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GENERAL NOTICE

NOTICE 3457 OF 2002**MINISTER OF COMMUNICATIONS**

In terms of section 96(6) of the Telecommunications Act, 1996 (Act no 103 of 1996) Act, I, Dr. Ivy Matsepe-Casaburri, Minister of Communications, hereby approve and publish the regulations set out in the schedule made by the Independent Communications Authority of South Africa under section 96 read with section 43 of the said Act.

Dr. Ivy Matsepe-Casaburri
MINISTER OF COMMUNICATIONS

SCHEDULE

SUPPLEMENTARY INTERCONNECTION GUIDELINES

These guidelines shall, unless the context indicates the contrary, be interpreted and applied in a manner consistent with the interconnection guidelines promulgated by the Minister under Gazette number 20993, General notice 1259 of 2000. For avoidance of doubt except as amended or supplemented by these guidelines, the existing Interconnection Guidelines shall continue in full force and effect.

1. DEFINITIONS

In these Guidelines, words shall have the meaning assigned to them in the Telecommunications Act of 1996, (Act No.103 of 1996), as amended ("the Act") and in General Notice 1259 of 2000 unless the context otherwise requires.

Clause 1 of the Interconnection Guidelines (General Notice 1259 of 2000) is hereby amended by:

1.1 the insertion of the following definition immediately before the definition of "Calling Line Identification (CLI)":

"Avoidable Costs" means, in respect of services provided by a Major Operator, the costs that can be attributed to sales, marketing, advertising, public relations, customer service, billing, collection, and other costs associated with offering those services by the Major Operator to customers who are not telecommunication licensees, and which can be avoided when such services are provided to telecommunication licensees.

1.2 the insertion of the following definition immediately before the definition of "Point of interconnection (POI)":

"Opportunity costs" means the revenues that a Major Operator would have received for the sale of telecommunication services, in the absence of competition from telecommunication service providers that purchase Essential Services.

1.3 the insertion of the following definition immediately before the definition of "Customer":

"Common Costs" means the costs necessarily incurred in the provision of some or all of the telecommunication services provided by a Major Operator, which cannot be attributed directly to any one of those services.

1.4 the insertion of the following definitions immediately before the definition of "Essential Service":

"Economic Cost" means, in respect of the provision of a service by a licensee, the sum of:

- a) The incremental cost of that service;
- b) The relevant common costs allocated to that service including a competitive return on the capital employed for the purpose of such provision.

1.5 the insertion of the following definitions immediately before the definition of "Common costs":

"COA/CAM" means the Chart of Accounts/Cost Allocation Manual adopted pursuant to section 46 of the Act.

1.6 effecting amendments to the following existing definitions:

- 1.61 By the substitution of the definition of "Public Operator" with the following definition:

"Public Operator" means a provider of a public switched telecommunication service or a mobile cellular telecommunication service, or an under-served area telecommunication service.

- 1.6.2 By the addition after sub-clause (d) in the definition of "Telecommunication Market" with the following sub-clauses:

(e): "international telecommunication services";

2. APPLICATION OF THESE GUIDELINES

- 2.1 For purposes of these guidelines and General Notice 1259 of 2000, based on the public record in this proceeding, the Authority finds that the Telecommunication Markets with regard to Interconnection are:

- a) Public switched telecommunication services
- b) National long distance telecommunication services
- c) Local access telecommunication services
- d) International telecommunication services; and
- e) Mobile cellular telecommunication services.

2.2.1 The Authority has established that interconnection services in these Telecommunication Markets are supplied by a limited number of providers, and therefore are Essential Services.

2.2.2 Telkom SA Limited being the holder of at least 35% of the relevant Telecommunications Markets for these Essential Services, the Authority declares that Telkom SA Limited is a Major Operator for the provision of Interconnection.

Process for exclusion in the category of Major Operators

2.3 At such time as a Major Operator, acting in good faith, can demonstrate that, because of:

- (a) A reduction in its share of the relevant Telecommunications Market; or
- (b) An industry change that requires reclassification of an Essential Service,

such Major Operator should no longer be considered a Major Operator, then:

2.3.1 Such Major Operator shall file a written request with the Authority accompanied by all supporting documentation establishing a reasonable basis for such request.

2.3.2 If the Authority finds, upon consideration of the request and supporting documentation and any additional information or documentation that the Authority may request, that there is a reasonable basis for removing the Major Operator determination from one or more of the Telecommunication Markets, the Authority shall:

- 2.3.2.1 publish the request in the Gazette,
- 2.3.2.2 seek comments from the public, and
- 2.3.2.3 conduct any hearings that it may find useful.

2.3.3 At the expiry of the time within which public comments may be filed and any hearings that it may have scheduled, if supported by the record before it, the Authority may declare by notice in the Gazette that such licensee is no longer a Major Operator in one or more of the Telecommunication Markets.

Process for inclusion in the category of a Major Operators

2.4 At such time that any party, acting in good faith, can demonstrate that :

- (a) A licensee's share of the relevant Telecommunication Market is at least 35%, or

- (b) An industry change that requires reclassification of an Essential Service has occurred, necessitating that such licensee, subject to the Interconnection Guidelines, (General Notice 1259 of 2000), pursuant to section 43(1) or section 43(2) of the Act, should be re-classified as a Major Operator, then:

2.4.1 Such party shall file a written request with the Authority accompanied by all supporting documentation establishing a reasonable basis for such request.

2.4.2 If the Authority finds, upon consideration of the request and supporting documentation and any additional information or documentation that the Authority may request, that there is a reasonable basis for considering to declare such licensee to be a Major Operator, the Authority may:

2.4.2.1 publish the request in the Gazette,

2.4.2.2 seek comments from the public,

2.4.2.3 and conduct any hearings that it may find necessary or useful.

2.4.3 At the conclusion of the process outlined in clause 2.4.2 above, the Authority may, based on its findings, declare such licensee to be a Major Operator in one or more of the Telecommunication Markets.

3. TRANSITIONAL OBLIGATIONS OF INTERCONNECTION PROVIDER

3.1 The Guidelines of this clause are temporary in nature and intended only to permit the orderly transition to the LRIC pricing regime prescribed in General Notice 1259 of 2000. This clause shall be effective upon publication in the Gazette and shall apply only for a period of no more than two years from its effective date. Upon the first anniversary of the effective date of this clause, the Authority shall publish a notice in the Gazette seeking public comment on the progress of the transition to the LRIC pricing regime. Upon consideration of the comments filed in response to such notice and evidence produced at any hearing that the Authority may conduct, the Authority may order the termination of this clause and the effectiveness of the LRIC regime prior to the second anniversary of the effective date of this clause.

3.2 All charges imposed by a Major Operator for Essential Services for interconnection to any requesting Public Operator must be no greater than the Major Operator's Fully Allocated Costs (FAC) of providing such services, calculated according to the Accounting Separation

Principles set out in the Major Operator's COA/CAM, including a reasonable cost of capital.

- 3.3 The costs used in calculating the amount a Major Operator may charge for Essential Services shall be the costs determined on a Current Cost Accounting basis as set forth in the relevant section of the Major Operator's COA/CAM and may include common costs associated with such services.
- 3.4 The sum of the allocation of common costs for all Essential Services shall equal the total common costs associated with the relevant accounts from the Major Operator's COA/CAM.
- 3.5 The following factors shall not be considered in a calculation of a Major Operator's charges for an Essential Service:
 - i. Avoidable Costs ; and
 - ii. Opportunity costs.
- 3.6 The cost-based charges per unit of an Essential Service equals the cost of the Essential Service, as illustrated in this sub-clause, divided by the total number of units of the Essential Service that the Major Operator has provided to requesting telecommunication licensees or has used in offering its own services, during the most recent measuring period for which such costs and numbers are available.
- 3.7 Essential Service rates shall be structured consistently with the manner in which the costs of providing the Essential Services are incurred.
 - 3.7.1 The fixed costs of dedicated services shall be recovered through fixed, flat rate charges.
 - 3.7.2 With respect to Essential Services that a Major Operator offers on a flat-rate basis, the number of units is defined as the discrete number of Essential Services that the Major Operator uses or provides.
 - 3.7.3 With respect to Essential Services that a Major Operator offers on a usage-sensitive basis, the number of units is defined as the unit of measurement of the usage (e.g. minutes of use or call related database queries) of the Essential Service.

For example, if an Essential Service is supplied on the basis of measurement, such as cable, the unit would be a metre or a kilometre; if an Essential Service is supplied on the basis of a period of time, such as the duration of a call, the unit would be a minute; if an Essential Service is supplied on the basis of capacity, the unit would be a measure of such capacity; and if an Essential Service is supplied on the basis of an occurrence,

such as a database query, the unit shall be a single such occurrence.

3.8 Upon its establishment of a rate for Essential Services pursuant to these Guidelines or any change in such rate, a Major Operator must provide the

Authority with a cost study that complies with the guidelines set forth in this clause and any underlying supporting documentation sufficient to allow the Authority to determine that the rate for each Essential Service such Major Operator offers does not exceed the cost-based charges per unit of providing the Essential Service.

3.8.1 The Authority may determine that the cost study and supporting documentation made available to it by the Major Operator with respect to one or more Essential Service does not support the adoption of a rate or rates that are consistent with the requirements set forth in this clause. In that event, the Authority may establish a rate for an Essential Service that is consistent with the best current practices in the international market.

3.8.2 Any rate(s) established through the use of international best current practices shall be superseded once the Authority has completed review of a cost study that complies with the cost based pricing guidelines described in this clause, and has concluded that such study is a reasonable basis for establishing Essential Service rates.

3.8.3 The implementation of cost-based rates for Essential Services pursuant to this clause shall not be delayed by the procedures of sub-clause 3.8. The Authority may order a Major Operator to issue refunds or make other adjustments to its charges as a result of determinations under this section.

3.9 The COA/CAM shall provide guidance for the interpretation of any provision of this clause or the resolution of any dispute that may arise hereunder.

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