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CONTENTS • INHOUD

<i>No.</i>	<i>Page No.</i>	<i>Gazette No.</i>
GENERAL NOTICE		
Independent Communications Authority of South Africa		
<i>General Notice</i>		
844 Electronic Communications Act (36/2005) as amended: Call Termination Regulations, 2014.....	3	38042

GENERAL NOTICE

NOTICE 844 OF 2014



INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA

"CALL TERMINATION REGULATIONS, 2014" PURSUANT TO SECTION 67(8) OF THE ELECTRONIC COMMUNICATIONS ACT NO. 36 OF 2005, AS AMENDED

I, Stephen Mncube, Chairperson of the Independent Communications Authority of South Africa, hereby publish the final Call Termination Regulations set out in the Schedule in terms of section 4 read with section 67(8) of the Electronic Communications Act No. 36 of 2005, as amended.

A handwritten signature in black ink, appearing to be 'S Mncube', written over a horizontal line.

Dr Stephen Mncube
Chairperson

SCHEDULE**"CALL TERMINATION REGULATIONS, 2014"
PURSUANT TO SECTION 67(8) OF THE ELECTRONIC
COMMUNICATIONS ACT NO. 36 OF 2005, AS AMENDED****1. DEFINITIONS**

In these Regulations, unless the context indicates otherwise, a word or expression to which a meaning has been assigned in the Act has the meaning so assigned, and the following words and expressions shall have the meaning set out below:

"2010 Regulations" means the Call Termination Regulations, 2010/11 published under Notice 1015 of 2010 in *Government Gazette* 33698 of 29 October 2010;

"the Act" means the Electronic Communications Act, 2005 (Act No. 36 of 2005), as amended;

"Authority" means the Independent Communications Authority of South Africa;

"BON" means between ON geographic area codes as specified in the Numbering Plan Regulations;

"ECNS" means an electronic communications network service as defined in the Act;

"ECS" means an electronic communications service as defined in the Act;

"Fixed Wholesale Voice Call Termination Service" means a wholesale voice call termination service provided by an ECNS or ECS licensee to a fixed location;

"Mobile Wholesale Voice Call Termination Service" means a wholesale voice call termination service provided by an ECNS or ECS licensee to mobile subscriber equipment enabled by wireless technology;

"Numbering Plan Regulations" means the Numbering Plan Regulations, 2012, published under Notice 790 in *Government Gazette* 35737 of 2 October 2012;

"Reference Interconnection Offer" or "RIO" means a document, approved by the Authority, setting out the standard terms and conditions for interconnection agreements;

"SMP" means significant market power as defined in section 67(5) of the Act; and

"WON" means within a 0N geographic area code as specified in the Numbering Plan Regulations.

2. PURPOSE OF REGULATIONS

The purpose of these Regulations is to modify the pro-competitive conditions imposed by the Authority in the 2010 Regulations to remedy market failure in the wholesale call termination markets following a review, by the Authority, of the market determinations contained in regulations 5 and 6 of the 2010 Regulations.

3. MARKET DEFINITION

Markets are categorised according to the type of service provided to the end-user and are defined as follows:

- (a) **Mobile termination markets:** The market for wholesale voice call termination services on the network of each licensee that offers termination to a mobile location within the Republic of South Africa.
- (b) **Fixed termination markets:** The market for wholesale voice call termination services on the network of each licensee that offers termination to a fixed location within the Republic of South Africa.

4. METHODOLOGY

In determining the effectiveness of competition in the wholesale voice call termination markets, the Authority has applied the following methodology:

- (a) the identification of relevant markets and their definition according to the principles of the Hypothetical Monopolist Test, taking into account the non-transitory (structural, legal, or regulatory) entry barriers to the relevant markets and the dynamic character and functioning of the relevant markets;
- (b) the assessment of licensees' market shares in the relevant markets; and
- (c) the assessment on a forward-looking basis of the level of competition and market power in the relevant markets.

5. EFFECTIVENESS OF COMPETITION

Pursuant to regulation 4 of these Regulations, the Authority has determined that competition in the wholesale voice call termination markets, as defined in regulation 3, remains ineffective.

6. SMP DETERMINATION

The Authority declares that each individual ECNS and individual ECS licensee that offers wholesale voice call termination services is dominant and has SMP in its own market for wholesale voice call termination.

7. PRO-COMPETITIVE TERMS AND CONDITIONS

- (1) The Authority has determined that the following market failures continue to exist:
 - (a) A lack of provision of access.
 - (b) The potential for discrimination between licensees offering similar services.
 - (c) A lack of transparency.
 - (d) Inefficient pricing.
- (2) In order to address the market failures identified in sub-regulation (1) above, all licensees 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 licensees:
 - (a) Licensees 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 mobile location as at 31st December 2013.
 - (b) Licensees 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 at 31st December 2013.

(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)
- (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:

For the period 01 October 2014 to 30 September 2017, 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 to a mobile location	Termination to a fixed location	
		WON	BON
1 October 2014 to 30 September 2015	R 0.20	R 0.12	R 0.15
1 October 2015 to 30 September 2016	R 0.16	R 0.11	R 0.12
1 October 2016 to 30 September 2017	R 0.13	R 0.10	R 0.10

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 two (2) years from the date of publication of these regulations.

9. CONTRAVENTIONS AND PENALTIES

A licensee that contravenes regulation 7 of these Regulations is subject to a fine not exceeding the greater of R5 000 000 (five million Rand) or a maximum of 10% of the licensee's annual turnover for every day or part thereof during which the contravention continued.

10. SHORT TITLE AND COMMENCEMENT

These regulations are called the Call Termination Regulations, 2014 and will come into effect on 1 October 2014.

11. REPEALED REGULATIONS

Regulation	Extent of Repeal
Call Termination Regulations, 2010/11 published under Notice 1015 in <i>Government Gazette</i> 33698 of 29 October 2010	The whole

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 licensees 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 licensees offer termination to a fixed location within the Republic of South Africa.
2. A licensees 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 at 31st December 2013; 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 at 31st December 2013.
3. A licensee entitled under paragraph 2 to charge a higher rate may charge a maximum rate according to the following tables:

Table A1: Maximum rate for termination to a mobile location

	Termination rate
1 October 2014 to 30 September 2015	R 0.31
1 October 2015 to 30 September 2016	R 0.24
1 October 2016 to 30 September 2017	R 0.19

Table A2: Maximum rate for termination to a fixed location

	WON	BON
1 October 2014 to 30 September 2015	R 0.18	R 0.21
1 October 2015 to 30 September 2016	R 0.15	R 0.16
1 October 2016 to 30 September 2017	R 0.12	R 0.12

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

Those licensees 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

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

1.2. Initiating Negotiations and Proposing Amendments

- Procedure for initiating negotiations as well as that for amending interconnection agreements, including:
 - how a request for interconnection is to be made;
 - to whom a request for interconnection is to be sent; and
 - the information that needs to be included in the application.

1.3. Description of Interconnection Services to be provided

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

1.4. Schedule of Charges for Interconnection Services

- Commercial and financial matters, including billing and collection procedures, and payment terms and conditions;
- The full charge for each interconnection service. Where relevant charges should:
 - be broken down into or built up from the charges for the network components;
 - include an indication of any surcharges; and
 - include an indication of charging unit/s (e.g. per second);
- Mechanisms for the review of charges; and
- 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

- Comprehensive technical description of the interconnect interface(s), including the signalling protocol(s) used;
- 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;
- Description of the physical arrangements for interconnection;
- Description of traffic routing arrangements;
- Details regarding access to numbers by the parties;
- Requirements to ensure network security or integrity; and
- The quality, availability, security, efficiency, and synchronisation of the services provided.

1.6. Arrangements for the Establishment of Interconnection

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

1.7. Other Legal and Procedural Issues

- Provisions on procedures for review, termination, and amendment of interconnection agreements;
 - Limitation of liability and indemnity between licensees;
 - Penalty clauses; and
 - 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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