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General Notices

COMMUNICATIONS REGULATORY AUTHORITY OF NAMIBIA

No. 250

2017

NOTICE OF INTENTION TO AMEND THE REGULATIONS PRESCRIBING THE NATIONAL NUMBERING PLAN FOR USE IN THE PROVISION OF TELECOMMUNICATIONS SERVICES IN THE REPUBLIC OF NAMIBIA, NUMBERING LICENCE FEES AND PROCEDURES FOR NUMBER LICENCES

The Communications Regulatory Authority of Namibia, in terms of section 81(3) and (4) and 129 of the Communications Act, 2009 (Act No. 8 of 2009) and the Regulations regarding Rule-Making Procedures published in Government Gazette No. 4630, General Notice No. 334 dated 17 December 2010 -

- (a) publishes this Notice of Intention to Amend the Regulations Prescribing the National Numbering Plan for Use in the Provision of Telecommunications Services in the Republic of Namibia, Numbering Licence Fees and Procedures for Number Licences as set out in Schedule 1; and
- (b) sets out the concise statement of the reasons and purpose for the proposed amendment in Schedule 2.

The public may make oral submissions on the proposed amending regulations to the Authority on the 25th July 2017 at a time and place to be notified by the Authority.

The public are hereby invited to make written representations, comments, communications and submissions (hereafter collectively called “submissions”) to the Authority within thirty (30) consecutive days from the date of publication of this notice in the Gazette, in the manner set out below for making of written submissions.

All written submissions must-

- (a) contain the name and full contact details (physical and postal address, email address and telephone or cell phone number) of the person making the written submissions and the name and similar contact details of the person for whom the written submission is made if different; and
- (b) be clear and concise.

In the event where any person making a submission wishes to designate any information contained in such submission as confidential, such information must be clearly marked as “confidential”. Notwithstanding, if the Authority is of the opinion that information is not confidential it will inform the person thereof thereby -

- (a) allowing the person to withdraw the information from the rule-making proceedings;
- (b) agreeing with the person that it will not be treated anymore as confidential information; or
- (c) requesting a hearing on the issue of confidentiality to be conducted in accordance with section 28 of the Communications Act.

All written submissions must be send or submitted to be received by the Authority on or prior to the due date anticipated above in any of the following manners-

- (a) by hand to the head office of the Authority, namely Communications House, 56 Robert Mugabe Avenue, Windhoek;
- (b) by post to the head office of the Authority, namely Private Bag 13309, Windhoek, 9000;
- (c) by electronic mail to the following address: legal@cran.na;
- (d) by facsimile to the following facsimile number: +264 61 222790; and
- (e) by fax-to-email to: 0886550852.

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

SCHEDULE 1**AMENDMENT OF REGULATIONS PRESCRIBING THE NATIONAL NUMBERING PLAN FOR USE IN THE PROVISION OF TELECOMMUNICATIONS SERVICES IN THE REPUBLIC OF NAMIBIA, NUMBERING LICENCE FEES AND PROCEDURES FOR NUMBER LICENCES: COMMUNICATIONS ACT, 2009**

The Communications Regulatory Authority of Namibia, in terms of sections 81(1), (3) and (4) and 129 of the Communications Act, 2009 (Act No. 8 of 2009, makes the regulations set out in the Schedule.

SCHEDULE

1. In these regulations “the Regulations” means the Regulations prescribing the National Numbering Plan for Use in the Provision of Telecommunications Services in the Republic of Namibia, Numbering Licence Fees and Procedures for Number Licences promulgated under Government Notice No 97 of 2016.

Insertion of regulation 6A in the Regulations

2. The Regulations are amended by the insertion of regulation 6A after regulation 6:

“Number portability requirement

6A. (1) A holder of a service technology neutral telecommunications services licence, as defined in Annexure 1A, must implement number portability within the timeframe and in accordance with the requirements contained in Annexure 1A.

(2) Unless specifically stated otherwise in Annexure 1A, the obligations as contained that Annexure and imposed on a holder of a service technology neutral telecommunications services licence in relation to number portability apply on and after the implementation date specified in that Annexure.”.

Insertion of Annexure 1A in the Regulations

3. The Regulations are amended by the insertion of Annexure 1A before Annexure A:

**“ANNEXURE 1A: NUMBER PORTABILITY
PART 1
PRELIMINARY****Interpretation**

1. In this Annexure any word or expression to which a meaning is assigned in the Act or in regulation 1 has the same meaning and unless the context indicates otherwise -

‘clearing house’ means a central service co-ordinating the steps of porting a number between two or more licensees and managing the porting messages flowing between them;

‘donor licensee’ means the licensee that is losing or ‘exporting’ the number to another licensee in terms of number portability;

‘fixed service’ means a radio communications service between two specified fixed points;

“licensee” means the holder of a service technology neutral telecommunications services licence as anticipated in item 3;

‘mobile service’ means a radio communication service between mobile and land stations or between mobile stations;

‘MSISDN’ means Mobile Station International Subscriber Directory Number;

‘Number Portability Steering Group’ means the committee established in terms of item 7(1) of this Annexure to co-ordinate the implementation of number portability in accordance with this Annexure and to perform such other functions as allocated to it;

‘recipient licensee’ means the licensee gaining or ‘importing’ the number from another licensee in terms of number portability;

‘reference database’ means a database with information which contains a record of (at least) all ported numbers and the current licensee who has the rights to use the number;

‘this Annexure’ means this Annexure 1A: Number Portability;

‘written’, without limiting the generality of this expression, includes letters, facsimiles and electronic communications.

Objectives of this Annexure

2. The objectives of this Annexure are:
 - (a) to set out the scope of number portability required to be implemented;
 - (b) to determine the date on which the number portability requirement becomes obligatory and enforceable; and
 - (c) irrespective of the date anticipated in paragraph (b), to set out the process for implementation of number portability.

Scope

3. The provisions of this Annexure apply to all holders of service technology neutral telecommunications services licences having a number range and having issued numbers, which licensees have been awarded one or more number licences for the provision of telecommunication services.

PART II NUMBER PORTABILITY ARRANGEMENTS

Number portability rights and obligations

4. (1) Subject to item 5 -
 - (a) customers having ECS (including any or all of the following services: DID services, fixed services and mobile services), may retain their number or numbers when they change the licensee providing their service and when they change their service type;
 - (b) third party service providers using M2M numbers, Specially Tariffed Numbers, virtual telephone numbers and Short Codes may retain their number or numbers when they change the licensee providing their service only when the recipient licensee provides the customer with a service similar to that of the donor licensee;

- (c) where a customer has a service with the donor licensee that utilises more than one number, the customer has the right to move some or all of their numbers in a single porting transaction.

(2) A licensee providing services referred to in subitem (1) must ensure that a customer or third party service provider is able to exercise the customer's rights in relation to number portability in accordance with this Annexure.

Timeframe for the implementation of number portability

5. All licensees must ensure that number portability is available to their customers when they change the licensee providing their service within 12 months from date of publication of this Annexure.

Rights and obligations of licensees with regard to number portability

6. (1) A licensee is responsible for completing its own internal number portability preparation and implementation tasks not only out of own accord but also in accordance with the decisions of, and within the time periods specified by, the Authority.

(2) The customer porting process shall be a recipient licensee led one-stop process whereby the customer does not communicate with the donor licensee during the porting process and the recipient licensee acts as the customer's agent to the donor licensee in all matters relating to the porting of the number.

(3) Verification of the customer requesting the port is the sole responsibility of the recipient licensee and the verification data used is limited to:

- (a) MSISDN to be ported;
- (b) SIM card number belonging to the subscription (where applicable) or telephone account number; and
- (c) ID-number or passport number (residential or non-residential customer who is a Namibian citizen and a natural person), passport number (residential or non-residential customer who is a natural person but not a Namibian citizen) or close corporation or company registration number (corporate business customer)

(4) Where a mobile service is required by the customer, the number portability process must be completed within 24 hours from the time that the recipient licensee accepts the customer's request to port their number.

(5) A recipient licensee may charge the customer for porting the number, subject to the internal business processes of the licensee and provided that such charging must not result in non-compliance with subitem (4).

(6) A donor licensee may only charge the porting customer the value of any unexpired term of the contract with the customer and for calls and services used by the customer up to the time that the number is ported.

(7) A donor licensee may refuse a port request because a customer has an outstanding negative balance, debt or an existing contract.

- (8) Subject to the Authority's interconnection tariff -

- (a) the donor licensee may only charge the recipient licensee the direct per port costs associated with the individual port; and
 - (b) such recoverable per port costs are limited to the incremental costs incurred by the donor licensee for the port activation activities only and exclude costs which the donor licensee would normally incur when a customer terminate their service.
- (9) All parties shall bear their own cost of preparing for and implementing the capability to port numbers.

Number portability implementation processes

7. (1) The Authority must establish and chair a committee to be called the Number Portability Steering Group whose responsibility it is to manage the implementation of number portability.

- (2) The functions of the Number Portability Steering Group are to:
 - (a) make recommendations to the Authority on the implementation of number portability;
 - (b) manage industry issues and concerns regarding the number portability implementation;
 - (c) co-ordinate the licensee specific issues regarding the implementation the number portability.
- (3) Every licensee and the Authority -
 - (a) must participate in the Number Portability Steering Group;
 - (b) may nominate up to three representatives to serve on the Number Portability Steering Group subject thereto that it is within the discretion of the Authority as to how many representatives it wants to nominate;
 - (c) must instruct and authorise its representatives to act in good faith with the aim to reach agreement with other representatives and the Authority in order to achieve the implementation and availability of number portability for customers and third party service providers in accordance with this Annexure.
- (4) The Number Portability Steering Group must develop, as and when necessary, the procedures for meetings of the Group, the procedures for performance of functions by representatives serving on the Group and any other relevant procedures.
- (5) The responsibility of the Number Portability Steering Group covers all aspects of the implementation of number portability, including but not limited to:
 - (a) establishing customer processes for requesting number portability, inter-licensee number portability processes and a Licensee Code of Practice or Business Rules common to and applicable to all licensees;
 - (b) establishing and managing of the industry wide number portability implementation plan;
 - (c) establishing the corporate governance arrangements for the clearing house and reference database;

- (d) supporting and assisting the Authority in the tender, selection and other procurement processes for the clearing house and reference database;
- (e) developing and co-ordinating industry wide customer awareness programmes and publicity for number portability and the service to which it relates, subject thereto that these may be supplemented by individual licensees' additional awareness creation and publicity activities.

(6) The Number Portability Steering Group may, as and when necessary, establish working groups to consider particular aspects of the implementation and must determine the terms of reference, membership and procedures of the working groups and their degree of delegated authority (if any).

(7) The Number Portability Steering Group must make every effort to achieve decision making by unanimous consent, subject thereto that if this cannot be achieved, the Authority's decision on the relevant matter shall prevail.

Remedial steps

8. In the event where a licensee fails to comply with its obligations under this Annexure or fails to implement number portability in accordance with agreements or decisions of the Number Portability Steering Group or the Authority, the Authority may take such measures as deemed necessary, including by means of enforcement orders under section 116 of the Act, to remedy such failure and as may be available to the Authority.

SCHEDULE 2

CONCISE STATEMENT OF PURPOSE

The Regulations Prescribing the National Numbering Plan for Use in the Provision of Telecommunications Services in the Republic of Namibia, Numbering Licence Fees and Procedures for Number Licences, promulgated under Government Notice 97 of 2016 in Government Gazette No. 5983 of 1 April 2016), states that one of the purposes of those Regulations is to provide for number portability. Section 81(3) of the Communications Act requires that the Numbering Plan must provide for at least mobile number portability by all technology and service neutral licensees. Section 81(4) expands hereon by authorising CRAN to make regulations containing additional requirements in the Numbering Plan relating to number portability (fixed and mobile number portability). In furtherance of these obligations and objectives, CRAN developed additional regulations to be included in the Numbering Plan in order to provide for fixed and mobile number portability.

Number portability is progressively being implemented across the globe albeit it often in different ways. Originally it was introduced as a tool to promote competition in the heavily monopolised wireline telecommunications industry. With the advent of mobile phones, increasing emphasis was placed number portability. Since the late 1990s, many countries have adopted enforceable number portability models to prevent market doldrums and to put pressure on service providers to furnish more and improved services at competitive price levels.

Typical benefits derived from number portability are:

- A phone user can change from service provider without having to change his/her phone number;
- Number portability is important in telecommunications markets as it removes a bar to switching that keeps those with much equity in a number (specifically business users) prisoner behind a high switching barrier;

- The reduction in barriers to switching is of particular benefit to challenger carriers against dominant carriers;
- Number portability promotes competition and it is believed that such competition will drive a decrease in tariffs;
- Number portability forces service providers to provide better service to their customers;
- Customers' freedom of choice is enhanced and promoted - a customer who is dissatisfied with the service received from an operator can easily switch to another operator;
- An efficient number portability regime is believed to reduce complaints of poor quality of service of specific operators as a customer has the opportunity to change operators at will;
- Even customers who do not choose to port their numbers to a new network benefit from such decreased tariffs, improved service, promotions and features likely to occur under a number portability regime;
- It is a form of empowerment for customers to demand their rights from operators and they can express this by switching to where they would be served better.

In conclusion, it is submitted that the inclusion of number portability requirements support and align with the objectives of the Communication Act in creating wide ranging and efficient telecommunication services, promoting technological innovation and the deployment of advanced facilities/services, supports economic growth, encouraging participation in the communications sector and ensuring fair competition and consumer protection. By making this key information available, the Authority aims at creating greater transparency, understanding and consultation on the proposed regulation of number portability.

COMMUNICATIONS REGULATORY AUTHORITY OF NAMIBIA

No. 251

2017

CODE OF CONDUCT FOR BROADCASTING SERVICE LICENSEES

The Communications Regulatory Authority of Namibia, in terms of section 89(2) of the Communications Act, 2009 (Act No 8 of 2009) and regulation 4(3) of the Regulations regarding Rule-Making Procedures as General Notice No. 334 of 17 December 2010 publishes this Notice of Intention to prescribe a Code of Conduct for Broadcasting Service Licensees, which contains the following:

1. Sets out the concise statement of the reasons and purpose for the Code of Conduct in Schedule
2. A draft of the proposed Regulations as set out in Schedule 2.

The public may also make written submissions to the Authority no later than thirty-one days from the date of publication of this Notice of Intention to Make Regulations, in the manner set out below for making written submissions.

Reply comments to written submissions may be submitted to the Authority-

- (a) No later than fifteen days after the time for the making of written submissions has lapsed; or
- (b) If the opportunity for the submission of reply comments is published in a subsequent *Gazette*, after the lapse of fourteen days from the date of such publication.

All written submissions must-

- (a) Contain the name and contact details of the person making the written submissions and the name and contact details of the person for whom the written submission is made, if different; and
- (b) Be clear and concise.

All written submissions must be sent or given in any of the following ways:

1. By hand to the head offices of the Authority, namely Communication House, No 56 Robert Mugabe Avenue, Windhoek.
2. By post to the head offices of the Authority; namely Private Bag 13309, Windhoek, 9000;
3. By electronic mail to the following address: legal@cran.na;
4. By fax to email to: 0886550852

In terms of regulation 7 of the Regulations regarding Rule-Making Procedures published in Government *Gazette* No. 4630, General Notice No.334 dated 17 December 2010 herewith gives notice that it will hold a hearing regarding the proposed Code of Conduct as follows:

DATE: 25 JULY 2017

TIME: TBA

VENUE: TBA

The public is invited to make comments and/or oral submissions at the hearing on the Code of Conduct for Broadcasting Service Licensees.

All written comments and notice of oral submissions to be made during the hearing must be submitted to the Authority on or before the **25 July 2017**.

All written comments and notice of oral submission must be submitted to the Authority either physically or electronically-

1. By hand to the head offices of the Authority, namely Communications House, 56 Robert Mugabe Avenue, Windhoek;
2. By post to the head offices of the Authority namely Private Bag 13309, Windhoek;
3. By electronic mail to the following address legal@cran.na;
4. By facsimile to the following facsimile number +264 61 222 790; or
5. By fax to email to: 088642748

Oral submissions must-

1. Include a statement of the name and contact details of the person making the oral submissions and the name and contact details of the person for whom the oral submission is made, if different;
2. Be clear and concise

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

SCHEDULE 1
CONCISE STATEMENT OF PURPOSE

In accordance with section 89(2), the Authority hereby sets standards according to which Broadcasting Service Licensees will be monitored by the Authority in terms of section 90 and adjudicated upon subject to section 89(2) of the Act. This Code gives expression to the Act, specifically to the requirements of section 89(2) of the Act.

The purpose of the Code of Conduct is to ensure the independent regulation of broadcasting services, access to broadcasting services, and broadcasting content in the public interest. The provisions of the Code are also aimed at attaining availability of local content, commitment to public debate and discussion as well as transparency and accountability.

Additionally, the Code contains provisions that, *inter alia*, relate to:

- (a) freedom of expression;
- (b) protection of privacy, children and victims of sexual abuse from inappropriate or harmful broadcast communications;
- (c) acknowledgement of the special susceptibilities of children and to ensure that commercial communications do not exploit these susceptibilities;
- (d) the regulation of hate speech; and
- (e) regulation against inequality and discrimination,

which are all essential for the provision of broadcasting services in a democratic society.

The Authority reserves the right to revise, review and amend any provision of the Code in consultations with stakeholders.

SCHEDULE 2

**DRAFT CODE OF CONDUCT FOR BROADCASTING SERVICE LICENSEES ISSUED IN
TERMS OF SECTION 89(1) OF THE COMMUNICATIONS ACT, (NO 8 OF 2009)**

The Communications Regulatory Authority of Namibia, in terms of section 89(2) of the Communications Act, 2009 (Act No. 8 of 2009), intends to prescribe the Code of Conduct for Broadcasting Service Licensees.

PART A
DEFINITIONS & APPLICABILITY

1. Definitions

In this Code of Conduct unless the context indicates otherwise, a word or expression to which a meaning has been assigned in the Act has the meaning so assigned.

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

“advertisement” means any visual or aural communication, representation, reference or notification of any kind, which is intended to promote the sale, leasing or use of any goods or services; or which appeals for or promotes the support of any cause. Promotional content of display material, menus, labels, and packaging also fall within the definition. Editorial material is not an advertisement, unless it is editorial for which consideration has been given or received;

“audience” means both the viewers and listeners of television and radio broadcasting service licensees;

“broadcasting service licensee” means a broadcasting service licensee as set out in the Regulations Setting Out Broadcasting and Telecommunications Service Licence Categories published in Government *Gazette* 4714, General Notice No. 124 of 18 May 2011, as amended in Government *Gazette* 5148, General Notice No. 74 of 13 March 2013;

“by-election” means an election through which a vacancy is filled as contemplated in terms of section 63(2) of the Electoral Act, 2014 (Act No. 5 of 2014).

“child” means a person under the age of 18 years as defined in terms of section 1 of the Child Care and Protection Act, 2015 (Act No.3 of 2015) and reference to children should be construed accordingly;

“controversial issues” refers to issues which have topical currency and excites conflicting opinions;

“current affairs” means a programme that is not a news bulletin but that focuses on and includes comments on and interpretation and analysis of issues of immediate social, political or economic relevance and matters of international, regional and local significance;

“election” means any election of the President, members of the National Assembly, any member of a regional council or local authority council, as the context may require;

“election broadcast period” means the period within which political party election broadcasts may be transmitted; ending 48 hours before polling day;

“election period” means the period within which party election broadcasts may be transmitted; commencing after nomination day and ending 48 hours before polling commences.

“local content” means a programme, which is produced -

- (a) by a broadcasting service licensee;
- (b) by a person who is a citizen of, and permanently resident in, the Republic;
- (c) by a juristic person, the majority of the directors, shareholders or members of whom are citizens of, and permanently resident in, the Republic;
- (d) In a co-production in which persons referred to in subparagraphs (a), (b) or (c) have at least a fifty percent financial interest;
- (e) By persons referred to in subparagraphs (a), (b), (c) or (d), in circumstances where the prescribed number of key personnel who are involved in the production of the television programme, are citizens of, and permanently resident in, the Republic; or
- (f) By persons referred to in subparagraphs (a), (b), (c) or (d), in circumstances where the prescribed percentage of the production costs are incurred in the Republic;

“Namibian music” means work which complies with at least two of the following criteria, namely-

- (a) If the lyrics (if any) were written by a Namibian citizen;
- (b) If the music was written by a Namibian citizen;
- (c) If the music or lyrics was or were principally performed by musicians who are Namibian citizens;
- (d) If the musical work consists of a live performance which is—
 - (aa) recorded wholly in the Republic; or
 - (bb) performed wholly in the Republic and broadcast live in the Republic.

“NBC” means the Namibian Broadcasting Corporation established in terms of the Namibian Broadcasting Corporation Act, 1991 (Act 9, 1991).

“news” means programming that is not current affairs by a broadcaster in which it reports on news events of immediate social, political or economic relevance and on matters of international, national and local significance;

“nomination day” means a day determined in terms of section 64(1) (a) of the Electoral Act, 2014 (No 5 of 2014);

“polling day”, in relation to any election in question, means any day determined in terms of section 64(1)(b) for voting, or any day determined under section 119(5) for voting on a referendum;

“performance period” means the period of 126 hours in one week measured between the hours 05h00 and 23h00 each day;

“referendum” means a referendum held in terms of Article 63(2)(g) and 132(3)(a) of the Namibian Constitution;

“party election broadcast” means any programme, which is -

- (a) broadcast free of charge or for a fee determined by the licensee;
- (b) intended or calculated to advance the interests, beliefs, or objects of any political party or candidate;
- (c) pre-recorded; or
- (d) live event.

“registered political party” means a political party that is registered in terms of section 137 of the Electoral Act, 2014 (No 5 of 2014);

“sexual conduct” means (a) the display of genitals or of the anus; (b) masturbation; (c) sexual intercourse including anal sexual intercourse; (d) in the case of child pornography, the fondling or touching of breasts, genitalia or the anus; (e) the penetration of a vagina or anus with any object; (f) oral genital contact; or (g) oral anal contact; (h) the insertion (to even the slightest degree) of the penis of a person into the vagina or anus or mouth of another person; or (i) the insertion of any other part of the body of a person or of any part of the body of an animal or of any object into the vagina or anus of another person, except where such insertion of any part of the body (other than the penis) of a person or of any object into the vagina or anus of another person is, consistent with sound medical practices; carried out for proper medical purposes; or (j) cunnilingus or any other form of genital stimulation; and

“watershed period” means the period between 21h00 and 05h00 for free-to-air television broadcasting service licensees and 22h00 and 05h00 for subscription television broadcasting service licensees.

2. Applicability

- (1) This Code is applicable to all commercial and community broadcasting service licensees, unless otherwise indicated within the Code.
- (2) Pursuant to the provisions of section 93 of the Act, until a date determined by the minister, this Code will not be applicable to the broadcasting services or to any broadcasting activities carried on by the NBC.
- (3) Broadcasting service licensees must ensure that relevant employees and programme-makers including those from whom they commission programmes, understand the content and significance of this code.
- (4) All broadcasting service licensees must have procedures for ensuring that programme-makers and channel providers can seek from them guidance relevant to the code.

PART B GENERAL PROVISIONS

3. News and Current Affairs

- (1) Subject to this section, broadcasting service licensees must:
 - (a) report news in a factually accurate, impartial and non-partisan manner; and
 - (b) present current affairs in a balanced, clear, factual, accurate and impartial manner.
- (2) News must be presented in the correct context and in a fair manner, without intentional or negligent departure from the facts, whether by:
 - (a) distortion, exaggeration or misrepresentation;
 - (b) material omissions; or
 - (c) summarisation.
- (3) Only that which may reasonably be true, having reasonable regard to the source of the news, may be presented as fact, and that fact must be broadcast fairly with reasonable regard to context and importance.
- (4) Where a report,
 - (a) is not based on fact;
 - (b) is founded on opinion, supposition, rumours;
 - (c) or allegations,the report must be presented in such a manner as to clearly indicate that that is the case.
- (5) Where there is reason to doubt the correctness of the report and it is practical to verify the correctness thereof, the report must be verified. Where verification is not practical, that fact must be mentioned in the report.

- (6) Where it subsequently appears that a broadcast report was incorrect in a material respect, it must be rectified within a reasonable time and rectification must be with a degree of prominence to attract attention.
- (7) Unless prior valid consent from the victim concerned is obtained, the identity of,
- (a) rape victims;
 - (b) victims of gender based violence;
 - (c) other victims of sexual violence; and
 - (d) minors implicated in criminal cases;
- must not be divulged in any broadcast, whether as part of the news or not.
- (8) Broadcasting service licensees must advise viewers in advance of:
- (a) scenes or reporting of extraordinary violence, or graphic reporting on delicate subject matter such as sexual; or
 - (b) Court action related to sexual crimes,
- particularly during afternoon or early evening newscasts and updates.
- (9) Broadcasting service licensees must not include explicit or graphic language related to news of destruction, accidents or sexual violence, which could disturb children or sensitive audiences, except where it is in the public interest to include that material.

4. Sexual Conduct

- (1) Broadcasting service licensees must not broadcast material which, judged within the context, contains a scene or scenes, simulated or real, of any of the following:
- (a) child pornography;
 - (b) bestiality;
 - (c) sexual conduct which degrades a person in the sense that it advocates a particular form of hatred based on gender and which constitutes incitement to cause harm;
 - (d) explicit sexual conduct;
 - (e) explicit extreme violence or the explicit effects thereof; or
 - (f) explicit infliction of domestic violence.

5. Protection of Children

- (1) A broadcasting service licensee shall ensure that due care is exercised in order to avoid content which may disturb or be harmful to children when the licensee broadcasts programmes at times where a large number of children may be expected to be watching or listening to radio or television programmes.
- (2) Broadcasting service licensees must, in the depiction of violence in children's programming exercise particular caution, as provided below:

- (a) in children's programming portrayed by real-life characters, violence may, whether physical, verbal or emotional, only be portrayed when it is essential to the development of a character and plot;
- (b) animated programming for children, while accepted as a stylised form of storytelling which may contain non-realistic violence, must not have violence as its central theme, and must not incite dangerous imitation;
- (c) programming for children must with reasonable care deal with themes that could threaten their sense of security when portraying, for example, domestic conflict, death, crime or the use of drugs or alcohol;
- (d) programming for children must with reasonable care deal with themes which could influence children to imitate acts which they see on screen or hear about, such as the use of plastic bags as toys, the use of matches or the use of dangerous household objects as toys;
- (e) programming for children must not contain realistic scenes of violence, which create the impression that violence is the preferred or only method to resolve conflict between individuals;
- (f) programming for children must not contain realistic scenes of violence, which minimise or gloss over the effect of violent acts;
- (g) any realistic depictions of violence must portray, in human terms, the consequences of that violence to its victims and its perpetrators;
- (h) programming for children must not contain frightening or otherwise excessive effects not required by the story line;
- (i) offensive language, including profanity and other religiously incentive material, must not be broadcast in programmes especially designed for children; and
- (j) no offensive language should be used before the watershed period on television or radio or at times when a large number of children are likely to be part of the audience on television or radio;

6. Violence and Hate Speech

- (1) Broadcasting service licensees must not broadcast material which, judged within the context;
 - (a) contains violence which does not play an integral role in developing the plot, character or theme of the material as a whole; or
 - (b) sanctions, promotes or glamorises violence or unlawful conduct.
- (2) Broadcasting service licensees must not broadcast material which, judged within context, sanctions, promotes or glamorizes violence or unlawful conduct based on race, sex, sexual orientation, ethnic origin, colour, religion, creed, gender, economic or social economic status, age or mental or physical disability.
- (3) Broadcasting service licensees must not broadcast material which, judged within context, amounts to:
 - (a) propaganda for war;

- (b) incitement of imminent violence; or
- (c) the advocacy of hatred that is based on race, ethnicity, religion, sex, sexual orientation or gender and that constitutes incitement to cause harm.

7. Privacy, Dignity and Reputation

- (1) Broadcasting service licensees must exercise exceptional care and consideration in matters involving the privacy, dignity and reputation of individuals, bearing in mind that these rights may be overridden by a legitimate public interest.
- (2) In the protection of privacy, dignity and reputation of individuals, special consideration must be given to
 - (a) the applicable customary law concerning the privacy and dignity of people who are bereaved and their respect for their deceased; and
 - (b) the privacy, dignity and reputation of children, women, the elderly and the physically and mentally disabled.

8. Audience Advisories

- (1) To assist audiences in choosing television programmes, television broadcasting service licensees must provide advisory assistance, which, when applicable, must include guidelines as to age, where such broadcasts contain violence, sex, nudity or offensive language.
- (2) The advisory must be shown on the screen for a minimum of 30 seconds after each advertisement or other break.
- (3) Where the frequency of the subject matters, or any one or some of them, is high, a continuous advisory is mandatory, whether it is broadcast before or after the watershed period.
- (4) The following visual advisory age system must be used:
 - (a) 10;
 - (b) 13;
 - (c) 16; and
 - (d) 18.
- (5) The following symbols must be used in accordance with the relevant content:
 - (a) V = (Violence);
 - (b) L = (Language);
 - (c) N = (Nudity);
 - (d) S = (Sex); and
 - (e) PG = (Parental Guidance).
- (6) An audio advisory before the commencement of the programme must also accompany the broadcast of a film with an age restriction of 18.

9. Controversial issues of public importance

- (1) A broadcasting service licensee must ensure that, when reporting on controversial issues, a wide range of views and opinions is reported, either within a single programme or within a series of programmes, which shall be broadcast as soon as is reasonably possible.
- (2) A broadcasting service licensee shall endeavour to ensure that when broadcasting controversial issues of political, industrial or public importance during phone-in programmes, a wide range of views and opinions is represented.
- (3) A person or organisation whose views have been criticised on any controversial issue of political, industrial or public importance during a programme, and who makes any representations, within a reasonable time, to the licensee responsible for the programme, that he or she or the organisation is aggrieved, shall be offered an opportunity by the licensee to reply to such criticism or comment.

10. Watershed Period

- (1) Programming on television, which contains scenes of,
 - (a) explicit violence;
 - (b) sexual conduct;
 - (c) nudity; or
 - (d) grossly offensive language,intended for adult audiences must only be broadcast during the watershed period.
- (2) Radio and television broadcasting licensees may only broadcast promotional material and music videos which contain,
 - (a) scenes of explicit violence;
 - (b) explicit threatening violence;
 - (c) sexual conduct;
 - (d) the fondling or touching of breasts;
 - (e) genitalia or the anus;
 - (f) nudity; or
 - (g) offensive language,intended for adult audiences must only be broadcast during the watershed period.
- (3) Some programmes broadcast outside the watershed period may not be suitable for those under the age of 18 and licensees must provide sufficient information, in terms of regular scheduling patterns or audience advisories, to assist parents and *de facto* or legal guardians to make appropriate viewing or listening choices.
- (4) Television and radio broadcasting service licensees may, with the advance of the watershed period, progressively broadcast more adult material.

- (5) Broadcasting service licensees must be particularly sensitive to the likelihood that programmes which commence during the watershed period and which run beyond it may then be viewed by children.

11. Competitions and Audience Participation

- (1) Broadcasting service licensees must make known during a broadcast the full cost of a telephone call or a message service, such as an SMS, where audiences are invited on air to react to a programme or competition.
- (2) Broadcasting service licensees must specify the proportion of the cost of the call or message service, such as an SMS, as the case may be, which is intended for any specified charitable cause.
- (3) Broadcasting service licensees must ensure that audiences who are invited to compete in any competition are made aware on air of the rules of the competition. The rules must include the closing date and the manner in which the winner is determined and publicly announced.

12. Public notices of emergencies or public disaster announcements

- (1) A broadcast service licensee shall broadcast, without delay provide, free of charge, a public notice of emergency service or a public disaster announcement requested by any Government Ministry, Office, Agency or any other entity, the Authority or any other organ of State.
- (2) The broadcast service licensee shall verify the notice with an authorised representative of the Government Ministry, Office, Agency, the Authority or any other organ of State from which the notice emanates or any other entity.

13. Comments

- (1) Broadcasting service licensees are entitled to broadcast comment on and criticism of any actions or events of public importance.
- (2) Comments must be an honest expression of opinion and must be presented in such a manner that it appears clearly to be comment, and must be made on facts truly stated or fairly indicated and referred to.
- (3) Where a person has stated that he or she is not available for comment or that person could not reasonably be reached, that fact must be stated in the programme including the effort and methodology employed to try and reach the person.
- (4) This section shall not be applicable to Subscription Television Broadcasting Service Licensees.

14. Counter-versions

- (1) Where it appears that comment was incorrect or differed in a material respect, a broadcasting service licensee shall broadcast a counter-version presented by any person or body of persons affected by an assertion of fact in any programme transmitted that the assertion of fact is in fact false.
- (2) Notwithstanding subsection (1), a broadcasting service licensee shall not transmit a counter-version if,
- (a) The person or organization concerned has no direct interest in the transmission of the counter-version; or

- (b) The counter-version is not of reasonable length, and in particular, if it is substantially longer than the part of the broadcast which dealt with the false assertion of fact.
- (3) The counter-version referred to in subsection (1) shall,
- (a) be limited to a factual account;
 - (b) not contain any material, which may reasonably be anticipated to expose the licensee to legal action if that material were to be broadcast;
 - (c) be made in writing;
 - (d) specify the programme and the assertions to which the objection is raised; and
 - (e) be signed by the person affected or, in the case of an organisation, by a duly authorized representative of that organization.
- (4) The person or body of persons affected shall not be entitled to insist on the transmission of a counter-version as contemplated in subsection (1) if the counter-version is presented to the licensee holder after the expiry of a period of thirty (30) days from the date of broadcast of the false assertion of fact.
- (5) The licensee shall, subject to subsection (2) and (4),
- (a) at the first opportunity, but not later than ten days from receipt of a counter-version referred to in subsection (1), broadcast the counter-version within the same programme or programme section as the one in which the false assertion was made and at the same time of day or, should that not be possible, at time equal in value to that of the programme objected to;
 - (b) broadcast the counter-version without any omissions and interruptions; and
 - (c) broadcast the counter-version free of charge.
- (6) A broadcasting service licensee shall immediately upon receipt of the counter-version referred to in subsection (1),
- (a) inform the Authority about that fact; and
 - (b) keep and store the programme objected to and the counter-version
- until he receives a notice to the contrary from the Authority.
- (7) This section shall not be applicable to Subscription Television Broadcasting Service Licensees.

PART C
COVERAGE OF ELECTIONS & REFEDUNDUMS

15. Party-Political Broadcasts

- (1) No broadcasting service licensee shall permit party election broadcasts under any circumstances except during an election period.
- (2) Broadcasting service licensees who choose to broadcast a party election broadcast, for a particular party, shall afford all other political parties a similar opportunity.

- (3) Broadcasting service licensees shall not broadcast a party election broadcast until its duly authorised representative submits it on behalf of the political party.
- (4) A party election broadcast shall be wholly under the editorial control of a political party, which the broadcaster shall not be held liable for the content of the broadcast.

16. News and current affairs during elections and referendum

- (1) News coverage of elections shall be left to the discretion of the News Editor of the broadcast services licensee.
- (2) Proper balance and fairness shall be applied to all current affairs programmes that deal with elections.

17. Balance and Impartiality

- (1) Broadcasting services licensees must afford reasonable opportunities for the discussion of conflicting views and must treat all political parties equitably.
- (2) Broadcasting service licensees must ensure that they are balanced and impartial in their election reporting and that no political party or candidate shall be discriminated against in editorial coverage or the granting of access to coverage.
- (3) In the event of any criticism against a political party being levelled in a particular programme of any broadcasting service -
 - (a) without that party having been afforded an opportunity to respond in the same programme; or
 - (b) without the view of that political party having been reflected therein,

the broadcasting services licensee concerned must afford that political party a reasonable opportunity to respond to the criticism.

18. Allocation of free airtime by the Namibian Broadcasting Corporation

- (1) Subject to section 93(1) of the Act, where the Namibian Broadcasting Corporation offers free airtime to various political parties contesting a regional, presidential or local Authority elections, it shall do so on the basis of the respective formula set out in this Code.
- (2) Subject to section 93(1) of the Act, a political party that intends to broadcast a party election broadcast utilizing the free airtime as allocated by the NBC above.
 - (a) must submit same to the Namibia Broadcasting Corporation at least ninety six (96) hours prior to the broadcast thereof; and
 - (b) subject further to the provision of regulation 7(2), if a political party fails to deliver the party election broadcast to the NBC before the expiry of the time stipulated in subsection (2) (a) above, the political party is deemed to have forfeited its free allocated airtime.
- (3) In the event of a by-election or election, the formulae must be submitted at least 7 days after the publication of the polling day.

- (4) In making advertising time available to political parties, no broadcasting services licensee may discriminate against any political party or make or give any preference to any political party or subject any political party to any prejudice.
- (5) In the event that a political party elects to forfeit its allocated party election broadcast airtime, then that airtime must be used by the broadcaster concerned for the purpose of broadcasting its normal programming or material.
- (6) In the event that a political party does not wish to use its allocated party election broadcast air-time, the broadcasting services licensee concerned must not, during the relevant time-slot, in any way vary the sequence or scheduling of party election broadcasts.

19. Party Election Broadcasts

- (1) A political party that intends to broadcast a party election broadcast must:
 - (a) submit same to the broadcasting service licensee at least ninety six (96) hours prior to the broadcast thereof;
 - (b) the submission must be accompanied by a written script in the English language; and
 - (c) if the Political Party wishes to use a local language, a script must also be provided in that language and same should be translated in English.
- (3) A broadcasting service licensee that is obliged, or intends to broadcast political party election broadcasts must ensure that the political party election broadcasts received conforms to the provisions of this Code and is acceptable to the Authority.
- (4) A broadcasting service licensee, to whom a political party election broadcast has been submitted by a party for broadcast, must not in any way edit or alter the content of the party election broadcast.
- (5) A licensee shall not reject the party election broadcast for any reason that is not reasonable or justifiable, and without any good cause shown.
- (6) A broadcasting service licensee that rejects a party election broadcast submitted to it by a party for broadcast must, within 24 hours of such submission:
 - (a) furnish the political party concerned with written reasons for the rejection; and
 - (b) on receipt of the written reasons contemplated in paragraph (a), the political party concerned may alter or edit the political election broadcast and resubmit it to the broadcasting service licensee concerned at least 72 hours prior to it being broadcast.
- (7) A political party that submits a political party election broadcast to a broadcasting service licensee for broadcast must ensure that the political party election broadcast does not:
 - (a) contravene the provisions of the Constitution of Namibia, the Electoral Act, or the Communications Act; and
 - (b) contain any material that is calculated, or that in the ordinary course is likely to provoke or incite any unlawful, illegal or criminal act, or that may be perceived as condoning or lending support to any such act.

- (8) A political party that submits a party election broadcast to a broadcasting service licensee for broadcast shall have no claim against the broadcasting service licensee arising from the broadcast or none broadcast of the party election broadcast.
- (9) A political party that submits a party election broadcast for broadcast to a broadcasting service licensee is deemed to have indemnified the broadcasting service licensee against incurred costs, damages, losses, and third political party claims arising from the broadcast thereof.
- (10) A broadcasting service licensee that broadcasts party election broadcast must:
 - (a) make available to political parties, every day, throughout the election period, four time-slots not exceeding two minutes each as a minimum;
 - (b) do so in accordance within and subject to the requirements prescribed by the Authority in terms of this Code; and
 - (c) ensure that all political party election broadcasts aired by that licensee are clearly identified .
 - (d) ensure that all party election broadcasts are identified or announced in a similar manner.
- (11) A party election broadcast must not exceed five minutes in duration.
- (12) A broadcasting service licensee must not transmit a party election broadcast or political advertisement immediately before or after another party election broadcast or political advertisement.
- (13) Unless a political party makes prior arrangements with the broadcasting service licensee, political party election broadcast airtime allocated to but not used by that political party shall be forfeited.
- (14) A broadcasting services licensee or political party must not permit or engage in any interference with, or trade-offs in the sequence or scheduling of party election broadcasts.

20. Political Advertising

- (1) Political advertisements shall not be broadcast 48 hours before the polling day.
- (2) A broadcasting service licensee, to whom a political advertisement has been submitted by a political party for broadcast, must not in any way edit or alter the advertisement.
- (3) A broadcasting service licensee may reject a political advertisement submitted for broadcast, provided that a licensee shall not reject the advertisement for any reason that is not reasonable or justifiable, and without any good cause shown.
- (4) A broadcasting service licensee that rejects a political advertisement submitted to it by a political party for broadcast must, within 24 hours of such submission:
 - (a) furnish the political party concerned with written reasons for the rejection and;
 - (b) on receipt of the written reasons contemplated in paragraph (a), the political party concerned may alter or edit the political advertisement and resubmit the political advertisement to the broadcasting service licensee concerned at least 72 hours prior to it being broadcast.

- (5) Where the broadcasting service licensee has rejected a political advertisement and the political party concerned has confirmed in writing to the broadcasting service licensee that it will not be re-submitting the advertisement, then the broadcasting service licensee must within 24 hours notify the Authority in writing of such rejection and must also furnish to the Authority written reasons for the rejection.
- (6) A political party, whose political advertisement has been rejected and has no intention of altering or editing the advertisement and does not accept the reasons for the rejection, may refer the matter to the Authority within 24 hours of being informed of the rejection.
- (7) A political party that submits a political advertisement to a broadcasting service licensee for broadcast must ensure that the advertisement does not:
 - (a) contravene the provisions of the Constitution of Namibia, the Electoral Act, the Communications Act, or any other relevant laws; and
 - (b) contain any material that is calculated, or that in the ordinary course is likely, to provoke or incite any unlawful, illegal or criminal act, or that may be perceived as condoning or lending support to any such act.
- (8) A political party that submits a political advertisement to a broadcasting service licensee for broadcast shall have no claim against the broadcasting service licensee arising from the broadcast of the advertisement.
- (9) A political party that submits a political advertisement for broadcast to a broadcasting service licensee is deemed to have indemnified the broadcasting service licensee against incurred costs, damages, losses, and third political party claims arising from the broadcast thereof.

21. Prevention of broadcasting

- (1) No broadcasting service licensee shall on polling day broadcast party election broadcast, political advertisement or any material canvassing for support of any political party or candidate.
- (2) No broadcasting service licensee shall 48 hours before polling day broadcast party election broadcast or political advertisement.
- (3) Election coverage on the date of polling shall be confined to reports and analyses on the progress of voting and information pertaining to voting schedules and location of polling stations.
- (4) No broadcasting service licensee shall broadcast election results until after the polls have been declared closed and official results are announced or published by the relevant officials of the Electoral Commission of Namibia as per the provisions of the Electoral Act 2014, (No 5 of 2014).

PART D LOCAL CONTENT

22. Local Content

- (1) Every broadcasting service licensee shall, through the broadcasting of local content:
 - (a) encourage the development of Namibian expression by providing a wide range of programming that reflects Namibia and African attitudes, opinions, ideas, values and

artistic creativity by displaying Namibian and African cultures and entertainment through music, dramas, series, news, soaps, documentaries, current affairs, movies, films and other programmes;

- (b) serve the needs and interests and reflect the circumstances and aspirations of Namibian women, men and children in a democratic Namibian society;
- (c) produce and maintain programmes of high standards and quality; and
- (d) make maximum use of Namibian and African creative and other resources in the creation and presentation of programming.

23. Exemptions

The following content does not constitute local content:

- (1) Pure promotional off-air activities such as station promotion in the area (vehicles carrying station logos, outside broadcasts, etc.);
- (2) Transmission of sporting events and compilations thereof;
- (3) Teletext;
- (4) Continuity announcements;
- (5) Competitions or promotions that invite and involve listener participation from outside a station area ; and
- (6) Advertisements.

24. Namibian Broadcasting Cooperation (Television and Sound Broadcasting Service Licensee)

- (1) The public television broadcasting service licensee must ensure that within three (3) years from date on which the Broadcasting Code comes into force, 45% of its programming, measured over the period of 3 years, consists of Namibian television content and that such Namibian television content is spread evenly throughout the said performance period and prime time.

25. Community Television & Sound Broadcasting Service Licensees

- (1) A community television broadcasting service licensee must ensure that within 3 years of commencement of the broadcasting code, 60% of its programming, consists of Namibian television content and that such Namibian television content is spread evenly throughout the said performance period and prime time.

26. Commercial Television & Sound Broadcasting Service Licensees

- (1) A commercial television broadcasting service licensee must ensure that within 3 years of commencement of the broadcasting code, 50% of its programming, consists of Namibian television content and that such Namibian television content is spread evenly throughout the said performance period and prime time.

27. Subscription Television Broadcasting Service Licensee

- (1) A subscription broadcasting service licensee that acquire channels must ensure that annually, a minimum of 15% of their channel acquisition budget is spent on Namibian content channels that are compiled from Namibia.
- (2) The broadcasting by a subscription television broadcasting service licensee of licensed free-to-air public television broadcasting services, licensed free-to-air commercial television broadcasting services and licensed community television broadcasting services will not count towards compliance for purposes of this code.
- (3) Content requirements will apply per bouquet and not per channel approach.

28. Formulas

- (1) The formula for the calculation of the local content quotas prescribed above shall be calculated as follows:
 - (a) The total number of hours that any form of local content has been broadcasted (over a reporting period) divided by the total number of hours of the performance period (over a reporting period) multiplied by 100 to get the total percentage.
 - (b) For instance a Community broadcasting service licensee has 5 hours on music, 3 hours on current affairs, 6 hours on drama, 10 hours on children programming; and 17 hours on educational programs. The performance period has 126 hours per week. Such a licensee will have 32.5% of local content for the week in question.

29. Record Keeping

- (1) All Broadcasting Service Licensees must keep and maintain logs, statistical forms and programme records in the following format:-
 - (a) full particulars of all Namibian local content programming broadcast in each week, indicating each category of Namibian television or radio content;
 - (b) Full particulars of name(s) of the author(s) of the drama script indicating their nationalities or that of the adaptor if it is drawn from a literary source;
 - (c) Full particulars of the name(s) of the drama director(s) indicating their nationalities;
 - (d) A list of the creative and technical personnel involved in drama production indicating their nationalities and, the roles they play; and
 - (e) Such other particulars as may be required by the Authority
- (2) Broadcasting Service Licensees logs, statistical forms and records contemplated in (1) above must be preserved for a period of not less than 36 months after the last date of entry.
- (3) Broadcasting Service Licensees should therefore, submit reports on the 31 January each year to the Authority detailing all the local content broadcast on a daily basis during the performance period (05h00 - 23h00) on an annual basis.
- (4) During the year, the Authority may conduct spot checks on each station, comparing the station logs with its own data to verify compliance with the code.

30. Amount of advertisements

- (1) The Authority will at a date still to be determined make Regulations in respect of Advertisements.

31. Supervision by the Authority

- (1) The Authority shall supervise compliance with these conditions in terms of section 90 of the Act.
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