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INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA

NO. R. 4546 **22 March 2024**

DRAFT AMENDMENT TO THE CALL TERMINATION REGULATIONS, 2014

The Independent Communications Authority of South Africa ("**ICASA**" or "**the Authority**") hereby declares its intention to amend the Call Termination Regulations, 2014 as amended ("**the Regulations**") in terms of section 4(3)(j) of the Independent Communications Authority of South Africa Act, 2000 (Act No. 13 of 2000) read with sections 4(1) and 67(8) of the Electronic Communications, 2005 (Act No. 36 of 2005), to the extent reflected in the Schedule.

On 28 May 2021, the Authority published a notice (Government Gazette No. 44636) declaring its intention to review the pro-competitive conditions imposed on relevant licensees in terms of the Regulations.

The above review process was undertaken as follows:

- Phase 1 (Commencement of the Review and Request for Information);
- Phase 2 (Discussion Document[1]);
- Phase 3 (Public hearings on the Discussion Document[2]); and
- Phase 4 (Findings Document[3]).

[1] Government Gazette No. 45426 of 5 November 2021.
[2] 7 February 2022.
[3] Government Gazette No. 46107 of 28 March 2022.

The publication of the Findings Document marked the conclusion of the review of the pro-competitive conditions imposed on relevant licensees imposed on licensees in terms of the Regulations (also called the Market Review Phase).

The Authority published a notice to commence with the Cost Modelling Phase on 26 May 2023, which follows the conclusion of the Market Review Phase[4]. The Cost Modelling Phase consisted of three (3) steps namely:

- Step 1 (Request for Information & Meetings)
- Step 2 (Draft Regulations)
- Step 3 (Final Regulations)

The Authority is currently on its second step of the Cost Modelling Phase which is to publish the Draft Call Termination Amendment Regulations, 2014 ("Draft Regulations").

A copy of the Draft Regulations will be made available on the Authority's website at https://www.icasa.org.za or can be sent via email upon request by any individual or can be collected from ICASA Library at the following address: 350 Witch-Hazel Avenue, Eco Point Office Park, Eco Park, Centurion between 09h00 and 16h00, Monday to Friday.

The Authority hereby invites interested parties to make written representations on the Draft Regulations by no later than 16H00 on **10 May 2024** by post, hand delivery or electronically (in Microsoft Word) and marked specifically for the attention of **The Chairperson (Call Termination Review)**.
Delivery address: Block C, 350 Witch-Hazel Avenue, Eco Point Office Park, Centurion; or by email to CTR2021@icasa.org.za.

Telephonic enquiries should be directed to **Mr Ruvengano Mandebvu: Project Manager Call Termination Review Council Committee** at 012 568 3495 between 08h30 and 16h30, from Monday to Friday.

Written representations received by the Authority pursuant to this notice, will be made available for inspection by interested persons at the Authority's library.

[4] Government Gazette No. 48660 of 26 May 2023.

When a person submits information to the Authority, such person may request that specific information be treated as confidential information in terms of section 4D of the Independent Communications Act of South Africa Act, 2000 (Act No.13 of 2000) ("ICASA Act"). The request for confidentiality must be accompanied by a written statement explaining why the specific information should be treated as confidential, in accordance with ICASA Guidelines for Confidentiality Request published in Government Gazette No. 41839 of 17 August 2018.

The Authority may determine that such specific information or any portion thereof is to be treated as confidential in terms of section 4D of the ICASA Act. Where the request for confidentiality is refused, the person who made the request will be granted an opportunity to withdraw such representations or portion(s) thereof.

Persons submitting written representations are further invited to indicate, as part of their representations, whether they require an opportunity to make oral presentations.



YOLISA KEDAMA
ACTING CHAIRPERSON
DATE: **11/ 03/2024**

DRAFT AMENDMENT TO THE CALL TERMINATION REGULATIONS, 2014

The Independent Communications Authority of South Africa has, under sections 4 (1), and 67 (8) of the Electronic Communications, 2005 (Act No. 36 of 2005), made the regulations in the Schedule.

SCHEDULE

1. DEFINITIONS

In these regulations "the Regulations" means the Regulations published by Government Notice No. 844 (Government Gazette No. 38042) of 30 September 2014, as amended by Government Notice No. 729 (Government Gazette No. 41132) of 01 October 2017; Government Notice No. 811 (Government Gazette No. 41167) of 06 October 2017; and Government Notice No. 1016 (Government Gazette no. 41943) of 01 October 2018.

2. Amendment of regulation 1 of the Regulations

2.1 by the insertion after the definition of "Mobile Wholesale Voice Call Termination Service" of the following definition:

""**New Entrant**" means a licensee who has been in the market for a period of less than three (3) years."

3. Amendment of regulation 3 of the Regulations

Regulation 3 of the Regulations is hereby amended by the deletion of sub-regulation (c)."

4. 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 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)
(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 ("RIO"):

(i) Licensees identified in sub-regulation (4) must submit a RIO to the Authority for approval within forty-five (45) days of the 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:

(i) 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

Maximum call termination rate for Large Mobile Operators	**Termination rate to a mobile location**	**Termination rate to a fixed location**
1 July 2024 to 30 June 2025	R0.07	R0.04
1 July 2025	R0.04	R0.01

(ii) A licensee identified in sub-regulation (4) must charge reciprocal international termination rates for voice calls originating outside of South Africa. The International termination rates charged by a licensee must not be: (a) less than the domestic regulated termination rates; or (b) higher than the international termination rates offered by an international operator.

(iii) New entrants will qualify for asymmetry for a limited period of three years after entry into the market.

Table 2: Termination Rates for New Entrants

Maximum call termination rate for New Entrants	Termination rate to a mobile location	Termination rate to a fixed location
1 July 2024	R0.07	R0.04

5. Substitution of regulation 8 of the Regulations

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

"**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."

6. Substitution of regulation 9 of the Regulations

The following regulation is hereby substituted for regulation 9 of the Regulations:

"**9. CONTRAVENTIONS AND PENALTIES**

(1) A licensee that contravenes regulation 7 (2) is liable to a fine of Five Hundred Thousand Rand (R 500 000.00).

(2) A licensee that contravenes regulation 7 (5)(a) and(b) is liable to a fine not exceeding One Million Rand (R 1 000 000.00)."

7. Short Title and Commencement

These regulations are called the Call Termination Amendment Regulations, 2024 and will come into effect on 01 July 2024.

8. Substitution of Annexure A of the Regulations

The following Annexure is hereby substituted for Annexure A 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) of the Schedule "fair and reasonable prices" are rates that are equivalent to the cost-based rates imposed on the licensees identified in regulation 7 (4) of the Schedule.

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 licensee not listed in regulation 7 (4) of the Schedule 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 2023; 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 2023.

3. A licensee affected by Regulation 2 of this Schedule must charge a rate in the following terms:

Table A1: Rate for termination to a mobile location

	Termination rate
1 July 2024 – 30 June 2025	R0.09
1 July 2025	R0.04

Table A2: Rate for termination to a fixed location

	Termination rate
1 July 2024 – 30 June 2025	R0.04
1 July 2025	R0.01

9. Substitution of Annexure B of the Regulations

The following Annexure is hereby substituted for Annexure B of the Regulations:

"Annexure B:

1. Minimum content of a Reference Interconnection Offer ("RIO")

A licensee listed in regulation 7(4) of the Schedule 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 the purpose of 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.

1.2. Description of Interconnection Services to be provided

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

1.3. Schedule of Charges for Interconnection Services

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

1.4. Technical Characteristics

1.4.1. Comprehensive technical description of the interconnect interface(s), including the signalling protocol(s) used;

1.4.2. 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;

1.4.3. Description of the physical arrangements for interconnection;

1.4.4. Description of traffic routing arrangements;

1.4.5. Details regarding access to numbers by the parties;

1.4.6. Requirements to ensure network security or integrity; and

1.4.7. The quality availability, security, efficiency, and synchronization of the services provided.

1.5. Arrangements for the Establishment of Interconnection

1.5.1. Conditions governing service provision;

1.5.2. Traffic forecasting requirements and arrangements;

1.5.3. Arrangements for testing the operation of interfaces and the interoperability of services;

1.5.4. Fault management procedures (recording and clearing); and

1.5.5. Conditions governing bank guarantees, if any.

1.6. Other Legal and Procedural Issues

1.6.1. Provisions on procedures for review, termination, and amendment of interconnection agreements;

1.6.2. Limitation of liability and indemnity between licensees;

1.6.3. Penalty clauses; and

1.6.4. 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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