



SUBMISSIONS BY ECN TELECOMMUNICATIONS (PTY) LTD

ON THE

DRAFT CALL TERMINATION REGULATIONS

**PUBLISHED UNDER NOTICE NO 314 IN GOVERNMENT GAZETTE NO
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1 INTRODUCTION

- 1.1 ECN Telecommunications (Pty) Ltd ("**ECN**") thanks the Independent Communications Authority of South Africa ("**the Authority**") for the opportunity to furnish comments on the Draft Call Termination Regulations ("**the Regulations**")¹.
- 1.2 The liberalization of the electronic communications industry in South Africa has allowed for new entrants such as ECN to begin to compete with incumbent operators. However, new entrants remain at a competitive disadvantage and ECN therefore welcomes the publication of these Regulations which seek to introduce pro-competitive measures for both fixed and mobile operators in South Africa.
- 1.3 ECN strongly supports the overall objective of the Regulations and the Authority's continued efforts to address the issue of high termination rates. ECN hopes that its comments set out below prove to be constructive.
- 1.4 ECN records that it would like to make oral representations, should the Authority hold public hearings.

2 THE GLIDE PATH

- 2.1 ECN supports a glide path that will ultimately result in symmetry between mobile termination rates (MTRs) and fixed termination rates (FTRs). Convergence between fixed and mobile services and networks (as well as technological neutrality) will, ultimately, be expressed in symmetry between MTRs and FTRs. ECN accepts that fixed and mobile services are, at present, fairly clearly delineated but cautions that the convergence between fixed and mobile services may outpace the Authority's proposed glide path as operators increasingly offer a mix of fixed and mobile services.
- 2.2 The glide path should therefore provide for a narrowing of the discrepancy between MTRs and FTRs so that ultimately the rates converge. As it stands, MTRs in July 2010 are set to be four times higher than FTRs in July 2010 and will remain four times higher than FTRs in 2012. Ecn submits that by 2012, MTRs should be approaching symmetry with FTRs.
- 2.3 ECN is not privy to the information provided to the Authority that informed the MTRs and FTRs specified in the glide path. ECN is somewhat concerned that elsewhere in Africa, benchmarking reports² on MTRs indicate that the cost of terminating a mobile call, in

¹ Published under Notice 314 in Government Gazette No 33121.

² Namibia, Uganda and Nigeria.

2010, is the equivalent R0.30 per minute. In the suggested glide path, MTRs will still exceed R0.30 per minute in 2012. This suggests that the financial and reporting information provided to ICASA by the mobile operators may have overstated the permissible costs associated with terminating a call. The glide path rates may also be skewed by the fact that the COA/CAM information upon which the rates are partially based is outdated and was submitted during a time when there was little competitive imperative to operate efficiently.

- 2.4 The glide path should therefore be subject to change during the three year period if regulatory financial reports (anticipated in regulation 10) indicate that the glide path termination rates are too generous.
- 2.5 It almost goes without saying that the regulations on Accounting Separation and Cost Accounting must be finalised without delay particularly given there has been no requirement to file COA/CAM reports since the finalisation of the conversion process in January 2009.
- 2.6 A final point in relation to the glide path is based on ECN's own experience following the reduction of MTRs from R1.25 to R0.89. After the rate was announced ECN anticipated that MTRs would be reduced to R0.89 across the board. However, ECN found that, in one instance, the mobile operator concerned was only prepared to lower the rate to R0.89 if ECN agreed to a number of other conditions including the lifting of the prohibition on transit. ECN therefore suggests that Regulations unambiguously state that the glide path is not conditional upon agreement on any other interconnection agreement related terms and conditions and that it be effected without the formal requirement of amending and filing of existing interconnection agreements.

3 FAIR AND REASONABLE PRICES

- 3.1 ECN supports the "fair and reasonable" obligation but requests further clarity on the practical application of the obligation.
- 3.2 It seems that the Authority's expectation may be that the non-established SMP licensees ("other SMP licensees") will, on the basis of reciprocity, charge the established SMP licensees the rates specified in the glide path. To ECN this would mean that, as a provider of fixed VOIP services, it would be under an indirect obligation to charge all other operators the glide path FTR. This is neither realistic nor fair and reasonable as new entrants often face significantly higher costs than established operators.
- 3.3 If it is indeed the Authority's expectation that the pricing obligations imposed on the

- established SMP licensees be imposed on the other SMP licensees, this would defeat the purpose of dividing the market into established SMP licensees and other SMP licensees.
- 3.4 ECN is of the view that it is fair and reasonable for other SMP licensees to charge established SMP licensees reciprocal rates i.e. rates that are reciprocal between parties to an interconnection agreement. Thus, if established SMP licensees providing mobile services charges other SMP licensees R0.65 to terminate a call, other SMP licensees should be reasonably entitled to charge the established SMP licensee the same rate.
- 3.5 Reciprocal rates between parties to interconnection agreements will allow for the standardisation of call charges from the established SMP operators to new entrants. This is particularly important for calls from Telkom's network. The current uncertainty around Telkom call charges to new entrants' networks hampers the take up of new entrants' number ranges and the successful roll out of geographic number portability (this is compounded by Telkom's retention rates imposed on calls from its network to the networks of new entrants).
- 3.6 ECN believes that the mobile operators are presently simplifying their calling bundles and are moving to packages that only differentiate between "on net" and "off net" call charges (true of all Vodacom packages, for example). ECN knows of no reason why new entrants should accept asymmetric interconnect rates in favour of the incumbent operators. If new entrants pay lower interconnect rates to the mobile operators, they are effectively subsidising the incumbent operators. This cannot be correct.
- 3.7 Asymmetrical rates between an established SMP licensee providing mobile services and a non-established SMP licensee providing fixed services can only result in the non-established SMP licensee subsidising the established SMP licensee.
- 3.8 In the United States of America, the FCC has implemented a system of reciprocal call termination rates between local calls³. In terms of the US approach, reciprocal compensation is achieved by voluntary negotiations between the parties to an interconnection agreement, and when an incumbent network operator (fixed or mobile) interconnects with a non dominant local carrier (irrespective of whether they are fixed or mobile networks) for the exchange of local traffic, the non-dominant local carrier is presumed to have costs equivalent to those of the incumbent network provider. The reciprocal interconnection rates will therefore, by default, be symmetric.
- 3.9 Other SMP licensees should not be restricted to cost orientated prices. As relatively new entrants, other SMP licensees should be given a pre-determined period of latitude to

³ Under the Communications Act of 1934 as amended, as codified at 47 U.S.C

recover their capital costs and to achieve levels of operation that will enable each of them to take advantage of economies of scale. ECN recognises that such latitude should not be given on an indefinite basis as this would encourage inefficiencies and over pricing.

4 RETAIL RATES

4.1 There is nothing in the Regulations that obliges the established SMP licensees offering mobile services to pass the lower termination rates received onto their subscribers.

4.2 In paragraph 1.9.2 of the Explanatory Note, ICASA acknowledges that there has been less than 100% pass through of reduction of peak hour mobile call termination rates from R1.25 to R0.89. The Regulations need to be bolstered by an obligation that the established SMP licensees pass the saving on lower termination rates on to their subscribers completely. Failure to include such an obligation will allow the established SMP licensees to benefit at the expense of the other SMP licensees and consumers.

5 TRANSIT

5.1 ECN notes that no mention is made of transit and arbitrage opportunities in the Explanatory Memorandum. ECN suggests that transit is an issue that needs to be considered by the Authority before finalising the Regulations.

5.2 For so long as MTR and FTRs are asymmetrical, opportunities for arbitrage will exist to the detriment of other SMP licensees. If mobile operators are permitted to transit, other SMP licensees offering fixed services will be effectively obliged to set their rates at the FTR price control rate which means the new entrants will not be entitled to take advantage of the "fair and reasonable" price provisions in the Regulations.

5.3 The "fair and reasonable" obligation only has meaning if mobile operators are forbidden to transit until such time as rates are symmetrical between mobile and fixed services.

6 CONCLUSION

6.1 ECN thanks the Authority for the opportunity to make written representations on these important Regulations. ECN is of the view that there is an urgent need to reduce both MTRs and FTRs.

6.2 Ultimately, the convergence of FTRs and MTRs should be the long term objective. In the interim, new entrants should at the very least be entitled to interconnect symmetrically with the established SMP licensees as a pro-competitive measure.

6.3 Should you have any queries, please contact Jeremy Macdonald on 082 314 4177 or jeremy@ecntelecoms.com.