a hearing must be public;
- (c) prescribe any matter relating to a report of the proceedings at a hearing prepared in terms of section 18(3);
- (d) any other procedural matter that is necessary or expedient to prescribe.

(2) The Authority may prescribe different procedures in respect of hearings held in terms of different provisions of this Act.

(3) In respect of each provision of this Act that requires the following of a rule-making procedure, the Authority must prescribe procedures for requesting and considering the comments of industry, users and the public.

(4) The procedures prescribed in terms of subsection (3) may include the holding of public oral hearings, the holding of closed hearings or requests for written comments.

(5) The procedures prescribed in terms of subsection (3) must provide that -

- (a) all persons that have a substantial interest in the regulation concerned is given a reasonable opportunity to make representations to the Authority; and
- (b) if representations and communications concerning a regulation are received by the Authority, every person who has a substantial interest in the decision concerned must be given an opportunity to comment on those representations and communications.

(6) Regulations made in terms of subsection (3) may prescribe different procedures for regulations made in terms of different sections of this Act.

(7) Regulations made in terms of subsection (3) may also prescribe procedures for the making of regulations for which this Act does not require a rule-making procedure.

### **Reconsideration**

31. The Authority may, on its own motion or on a petition filed by an aggrieved party to any proceedings, reconsider any order or decision that it has made, within 90 days from the date of making that decision or issuing that order.

### **Review of actions of Authority**

32.

(1) Any person may take any regulation for which procedures have been prescribed in terms of section 30 on review on the same grounds and in the same manner as a decision of an administrative body.

(2) Any person who has a substantial interest in any proceedings before the Authority may not take any decision, order, regulation or any other action that is made or taken by the Authority as a result of such proceedings, on review after a period of six months from the date on which that person has become aware of the decision, order, regulation or action concerned.

## **CHAPTER IV**

## PROMOTION OF COMPETITION

### **Anticompetitive practices**

33. (1) Any practice or activity that has the object or effect of preventing, restricting or distorting competition in a market for the supply of telecommunications or broadcasting services or any product or service used in connection with these services is prohibited.

(2) Any abuse of individual or collective dominant position by one or more persons in a market for the supply of telecommunications or broadcasting services or any product used in connection with these services is prohibited.

(3) The Authority may review any proposed acquisition of an interest conferring control in competing providers of telecommunications or broadcasting services, and any proposed major transaction between such providers and their affiliates for conformance with this Act and to ensure that the transaction will result in no reduction in competitive markets not offset by sufficient benefits to the public (as measured by the objects of this Act).

(4) The Authority may impose conditions before or after such acquisitions or transactions to maintain competitive telecommunications or broadcasting markets.

(5) Any agreements determined by the Authority to be anticompetitive will be automatically null and void.

(6) Any restrictive practice or activity whose pro-competitive effects outweigh its anticompetitive effects is deemed not to infringe the provisions of this section.

(7) Sharing of directors and officers among otherwise unaffiliated providers of telecommunications or broadcasting services without the approval of the Authority is prohibited.

### **Jurisdiction of the Authority**

34. (1) The Authority must, in the performance of its functions under this Act, promote, develop and enforce fair competition and equality of treatment among all providers of telecommunications and broadcasting services and users of such services.

(2) Subject to an agreement concluded in terms of section 67 of the Competition Act, 2003 (Act No. 2 of 2003), the Authority has jurisdiction to investigate, enforce and authorise any breach of the competition rules contained in section 33, on its own initiative or upon request by any person affected by the anti-competitive action concerned.

### **Transfer of control of licence holders and assignment of licences**

35. (1) No telecommunications service licence or broadcasting licence may be assigned by any person, and control of any person holding such a licence may not be transferred without the prior consent of the Authority, which consent may be given if the Authority finds that the transfer or assignment would not be prejudicial to the objects of this Act.

(2) The parties to any transaction transferring an interest in (or conferring or transferring a right to appoint or dismiss a director of) any holder of a licence referred to in subsection (1), must notify the Authority of that transaction within 15 days from the conclusion of that transaction whether it transfers control in the licence holder or not.

(3) If the transfer has ultimately resulted in a change of control, the Authority may impose necessary measures to annul the transfer or alleviate the change of control.

## **CHAPTER V TELECOMMUNICATIONS SERVICES**

### **Definition for the purposes of this Chapter**

36. For the purposes of this Chapter “licence” means a telecommunications licence, unless the context indicates otherwise and “licensee” is construed accordingly.

## **PART 1 TELECOMMUNICATIONS LICENCES**

### **Prohibition of the provision of telecommunications service and the operation of a network without a licence**

37. (1) No person may provide a telecommunication service except under and in accordance with a licence issued to that person in terms of this Chapter, unless any other provision of this Act or a regulation made in terms of subsection (6) expressly authorises the provision of such service without a licence.

(2) No person may construct, operate or use an electronic communications network except under and in accordance with a licence issued to that person in terms of this Chapter, unless any other provision of this Act or a regulation made in terms of subsection (6) expressly authorises the performance of such action without a licence.

(3) A licence confers on the holder the privileges and subjects him or her to the obligations provided for in this Act or specified in the licence.

(4) A licence authorises the holder to provide the services, or to operate, construct or use the electronic communications network specified in the licence subject to the terms and conditions of the licence concerned.

(5) Subsection (1) does not apply to network infrastructure established by the government in the interest of national defence and public security.

(6) The Authority may make regulations –

- (a) prescribing the classes of telecommunications services that may be provided without a licence;
- (b) prescribing the classes of electronic telecommunications network which may be constructed, operated or used without a licence;
- (c) prescribing any matter relating to such services or networks that may be imposed as the condition of a licence under this Act;
- (d) requiring the registration of any class of such providers or networks or the provision of information relating thereto;
- (e) prescribing any technical or other requirements relating to such services or networks that will promote the objects of this Act.

## **Telecommunications licences**

38. (1) The Authority may issue –

- (a) service and technology neutral licences to a limited number of applicants who intend to render a comprehensive telecommunications service;
- (b) other individual licences to applicants where the licence applied for does not fall within the classes for which a class licence is required;
- (c) class licences for the classes of telecommunications services and electronic communications networks set out in subsection (2).

(2) The Authority may issue class licences to persons who comply with the provisions of this Act and such other conditions as may be prescribed, authorising –

- (a) the provision of telecommunications services which entail the routing or other processing of information, but in respect of which the provider of those services uses the facilities of another licensee to transport the information concerned;
- (b) the construction, operation or use of an electronic telecommunications network by any person for his or her own purposes where the network concerned is not a private network contemplated in section 43(2);
- (c) the provision of such other telecommunications services and the construction, operation or use of such other types of electronic telecommunications networks as the Authority may prescribe after having followed a rule-making procedure.

(3) When the Authority receives an application for a licence contemplated in subsection (1)(b), it may suspend the consideration of the application concerned and instead make regulations as contemplated in subsection (2)(c), if in its opinion it is likely that a number of similar licences will be issued.

(4) The Authority may convert licences referred to in subsection (1)(b) to class licences after regulations contemplated in subsection (2)(c) have been made.

(5) The Authority may prescribe any matter relating to a class licence which this Act authorises it to determine in respect of an individual licence.

(6) The Authority may after having followed a rule-making procedure, prescribe with

the concurrence of the Minister that only a certain number (which need not be more than one) service and technology neutral or other individual telecommunications licences may be issued in respect of any specific category of telecommunications service.

(7) The Authority may determine that any category of telecommunications service may only be rendered to a specific category of users, which category must be specified in the licence.

(8) The Authority may issue a licence for a specified geographic area, which area must be specified in the licence.

(9) Licences must be issued for a fixed term and may be renewed by the Authority on application by the licensee.

(10) The Authority may impose specific obligations and requirements on a licensee regarding –

- (a) mandatory provision of universal service and such other services as the Authority may think fit;
- (b) the transportation of emergency calls or other forms of emergency electronic communications free of charge and under such conditions and subject to such requirements as the Authority may determine;
- (c) the use of the radio frequency spectrum, the fees related to this use and to the costs of spectrum management and monitoring when applicable;
- (d) the allocation of individual telephone numbers or numbering ranges and the fees required for the management and control of the numbering plan;
- (e) the rights and obligations of the licensee with regard to interconnection;
- (f) the fees payable for the grant, management and control of the licence;
- (g) the equitable treatment of, and provision of information to, users, particularly concerning the contractual conditions under which the service is provided and

that allow compensation to the customer in case of breach of quality requirements;

- (h) any matter relating to masts, towers or other facilities effecting the environmental or aesthetic impact of such facilities;
- (i) the duration of the licence and the conditions and procedures for its withdrawal, renewal and modification of its terms;
- (j) relating to any matter that the Authority may consider when issuing a licence as provided in section 39(4); and
- (k) other conditions as may be required to achieve the objects of this Act.

(11) The Authority may impose specific obligations on a licensee when the licensee has a dominant position in relation to the provision of any class of telecommunications services.

(12) When the Authority issues individual licences, it may indicate in the licence –

- (a) which duties referred to in Part 2, are owed by the licensee concerned;
- (b) which duties referred to in Part 2 are owed to the licensee concerned;
- (c) which special rights referred to in Part 5 the licensee concerned has in respect of which class of telecommunications facilities.

(13) The Authority may make regulations prescribing any matter referred to in subsection (12) in respect of such class licences as may be prescribed.

(14) When the Authority acts under subsection (12) or (13), it may –

- (a) make distinctions between licensees who are dominant and those that are not, or between services for which licensees are dominant and those for which they are not;
- (b) grant the rights or impose the duties only in respect of a specified class of

services or networks.

### **Selection criteria for telecommunications service licences**

39. (1) Subject to section 45, the Authority must grant individual telecommunications licences on the basis of selection criteria that are objective, non-discriminatory, detailed and transparent.

(2) The criteria referred to in subsection (1) must be prescribed by regulation before the Authority may consider the issuing of a licence.

(3) Without limiting the power to refuse a licence when the granting of a licence is not in the public interest, the Authority may refuse to issue a licence on one or more of the following grounds—

- (a) national defence or public security;
- (b) technical constraints due to the limited availability of frequencies;
- (c) the lack of technical and financial capability to substantially meet the obligations arising out of the applicant's operating conditions or the fact that it does not meet prior specified selection criteria; or
- (d) the fact that the applicant has been subject to penalties referred to in section 115(4).

(4) The Authority may consider the following matters when it is considering the granting of an individual licence -

- (a) the nature, characteristics, service coverage area and network extension schedule;
- (b) the operating hours, quality and availability of the network and access conditions;
- (c) the condition of confidentiality and neutrality of the service with regard to the

information transmitted and other customer proprietary information;

(d) the standards and specifications for networks and services;

(e) network provisions relating to national defence and public security;

(f) network provisions relating to fair competition;

(g) the licence holder's commitments to meeting its universal service obligations.

(5) With respect to the licensing of services provided over radio frequencies, the Authority may in addition to any other power vesting in it, make regulations requiring prior approval for the installation and operation of equipment to avoid interference.

(6) The Authority must prescribe the requirements with which the applicant for every category of class licence must comply.

(7) The Authority must grant a class licence to every applicant who complies with the prescribed requirements and may not consider any other matter when deciding whether to grant the licence in question.

### **Licensing procedures**

40. (1) The Authority must by regulation determine open, non-discriminatory and transparent procedures for the submission and consideration of applications for licences and for the withdrawal and renewal of licences.

(2) These procedures must include public notice and opportunity to comment on applications and must specify the time periods within which the Authority must resolve or otherwise act on applications and submissions relating to applications, including applications for renewal.

### **Tenders and competitive bidding**

41. (1) The Authority may under the prescribed circumstances and subject to the prescribed conditions and procedures, by notice in the *Gazette* invite tenders for the provision

of the class of telecommunications services specified in that notice.

(2) On receipt of the tenders to provide the specified services, the Authority may award such individual licences to any of the persons who submitted tenders to it as in its opinion will promote the objects of this Act or it may decide to grant no licence.

(3) The Authority is not compelled to accept the highest tender or any tender that complies with the conditions specified in the notice inviting tenders.

(4) If -

(a) scarcity of radio wave frequencies or other resources makes it desirable in the opinion of the Authority;

(b) the Authority has with the approval of the Minister decided,

that only a specified number of persons must be licensed to provide the services concerned it may by notice in the *Gazette* institute a system of competitive bidding that is structured in the manner specified in that notice.

(5) After the process of competitive bidding is complete, the Authority must consider all the bids received and may grant an individual licence to any person who submitted a bid or may refuse to grant an individual licence to any person who submitted a bid.

(6) The Authority may by notice in the *Gazette* stop a process of competitive bidding before the process has been completed.

(7) When -

(a) the Authority grants a licence or decides to grant no licence after tenders have been received;

(b) grants a licence or decide not to grant a licence after the process of competitive bidding is completed; or

(c) stops a process of competitive bidding under subsection (6),

it must by notice in the *Gazette* indicate the reasons for its decision.

### **Refusal, renewal, modification and termination of licences**

42. (1) Prompt notice and grounds for such decision must be given to the applicant when the Authority denies, in whole or in part, a licence application or refuses to grant a renewal of a licence.

(2) A licence may be modified upon a finding by the Authority that such modification would serve the objects of this Act: Provided that the Authority has given the licence holder adequate advance notice of such modification and the grounds for such modification and has given the licence holder an opportunity to object to such modification.

### **Private networks**

43. (1) The installation, administration and operation of private networks do not require a licence if such network and services conform with the provisions of this Act and the basic qualifications and conditions that the Authority may prescribe.

(2) A private network for the purposes of this section means a network that –

- (a) connects only equipment situated on one erf or one piece of land registered as such in the deeds office; and
- (b) does not have any radio apparatus in the network concerned, unless the possession and use of that apparatus in that network has been authorised by regulations made (or deemed to have been made) in terms of section 101(16).

### **Provision of telecommunications equipment**

44. (1) Subject to subsection (2), the Authority may not restrict the provision, including the development, manufacture, sale, lease, installation, maintenance or repair, of telecommunications equipment, except as expressly provided in section 80: Provided that the Authority may make regulations requiring such persons who provide such equipment to register with the Authority and to provide such information as may be prescribed, to the Authority.

(2) The Authority may restrict the provision of telecommunications equipment by a licensee that is dominant in a market relating to the use or provision of such equipment by prescribing such accounting rules and other regulatory safeguards as it may consider necessary for the promotion of competition, after having followed a rule-making procedure.

### **Automatic licence to be granted to Telecom**

45. (1) Telecom will be deemed to have applied for a service and technology neutral licence to render telecommunications services on the date of commencement of this Act.

(2) The licence issued to Telecom must include such mandatory or permissive network and service expansion targets and quality of service standards as the Authority deems appropriate in order to achieve the objects of this Act and to treat Telecom fairly.

(3) The Authority must determine quality of service standards in the licence issued to Telecom under this section that must include, but are not limited to, requirements relating to service provision time, call completion rates, fault rates, fault repair times, dial tone delays, and dialling errors.

(4) The Authority must establish procedures for measuring, reporting and monitoring compliance with network and service expansion targets and quality of service standards.

(5) If Telecom fails to comply substantially with the mandatory network and service expansion targets or the quality of service standards contained in its licence, the Authority may impose such penalties as provided by section 115(4) of this Act.

(7) The Authority may include conditions in the licence requiring Telecom to provide the following services to existing and new customers for the duration of the licence:

- (a) domestic private line service;
- (b) international private line service;
- (c) public call offices and public pay-telephones;
- (d) emergency call services;

(e) dial-up and printed directory information services; and

(f) such other telecommunications services as the Authority may find to be in the public interest.

(8) When acting in terms of subsection (7), the Authority must consider all relevant matters relating to the market for telecommunications services and the development of technology in order to determine whether the services are still necessary and appropriate.

### **Ownership restrictions**

46. (1) Subject to subsection (2) no licensee may be controlled by any person that is not a Namibian citizen or a Namibian company and no more than 49% of the stock in any licence holder may be owned by persons that are not Namibian citizens or Namibian companies that are controlled by Namibian citizens.

(2) The Minister may beforehand authorise the acquisition of control or ownership of stock that is prohibited by subsection (1).

(3) Any transfer of control or ownership prohibited by subsection (1) is of no force and effect.

## **PART 2**

### **DUTIES OF PROVIDERS OF TELECOMMUNICATIONS SERVICES**

#### **Application of this Part**

47. (1) The duties imposed by this Part are imposed upon all holders of technology and service neutral licences as well as those other licensees upon whom the duty in question has been imposed in terms of section 38(12) or (13).

(2) The duties imposed by this Part are owed to holders of technology and service neutral licences.

(3) Unless the context indicates otherwise, a reference to “carrier” is construed as a reference to the licensee who owes the duty or to whom the duty is owed as the case may be in accordance with the provisions of subsection (1), (2), determinations made in terms of

section 38(12) or regulations made in terms of section 38(13).

### **Duties of carriers relating to the promotion of competition**

48. (1) All carriers have the duty to –

- (a) afford access to its poles, ducts and conduits to other carriers on rates, terms, and conditions that are consistent with this section;
- (b) establish reciprocal compensation arrangements for the transport and termination of telecommunications;
- (c) negotiate in good faith the particular terms and conditions of agreements to fulfil the duties described in this section, section 49, 50, 51(2) and 52.

(2) It is the duty of a carrier who has a dominant position with relation to some class of telecommunications services to –

- (a) provide subject to subsection (3), to any requesting carrier, nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory in accordance with the terms and conditions of the agreement between them and the requirements of this Act;
- (b) provide subject to subsection (5), on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, for physical co-location of equipment necessary for interconnection or access to unbundled network elements at the premises of the dominant carrier,

if such network elements relate to the market segment in which the carrier in question is dominant.

(3) Subject to subsection (4), a dominant carrier must provide such unbundled network elements in a manner that allows requesting carriers to combine such elements in order to provide the telecommunications service concerned.

(4) If –

- (a) it does not place an unreasonable burden upon the dominant carrier; and
- (b) it will place an unreasonable burden upon the carrier requesting such elements if it is not done,

the dominant carrier must combine such elements in the manner requested.

(5) The dominant carrier may provide for virtual or any other form of co-location if it demonstrates to the Authority that physical co-location is not practical for technical reasons or because of space limitations.

(6) The Authority may after a rule-making procedure, make regulations regulating the duties imposed on carriers by this section and the terms upon which carriers must agree to fulfil these duties.

(7) In determining what network elements must be made available for the purposes of subsection (2)(a), the Authority must consider, at a minimum, whether–

- (a) access to such network elements as are proprietary in nature is necessary; and
- (b) the failure to provide access to such network elements would impair the ability of the carrier seeking access to provide the services that it seeks to offer.

(8) Any carrier may request the Authority to convene a hearing in order to determine reasonable terms relating to the duties referred to in this section.

(9) For the purposes of this section, “network element” means a facility or equipment used in the provision of a telecommunications service, including all features, functions and capabilities that are provided by means of such facility or equipment, such as subscriber numbers, databases, signalling systems and information sufficient for billing and collection or used in the transmission, routing or other provision of telecommunications services.

## **Interconnection**

49.

(1) In accordance with the terms and requirements prescribed by the Authority after a rule-making procedure, all carriers must allow any other carrier to interconnect its network with that of the former carrier for the purpose of the transport and termination of telecommunications and information.

(2) A carrier may impose reasonable charges on a requesting carrier for interconnection which charges must be limited to the costs provided for in this section.

(3) If a carrier agrees to provide interconnection as contemplated in this section, the charges and all other material terms of that interconnection agreement must be contained in a written agreement.

(4) All interconnection agreements must be submitted to the Authority for approval

—

(a) within 90 days from the date of commencement of this Act, in the case of agreements concluded before the commencement of this Act;

(b) within 30 days from the concluding of the agreement in the case of agreements concluded after the commencement of this Act.

(5) An interconnection agreement that is submitted to the Authority must be accompanied with a summary of its principal terms and interconnection charges, which the Authority must make available in accordance with section 27 when the agreement is approved.

(6) If the Authority does not reject the agreements and charges within 90 days, the proposed charges will become effective on an interim basis until 120 days, at which time the Authority must issue its decision.

(7) If carriers fail to agree on terms of interconnection within a reasonable period (which may be specified by the Authority), one or both of the parties may request that the Authority determines terms of interconnection in accordance with this section.

(8) A carrier who is dominant in respect of any services relating to the request for interconnection must allow such interconnection at any technically feasible point within its network and such interconnection must be accomplished without unreasonable interruption of service to existing users.

(9) The quality of the interconnection must be at least equal to that provided by a carrier to itself, or any affiliate, or any other party to which interconnection is provided.

(10) The burden of demonstrating the reasonableness of a disputed practice rests solely on the carrier responsible for implementing interconnection.

(11) In resolving any disputes concerning interconnection, the Authority must adhere to the following principles -

- (a) the terms and practices for interconnection may not vary depending on the type of telecommunications service to be provided by the carrier requesting interconnection and may not discriminate unjustifiably between users of equivalent interconnection arrangements or similarly situated users;
- (b) subject to subsection (12), charges for interconnection services and facilities may not exceed the carrier's forward-looking incremental costs: Provided that the Authority may order both parties to an interconnection arrangement to adopt identical interconnection charges based on the demonstrated forward-looking incremental costs of one of the providers if the Authority finds that doing so would promote competition and the efficient provision of interconnection services and facilities;
- (c) differences in charges between different users can be justified only based on cost differences directly attributable to providing interconnection for those users;
- (d) costs must be measured according to methods prescribed by the Authority after following a rule-making procedure.

(12) The Authority may prescribe bench mark charges for interconnection which charges should be determined in accordance with international benchmarks on interconnection and subject to the principles set out in subsection (11).

(13) A carrier must charge the benchmark fees prescribed in terms of subsection (12), unless it can prove to the Authority that its forward-looking incremental costs will exceed the benchmark fees prescribed in terms of subsection (12).

(14) All carriers must provide reasonable notice to every other carrier whose network is interconnected with its network of changes in the information necessary for transmitting and routing services using its facilities or networks, as well as, of any other changes that affect the interoperability of those facilities and networks.

(15) Any carrier who is a party to an interconnection agreement with licensees authorised by foreign countries must submit all such agreements to the Authority –

(a) in the case of an agreement concluded before the commencement of this Act, within 90 days from the date of commencement of this Act;

(b) in the case of an agreement concluded after the commencement of this Act, within 90 days from the conclusion of the agreement concerned.

(16) If an agreement referred to in subsection (15), in the opinion of the Authority, has the effect of impairing competition or the interoperability of the networks of different carriers, the Authority may after holding a hearing impose obligations upon a carrier who is a party to such agreement which would have the effect of remedying such impairment.

(17) In the case of an agreement referred to in subsection (15) concluded after the commencement of this Act, the Authority must (within 90 days from the date on which the agreement is submitted to it) approve or order modifications to any terms, including the accounting rate and settlement arrangements, agreed upon by the parties before the agreement can become binding upon the parties.

(18) When concluding an agreement referred to in subsection (15) all carriers must comply with all international treaties and bilateral agreements relating to such arrangements, and any requirements prescribed for such arrangements.

(19) In reviewing international interconnection arrangements, the Authority must take into account exclusionary and discriminatory practices of foreign providers of telecommunications services and governments.

## Sharing of infrastructure

50. (1) When it will promote competition or the other objects of this Act, a dominant carrier must lease any infrastructure to any other licensee or must allow the latter licensee to install telecommunications equipment on such infrastructure or to otherwise utilise such infrastructure: Provided that the dominant carrier may refuse to make such infrastructure available if –

- (a) such infrastructure is required by the dominant licensee for its own purposes;
- (b) in all the circumstances, the making available of such infrastructure will impose an unreasonable burden upon the dominant licensee; or
- (c) the making available of such infrastructure is likely to affect the service of the dominant licensee detrimentally.

(2) A dominant licensee may request the Authority to exempt it from any duty imposed by this section for a period of six months.

(3) A request contemplated in subsection (2) may be granted by the Authority, if the dominant licensee can prove that if it complies with the duty concerned, it would not be able to perform any expansion which it plans to perform.

(4) If any expansion is not performed within six months from the date on which the Authority granted the exemption contemplated in subsection (2), then the dominant carrier will be obliged to comply with the request concerned.

(5) It is the duty of any utility to lease any spare capacity available in any tower, mast, pole, duct, conduit or pipe to any carrier who requests that utility to lease such capacity in order to attach any telecommunications equipment to such infrastructure or to lay any telecommunications wires or fibres in such infrastructure.

(6) A lease referred to in subsection (5) must be on reasonable terms (including terms relating to compensation).

(7) A utility may refuse to lease infrastructure as contemplated in subsection (5) if -

- (a) such infrastructure is reasonably required for the expansion of the activities of the utility concerned;
- (b) the activities of the requesting carrier will interfere with the activities of the utility concerned; or
- (c) the activities of the requesting carrier will place an unreasonable burden upon the utility concerned.

(8) A dominant licensee or the utility who leases the infrastructure must maintain that infrastructure and facilities installed in its premises or facilities, in return for the payment of compensation negotiated between the parties.

(9) The Authority may after a rule-making procedure make regulations to ensure that any conditions and charges for such lease are reasonable, non-discriminatory and fairly apportioned among carriers and utilities.

(10) Where the parties are unable to negotiate a reasonable price, terms or conditions for any agreement under this section, the Authority must convene a hearing to determine the appropriate prices, terms, and conditions.

(11) For the purposes of this section, “utility” means any person that provides telecommunications services, broadcasting or any other radio communications services, as well as electricity, gas or water.

### **Prohibition against restraint of resale**

51. (1) All carriers must permit the unrestricted resale of their retail services.

(2) A licensee who is dominant in respect of some class of telecommunications services must offer such telecommunications services for resale at a discounted rate to any requesting reseller.

(3) Where the parties are unable to negotiate a discounted rate for resale, the parties may request the Authority to convene a hearing to determine such resale discount rate.

(4) A licence is not required by a person that only resells telecommunications services obtained from a licensee.

### **Duty not to discriminate when rendering telecommunications services**

52. A carrier may not provide telecommunications services on terms that discriminate against, or give undue preference to any user, reseller or provider of telecommunications services on the grounds that –

- (a) that user, reseller or provider renders any service or class of service or does not provide any service or class of service to the public;
- (b) that user, reseller or provider uses or does not use any service or class of service rendered by that carrier or an affiliate of that carrier that is not reasonably related to the service in question; or
- (c) that user, reseller or provider makes use of any service rendered by a third person.

## **PART 3 TARIFFS AND ACCOUNTING**

### **Rates and tariffs**

53. (1) Subject to subsection (2), (3), (4) and (6) all rates and charges received in respect of any telecommunications service that may only be provided with an individual licence or a prescribed type class licence, must be in accordance with a tariff filed and permitted to come into operation in accordance with the provisions of this section: provided that the Authority may prescribe services for which the filing of a tariff is not necessary if in its opinion, there is competition in the market for the provision of those services.

(2) Subsection (1) does not apply to a temporary reduction in any rates charged by a carrier if -

- (a) such rates do not apply for a period longer than three months;
- (b) such rates are for promotional or advertising purposes only; and

(c) all relevant particulars relating to the rates concerned are given to the Authority no later than the date on which the fact that special rates will be charged are made known to the general public.

(3) Subsection (1) does not apply in respect of any rates or charges payable in respect of any interconnection arrangement between two carriers.

(4) A tariff filed in terms of this section may provide that specified classes of services to specified classes of customers will not be subject to that tariff.

(5) Every contract concluded for the provision of services that are not subject to a tariff as contemplated in subsection (4), must be filed with the Authority which has the power to deal with such contract as if it were an interconnection agreement.

(6) Every carrier must within six months from the commencement of this Act, file a tariff with the Authority in accordance with the provisions of this section.

(7) If a licensee wishes to amend a tariff applicable to it, or wishes to use a new tariff, it must file a new or amending tariff in the prescribed manner with the Authority for the approval thereof.

(8) Any tariff or amendment of a tariff must state the date on which the tariff or amendment comes into operation, which date may not be less than 60 days (or such shorter period as the Authority may prescribe for specific classes of service) from the date of the filing referred to in subsection (7).

(9) Tariffs must contain all pertinent information concerning rates and charges for services, including all deposits, non-recurring charges and monthly charges, as well as all terms and conditions applicable to the provision of services by the corresponding carrier, including rights and remedies available to customers in the event of unauthorised charges or other disputes or claims over billing or the provision of services, and any other information requested by the Authority pursuant to this section.

(10) Notice of the filing of a tariff must be published by the Authority in the *Gazette*, and after such tariff has come into operation, the full text of the tariff must be made available in terms of section 27.

(11) Carriers may withdraw a tariff after filing prior to the Authority's decision on the tariff.

(12) Subject to subsection (13), after notice of the tariff filing is published, a tariff must be permitted to come into operation automatically upon the date specified as its date of commencement, unless it does not comply with subsection (19).

(13) The Authority may postpone the date of commencement of a tariff before it has come into operation, for a period not exceeding 90 days, to examine the reasonableness of the tariff.

(14) If the Authority finds that there are grounds for rejecting the tariff as contemplated in subsection (19), before it comes into operation, it may partially or totally reject the tariff or approve that tariff on condition that specified amendments are made to the tariff concerned.

(15) If a tariff is rejected, the Authority may require that prior rates remain in effect, or it may determine temporary rates to be in effect until a new tariff is proposed by the licensee and permitted to come into operation.

(16) At any time after the tariff comes into operation, upon receiving evidence that there are grounds for rejecting the tariff as contemplated in subsection (19), the Authority may investigate its reasonableness which investigation must be concluded within five months.

(17) If after an investigation referred to in subsection (16), the Authority finds that there are grounds for rejecting the tariff as contemplated in subsection (19), it may require that prior rates be applied or it may prescribe temporary rates and any other temporary measures consistent with the provisions of this Act to be in effect until a new tariff is proposed by the licence holder and permitted to take effect or the Authority may order refunds to customers consistent with its findings.

(18) Tariff filings must be accompanied by all such accounting and cost information as the Authority may require, and must comply with all other requirements prescribed by the Authority.

(19) The Authority may reject a tariff or part thereof if it will promote the objects

of this Act and –

- (a) it is unreasonable;
- (b) it does not conform to the terms and conditions stipulated in the licence issued to the licensee concerned;
- (c) it does not comply with regulations made in terms of subsection (20);
- (d) it is unreasonably discriminatory;
- (e) it has the effect of impairing competition;
- (f) it is not sufficiently disaggregated so that the user is required to pay for facilities or services which are not necessary for, or reasonably related to, the service requested; or
- (g) it is not accompanied by such cost information and other supporting material as the Authority may require under subsection(18).

(20) The Authority may after having followed a rule-making procedure make regulations –

- (a) prescribing limits on the tariffs that licensees may charge for the rendering of telecommunications services;
- (b) prescribing the methods of the sharing of costs between customers in urban and rural areas;
- (c) prescribing the methods of calculating tariffs where services are subsidised as contemplated in section 57;
- (d) prescribing any other matter relating to tariffs that is necessary or expedient.

### **Cost Accounting Procedures**

54. (1) A dominant licensee and any other licensee designated by the Authority must keep separate accounts for its telecommunications activities, to the extent that would be required if the telecommunications activities in question were carried out by legally independent companies, so as to identify all elements of costs and revenue, with the basis of their calculation and the detailed attribution methods used.

(2) The Authority must prescribe reasonable accounting systems based on current costs and activity-based accounts within two years after the date of commencement of this Act.

(3) Such accounting procedures must be followed and implemented by the dominant licensee and, where appropriate, other carriers designated by the Authority in terms of subsection (1).

(4) The Authority must verify compliance with such cost accounting systems.

(5) The dominant licensee and other licensees required to adopt such accounting systems must provide financial information to the Authority promptly on request and at the level of detail required by the Authority.

(6) The Authority may make relevant, complete or summary accounting information available on request to all interested parties subject to considerations of confidentiality of proprietary information.

(7) Where a licensee has the obligation to comply with cost accounting procedures, discount schemes for users, including customers, must be fully transparent and non-discriminatory.

(8) The Authority may require such schemes to be modified or withdrawn if they are prejudicial to the objects of this Act.

### **Reporting requirements**

55. (1) The Authority may require the filing of annual or occasional reports from all or any class of licensees.

(2) The Authority may require that such reports include –

- (a) the amount of capital stock issued, the amount and privileges of each class of stock, the amounts paid therefor and the manner of payment for the same, the dividends paid and any surplus capital;
- (b) the debts of the company and the interest paid thereon;
- (c) the names and addresses of all persons who owns at least one percent of such stock;
- (d) the names and addresses of the directors and officers, and the compensation paid to each;
- (e) the earnings and expenses from all sources, and a complete exhibit of the financial operations of the company each year.

(3) The books of accounts, accounting records and financial statements provided to the Authority must be audited annually by a person duly registered as an accountant and auditor under the Public Accountants and Auditors Act, 1951 (Act 51 of 1951).

#### **PART 4**

#### **UNIVERSAL SERVICE**

#### **Universal Service Fund**

56. (1) There is hereby established a fund to be known as the “Universal Service Fund”.

(2) The Authority may by regulation, after having followed a rule-making procedure, impose a universal service levy to be paid into the universal service fund.

(3) The provisions of section 23(2) and 23(3) apply with the necessary changes required by the context to the universal service levy.

(4) The money in the universal service fund may only be utilised –

- (a) in order to defray the expenses directly relating to the administration, control and accounting for the Universal Service Fund;

- (b) for the purposes of paying subsidies to licensees to subsidise the provision of services or the provision of infrastructure for the purpose of providing universal service.

### **Provision of universal service**

57. (1) The Authority may after having followed a rule-making procedure, prescribe which telecommunications services are the minimum set of services that should be made available by licensees.

(2) Universal service may be specified in one or more of the following manners:

- (a) As a minimum number of prescribed telecommunications facilities or services that must be made available to a community of a prescribed size;
- (b) in the form of specified equipment that should be made available in order to cater for the telecommunications needs of a specified category of community;
- (c) in the form of specified services to be made available to specified categories of customers in specified categories of communities;
- (d) in the form of specified telecommunications services that are available to the public or that are rendered to schools, hospitals, or any other specified category of place that serves the needs of the public or that are available for use by the public;
- (e) in the form of the deployment of any technology that will promote the availability of telecommunications and information services in Namibia;
- (f) in any other manner that may be necessary to specify the form, scope, nature or any other aspect of the services in question.

(3) Subject to subsection (4), (5) and (6), the Authority may issue an order instructing a licensee to provide a specified form of universal service in a specified area, subject to specified conditions.

(4) An order referred to in subsection (3) must state whether subsidies will be paid by the Authority from the Universal Service Fund and if subsidies will be paid, it must state the amount thereof or the basis on which the subsidies must be calculated.

(5) An order referred to in subsection (3) may only be issued if –

(a) the services which the order compels the carrier to render are within the scope of a condition imposed on its licence; or

(b) the subsidies stated in the order will compensate the carrier for any loss that the rendering of the services concerned will cause to it.

(6) When issuing an order under subsection (3), the Authority must consider universal service having been rendered by a particular licensee and the repayment of money that was borrowed for the purpose of rendering universal service before the commencement of this Act.

(7) The Authority may request tenders or institute a system of competitive bidding for the rendering of such universal service as it may think fit.

(8) The provisions of section 41 applies with the necessary changes to tenders and bidding contemplated in subsection (7).

(9) After a tender or bid as contemplated in subsection (7) has been excepted, the Authority may conclude a contract with the licensee concerned for the provision of the services concerned, subject to those conditions which were included in the requests for bids or tenders.

(10) The Authority may after having followed a rule-making procedure, prescribe an accounting system that licensees must follow in order to calculate the cost of complying with an order referred to in subsection (3).

(11) If no regulations have been made under subsection (10), the licensee and the Authority may agree on an accounting system, to be followed in a specific case, if the Authority is of opinion that such a system will accurately reflect the cost of providing the universal service to which the system concerned will apply.

(12) The accounting system used to determine the costs of complying with an order referred to in subsection (3), must be audited in respect of every licensee at the expense of that licensee by a person who is registered as an accountant and auditor in terms of the Public Accountants' and Auditors' Act, 1951 (Act 51 of 1951).

(13) The audited statements referred to in subsection (12), as well as such interim statements relating to the provision of universal service as the Authority may request, must be submitted to the Authority.

### **Universal service report**

58. (1) The Chief executive officer must in respect of each calendar year after the commencement of this Act, prepare a universal service report in which must be indicated in respect of the year concerned –

- (a) to which portions of the territory of Namibia and to which communities in Namibia universal service is not being provided;
- (b) how much money stands to the credit of the universal service fund and how much money is expected to be paid into the universal service fund;
- (c) how the Authority intends to spend the money available in the Universal Service Fund;
- (d) what steps the Authority intends to take in order to promote the availability of universal service;
- (e) what steps have been taken in the previous year in order to promote universal service;
- (f) any other matter that the Authority regards as relevant to the provision of universal service.

(2) The universal service report must be dealt with in the same manner as the annual report of the Authority referred to in section 26.

## **PART 5**

## **SPECIAL RIGHTS OF CARRIERS**

### **Applicability of this Part**

59. (1) The rights granted by this Part are granted to all holders of technology and service neutral licences and to other licensees to whom and in so far as it has been made applicable to them in terms of section 38(12) or 38(13).

(2) Unless the context indicates otherwise, “carrier” is construed as a reference to a licensee to which this Part is applicable.

(3) When this section grants rights to install telecommunications facilities, those rights only relate to wires, fibres, or any other form of telecommunications line as well as facilities used to protect or support such wires, fibres or lines (including poles, stays, ducts and pipes), but do not relate to masts, towers, pay telephones and other similar equipment.

(4) After having followed a rule-making procedure, the Authority may make this Part applicable to antennas or other equipment used in connection with the transmission or receipt of radio waves, if in its opinion the installation of such equipment does not place a greater burden on the owner of land than telecommunications facilities to which this Part applies as provided in subsection (3).

### **Entry upon and construction of lines across any land**

60. A carrier may, for the purposes of provision of telecommunications services, enter upon any land, including any street, road, footpath or land reserved for public purposes, and any railway, and construct and maintain a telecommunications facility upon, under, over, along or across any land, street, road, footpath or waterway or any railway, and alter or remove the same, and may for that purpose attach wires, stays or any other kind of support to any building or other structure.

### **Underground pipes for telecommunication service purposes**

61. (1) If any local authority and carrier agree that in a particular area electricity supply and the telecommunication services of that carrier must be provided by means of underground cables, that local authority may on any premises within the said area, when

installing such cables for an underground electricity supply line on the said premises, in accordance with the requirements of the carrier provide a conduit pipe or other facility for the installation of an underground telecommunication service line from a point of connection on the street boundary to a building on those premises.

(2) The costs of the provision of the said conduit pipe or other facility is payable to the local authority in question and is for the purpose of any law deemed to be fees payable by the owner of the premises in question to the local authority in respect of the installation of the electricity supply line.

### **Pipes under streets**

62. A carrier may, after reasonable notice in writing to the local authority or person owning or having the care and maintenance of any street, road or footpath, construct and maintain in the manner specified in that notice any pipes, tunnels or tubes required for telecommunication facilities under any such street, road or footpath, and may alter or remove the same, and may for such purposes break or open up any street, road or footpath and alter the position thereunder of any pipe (not being a sewer drain or main) for the supply of water, gas or electricity: Provided that the local authority or person to whom any such pipe belongs or by whom it is used is entitled at all times while any work in connection with the alteration in the position of that pipe is in progress, to supervise that work, and the carrier must pay all reasonable expenses incurred by any such local authority or person in connection with any alteration or removal under this section or any supervision of work relating to such alteration.

### **Removal of pipes and facilities**

63. (1) If a carrier finds it necessary to move any telecommunication facilities, pipes, tunnels or tubes constructed upon, in, over, along, across or under any land, railway, street, road, footpath or waterway, owing to any alteration of alignment or level or any other work on the part of any public authority or person, the cost of the alteration or removal must be borne by that local authority or person.

(2) Where any telecommunication facility, pipe, tunnel or tube constructed by a carrier passes over any private property and interferes with any building about to be erected on that property, the carrier must, on receiving satisfactory proof that a building is actually

to be erected, cause the line to be deviated or altered in such manner as will remove all obstacles to building operations.

(3) Notice that any such deviation or alteration is required must be given to the carrier in writing not less than 28 days before the alteration or deviation is to be effected.

(4) If any deviation or alteration of a telecommunications facility, pipe, tunnel or tube constructed by a carrier and passing over any private property is desired on any ground other than those contemplated in subsection (2), 28 days' notice thereof in writing must be served on the carrier, who may decide whether or not the deviation or alteration is possible, necessary or expedient, and if the carrier agrees to make the deviation or alteration, the cost thereof must be borne by the person at whose request the deviation or alteration is effected: Provided that in any case where in the opinion of the carrier it is justified, the carrier may bear the whole or any part of the said cost.

## **Fences**

64. (1) If any fence erected or to be erected on land over which a telecommunications facility, pipe, tunnel or tube is constructed or is to be constructed by a carrier, renders or would render it impossible or inconvenient for the carrier to obtain access to that land the carrier may at its own expense erect and maintain gates in that fence and must provide duplicate keys therefor, one of which must be handed to the owner or occupier of the land.

(2) Any person intending to erect any such fence must give not less than six weeks' notice in writing to the carrier of his or her intention.

## **Trees obstructing telecommunication facilities**

65. (1) If in the opinion of a carrier, any tree or vegetation obstructs or interferes with or is likely to obstruct or interfere with the working or maintenance of any telecommunications facility, pipe, tunnel or tube, whether or not such tree or vegetation is on state land or land belonging to a local or authority or other public body it may issue a notice in terms of subsection (2).

(2) A notice issued under the circumstances referred to in subsection (1) must instruct the owner or occupier of the land to cut down or trim the tree or vegetation specified in the

notice in the indicated manner.

(3) After receipt of a notice under subsection(2), the owner of the land concerned, or the public body having control of such land, must trim or cut down such tree or vegetation as specified in the notice at the expense of the carrier.

(4) If the owner or public body fails to trim or cut down such tree or vegetation within a reasonable time, the carrier may trim or cut down that tree or vegetation.

(5) If such tree or vegetation interferes with or endangers telecommunications, the carrier may without giving the notice referred to in subsection (2) cut down or trim such tree or vegetation.

### **Height or depth of cables and facilities**

66. (1) Aerial telecommunication wires or cables along any railway or public or private street, road, footpath or land must be at the prescribed height above the surface of the ground.

(2) Underground telecommunication facilities, pipes, tunnels and tubes must be placed by a carrier at the prescribed depth below the surface of the ground.

(3) If the owner of any private land is obstructed in the free use of his or her land by reason of the insufficient height or depth of any telecommunications wire, cable or other facility, pipe, tunnel or tube constructed by that carrier, the carrier must take such steps as are necessary for giving relief to that owner.

### **Railways and electrical works**

67. (1) Any person who constructs, equips or carries on any railway or works for the supply of light, heat or power by means of electricity, must conform to the requirements of a carrier for the prevention of any of its telecommunications facilities or works being injuriously affected thereby, and must, before commencing the construction of any such railway or works, give one month's notice in writing to the carrier of his or her intention to commence the construction, and must furnish the carrier with a plan of the proposed railway or works, together with particulars showing the manner and position in which the same are

intended to be constructed, executed and carried on and such further information relative to the proposed railway or works as the carrier may require.

(2) If it appears to the carrier that the construction, equipment or operation of such railway or works is likely to affect injuriously any of its telecommunication facilities or works, or if any of such facilities or works are injuriously affected by the construction, equipment or operation of any such railway or works, the carrier must give reasonable notice of the actions required to stop such injurious effect to the person concerned, and any person who, after receiving any such notice, fails to comply with such notice is liable to the carrier in damages, recoverable by action in a competent court, of N\$50 for every day on which the person concerned has not complied with such notice or the injurious effect continues, and must in addition make good any damage or expense suffered by the carrier by reason of the failure to comply with the carrier's requirements.

### **Carriers to perform functions in prescribed manner**

68. (1) A carrier must perform its functions in terms of this Chapter in accordance with the regulations contemplated in subsection (2).

(2) The Authority may prescribe –

- (a) the manner, form and period of notice to be given by a carrier to any person or public body in connection with the performance by the carrier of functions contemplated in this Part;
- (b) the procedure to be followed and consultations to be held between a carrier and any affected person or public body.

### **Authority to adjudicate in disputes between owners of property and carriers**

69. Unless the provisions of this Chapter expressly provide otherwise, any party to a dispute regarding the exercise of the rights conferred upon a carrier in this Part, may only be adjudicated upon by the Authority.

(2) Any party to a dispute referred to in subsection (1) may refer the dispute in the prescribed manner to the Authority.

(3) The Authority must make regulations prescribing the procedure to be followed when a dispute is adjudicated upon in terms of this section.

(4) Any party aggrieved by a decision of the Authority under this section may appeal to the High Court within the prescribed period and subject to the prescribed procedural requirements.

## **PART 6**

### **INTERCEPTION OF TELECOMMUNICATIONS**

#### **Interception centres**

70. (1) The Prime Minister must establish such interception centres as is necessary for the combating of crime and national security.

(2) Interception centres are staffed by such staff members in the Namibia Central Intelligence Agency as may be designated by the Director-General.

(3) Interception centres must be equipped by such equipment and software as may be designated by the Director-General.

(4) The Director-General must designate a staff member in the Namibia Central Intelligence Service as the head of the interception centre concerned.

(5) Where any law authorises any person or institution to intercept or monitor electronic communications or to perform similar activities, that person or institution may forward a request together with any warrant that may be required under the law in question to the head of an interception centre.

(6) Any staff member employed in an interception centre may do anything necessary in order to perform the interception or monitoring concerned (as well as any decoding or decryption necessary to make the information in question intelligible) and must forward all information obtained from these activities to the person who made the request referred to in subsection (5).

#### **Duties relating to interception**

71. (1) Licensees and other providers of telecommunications services must provide a telecommunications service in such a manner that it is capable of being intercepted.

(2) Licensees and other providers of telecommunications services must store such information relating to the originator, destination, contents of, and other information relating to the telecommunications concerned as may be prescribed.

(3) A telecommunication service provider must acquire at its own cost whether by purchasing or leasing the facilities and capabilities necessary to comply with the duties referred to in subsection (1) and (2).

(4) Costs incurred by telecommunications service providers in complying with subsection (1) and (2), including investments, technical, maintenance and operating costs must be borne by that telecommunications service provider.

(5) The provisions of this Part are not construed so –

(a) as to prohibit the use of any specific type of technology;

(b) as to compel service providers to perform any action that would make the provision of any class of telecommunications service uneconomical or technically infeasible;

(c) as to obtain or store any information that in the normal use of any technology or protocol will not come to its knowledge or would not be readily available.

#### **Assistance by telecommunications service providers and compensation therefor**

72. (1) The Minister must make regulations prescribing –

(a) the forms of assistance in the execution of a direction for which a telecommunication service provider must be compensated; and (

(b) reasonable tariffs of compensation payable to a telecommunications service provider for providing such prescribed forms of assistance.

- (2) The forms of assistance referred to in subsection (1) (a) may include –
- (a) the making available of a facility, device or telecommunication system;
  - (b) the routing of duplicate signals or duplicate packets to interception centres;
  - (c) making available of network services or facilities to equipment or software installed in interception centres;
  - (d) provision of information stored in terms of section 71(2).
- (3) Regulations made in terms of subsection (1)(a) may also prescribe –
- (a) the manner of routing signals to interception centres;
  - (b) the format in which information or signals must be provided to interception centres;
  - (c) any technical matter relating to the interconnection of equipment at interception centres and equipment or networks of telecommunications service providers;  
or
  - (d) any other technical requirement that will facilitate the interception of the telecommunications in question.
- (4) The tariffs prescribed in terms of subsection (1)(b) –
- (a) may differ in respect of different categories of telecommunication service providers;  
and
  - (b) must be uniform in respect of each telecommunication service provider falling within the same category.
- (5) The compensation prescribed in terms of subsection (1)(b) may only be for direct costs incurred in respect of personnel and administration which are required for purposes of providing any of the forms of assistance contemplated in subsection (1) (a).

## **Duty to obtain information relating to customers**

73. (1) Telecommunications service providers must ensure that the prescribed information is obtained from all customers.

(2) The information referred to in subsection (1) must be sufficient to determine which telephone number or other identification has been issued to a specific customer in order to make it possible to intercept the telecommunications of that customer.

## **Functions of Authority relating to interception**

74. (1) Any duty imposed by this part or any regulation made in terms of this Part may be enforced as if such duty were a licence condition imposed under this Act.

(2) The Authority may adjudicate any dispute that may arise between a telecommunications service provider and an interception centre, if such a dispute relates to any duty imposed by this Part or a regulation made in terms of any provision of this Part.

## **Disclosure of information**

75. Any person who performs any service relating to interception contemplated in this Part or information stored in terms of this Part and who –

- (a) reveals any information or performs any other action that will or is calculated to, have the effect that the interception or collection of information will not provide the information sought; or
- (b) discloses or in any other manner makes use of information obtained by means of the activities in question for another purpose than the purpose for which the interception or collection is intended,

commits an offence and is liable to imprisonment for a period of five years or N\$20 000.

## **Equipment relating to interception**

76. (1) Any person who possesses, imports, exports, distributes or deals in any

equipment prescribed in terms of subsection (2) without a permit issued by the Minister or who does not comply with any conditions in the permit in question, commits an offence and is liable to imprisonment for a period of five years or a fine of N\$20 00 or to both such fine and such imprisonment.

(2) On the recommendation of the Director-General the Minister may make regulations listing the equipment and software to which subsection (1) applies, if such equipment or software –

- (a) may be used to perform or facilitate interception or monitoring of telecommunications or any other activity performed by or in relation to an information or computer system;
- (b) may be used to prevent lawful interception or monitoring or rendering it less effective.

(3) Before regulations referred to in subsection (3) are made, the Authority must conduct a consultation process in the manner prescribed in terms of section 30(3) obtaining the input of persons having an interest in the regulations in question.

(4) The Authority must submit a report of the consultation process to the Minister which contains –

- (a) the submissions made by stake holders on the proposed regulations;
- (b) the recommendations of the Authority on the impact on the proposed prohibition on the telecommunications and the information technology industry; and
- (c) any information that the Authority may think fit with relation to beneficial or harmless uses of the equipment or software in question.

### **Regulations relating to interception**

77. (1) Regulations prescribing anything in terms of this Part must be made by the Minister, after consultation with the Authority and the provider of telecommunications

services concerned.

(2) Regulations made in terms of this Part may exempt any provider of telecommunications services from any duty imposed by this Part if –

- (a) it will promote the objects of this Act;
- (b) complying with the duty in question will affect the provision of a class of telecommunications services detrimentally; or
- (c) the burden imposed upon any provider of telecommunications services is disproportionate with the benefit that will be derived from the facilitation of interception by complying with the duty in question.

## **PART 7**

### **MISCELLANEOUS MATTERS**

#### **Determination of dominant position**

78. (1) Subject to subsection (2) the Authority must hold a hearing within one year from the date of commencement of this Act and thereafter every three years in order to determine which licensees hold a dominant position in the market.

(2) A licensee may request the Authority to conduct such a hearing earlier than required by subsection (1) and the Authority must hold such hearing, if the licensee requesting such a hearing presents sufficient information to the Authority to convince it that there is a *prima facie* case that a different licensee has become a dominant provider of telecommunications services.

(3) The Authority may also conclude that a licensee is dominant in respect of a specific class of telecommunications services when it is considering a matter where the question of dominance is relevant: Provided that it gives all parties affected by that finding an opportunity to be heard on that matter.

(4) Subject to subsection (5), the Authority must find a licensee to be dominant if it is of the opinion that –

- (a) the licensee in question has such a share of the market in the class of telecommunications services in question, that it is able to act independent of its competitors;
- (b) the licensee controls some infrastructure that is necessary for the provision of the services in question;
- (c) the licensee in question is dominant as provided in paragraph (a) or (b) in respect of a class of related services (which need not be telecommunications services) and the licensee can use that dominance to exercise power in the market for the telecommunications services in question; or
- (d) the licensee in question has a position in a market in another country or a relationship with providers in another country that can be used to exercise market power in respect of the relevant class of telecommunications services in Namibia.

(5) The Authority must consider the market power that may be exercised by a competitor of the licensee concerned in order to determine whether any of the matters referred to in subsection (4) will give the licensee concerned market power as contemplated in subsection (4).

### **Consumer protection**

79. (1) Each licensee must fully disclose to all users of its services adequate and up to date information concerning the standard terms and conditions for provision of telecommunications services.

(2) The information referred to in subsection (1) must be provided to the Authority which must make that information available in terms of section 27.

(3) All licensees must provide a contract to every customer that either specifies the service to be provided and the terms and conditions for providing such service or makes reference to publicly available terms and conditions.

(4) The contract or the publicly available terms and conditions must specify –

- (a) the supply time for initial connection and service;
- (b) the duration of the contract for each given service;
- (c) the types of maintenance service offered;
- (d) the additional charges for maintenance;
- (e) the compensation and refund arrangements if the contracted service is not met; and
- (f) a summary of the method of initiating procedures for the settlement of disputes before the Authority.

### **Equipment approvals and standards**

80. (1) The Authority may prescribe reasonable technical standards applicable to telecommunications equipment to ensure against harm to electronic telecommunications networks or to public health or safety.

(2) The Authority may prescribe standards relating to the attachment of telecommunications equipment to the telecommunications networks of licensees.

(3) The Authority may prescribe categories of telecommunications equipment for which type approval is required before it is sold or put into use in Namibia, to ensure against harm to public health and safety or to electronic telecommunications networks.

(4) The Authority may prescribe general or specific standards of performance, operational compatibility, and interconnectivity, for different categories of telecommunications equipment.

(5) The Authority may prescribe procedures for testing equipment to ensure compliance with this Act.

(6) The Authority must consider input from public health and safety officials, licensees and other providers of telecommunications services, manufacturers and other industry par-

ticipants before it prescribes any category of equipment for which type approval is required as contemplated in subsection (3).

(7) The Authority must ensure that its regulation of equipment and any standards it prescribes under this section are no more than the minimum necessary to ensure safe and efficient telecommunications in the country.

(8) In setting standards under this Act, the Authority must take into account the standards promulgated in other states in the region, and where feasible coordinate with other states in the region in the setting of standards, either through participation in international standards-setting bodies, or through consideration of the views of industry participants in industry standards-setting organisations.

(9) The Authority may seize any telecommunications equipment that does not comply with any standard prescribed under this section or that belongs to a category of telecommunications equipment for which type approval is required as contemplated in subsection (3) and that has not been approved as contemplated in that subsection.

## **Numbering administration**

81. (1) The Authority must after having followed a rule-making procedure prescribe a national numbering plan for use in the provision of telecommunications services.

(2) In preparing the numbering plan, the Authority must take account of existing numbering plans or schemes.

(3) The numbering plan must require mobile number portability by all technology and service neutral licensees within two years from the date of commencement of this Act.

(4) The Authority must allocate to licensees adequate prefixes, numbers and numbering ranges without unreasonable delay, in an objective, non-discriminatory, proportionate and transparent manner, in return for a fee that is no greater than necessary to compensate for the management costs of the numbering plan and the control of its use.

(5) The Authority must ensure that no customer of any licensee is unnecessarily inconvenienced by alterations in the numbering plan, and the allocation of numbers does not

confer any competitive advantage to any particular licensee.

(6) The conditions under which prefixes, individual numbers and number ranges may be used must be specified in licences or in a decision allocating numbering resources.

(7) Within two years from the date of commencement of this Act, carriers must include the necessary provisions to meet local number portability obligations and dialling parity in their interconnection agreements.

(8) Except in connection with transfers of subscribers from one carrier to another, numbers may be transferred between carriers only with the prior consent of the Authority.

(9) For the purposes of this section “dialling parity” means the ability to provide telecommunications services in such a manner that users have the ability to route calls automatically through any carrier without having to dial additional digits depending upon the identity of the carrier.

## **CHAPTER VI BROADCASTING SERVICES**

### **Definition for the purposes of this Chapter**

82. For the purposes of this Chapter, the term “licence” refers to a broadcasting licence and “licensee” is construed accordingly.

### **Prohibition of the provision of broadcasting services without licence**

83. (1) No person may broadcast or otherwise operate a broadcasting service or do or permit anything to be done for which a broadcasting licence is required in terms of this Act, unless he or she is in possession of the appropriate licence so required, in addition to any other licence or certificate which may be required by this Act for the transmission or operation of a broadcasting service undertaken by him or her or for the doing of that thing.

(2) A broadcasting licence is also required in respect of any broadcast transmitted from outside Namibia if such broadcast is intended to be received only by persons who subscribe to the service in question or provide any other consideration to receive that service.

(3) Any person who promotes such a service in Namibia or who receives payment as consideration for access to such service is deemed to be operating the service in question.

### **Categories of broadcasting licences**

84. (1) Before this Chapter is put into operation, and thereafter whenever it may be necessary, the Authority must conduct a rule-making procedure to prescribe the categories of broadcasting licences.

(2) When different categories of broadcasting licences are determined, the following distinguishing characteristics of the services must be taken into account –

- (a) the method used to distribute the services concerned;
- (b) whether scarce resources such as portions of the radio spectrum are used by the service;
- (c) the extent to which the licensee has editorial control over the contents of channels or programs forming part of the services concerned and whether the provider concerned is a provider contemplated in section 83(2);
- (d) whether the services concerned are community, commercial or public broadcasting services.

### **Issue of broadcasting licences**

85. (1) The Authority may, on such conditions as it may determine and against payment of such fees as may be prescribed, issue a broadcasting licence in the appropriate category prescribed in terms of section 84(1) conferring the right to provide the services authorised by the licence.

(2) The Authority may issue a broadcasting licence only to –

- (a) a Namibian citizen; and
- (b) a company of which at least 51 percent of the share holding is beneficially

owned by Namibian citizens and which is not controlled directly or indirectly by persons who are not Namibian citizens and which has its principal place of business or registered office in Namibia.

(3) Every application for a broadcasting licence must be made in the prescribed form and must be accompanied by –

- (a) the prescribed application fee;
- (b) the prescribed deposit, if any;
- (c) the applicant's proposals in relation to the nature of the service and a programme schedule in regard to the daily transmission time allocated to different programmes;
- (d) a statement of account setting out the financial resources available to the applicant to conduct a broadcasting service; and
- (e) such other information as the Authority may deem necessary in order to decide on the ability of the applicant to provide the broadcasting service.

(4) Where the application has not been successful, all amounts paid by the applicant, except the prescribed application fee, must be refunded by the Authority to the applicant, and no interest is payable on any such amount.

(5) The Authority must cause notice to be given in the *Gazette* of every application for the issue of a broadcasting licence received by it.

(6) Any person may within fourteen days of publication of a notice in terms of subsection (4) lodge with the Authority written representations opposing the issue of a broadcasting licence, and such representations must be taken into account when the Authority considers the application.

(7) When considering an application for the issue of a broadcasting licence the Authority must have regard to –

- (a) the character of the applicant or, if the applicant is a body corporate, the character of its directors;
- (b) the adequacy of the expertise, experience and financial resources available to the applicant;
- (c) the desirability or otherwise of allowing any person or association of persons, to have control of or a substantial interest in –
  - (i) more than one broadcasting service;
  - (ii) more than one radio station and one television station and one registered newspaper with a common coverage and distribution area or significantly overlapping coverage and distribution areas;
- (d) whether the applicant is likely to comply with the prescribed technical broadcasting standards;
- (e) whether the conditions of a broadcasting licence will unjustly benefit one licensee above another;
- (f) the allocation of spectrum resources in such a manner as to ensure the widest possible diversity of programming and the optimal utilisation of such resources: Provided that priority may be given to broadcasters transmitting the maximum number of hours per day;
- (g) the reservation of radio wave spectrum resources for future use; and
- (h) the desirability of giving priority to community based broadcasts.

(8) As soon as the Authority grants an application for the issue of a broadcasting licence, it must cause notice thereof to be given in the *Gazette* and to the applicant.

(9) Subject to Article 18 of the Namibian Constitution, the decision of the Authority to grant or refuse an application for the issue of a broadcasting licence is final.

## conditions on broadcasting licences

86. (1) The Authority may impose such conditions on broadcasting licensees as are appropriate for the category of broadcasting licence issued to the licensee concerned.

(2) The conditions referred to in subsection (1) may include conditions in relation to

–

- (a) the frequencies that may be used and the power limitations of transmitters used in connection with the broadcasting services in question, the technical servicing and inspection of equipment and any other technical matters;
- (b) the prevention of electric and other disturbances of radio reception or of transmissions over any telecommunications line;
- (c) the broadcasting of reports, announcements, news or other information which is required to be broadcast in the public interest;
- (d) the location of a transmitter and the specific geographical area to which the broadcast may be made;
- (e) the manner in which the information must be modulated upon the radio waves in question, including whether the service must be digital or analog;
- (f) the duty to make spare capacity on transmitters available to other licensees, the conditions under which such duty exists, the extent of the duty, the payment for the use of such capacity, the rights of the person who provides such capacity and any other matter relating thereto; and
- (g) any matter relating to masts, towers or other facilities effecting the environmental or aesthetic impact of such facilities.

(3) The Authority may, in respect of any particular licence, amend any of the conditions, including by adding further conditions –

- (a) if the Authority is of the opinion that it is in the interest of orderly spectrum

management;

(b) in order to give effect to any international treaty in relation to broadcasting to which Namibia is a party; or

(c) at the request of the licensee.

(4) No amendment may be made to the conditions of a broadcasting licence in terms of paragraph (a) or (b) of subsection (3), unless the licensee concerned has been granted the opportunity to make written representations to the Authority in connection therewith.

(5) The decision by the Authority to so amend or not, is, subject to the provisions of Article 18 of the Namibian Constitution, final.

### **Duration of, renewal and lapsing of broadcasting licence**

87. (1) A broadcasting licence is issued for such period as the Authority may determine but may not –

(a) in the case of a radio broadcasting licence, exceed five years;

(b) in the case of a television broadcasting licence, exceed eight years.

(2) The Authority may from time to time renew a licence for such further period as the Authority may determine which period may not-

(a) exceed five years, when such licence is renewed for the first time; and

(b) not exceed ten years, when the licence is renewed for the second or subsequent time.

(3) An application for the renewal of a licence must be made not earlier than six months and not later than sixty days before the date of expiry of the existing licence.

(4) The Authority may, when considering an application for the renewal of a licence, require such new or additional information as it may deem necessary to make a finding.

(5) The Authority must renew a licence unless, in its opinion, there is a good reason to refuse to renew the licence in question.

(6) If a decision in connection with an application for the renewal of a licence has not been reached by the Authority at the time when the period of validity of the existing broadcasting licence expires, such licence continues to be of effect pending such decision.

(7) A licence lapses after the expiry of such period which may be prescribed in the event that no broadcasts are made under that licence.

### **Payment of broadcasting licence fees**

88. If any prescribed fees are not paid by a licensee on the date on which such fees are payable and remain unpaid after the expiry of a period of seven days after the written notice by the Authority to the licensee to remedy the default, the licensee forfeits the broadcasting licence concerned.

### **Broadcasting code**

89. (1) The Authority must as soon as possible after the commencement of this Act after having followed a rule-making procedure, prescribe a broadcasting code that must prescribe the duties with which licensees must comply.

(2) The broadcasting code may –

- (a) prescribe duties relating to the coverage of news and current affairs in order to ensure that the news coverage by broadcasters is fair, objective and impartial;
- (b) prescribing such duties as may be required to comply with generally accepted journalistic ethics;
- (c) regulate the broadcasts of any matter having the purpose of promoting the interests of any political party (whether it is in the form of a paid advertisement) or otherwise;
- (d) prescribing special duties for broadcasters while campaigns are being con-

ducted for elections or referendums as will promote democracy and the fair conducting of such elections or referendums;

- (e) regulate the broadcasting of matters of a sexual nature, containing offensive or strong language or that is offensive or degrading to any portion of the Namibian public or prohibit such broadcasts under prescribed circumstances or during prescribed times or prescribing other conditions relating to such broadcasts or subject to the Namibian Constitution prohibit the broadcast of a prescribed class of such matter under the prescribed circumstances;
  - (f) prescribe the duty to broadcast a prescribed class of public announcements free of charge;
  - (g) prescribe the circumstances under which corrections or counter-versions must be broadcast when factually incorrect or defamatory or injurious matter or matter whose broadcast is prohibited by the code, has been broadcast;
  - (h) require the broadcast of prescribed types of content produced in Namibia;
  - (i) prescribe the amount and nature of advertisements that may be broadcast and prohibit the broadcast of advertisements that are degrading or offensive;
  - (j) prescribe any duty that will improve the quality of the service provided by broadcasters.
- (3) When the code is prescribed, the Authority must –
- (a) ensure that the duties imposed on a specific category of broadcasting service is appropriate for the services in question;
  - (b) ensure that duties are not imposed that will make some class of service uneconomical or impractical;
  - (c) ensure that community broadcasting is promoted;
  - (d) impose duties that will as far as practical promote Namibian creativity.

## **Supervision by Authority**

90. (1) The Authority must supervise compliance with the conditions imposed on broadcasting licences and the broadcasting code and if the chairperson, as a result of a complaint by any person, is of the opinion that the conditions or duties have been materially breached, he or she must request the licensee concerned to make written representations regarding the alleged breach to the Authority.

(2) When, after consideration of the written representations, the Authority is of the opinion that the licensee has materially breached a condition or provision of the broadcasting code, it may issue an order –

- (a) warning the broadcasting licensee;
- (b) directing the licensee to effect a programme change within a period not longer than thirty days from the date of receipt of the direction;
- (c) directing the licensee to disclose, free of charge and in such manner as the Authority may direct, the finding of the Authority;
- (d) directing the licensee to broadcast a counter-version in accordance with the provisions of the broadcasting code;
- (e) suspending the broadcasting licence for a period determined by the Authority;  
or
- (f) withdrawing the broadcasting licence,

or it may take any other action authorised by this Act.

(3) Whenever the Authority orders the withdrawal of a broadcasting licence under paragraph (f) of subsection (2), it must cause a notice to be published in the *Gazette* containing details of such order.

## **Furnishing of financial statements**

91. (1) Every licensee must, within 60 days after the end of such licensee's financial year, submit his or her audited financial statements to the Authority.

(2) The auditing of the financial statements referred to in subsection (1) must be carried out by a person who is registered as an accountant and auditor in terms of the Public Accountants' and Auditors' Act, 1951 (Act 51 of 1951).

### **Broadcasting licences issued under Act 4 of 1992**

92. (1) A broadcasting licence issued under the Namibian Communications Commission Act, 1992 (Act 4 of 1992), is, subject to subsection (2), deemed to be a licence issued under this Chapter and any condition imposed on the holder of such a licence is deemed to be a condition imposed under this Chapter.

(2) The Authority must within six months from the commencement of this Act, review all existing broadcasting licences and must issue a broadcasting licence in the appropriate category to the licensee in question.

### **Application of this chapter to Namibian Broadcasting Corporation**

93. (1) Until a date determined by the Minister by notice in the *Gazette*, this chapter does not apply to the Namibian Broadcasting Corporation established by section 2 of the Namibian Broadcasting Act, 1991 (Act 9 of 1991), or in respect of the broadcasting activities carried on by that Corporation.

(2) Before the date determined in terms of subsection (1), the broadcasting code must be amended in consultation with the Minister after having followed a rule-making procedure in order to prescribe appropriate obligations with which a public broadcaster must comply.

(3) Within six months from the date determined in terms of subsection (1), the Authority must issue a broadcasting licence to the Namibian Broadcasting Corporation that is appropriate for a public broadcaster.

## **CHAPTER VII POSTAL SERVICE LICENCES**

### **Definition for the purposes of this Chapter**

94. In this Chapter unless the context indicates otherwise, “licence” means a postal licence and “licensee” is construed accordingly.

### **Prohibition of the provision of postal services without a licence**

95. (1) Subject to subsection (2), no person (except Namibia Post Limited established by section 2(1)(a) of the Posts and Telecommunications Companies Establishment Act, 1992 (Act No. 17 of 1992) ) may render a postal service without a licence issued in terms of section 96.

(2) The Minister may by notice in the *Gazette* determine a date from which Namibia Post Limited will require a licence under this Chapter authorising the rendering of postal services.

(3) Within six months from the date determined in terms of subsection (1), Namibia Post Limited must submit an application for a postal service licence in the form required by the Authority.

### **Postal service licences**

96. (1) The Authority may on application made to it in the prescribed manner, and on such conditions and against payment of such fees as may be prescribed, issue a postal service licence conferring the right to provide a postal service for such period as the Minister may determine.

(2) (a) The Authority must cause notice to be given in the *Gazette* of every application received by it under subsection (1).

(b) Any person may within fourteen days of publication of a notice in terms of paragraph (a) lodge with the Authority written representations opposing the application in question and such representations must be taken into account when the Minister considers that application.

(3) (a) The Authority may from time to time, on application made to it in the prescribed manner, renew a licence issued under subsection (1) for such further period as it may determine.

- (b) An application referred to in paragraph (a) must be made not earlier than six months and not later than sixty days before the date of expiration of the existing licence.
- (c) The Authority may, when considering an application for the renewal of a postal service licence require such new or additional information as it may deem necessary to make a finding.
- (d) If a decision in connection with an application made under paragraph (a) has not been reached by the Authority at the time when the period of validity of the existing licence has expired, such licence continues to be of effect pending such decision.

(4) If any prescribed fees with regard to a postal service licence have not been paid by a licensee on the date on which such fees are payable and remain unpaid after the expiry of a period of seven days after a written notice by the Authority to such licensee to remedy the default, such licensee forfeits the licence concerned.

- (5) (a) The Authority may, where it is of the opinion that the conditions of any postal service licence have been materially breached, request the holder of such licence to make written representations to it regarding the alleged breach.
- (b) If, after consideration of the written representations contemplated in paragraph (a), the Authority is of the opinion that the holder of a postal service licence has materially breached a condition of the licence concerned, it may issue an order
  - (i) warning such holder;
  - (ii) imposing a fine on such holder not exceeding N\$10,000;
  - (iii) suspending the licence concerned; or
  - (iv) withdrawing the licence concerned.

(c) Any fine imposed under subparagraph (ii) of paragraph (b) is for the benefit

of the Authority.

- (d) Whenever the Authority orders the withdrawal of a postal service licence under subparagraph (iv) of paragraph (b) it must cause a notice to be published in the *Gazette* containing details of such order.

(6) A licensee must, within sixty days after the end of its financial year, submit to the Authority his or her financial statements, audited by a person registered as an accountant and auditor in terms of the Public Accountants' and Auditors' Act, 1951 (Act 51 of 1951).

### **Transfer of postal service licences**

97. (1) No postal service licence may be transferred, except with the approval of the Authority granted upon an application for such transfer in the prescribed form.

(2) Where a company is the holder of a postal service licence, no person other than an existing shareholder of that company, may, except with the prior written approval of the Authority, acquire shares or any other interest in that company which results in that person directly or indirectly obtaining a controlling interest in the company.

### **Regulations relating to postal service licences**

98. The Authority, with the approval of the Minister, may make regulations –

- (a) prescribing the form and procedure to be followed when a person applies for a postal service licence;
- (b) prescribing any fees to be paid for an application for a postal service licence, any deposit payable in respect of an application for a postal service licence and any fees payable by a licence holder;
- (c) prescribing any service involving the transport of packages or documents to be postal services for the purposes of this Chapter;
- (d) prescribing anything that in terms of this Chapter may or must be prescribed.

## **CHAPTER VIII**

## REGULATION OF RADIO SPECTRUM

### Control of radio spectrum

99. The Authority is vested with the control, planning, administration, management and licensing of the radio spectrum.

(2) In controlling, planning, administering, managing and licensing the use of the radio frequency spectrum, the Authority must comply with the applicable standards and requirements of the International Telecommunication Union and its Radio Regulations, as agreed to or adopted by Namibia.

(3) The Authority must honour present and future commitments of Namibia in terms of international agreements and standards in respect of radio communication and telecommunication matters.

### Frequency band plans

100. (1) The Authority may from time to time prescribe a frequency band plan in respect of any part of the radio frequency spectrum.

(2) A frequency band plan must –

- (a) define how the radio spectrum must be used;
- (b) aim at ensuring that the radio frequency spectrum is utilised and managed in an orderly, efficient and effective manner;
- (c) aim at reducing congestion in the use of frequencies and at protecting frequency users from any interference or other inability to make use of the frequencies assigned to them;
- (d) avoid obstacles to the introduction of new technologies and telecommunication services;
- (e) aim at providing opportunities for the introduction of the widest range of

telecommunication services and the maximum number of users thereof as is practically feasible.

(3) In preparing a frequency band plan in terms of this section, the Authority-

- (a) must have due regard to the reports of experts in the field of spectrum or frequency band planning and to internationally accepted methods for preparing such plans;
- (b) must take into account existing uses of the radio frequency spectrum and any frequency band plans of other countries whether they are already in effect or whether they are in the course of preparation.

(4) The Authority must give notice in the *Gazette* of its intention to prepare a plan and in such notice invite interested parties to submit their written representations to the Authority within such period as may be specified in such notice.

(5) The Authority must, after the period referred to in subsection (4) has passed, hold a hearing in respect of the proposed plan.

(6) After the hearing and after due consideration of any representations received pursuant to the notice mentioned in subsection (4) or tendered at the hearing, the Authority must adopt the frequency band plan in question, with or without amendment, and cause such plan to be published in the *Gazette* .

(7) Any frequency band plan adopted in terms of this section and all such comments, representations and other documents as have been received in response to the notice contemplated in subsection (4) or tendered at the hearing, must be kept at the offices of the Authority and made available to the public as provided in section 27.

(8) The Authority may review a frequency band plan adopted in terms of this section.

(9) The provisions of subsections (2) to (7) apply, with the necessary changes, in relation to any amendment contemplated in subsection (8).

## **Spectrum licences, certificates and authorities**

101. (1) Unless expressly provided otherwise by this Act, no person may—

- (a) transmit any signal by radio waves;
- (b) use radio apparatus to receive any signal transmitted by radio waves; or
- (c) instruct, permit or fail to prohibit any person in his or her employ or under his or her control to perform any action referred to in paragraph (a) or (b),

except under and in accordance with a licence issued in terms of subsection(2) and if applicable a certificate or authority issued in terms of subsection (3).

(2) The Authority may issue a licence conferring on the licence holder the right to use, or to cause any person in his or her employ or under his or her control to use a transmitter for any prescribed purpose or to use any radio frequency or group of radio frequencies or radio receiver for any purpose and in the manner prescribed or determined in the licence concerned.

(3) The authority may –

- (a) determine in a spectrum licence that the radio apparatus specified in that licence;
- (b) prescribe the circumstances under which radio apparatus; or
- (c) prescribe the categories of radio apparatus that,

may only be operated or maintained by a person to whom-

- (i) a certificate of proficiency has been issued; or
- (ii) an authority to operate or maintain radio apparatus as specified in that authority has been issued, in addition to a certificate referred to in paragraph (i).

(4) A certificate referred to in subsection (3)(i) may be issued to a person who has

passed the examinations referred to in subsection (10) or to any person who according to the regulations qualifies for the issuing of such a certificate without having passed the examination in question.

(5) The procedures for the application for licences, certificates and authorities referred to in this section and the information to be supplied for the consideration of applications must be prescribed.

(6) A spectrum licence is required as provided in subsection (2) in addition to any licence to operate a network or to provide telecommunications service or a broadcasting service issued under this Act, where the operation of the network or the provision of the service or the use thereof entails the use of radio waves as contemplated in that subsection.

(7) When a person applies for a licence to operate a network or provide telecommunications services or broadcasting services, that person must also apply for such spectrum licences as are necessary to render the service concerned.

(8) The Authority must consider the application for the spectrum licence together with the application for the other licence, and must ensure that such spectrum licence is issued to the applicant to enable him or her to render the service for which the other licence is issued: Provided that the Authority may refuse to issue a spectrum licence if the applicant does not comply with such technical requirements for the issue of a spectrum licence as the Authority may deem necessary.

(9) The provisions of section 45 apply with the necessary changes in respect of such spectrum licences as Telecom may require in order to render the telecommunications services contemplated in that section.

(10) The Authority may conduct examinations, or cause examinations to be conducted, to determine the proficiency of any person to use or maintain a station as contemplated in subsection (3) (i).

(11) A licence, certificate or authority issued in terms of section 7 (1) (a), (c) or (d) of the Radio Act, 1952 (Act 3 of 1952), and which was still valid immediately before the date of commencement of this Act, is deemed to have been issued in terms of this section.

(12) The Namibian Defence Force or any other organ of the state is deemed to be the holder of a licence issued under subsection (2) authorising it to use the radio frequencies and groups of radio frequencies which had been assigned to it for defence purposes or to the other organ immediately before the date of commencement of this Act: Provided that the said Force or other organ must apply to the Authority within six months after the date of commencement of this Act or such extended period as the Authority may allow, for such a licence, and that the Authority must grant such a licence in terms of this section to the Force or other organ.

(13) The Authority may amend a spectrum licence issued under subsection (2)-

- (a) to implement any frequency band plan or in the interest of orderly frequency management, if the amendment will not cause substantial prejudice to the licence holder;
- (b) if requested thereto by the licence holder concerned.

(14) The procedures in relation to the amendment, renewal or transfer of a spectrum licence, certificate or authority contemplated in this section will be as prescribed.

(15) Subsection (1) does not apply to a person who utilises radio waves –

- (a) in the course of making due and proper use of a telecommunication service, the provision of which is duly licensed in terms of this Act, as a customer or end user thereof;
- (b) in accordance with the regulations contemplated in subsection (16).

(16) The authority may prescribe –

- (a) categories of radio apparatus, the use or possession of which; or
- (b) the circumstances in which the use or possession of radio apparatus,

does not require a licence, certificate or authority in terms of this section or a permit in terms of section 102.

(17) A notice published in the *Gazette* and still of force and effect immediately before the date of commencement of this Act declaring any article not to be radio apparatus for the purposes of the laws governing radio, is deemed to be a regulation made in terms of subsection (16) authorising the possession of the apparatus mentioned in that notice.

### **Control of possession of radio apparatus**

102. (1) Subject to any regulation made or deemed to have been made in terms of section 101(16), no person may have in his or her possession any radio apparatus unless he or she is in possession of a permit issued by the Authority in terms of this section or a spectrum licence issued in terms of section 101 authorising such possession.

(2) The procedure for obtaining a permit in terms of subsection (1), is as prescribed.

(3) Where any radio apparatus is found in the possession of any person in contravention of the provisions of this section, the Authority may –

(a) seal or alter such apparatus or any part thereof in order to prevent the use of that radio apparatus for the purpose of transmission or reception, and issue to such person a permit for a limited or indefinite period authorising the possession of that apparatus on condition that it is not during such period used for such purpose;

(b) seize such apparatus, whether or not it is sealed as contemplated in paragraph (a), for disposal in terms of subsection (4).

(4) Radio apparatus seized under subsection (3) (b) must be held by the Authority until –

(a) its possession is authorised in terms of subsection (1) or (3) (a); or

(b) it is declared forfeited as contemplated in section 110 or under any other law.

## **CHAPTER IX**

### **ESTABLISHMENT AND INCORPORATION OF .NA DOMAIN NAME ASSOCIATION**

#### **Establishment of Association**

103. A juristic person to be known as the .na Domain Name Association is hereby established –

- (a) with the object of obtaining all rights necessary for the purposes of administering the .na name space;
- (b) for the purpose of assuming responsibility for the .na domain name space as from a date determined by the Minister by notice in the *Gazette*.

### **Incorporation of Association**

104. (1) The Minister must, within 12 months of the date of commencement of this Act, take all steps necessary for the incorporation of the Association as a not for profit company under the laws regulating companies in Namibia.

(2) All citizens and permanent residents of Namibia are eligible for membership of the Association and must be registered as members upon application and on payment of a nominal fee to cover the cost of registration of membership and without having to comply with any formality.

### **Association's memorandum and articles of association**

105. (1) The memorandum of association and articles of association of the Association must be consistent with this Chapter.

(2) Notwithstanding any law relating to companies, an amendment to the memorandum of association or articles of association affecting any arrangement made by any provision of this Chapter, does not have any legal force and effect unless the Minister has consented in writing to such an amendment, which consent may not be withheld unreasonably.

(3) No fee is payable in respect of the reservation of the name of the company, the registration of the said memorandum and articles and the issue of the certificate to commence business.

(4) The memorandum and articles of association of the Association must, amongst others, provide for –

- (a) the rules for the convening and conducting of meetings of the Board, including the quorum required for and the minutes to be kept of those meetings;
- (b) the manner in which decisions are to be made;
- (c) the establishment of any division of the Authority to perform specialised functions;
- (d) the establishment and functioning of committees, including a management committee;
- (e) the co-opting by the Board or a committee of any person to assist the Association or committee in the consideration of any particular matter;
- (f) the preparation by the Board of an annual business plan in terms of which the activities of the Association are planned annually;
- (g) the banking and investment of funds by the Board;
- (h) provisions to regulate the manner in which, and procedures whereby, expertise from any person is obtained in order to further the objects of the Association;
- (i) the determination through arbitration of any dispute concerning the interpretation of the memorandum and articles of association of the Association;
- (j) the delegation of powers and assignment of duties to directors, committees and employees: Provided that the Board may-
  - (i) not be divested of any power or duty by virtue of the delegation or assignment; and
  - (ii) vary or set aside any decision made under any delegation or in terms of any assignment;
- (k) the procedures and criteria for the establishment and disestablishment of second level domains and for delegations to such domains;

- (l) appeal mechanisms;
- (m) the tenure of directors;
- (n) the circumstances under and the manner in which a directorship is terminated;
- (o) criteria for the disqualification of directors;
- (p) the method of determining the allowances to be paid to directors for attending meetings; and
- (q) the powers and duties of directors.

### **Board of directors of Association**

106. (1) The Association is managed and controlled by a Board of Directors consisting of five directors of whom –

- (a) three are nominated by an organisation that in the opinion of the Minister is representative of the information technology and telecommunications industry in Namibia;
  - (b) one is a staff member whose duties relate to information technology in the government;
  - (c) one represents the Namibian public.
- (2) The Minister appoints the directors and designate one of them as the chairperson.
- (3) The directors must be persons who are committed to fairness, openness and accountability and to the objects of this Chapter.
- (4) All directors serve in a part-time and non-executive capacity.
- (5) Any vacancy on the Board must be filled in accordance with subsections (2) and (3).

## **Staff of Association**

107. (1) The chief executive officer of the Association appointed by the Board must perform any work incidental to the functions of the Association.

(2) The chief executive officer may be assisted by staff appointed by the Board.

(3) The Board must determine the conditions of service, remuneration and service benefits of the chief executive officer and the staff.

(4) If the chief executive officer is for any reason unable to perform his or her functions, the Board may designate a person in the service of the Authority to act as the acting chief executive officer until the chief executive officer is able to resume office.

## **Licensing of registrars and registries**

108. (1) No person may update a repository or administer a second level domain unless such person is licensed to do so by the Association.

(2) An application to be licensed as a registrar or registry must be made in the prescribed manner and subject to the prescribed fees.

(3) The Association must apply the prescribed conditions and criteria when evaluating an application referred to in subsection (2).

## **Functions of Association**

109. (1) The Association must –

(a) administer and manage the .na domain name space;

(b) comply with international best practices in the administration of the .na domain name space;

(c) license and regulate registries;

(d) license and regulate registrars for the respective registries; and

(e) publish guidelines on –

(i) the general administration and management of the .na domain name space;

(ii) the requirements and procedures for domain name registration; and

(iii) the maintenance of and public access to a repository,

with due regard to the policy directives which the Minister may make from time to time by notice in the *Gazette*.

(2) The Association must enhance public awareness on the economic and commercial benefits of domain name registration.

(3) The Association –

(a) may conduct such investigations as it may consider necessary;

(b) must conduct research into and keep abreast of developments in Namibia and elsewhere on the domain name system;

(c) must continually survey and evaluate the extent to which the .na domain name space meets the needs of the citizens of Namibia; and

(d) may, from time to time, issue information on the registration of domain names in Namibia.

(4) The Association may, and must when so requested by the Minister, make recommendations to the Minister in relation to policy on any matter relating to the .na domain name space.

(5) The Association must continually evaluate the effectiveness of this Act and things done in terms thereof towards the management of the .na domain name space.

(6) The Association may-

- (a) liaise, consult and co-operate with any person or other authority; and
- (b) appoint experts and other consultants on such conditions as the Association may determine.

(7) The Association must respect and uphold the vested rights and interests of parties that were actively involved in the management and administration of the .na domain name space at the date of its establishment: Provided that –

- (a) such parties must be granted a period of six months during which they may continue to operate in respect of their existing delegated sub-domains; and
- (b) after the expiry of the six-month period, such parties must duly apply to be licensed registrars and registries as provided for in this Chapter.

### **Finances of Association**

110. (1) All money received by the Association must be deposited in a banking account in the name of the Association with any banking institution or building society registered in terms of the laws governing banking institutions and building societies in Namibia.

(2) The chief executive officer is the accounting officer of the Association and must ensure that –

- (a) proper record of all the financial transactions, assets and liabilities of the Association are kept; and
- (b) as soon as possible, but not later than three months after the end of a financial year, accounts reflecting the income and expenditure of the Association and a balance sheet of the assets and liabilities of the Association as at the end of that financial year are prepared and submitted to the Board and Minister.

(3) The Association is funded from –

- (a) the capital invested in or lent to the Association;
- (b) money appropriated by Parliament for that purpose;
- (c) income derived from the sale or other commercial exploitation of its licenses, approvals, products, technology, services or expertise in terms of this Chapter;
- (d) loans raised by the Association;
- (e) the proceeds of any sale of assets;
- (f) income or interest earned on the Association's cash balances or on money invested by it; and
- (g) money received by way of grant, contribution, donation or inheritance from any source inside or outside Namibia.

(4) The funds of the Association must be utilised to meet the expenditure incurred by the Association in connection with its functioning, business and operations in terms of this Chapter.

- (5) (a) The money may be so utilised only as provided for in a statement of the Association's estimated income and expenditure, that has been approved by the Minister.
- (b) Money received by way of grant, contribution, donation or inheritance in terms of subsection (3) (g), must be utilised in accordance with any conditions imposed by the grantor, contributor, donor or testator concerned.
- (6) (a) The Board must in each financial year, at a time determined by the Minister, submit to the Minister for approval a statement of the Association's estimated income and expenditure for the next financial year.
- (b) The Board may at any time during the course of a financial year, submit a supplementary statement of estimated income and expenditure of the Association for that financial year, to the Minister for approval.

(c) The Minister may grant the approval of the statement referred to in paragraph (a), with the agreement of the Minister of Finance.

(d) The Association may not incur any expenditure in excess of the total amount approved under paragraph (c).

(7) The Board may establish a reserve fund for any purpose that is connected with the Association's functions under this Chapter and has been approved by the Minister, and may allocate to the reserve fund the money that may be made available for the purposes in the statement of estimated income and expenditure or supplementary statement contemplated in subsection (6).

## **Reports**

111. As soon as practicable after the end of every financial year, the Board must submit a report on its activities during that year to the Minister who must table that report in Parliament.

## **Regulations regarding Association**

112. The Authority may, with the approval of the Minister, make regulations regarding –

(a) the requirements which registries and registrars must meet in order to be licensed, including objective standards relating to operational accuracy, stability, robustness and efficiency;

(b) the circumstances and manner in which registrations may be assigned, registered, renewed, refused, or revoked by the registries with due regard to the express recognition of the right of groups and members of groups within Namibia to identify with, use or communicate cultural, linguistic, geographical, indigenous or any other expressions of heritage including any visual or audible elements or attributes thereof;

(c) pricing policy;

- (d) provisions for the restoration of a domain name registration and penalties for late payments;
- (e) the terms of the domain name registration agreement which registries and registrars must adopt and use in registering domain names, including issues in respect of privacy, consumer protection and alternative dispute resolution;
- (f) processes and procedures to avoid unfair and anti-competitive practices, including bias to, or preferential treatment of actual or prospective registrants, registries or registrars, protocols or products;
- (g) requirements to ensure that each domain name contains an administrative and technical contact;
- (h) the creation of new sub-domains;
- (i) procedures for ensuring monitoring of compliance with the provisions of this Act and the regulations provided for in this Chapter, including regular .na domain name space technical audits;
- (j) such other matters relating to the .na domain name space as it may be necessary to prescribe to achieve the objectives of this Chapter; and
- (k) policy to be applied by the Association.

### **Alternative dispute resolution**

113. (1) The Minister, in consultation with the Minister of Trade and Industry, must make regulations for an alternative mechanism for the resolution of disputes in respect of the .na domain name space.

- (2) The regulations must be made with due regard to existing international precedent.
- (3) The regulations may prescribe –
  - (a) procedures for the resolution of certain types of disputes determined in the

- regulations and which relate to a domain name registration;
- (b) the role which the Association must fulfil in administering the dispute resolution procedure;
  - (c) the appointment, role and function of dispute resolution adjudicators;
  - (d) the procedure and rules which must be followed in adjudicating disputes;
  - (e) unlawful actions or activities in respect of domain names, distinguishing between criminal and civil liability;
  - (f) measures to prevent unlawful actions or activities with respect to domain names;
  - (g) the manner, costs of and time within which a determination must be made;
  - (h) the implementation of determinations made in terms of the dispute resolution procedure;
  - (i) the limitation of liability of registrars and registries for implementing a determination; and
  - (j) the enforcement and publication of determinations.

## **CHAPTER X GENERAL PROVISIONS**

### **Regulatory offences**

114. (1) Any person who provides telecommunications or broadcasting services or owns or operates a network for which a licence is required by this Act without a licence to provide such services is liable to a penalty contemplated in section 115(4) and guilty of an offence and on conviction liable to a fine not exceeding N\$1 000 000 or to imprisonment for a period not exceeding three years.

(2) Any person who provides broadcasting services or telecommunications services

or owns or operates a telecommunications network outside the scope of a licence or who does not comply with a condition of the licence held by that person is liable to a penalty contemplated in section 115(4) and guilty of an offence and on conviction liable to a fine not exceeding N\$500000 or to imprisonment for a period not exceeding two years.

(3) Any person who fails to comply with an enforcement order or any other order or request that this Act authorises the Authority to make, is liable to a penalty contemplated in section 115(4) and is guilty of an offence and liable to a fine not exceeding N\$100 000 or imprisonment for a period not exceeding two years.

(4) An additional penalty or fine of N\$10000 for each day which an offence referred to in this section continues may be imposed by the Authority or court as the case may be.

(5) Offences under this section may be prosecuted in the manner provided in section 115.

### **Manner of prosecuting regulatory offences**

115. (1) If the Authority is of the opinion that any person has committed an offence referred to in section 114, it may issue a summons in the prescribed form, which must -

- (a) state the offence that the person has allegedly committed;
- (b) contain allegations of fact which if proved will establish the offence concerned;
- (c) indicate the penalty that the Authority intends to impose for the offence concerned.

(2) Within 30 days from the date of the service of a notice referred to in subsection (1), the accused must deliver a notice to the Authority in the prescribed form indicating whether he or she admits or denies the commission of the offence alleged in the notice or whether he or she admits any other offence referred to in section 114.

(3) If the accused admits the offence alleged in the notice or admits a different offence and the Authority accepts that admission, the Authority must hold a hearing within three months from the date of the admission by the accused in order to determine the appropriate

sanction or penalty.

(4) After a hearing referred to in subsection (3) the Authority may –

(a) impose a fine that does not exceed the fine which this Act determines to be the maximum fine for the offence concerned;

(b) declare any telecommunications equipment or radio apparatus forfeited-

(i) that has been used by the accused in the commission of the offence concerned;

(ii) whose possession is prohibited by this Act or otherwise unlawful; or

(ii) that does not comply with standards prescribed under section 80 or that belongs to a category of telecommunications equipment for which type approval has been prescribed as contemplated in section 80(3) and that has not been approved as contemplated in that subsection;

(c) amend any or withdraw any licence issued to the accused under this Act.

(5) The accused may appeal against the imposition of a penalty by the Authority under this section, as if the penalty were a sentence in a Magistrate's Court and as if the person who presided at the meeting at which the penalty was imposed, were a magistrate presiding at a criminal trial in the Magistrate's Court.

(6) If the accused denies the alleged offence or the Authority does not except the admission by the accused of a different offence, the Authority may forward all relevant information to the Prosecutor-General together with a request to him or her to prosecute such offence as is indicated in the request.

(7) The Prosecutor-General may request further information from the Authority in order to determine whether an offence has been committed.

(8) If the Prosecutor-General is satisfied that there is a reasonable possibility of proving the alleged offence, he or she must prosecute the offence concerned.

(9) The Prosecutor-General may delegate the power to prosecute any offence in terms of this Act to a member of the Board or an employee of the Authority or to any legal practitioner to prosecute such offence subject to such conditions or restrictions as the Prosecutor-General may deem appropriate.

### **Enforcement order**

116. (1) If the Authority is of the opinion that any person has contravened or failed to comply with any provision of this Act for which a specific penalty has not been prescribed, or any provision for which the making of such an order is explicitly authorised, it may issue an enforcement order instructing the person concerned to perform any action or refrain from any action stated in that order within the period specified in that order.

(2) Any person against whom an order is made under subsection (1) may appeal against such order to the High Court within the prescribed period and subject to such procedural requirements as may be prescribed.

(3) The Authority may allow a person against whom a compliance order has been made to postpone compliance with the order pending an appeal.

(4) Subject to subsection (3), a person who appeals against an order made under subsection (2), must comply with the order pending the decision of the High Court on the appeal, unless the High Court has made an order exempting him or her from complying with that order, which order may only be granted if the compliance with the order would cause serious prejudice to the party against whom the order has been made and the failure to comply with the order would not cause serious prejudice to another party having a substantial interest in the subject matter of the order.

### **General offences**

117.

Any person who -

- (a) knowingly causes harmful interference to the radio transmission of a licensed service;

- (b) contravenes the provisions of section 101(1);
- (c) by means of a telecommunications device knowingly -
  - (i) makes, creates, or solicits; and
  - (ii) initiates the transmission of,  
  
any comment, request, suggestion, proposal, image, or other communication which is obscene, lewd, lascivious, filthy, or indecent, with intent to annoy, abuse, threaten, or harass another person;
- (d) by means of a telecommunications device knowingly -
  - (i) makes, creates, or solicits; and
  - (ii) initiates the transmission of,  
  
any comment, request, suggestion, proposal, image, or other communication which is obscene or indecent, knowing that the recipient of the communication is under 18 years of age, regardless of whether the maker of such communication placed the call or initiated the communication;
- (e) makes a telephone call or utilises a telecommunications device, whether or not conversation or communication ensues, without disclosing his or her identity and with intent to annoy, abuse, threaten, or harass any person at the called number or who receives the communications;
- (f) makes or causes the telephone of another repeatedly or continuously to ring, with intent to harass any person at the called number;
- (g) makes repeated telephone calls or repeatedly initiates communication with a telecommunications device, during which conversation or communication ensues, solely to harass any person at the called number or who receives the communication;

- (h) knowingly permits any telecommunications facility under his or her control to be used for any activity prohibited by paragraphs (c), (d), (e), (f) or(g) with the intent that it be used for such activity;
- (i) obtains a telecommunications service with the intent of avoiding payment of applicable charges for such service;
- (j) refuses to supply information or documents to the Authority without just excuse or obstructs investigation of an alleged offence by the Authority;
- (k) fails to attend a hearing when a summons has been issued in terms of section 120,requiring his or her attendance at that hearing or fails to answer a question put to him or her at such a hearing without just excuse;
- (l) intentionally modifies, delays or interferes with the contents of any message or information sent by means of a telecommunications service;
- (m) unlawfully engages in interception, tracing or recording of telecommunications operations or messages;
- (n) intentionally damages telecommunications facilities belonging to another person;
- (o) possesses any telecommunications equipment, copper wire, optical fibre or any other equipment or thing that has been used in relation to the provision of telecommunications services, knowing such equipment, wire, fibre or thing to have been stolen or can reasonably be expected to have known or should have reasonably suspected such equipment, wire, fibre or thing to have been stolen;
- (p) performs any action that has the effect that he or she or any other person gains access to any broadcasting or telecommunications service that is protected by any technological means,

is guilty of an offence and on conviction liable to imprisonment for a period not exceeding 5 years or to a fine not exceeding N\$20000 or to both such fine and such imprisonment.

## **Forfeiture of equipment or apparatus**

118. (1) If a person is convicted by a court of any offence in terms of this Act, that court may declare any telecommunications equipment or radio apparatus used in the commission of a crime or whose possession is prohibited by this Act or whose possession is otherwise unlawful, to be forfeited to the Authority.

(2) The Authority may deal with any apparatus or equipment forfeited to it in terms of subsection (1) or section 118(4)(b) as it thinks fit.

## **Production of books and records**

119. (1) The Authority may by notice in writing direct a carrier or provider of telecommunications services or advanced information services to produce or furnish to the Authority, at the time and place specified in the notice, such accounts, records or other documents or information specified in such notice and relating to any matter in respect of which a duty or obligation is imposed on that person under or by this Act or a licence.

(2) The Authority may prescribe a mandatory period for the retention of records which may not exceed eight years.

## **Summoning of witnesses**

120. When in the opinion of the Authority, it is likely that any person can give evidence concerning any matter that is relevant to any matter considered at any hearing held by the Authority in terms of this Act, the Authority may issue a summons in the prescribed form instructing that person to attend a hearing of the Authority on a date, time and place indicated in that summons.

## **Power to monitor compliance with the provisions of this Act**

121. (1) In order to monitor compliance with the provisions of this Act the Authority may -

- (a) use any radio apparatus to monitor telecommunications by radio waves;

- (b) connect any equipment to the network of any carrier or the provider of any telecommunications service in order to monitor any aspect of the network that may be relevant for the performance of any function of the Authority under this Act.

(2) The Authority may require any carrier or any provider of telecommunications services to provide any information necessary to make any connection or in order to decrypt or interpret any information that the Authority may require in order to exercise the power referred to in subsection (1).

(3) The power referred to in subsection (1) may only be exercised in order to gather general or statistical information relating to telecommunications or to determine any technical question relating to any network that may be relevant to the compliance with any provision of this Act, but the power may not be used to obtain the contents of any message or information transmitted over that network, or to obtain any information relating to the behaviour of any customer or user of any telecommunications service.

### **Investigations by Authority**

122. (1) The Authority may, on the application of any interested person or on its own motion, conduct investigations with respect to any activity prohibited, required or permitted to be done under this Act.

### **Inspectors**

123. (1) the Authority may appoint any of its staff members as inspectors to exercise the powers conferred upon inspectors by this Act.

(2) An inspector –

- (a) has such powers, functions and duties as may be provided for by this Act or as may be delegated or assigned to the inspector concerned by the Authority; and

- (b) must exercise such powers, perform such functions and discharge such duties in compliance with the directions or instructions as may be specified orally or

in writing by the Authority, the chairperson or the Chief executive officer.

(3) An identification card must be issued to every staff member appointed as an inspector in terms of subsection (1), which –

(a) must be signed by the chairperson; and

(b) is *prima facie* evidence of the appointment of the person concerned.

### **Special investigators**

124. (1) The Authority may appoint a person who has expert knowledge in a particular field to be a special investigator to investigate any contravention of a provision of this Act or any aspect thereof, specified –

(a) in the instrument appointing the special investigator; or

(b) in a written notice given to the special investigator by the chairperson.

(2) A special investigator must perform his or her functions –

(a) subject to the control and direction of the Chair person; and

(b) on the terms and conditions as the Authority and the special investigator may agree.

(3) The Authority may appoint a special investigator as an inspector for a specific purpose.

(4) If a special investigator has been appointed as an inspector, he or she must be issued with an identification card as contemplated in section 123(3) which also states the purpose for which he or she has been appointed as an inspector.

### **General powers of inspectors**

125. (1) An inspector has the power to demand on behalf of the Authority any

information from any person which that person is required to provide to the Authority by virtue of any provision of this Act.

(2) An inspector may put any question to any person, or may examine any book, document, telecommunication facility, any telecommunications equipment or any other object, in order to obtain any information required by the Authority for the purpose of performing any function under this Act.

### **Power to enter and search**

126. (1) If in the opinion of the Authority it is necessary in order to perform any function under this Act, it may issue a warrant instructing any provider of telecommunications services to allow an inspector to enter and search any premises used by that person for the conducting of its business: Provided that nothing in this section authorises an inspector to search any premises or part of any premises that is used as the dwelling of any person.

(2) A warrant referred to in subsection (1) must be handed to an inspector to execute.

(3) An inspector executing a warrant referred to in subsection (1), may enter any premises and there –

- (a) make such investigation or inquiry; and
- (b) seize anything which in his or her opinion has a bearing on the investigation;
- (c) examine any article or document that is on or in those premises that has a bearing on the investigation;
- (d) request information about any article or document from the owner of, or person in control of, the premises or from any person who has control of the article or document, or from any other person who may have the information;
- (e) take extracts from, or make copies of, any book or document that is on or in the premises that has a bearing on the investigation;
- (f) in the presence of a person in charge of, or employed at, the premises, use any

computer system on the premises, or require the assistance of any such person to use that computer system, to –

- (i) search any data contained in or available to that computer system;
  - (ii) reproduce any record from that data; and
  - (iii) seize any output from that computer system for examination and copying; and
- (g) attach and, if necessary, remove from the premises for examination and safe-keeping anything that has a bearing on the investigation.

(4) Notwithstanding paragraph (f) of subsection (3), if a person contemplated in that paragraph is not present or not able to give the assistance required by the authorised officer, the inspector may proceed to use the computer system if in the circumstances of the case any delay may prejudice the purpose for which the search is carried out.

(5) A person who removes anything from premises being searched must

- (a) issue a receipt for it to the owner of, or person in control of, the premises; and
- (b) return it as soon as practicable after achieving the purpose for which it was removed.

(6) If the owner or person in control of an article or document refuses to allow the inspector conducting a search to inspect that article or document, the inspector may request the registrar or sheriff of the High Court, or the messenger of the magistrate's court of the area of jurisdiction where the premises are situated, to attach and remove the article or document for safe custody until a competent court determines whether or not the information is privileged.

### **Investigation of offences**

127. (1) An inspector who is investigating any offence under this Act may request a police officer to accompany him or her while he or she is conducting such investigation.

(2) A police officer requested to accompany an inspector as contemplated in subsection (1), must accompany such inspector and may exercise any power vested in him or her by any law in the presence of that inspector: Provided that the police officer concerned may not search a person in the presence of the inspector concerned if that person is not the same gender as the inspector concerned.

## **Regulations**

128. (1) The Authority may make regulations -

- (a) prescribing the forms and procedures for any application made to the Authority;
- (b) regulating any matter relating to the operation of radio installations on board ships within the territorial waters of Namibia and on aircraft in or flying over Namibia;
- (c) relating to the control and prevention of electrical or other interference with radio reception;
- (d) prescribing the fees payable to the Authority when applications are made, when licences are issued, when information or access to or extracts from documents are provided or when any service is rendered by the Authority or any thin is done by it;
- (e) prescribing any thing that is required to be prescribed by this Act;
- (f) prescribing anything that is necessary or expedient to prescribe in order to implement the provisions of this Act.

(2) Regulations made under this Act may prescribe penalties for the contravention of their provisions or for the failure to comply with their provisions.

(3) Regulations made under this Act may impose duties on any person which may be enforced in the manner provided for in section 116.

(4) Regulations made under this Act, may incorporate standards issued by any standards organisation (whether an international organisation, or an organisation in a particular country) by reference.

(5) Any standard incorporated as contemplated in subsection (4) may incorporate such standard partly or in full and may incorporate it with such amendments as are indicated in the regulations.

(6) Standards incorporated as contemplated in subsection (4), will form part of the regulations concerned.

(7) Regulations incorporating standards as contemplated in section (4) must only mention the organisation that issued the standard concerned and identify the standard with the name or number given by the organisation concerned in the regulations.

(8) The Authority must keep copies of all standards incorporated in regulations and permit any person to inspect such standards during the prescribed hours and must, subject to the copyright of the standards organisation concerned, permit any person to make copies of parts or the whole of such standards, subject to the prescribed fees.

## **National security**

129. (1) During the continuance of a declared war in which Namibia is engaged or during a state of emergency declared under Article 26 of the Namibian Constitution, the President may if in his or her opinion it is necessary for the national defence and security, direct that such communications as may be essential to the national defence and security will have preference or priority with any licensee or provider of telecommunications services or owner of a network.

(2) The President may give instructions to licensees, providers of telecommunications services or owners of networks for such time as the state of emergency lasts as may be reasonably related to a direction given under subsection (1).

(3) Holders of telecommunications service licences, other providers of telecommunications services or owners of networks must receive just compensation for any loss or damage caused by reason of complying with the directions of the President and will not be held liable

for any loss due to their compliance with the instructions of the President.

### **Complaints by users**

130. (1) Any user may lodge a complaint with the Authority relating to the quality of service rendered by any carrier or any other provider of telecommunications services.

(2) The Authority must consider a complaint lodged in terms of subsection (1) and may as a result of such complaint, take any action authorised by this Act.

(3) The Authority must inform the person who lodged a complaint in terms of subsection (1) in the prescribed manner of the action taken as a result of the complaint or if it has decided to take no action, of the reason for that decision.

### **Mediation proceedings**

131. (1) Whenever this Act provides that a dispute between two parties must be adjudicated by the Authority, the Authority may appoint any person to conduct mediation proceedings in order to obtain a settlement of the dispute concerned.

(2) The Authority may make regulations to prescribe any matter relating to the mediation proceedings provided for in subsection (1).

### **Act to bind State**

132. This Act binds the State.

### **Repeal and amendment of laws**

133. (1) Subject to the provisions of this Act, the laws mentioned in the Schedule are hereby repealed to the extent indicated in the third column thereof.

(2) Schedule 1 of the State-owned Enterprises Governance Act, 2006 (Act No. 2 of 2006), is amended by the insertion after item 52 of the following item:

“53. Namibia Communications Regulatory                      Communications Act, 2008”  
Authority

## **Transitional provisions**

134. (1) Any regulation or notice issued under a law repealed by section 133 that may be made under any provision of this Act, is deemed to have been made under such provision.

(2) Any licence authorising a person to provide telecommunications services or broadcasting services, or operate, construct or use an electronic communications network issued under a law repealed by section 133 must be reviewed and amended to comply with the provisions of this Act.

(3) Until the Authority has completed the review of a licence contemplated in subsection (2), that licence remains valid and is deemed to be a licence issued in terms of this Act.

(4) When the Authority reviews a licence, it may not change the period for which the licence has originally been issued.

(5) Any person lawfully providing telecommunications or broadcasting services or operating, constructing or using an electronic communications network without a licence on the date of commencement of this Act, where such actions are required to be licensed under this Act, must apply within six months from the date of commencement of this Act for such licence or licences as may be required to comply with the provisions of this Act.

(6) Until the Authority informs the person contemplated in subsection (5) of its decision to grant or refuse the application for a licence, that person may continue to render the services concerned as if this Act were not yet in operation.

(7) After the period referred to in subsection (5) has elapsed, the rendering of the services contemplated in that subsection by a person who failed to apply for a licence as contemplated in that subsection, is no longer lawful.

(8) All applications for licences pending before the Namibian Communications Commission established by section 2 of the Namibian Communications Commission Act, 1992 (Act No. 4 of 1992), on the date on which this Act comes into operation must be dealt with by the Authority as if that application have been made under this Act.

(9) The Authority must allow applicants to amend their applications to comply with the provisions of this Act.

### **Short Title and Commencement**

135. (1) This Act is called the Communications Act, 2008 and comes into operation on a date to be determined by the Minister by notice in the *Gazette*.

(2) Different dates may be determined under subsection (1) for different provisions of this Act.

(3) All steps that are necessary in order to appoint the members of the Authority and the staff members of the Authority may be performed before this Act has been put into operation.

(4) Any regulations that may be made under this act, may be made before this Act has been put into operation and any steps forming part of a rule-making procedure may be taken before the relevant provision of this Act has been put into operation.

(5) The State may make any staff member in the public service available to the Authority before the commencement of this Act, in order to assist the Authority with the performance of any function.

## SCHEDULE

(Section 133)

Column 1 No. and year of law	Column 2 Title of law	Column 3 Extent of repeal
Act No. 3 of 1952	Radio Act, 1952	The whole
Act No.68 of 1957	General Law Amendment Act,1957	Section 42
Act No. 51 of 1962	The Radio Amendment Act, 1962	The whole
Act No. 90 of 1963	The Radio Amendment Act, 1963	The whole
Act No. 93 of 1969	The Radio Amendment Act, 1969	The whole
Act No. 50 of 1974	The Radio Amendment Act, 1974	The whole
Act No. 57 of 1975	The General Law Amendment Act, 1975	Section 14 to 21 inclusive
Act No. 2 of 1978	Radio Amendment Act, 1978	The whole
Act No. 9 of 1991	The Namibian Broadcasting Act, 1991	The item in the Schedule relating to (Act No. 3 of 1952)
Act No. 4 of 1992	The Namibian Communications Commission Act, 1992	The whole
Act No. 17 of 1992	Posts and Telecommunications companies Establishment Act, 1992	The item in the Schedule relating to Act No. 3 of 1952
Act No. 19 of 1992	Posts and Telecommunications Act, 1992	Chapter II, Chapter IV and section 45
Act No. 1 of 1995	The Namibian Communications Commission Amendment Act, 1995	The whole
Act No. 18 of 2000	The General Law Amendment Act, 2000	Section 4
Act No. 4 of 2004	The Namibian Communications Commission Amendment Act, 2004	The whole