

Namibia

Communications Act, 2009

Regulations setting out Licence Conditions for Spectrum Use Licenses, 2013

General Notice 469 of 2013

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Regulations setting out Licence Conditions for Spectrum Use Licenses, 2013
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Republic of Namibia
Annotated Statutes

Communications Act, 2009

Regulations setting out Licence Conditions for Spectrum Use Licenses, 2013

General Notice 469 of 2013

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[\[These regulations were made by the Board of the Communications Regulatory Authority of Namibia.\]](#)

[\[The capitalisation of the regulation headings and text is reproduced here as it appears in the Government Gazette. Errors and inconsistencies in capitalisation are not individually marked. The use of italics is also reproduced as it appears in the Government Gazette. Formatting has been adjusted to be consistent with other regulation sets.\]](#)

1. Definitions

In these regulations, any word or expression to which a meaning is assigned in the Act, shall have the same meaning and-

“Act” means the Communications Act, 2009 (Act [No. 8 of 2009](#)).

“**efficient use**” means efficient use of spectrum as defined in ITU Recommendation: ITU-R SM.1046-2 as amended from time to time.

2. Purpose

These regulations impose conditions on spectrum use licensees in addition to the conditions imposed by the Act.

3. Applicability

These regulations are applicable to all spectrum use licences issued in terms of section 101 of the Act and to persons that may provide telecommunications services without a licence as in regulation 5(2) of the

Regulations Setting out Broadcasting and Telecommunications Service Licences Categories, published in Government *Gazette* 4714, Notice 124, dated 18 May 2011 (As amended in Government *Gazette* 5148, Notice 74, dated 13 March 2013).

[Both of the Notices referred to are General Notices. Note that regulation 5(2) has been further amended since these regulations were issued.]

4. Authorisation

- (1) All spectrum use licensees are duly authorised to-
 - (a) Transmit any signal by radio waves, use radio apparatus to receive any signal transmitted by radio waves or instruct, permit or prohibit any persons in their employ or under their control to perform any of these actions; and
 - (b) Use or cause any person in their employ or under their control to use a transmitter for any prescribed purposes or to use a radio frequency or group of radio frequencies or radio receiver for any purpose and in the manner prescribed or determined in the licence concerned.
- (2) The spectrum use licence certificate (as contained in “Annexure A”) shall not confer any ownership rights of the frequency indicated on the licence, but only give the licensee a right of use.
- (3) The Authority may request a licensee to prove that the allocated frequency is been used efficiently. After considering such a written report from a licensee, the Authority may revoke a spectrum licence issued, should it be deemed that the licensee is hoarding spectrum or not using it efficiently.

5. Spectrum use licence area

- (1) The spectrum use licence area is the Republic of Namibia or any specific geographical area in the Republic of Namibia, as specified on spectrum use licence certificate and/or annexes attached to the spectrum use licence certificate.

[The number (1) must be in error as there are no additional subregulations in regulation 5.]

6. Duration of spectrum use licences

- (1) Subject to section 101 of the Act, the authorisation to utilise spectrum stipulated in a spectrum use licence shall automatically expire on 31 December of every calendar year, without prior written notice.
- (2) In terms of section 101(14) of the Act and in accordance with regulation 9 of the Regulations Regarding Licensing Procedures for Telecommunications and Broadcasting Service Licences and Spectrum Use Licence No 272 of 29 August 2011, spectrum use licensees must apply to renew their licences, on a form provided by the Authority, two (2) months prior to the expiry thereof.

[“No 272 of 29 August 2011” refers to [General Notice 272/2011 \(GG 4785\)](#).]

- (3) In terms of section 42(3) of the Act, in the event that a licensee fails to pay licence fees payable, the Authority may declare the licence to be forfeited in which case no licence renewal will be issued.
- (4) A spectrum use licence issued in respect of telecommunications and broadcasting service licences shall lapse six months after the date of issuance thereof.
- (5) If the Authority-
 - (a) is satisfied that a licensee has-
 - (i) within six months after issue of licence, failed to commence to carry on services in respect of which it is licenced;
 - (ii) failed to pay licence fees payable; or

(iii) ceased to carry on services in respect of which it is licenced,

the Authority may by written notice to the licensee inform such licensee that it intends to cancel such licensee's spectrum use licence and in such notice state the grounds for such intended action.

[The letter (a) must be in error as there are no additional paragraphs in subregulation (5).]

- (6) A licensee may, within 30 days from the date of receipt of a notice referred to in subsection (1), make written representations to the Authority in connection with the matter.
- (7) After consideration of the representations referred to in subsection (5) or, if no such representations have been made, upon the expiry of the period mentioned in that subsection, the Authority may-
- (a) if it is satisfied that it is just and equitable to do so in the particular case, by written notice to the licensee withdraw the notice referred to in subsection (5); or
 - (b) by written notice to the licensee and by notice in the *Gazette* prohibit such licensee, with effect from a date specified in those notices, from providing services in respect of which such licensee is licenced.

7. National spectrum band plan

- (1) The spectrum use licensees shall comply with the International Telecommunication Union's regulations as set out for Region 1 indicated in the national spectrum band plan, as prescribed in terms of Regulations setting out the Frequency Band Plan for Namibia published in Government *Gazette* 5214, Notice No. 191 dated 31 May 2013. and any amendments that are made thereto from time to time.

[The number (1) must be in error as there are no additional subregulations in regulation 7. The full stop after "31 May 2013" is superfluous. The Notice referred to is a General Notice. However, the Regulations setting out the Frequency Band Plan for Namibia contained in [General Notice 191/2013 \(GG 5214\)](#) were replaced by a Frequency Band Plan of Namibia contained in [General Notice 424/2016 \(GG 6160\)](#), which does not take the form of regulations.]

8. Technical conditions

- (1) Spectrum use licensees must comply with the following technical conditions:
- (a) The Licensees must provide telecommunications and broadcasting services as per the frequencies assigned by the authority as contained in the band plan referred to in regulation 7 above. The power limitations and geographic coverage areas will be as contained in the licence issued.
 - (b) Licensees must prevent electric and other disturbances of radio reception or of transmissions over any telecommunications lines as contained in the band plan.
 - (c) Licensees must not change, without the prior written consent of the Authority, the location of a transmitter and the specific geographical area to which services may be rendered as reflected in the licence certificate.
 - (d) Licensees providing broadcasting services must do so in the manner in which the information must be modulated upon the radio waves in question, including whether the service must be digital or analog as reflected in the licence certificate issued by the Authority.

[The number (1) must be in error as there are no additional subregulations in regulation 8.]

9. Payment of spectrum use licence fees

- (1) Licence fees for the renewal of existing spectrum use licences are payable by 31 December of every calendar year.
- (2) The Authority may only award spectrum use licences after payment of the applicable fees to the Authority as prescribed by the Authority from time to time.
- (3) The Authority must issue an invoice to the licensee and a receipt upon receipt of the verified and correct payment.
- (4) The Authority will issue a renewal letter, after proof of payment of the annual licence fee.

10. Amendment, renewal or modification of licence

- (1) Should a spectrum use licensee wish to amend his, her or its licence, the licensee must comply with the Regulations Regarding Licensing Procedures for Telecommunications and Broadcasting Service Licences and Spectrum Use Licences”, published in Government *Gazette* No. 4785, Notice Number 272, dated 29 August 2011, as may be amended from time to time, pertaining to the amendment of licences.
- (2) The Authority retains the right to modify a licence in terms of Section 101(13) of the Act, provided that the Authority complies with the applicable procedures prescribed in the Regulations Regarding Licensing Procedures for Telecommunications and Broadcasting Service Licences and Spectrum Use Licences”, published in Government *Gazette* No. 4785, Notice Number 272, dated 29 August 2011, as may be amended from time to time.

[The Notices referred to are General Notices. There is no opening quotation mark for the regulations named in either subregulation above in the Government *Gazette*.]

11. Reporting, monitoring and compliance

- (1) The Authority may, in the format determined by the Authority, request any information from spectrum use licensees which the Authority deem necessary for the discharge of its functions and duties to monitor and ensure compliance with the Act and these Regulations.

[The word “deem” should be “deems” or “may deem” to be grammatically correct.]

- (2) The Authority may, in the course of carrying out its obligations under the Act require a Licensee to provide information, so as to enable it to:
 - a) Monitor and enforce consumer protection, quality of service, compliance with licence conditions and other requirements of the Act and applicable regulations;
 - b) Facilitate efficient use of scarce resources (spectrum); and
 - c) Collect and compile information to be used for the purpose of sectoral analysis, planning, reporting and conducting inquiries.

[There are no opening brackets before the letters for paragraphs (a)-(c).]

- (3) Except where otherwise addressed in applicable regulations, the Authority must, in respect of each request for information referred to in this regulation provide a detailed specification of such request together with, applicable response times and identify a contact person to whom queries may be addressed.

[The comma after the phrase “together with” is superfluous. There should be a comma after the phrase “in respect of each request for information referred to in this regulation” to set it off properly.]

- (4) All licensees must submit bi-annual reports to the Authority, in July for the June report, and in January of the following year for the December, specifying the following information-
- a) Location and coordinates of each site;
 - b) Spectrum and technology utilized at each site; and
 - c) Power output of transmitters installed at each site.

[There are no opening brackets before the letters for paragraphs (a)-(c).]

12. Universal services and access

The Authority may in the manner as prescribed by the Authority in applicable regulations, grant universal service obligations in regard to spectrum use licensees regarding the utilisation of spectrum allocated to such users.

13. Regulatory offences

The Authority will prosecute regulatory offences and enforce these licence conditions in terms of sections 114 - 116 of the Act.

14. Revocation of licence

The licence may be revoked in terms of sections 42 and 115 of the Act and section 4 of the licensing conditions as may be applicable.

15. Amendment of licence conditions

The Authority may amend these conditions from time to time in terms of the rule-making regulations.

16. Supervision by authority

The Authority shall supervise compliance with these conditions in terms of sections 114 -116 of the Act.

“Annexure A”

SPECTRUM USE LICENCE

[This Annexure is reproduced in full as it appears in the *Government Gazette*; there is a reference to “the radio frequencies contained in “Annexure A” attached hereto”, but this must refer to an attachment to the Spectrum Use Licence as no radio frequencies appear in Annexure A to these regulations.]

The right to use the radio frequencies contained in “Annexure A” attached hereto, is conferred to:

in terms of section 101 of the Communications Act, 2009 (Act [No. 8 of 2009](#)), and the Regulations Regarding Licensing Procedures for Telecommunications and Broadcasting Service Licences and Spectrum Use Licences, as published in *Government Gazette* No. 4785, Notice No. 272, dated 29 August 2011.

The license is issued subject to the Communications Act, regulations made in terms of the Communications Act and conditions for Spectrum Use Licences to be published in terms of the Regulations Regarding Rule-Making Procedure.

It may however, be suspended or cancelled at any time by the Authority in terms of the Communications Act and applicable Regulations. The licence expires on 31st December each year. The Authority will issue a renewal letter, after proof of payment of the annual licence fee.

DATE OF ASSIGNMENT OF FREQUENCY:
