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Contents

<i>No.</i>	<i>Gazette No.</i>	<i>Page No.</i>
GOVERNMENT NOTICES • GOEWERMENTSKENNISGEWINGS		
Independent Communications Authority of South Africa/ Onafhanklike Kommunikasie-owerheid van Suid-Afrika		
R. 1016	Electronic Communications Act (36/2005): Amendment of the Call Termination Regulations, 2014	41943 4

GOVERNMENT NOTICES • GOEWERMENTSKENNISGEWINGS

INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA**NO. R. 1016****28 SEPTEMBER 2018****"AMENDMENT OF THE CALL TERMINATION REGULATIONS, 2014"**

The Independent Communications Authority of South Africa, hereby publishes the amendment to the Call Termination Regulations, 2014 in terms of sections 4(7)(b) and 67(8) of the Electronic Communications Act, 2005 (Act No. 36 of 2005), to the extent as reflected in the Schedule.

Rubben Mohlaloga**Chairperson**

SCHEDULE

1. Definitions

In these regulations "the Regulations" means the Regulations published under Government Notice No 844 of 2014 (Government Gazette No. 38042), as amended by Government Notice No. 729 of 2017 (Government Gazette No. 41132) and Government Notice No 811 of 2017 (Government Gazette No. 41167).

2. Amendment of regulation 1 of the Regulations

Regulation 1 of the Regulations is hereby amended by –

- (a) the deletion of the definition "BON"; and
- (b) the deletion of the definition "WON".

3. Substitution of regulation 7 of the Regulations

The following regulation is hereby substituted for regulation 7 of the following regulation:

"7. PRO-COMPETITIVE TERMS AND CONDITIONS

- (1) The Authority has determined that the following market failures may recur in the absence of regulation:

- (a) A lack of provision of access;
 - (b) The potential for discrimination between licensees offering similar services;
 - (c) A lack of transparency; and
 - (d) Inefficient pricing.
- (2) In order to address the market failures identified in sub-regulation (1) above, an ECNS and ECS licensee must charge fair and reasonable prices for wholesale voice call termination consistent with **Annexure A**.
- (3) In addition to sub-regulation (2), the Authority has determined that additional pro-competitive terms and conditions are necessary to correct the market failures identified in sub-regulation (1), which are to be imposed on the following types of licensees:
- (a) A licensee that benefits from economies of scale and scope with a share of total minutes terminated in the wholesale voice call termination markets with more than 20% of total minutes terminated to a mobile location as at 31st December 2016.
 - (b) A licensee that benefitted from economies of scale and scope with a share of total minutes terminated in the wholesale voice call termination markets with more than 20% of total minutes terminated to a fixed location as at 31st December 2016.
- (4) The Authority has determined that the following licensees have the characteristics mentioned in sub-regulation (3):

- (a) Mobile termination markets:
 - (i) MTN (Pty) Ltd (MTN); and
 - (ii) Vodacom (Pty) Ltd (Vodacom).
 - (b) Fixed termination markets:
 - (i) Telkom SA SOC Limited (Telkom).
- (5) All licensees referred to in sub-regulation (4), must comply with the following additional pro-competitive terms and conditions:
- (a) Publication of a Reference Interconnection Offer:
 - (i) Licensees identified in sub-regulation (4) must submit a RIO to the Authority for approval within forty-five (45) days of promulgation of these Regulations.
 - (ii) The RIO must comply with the requirements set out in **Annexure B**.
 - (iii) The Authority will assess a RIO submitted by a licensee within thirty (30) days of its submission.
 - (iv) Licensees identified in sub-regulation (4) are obliged to offer interconnection using IP-based protocols.
 - (v) Provided that all requirements in the RIO are met by both an interconnection seeker and provider, a request for interconnection based on the RIO must be concluded within thirty (30) days of such a request for

interconnection unless otherwise agreed between the licensees.

- (vi) A licensee identified in sub-regulation (4) must publish the approved version of its RIO on its website within five (5) days of receiving notice of approval from the Authority.

(b) Price Control: Cost-based pricing:

A licensee identified in sub-regulation (4) must charge wholesale voice call termination rates to a mobile or fixed location as specified in Table 1.

Table 1: Termination Rates:

	Termination rate to a mobile location	Termination rate to a fixed location
1 October 2018 to 30 September 2019	R0.12	R0.09
1 October 2019 to 30 September 2020	R0.10	R0.07
1 October 2020	R0.09	R0.06

... end of substitution"

4. Substitution of regulation 8 of the Regulations

The following regulation is hereby substituted for regulation 8 of the following regulation:

“8. SCHEDULE FOR REVIEW OR REVISION OF MARKETS

The Authority will review the markets for wholesale voice call termination services, to which these Regulations apply, as well as the effectiveness of competition and the application of pro-competitive terms and conditions in those markets when the Authority deems it necessary but not earlier than three (3) years from the date of publication of these Regulations.”

5. Short Title and Commencement

These Regulations are called the “Call Termination Amendment Regulations, 2018” and will come into effect on 1 October 2018.

6. Substitution of Annexures A and B of the Regulations

The following Annexures of the Regulations are hereby substituted for Annexures A and B of the Regulations:

Annexure A:**APPLICATION OF THE FAIR AND REASONABLE OBLIGATION**

1. Principles of implementation of fair and reasonable obligation
 - 1.1. For the purposes of regulation 7(2) "fair and reasonable prices" are rates that are equivalent to the cost-based rates imposed on the licensees identified in regulation 7(4).
 - 1.2. Licensees must charge the following rates:
 - 1.2.1. Reciprocal rates with the rate set for MTN and Vodacom if these licensee's offer termination to a mobile location within the Republic of South Africa; or
 - 1.2.2. Reciprocal rates with the rate set for Telkom if these licensee's offer termination to a fixed location within the Republic of South Africa.
2. A licensee not listed in regulation 7(4) may charge higher rates if:
 - 2.1. the licensee has a share of total minutes terminated in the wholesale voice call termination markets of 20% or less of total minutes terminated to a mobile location as at 31st December 2016; or
 - 2.2. the licensee has a share of total minutes terminated in the wholesale voice call termination markets of 20% or less of total minutes terminated to a fixed location as at 31st December 2016.

3. A licensee affected by regulation 2 may charge a maximum rate in the following terms:

Table A1: Maximum rate for termination to a mobile location

	Termination rate
1 October 2018-30 September 2019	R0.18
1 October 2019-30 September 2020	R0.16
1 October 2020	R0.13

Table A2: Maximum rate for termination to a fixed location

	Termination rate
1 October 2018-30 September 2019	R0.10
1 October 2019-30 September 2020	R0.08
1 October 2020	R0.06

Annexure B:**1. Minimum content of a Reference Interconnection Offer ("RIO")**

A licensee listed in regulation 7(4) must develop their own RIO for the Authority's approval. The RIO must include at least the following:

1.1. General Legal Principles

- 1.1.1. Definitions of terms and abbreviations;
- 1.1.2. Requirements concerning the exchange and use of information for interconnection; and
- 1.1.3. Data exchange formats.

1.2. Initiating Negotiations and Proposing Amendments

Procedure for initiating negotiations as well as that for amending interconnection agreements, including:

- 1.2.1. how a request for interconnection is to be made;
- 1.2.2. to whom a request for interconnection is to be sent; and
- 1.2.3. the information that needs to be included in the application.

1.3. Description of Interconnection Services to be provided

- 1.3.1. List of interconnection services offered;
- 1.3.2. Full description of each interconnection service; and
- 1.3.3. Conditions governing access to services.

1.4. Schedule of Charges for Interconnection Services

- 1.4.1. Commercial and financial matters, including billing and collection procedures, and payment terms and conditions;
- 1.4.2. The full charge for each interconnection service. Where relevant charges should:
 - 1.4.2.1. be broken down into or built up from the charges for the network components;
 - 1.4.2.2. include an indication of any surcharges; and
 - 1.4.2.3. include an indication of charging unit/s (e.g. per second);
- 1.4.3. Mechanisms for the review of charges; and
- 1.4.4. Billing services for third parties, where relevant (e.g. if operator is billing on behalf of resellers, other Individual ECS or other Individual ECNS).

1.5. Technical Characteristics

- 1.5.1. Comprehensive technical description of the interconnect interface(s), including the signalling protocol(s) used;
- 1.5.2. Full details of the availability and location of points of interconnection which shall include public internet exchange points (IXPs) at which the licensee has a presence;
- 1.5.3. Description of the physical arrangements for interconnection;
- 1.5.4. Description of traffic routing arrangements;
- 1.5.5. Details regarding access to numbers by the parties;
- 1.5.6. Requirements to ensure network security or integrity; and
- 1.5.7. The quality, availability, security, efficiency, and synchronization of the services provided.

1.6. Arrangements for the Establishment of Interconnection

- 1.6.1. Conditions governing service provision;
- 1.6.2. Traffic forecasting requirements and arrangements;
- 1.6.3. Arrangements for testing the operation of interfaces and the interoperability of services;
- 1.6.4. Fault management procedures (recording and clearing); and
- 1.6.5. Conditions governing bank guarantees, if any.

1.7. Other Legal and Procedural Issues

- 1.7.1. Provisions on procedures for review, termination, and amendment of interconnection agreements;
- 1.7.2. Limitation of liability and indemnity between licensees;
- 1.7.3. Penalty clauses; and
- 1.7.4. Dispute resolution arrangements and procedures, including the right of either party to request the Authority to intervene to resolve a dispute."

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