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22 January 2010

Mr Paris Mashile
Chairperson
ICASA
Block B, Pinmill Farm
164 Katherine Street
Sandton

Via Email : PMashile1@icasa.org.za

Attention : Ms Thenjiwe Dube
Via Email : tdube@icasa.org.za

Dear Sir and Madam,

RE: MTN'S RESPONSE TO ICASA'S NOTICE OF INTENTION TO AMEND THE E-RATE REGULATIONS AS PUBLISHED IN GAZETTE NO. 32789 DATED 7 DECEMBER 2009

MTN would like to thank the Authority for the opportunity to make comments on the above notice and herewith submit our comments for your consideration.

Furthermore, MTN records that it wishes to make oral presentations to the Authority should oral hearings be scheduled.

Thanking you in anticipation.

Yours faithfully,

GRAHAM DE VRIES
GENERAL MANAGER: REGULATORY AFFAIRS
MTN (PTY) LTD

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**MTN'S RESPONSE IN RELATION TO ICASA'S
NOTICE OF ITS INTENTION TO AMEND
REGULATIONS IN TERMS OF SECTION 73(3) & (4)
OF THE ELECTRONIC COMMUNICATIONS ACT,
2005 (ACT NO. 36 OF 2005) ("THE EC ACT") IN
RELATION TO E-RATE REGULATIONS AS
PUBLISHED IN GOVERNMENT GAZETTE NO. 32789
DATED 7 DECEMBER 2009**

22 January 2010

1. INTRODUCTION

MTN thanks the Authority for an opportunity to comment on General Notice 1610 (Government Gazette 32789, 7 December 2009) wherein comments were invited in relation to the Authority's intention to amend the E-Rate Regulations.

We have noticed that the amendments are aimed at introducing intermediaries in the delivery of E-Rate. Notwithstanding that MTN does not use any intermediaries in its delivery of E-Rate, we view this as an opportunity to comment on the new issues introduced in this draft amendment and also emphasise our concerns relating to issues that we had raised initially but were not taken into account by the Authority.

In this written submission we first address the Authority on matters of a general nature and then we make specific comments.

2. GENERAL COMMENTS

Since the promulgation of the E-Rate regulations in 2008 MTN has through different business segments rolled out connectivity to schools and in line with these regulations given the 50% discount and more.

2.1 Initiatives by the MTN Foundation

The MTN Foundation is currently working with six Provinces for school connectivity namely North West, Limpopo, Free State, Mpumalanga, KZN and Eastern Cape. The reason for their selection was based on their Socio-economic development status. These are the most underdeveloped provinces that mainly lack major basic resources.

This was then filtered down to the most needy regions in each of these Provinces and which resulted in the identification of six local municipalities: North West- Moretele, Limpopo- Makhuduthamaga, Free State- Mantsopa, Mpumalanga- Albert Lithuli, KZN- Hlabisa and EC- Nkonkobe.

2.2 MTN Foundation's school connectivity concept comprises:

2.2.1 In the computer laboratory

- 20 PCs
- multifunctional printer
- A data projector
- 1 Interactive white board
- Worktables to accommodate the 20 computers

- Heavy duty PC security brackets
- Internet access for 24 months subsidized at R1000 per school per month
- DSTV decoder and Dish

2.2.2 For school management and administration

- 1 Pc
- 1 printer
- Internet access subsidized at R200 a month for 24 months

2.2.3 The classroom to be used has to be thoroughly prepared, meaning:

- Painting
- Burglar door
- Burglar windows
- Alarm system
- Air conditioner
- Electrical power points

2.2.4 At the Circuit Office

- 1 PC
- 1 Printer
- Internet access subsidized at R200 a month for 24 months

2.2.5 At the District Office

- 1 PC
- 1 Printer
- Internet access subsidized at R200 a month for 24 months

2.3 OWNERSHIP AND SUSTAINABILITY PROCESSES

- 2.3.1 Schools to take full ownership of the donation. (The school governing body are part of the meetings and any agreements that are reached)
- 2.3.2 Some measure of security is provided but schools take full responsibility where possible (an understanding of the local environment and local dynamics is necessary).
- 2.3.3 MTN Foundation provide internet and subsidises the running costs at R1000 per school centre per month; the administration office at R200 per school per month ; the Circuit office at R200 per month and the District office at R200 per month.
- 2.3.4 At the commencement of each school connectivity project MTN Foundation request Provinces to get schools to build into their budget for internet services costs beyond the subsidy period (two years).

MTN as a responsible corporate citizen has surpassed any expectations on school internet connectivity and continues to do so on a yearly basis.

4. SPECIFIC COMMENTS

4.1 Definitions

4.1.1 E-Rate – Regulation 1(3)

Section 73(5) provides for the Minister in consultation with the Minister responsible for education to declare certain categories of independent schools or private institutions of further learning or training, for the 50% discount. We therefore propose that “...,as prescribed,...”in the definition of E-Rate be replaced with “...,as declared,...”.

4.1.2 Retail rate – Regulation1 (6)

The definition of “retail rate” is still of concern to MTN as it gives an impression that a licensee should have a separate retail rate applicable to schools for E-Rate. Section 73(1) enjoins the licensee to take off 50% “of the total charge levied”

We propose that the regulations leave it open for a school to choose a suitable tariff plan from a licensee’s commercial offerings which can then be discounted by 50%. The lowest commercial rate as a result of the structure of our tariff plans is applicable to our top end data bundles packages.

The data capacity on the top end packages may not be the desirable package for a school given the capacity.

MTN's data offerings are very competitive coupled and with the 50% E-Rate discount any school should be able to afford internet services.

4.1.3 Upstream Licensee – Regulation 1(7)

This is a new definition that is not found in the Electronic Communications Act either. Section 73(3) refers to “a electronic communications network service licensee”. The use of “upstream” to define an electronic communications network service licensee (as per 73(3)) may be problematic as it begs the question what criteria will be used to categorise a licensee as upstream.

Further, licensees can now self provide facilities therefore it should not be compulsory for another licensee to make available any facilities at a discounted rate.

4.1.4 Requirements – Regulation 3.1 (b)

We propose that 3.1(b) be reworded as follows: “**An Electronic Communications Network Service Licensee** shall grant a 50% (fifty percent) discount off its retail rate charged for **any connection; equipment or calls** provided by **another licensee** for the provision of internet services to:...””. This will align with the wording used in the enabling Section (73(3)).

END