

SUBMISSIONS BY NASHUA MOBILE (PROPRIETARY) LIMITED IN RESPECT OF THE CALL TERMINATION REGULATIONS PURSUANT TO SECTION 67(4) OF THE ELECTRONIC COMMUNICATIONS ACT NO. 36 OF 2005 (“the Act”) PUBLISHED IN GOVERNMENT GAZETTE 33121 DATED 16th April 2010 (hereinafter referred to as the “draft call termination regulations” or the “ draft Regulations”)

1. INTRODUCTION

1.1. Nashua Mobile (Proprietary) Limited (“Nashua Mobile”) is a service provider in respect of all three mobile network operators and, in addition, operates a broadband business in respect of which Nashua Mobile is the holder of an I-ECNS licence and an I-ECS licence.

1.2. Nashua Mobile welcomes the opportunity to comment on the Draft Regulations. We trust that our contribution will assist the Authority in moulding these draft regulations for the benefit of the Telecommunications Industry as well as consumers.

1.3. Nashua Mobile’s submissions contained herein relate to the implications of the draft call termination regulations from the perspective of a reseller of SMP licensee.

1.4. Nashua Mobile’s submissions are contained under three main heads, namely:

1.4.1. Overview;

1.4.2. General Comments;

1.4.3. Content Specific Comments; and

1.4.4. Conclusion.

2. OVERVIEW

- 2.1. Nashua Mobile has an annual turnover of 4.5 billion rand and directly employs 929 staff members. As a reseller of services of the three network operators (Cell C, Vodacom and MTN), Nashua Mobile relies on incentives received from the network operators. These incentives are determined by the network operators per type of cellular package (tariff plan) and are subject to change at the network operators' discretion.
- 2.2. While Nashua Mobile does not oppose the lowering of interconnect rates as proposed by the Authority in the Draft Regulations, Nashua Mobile is concerned with the short time period for the implementation thereof as well as the impact that such a rapid drop will have on the industry as a whole as well as Nashua Mobile specifically.

3. GENERAL COMMENTS

- 3.1. Nashua Mobile respectfully submits that ICASA has an obligation in terms of the Electronic Communications Act ("ECA") to attend to an impact study on all proposed regulations and specifically how such regulations will affect all parties involved, including, but not limited to, in this instance the network operators, service providers and customers.
- 3.2. Nashua Mobile respectfully requests that ICASA advise on its methodology used to determine the proposed wholesale termination rates and the impact that this will have on the entire industry.
- 3.3. Nashua Mobile cannot prepare properly for nor do an assessment of how specifically the draft regulations will affect it as it is reliant on what the Network operators will do in light of the draft regulations.
- 3.4. Nashua Mobile has in excess of 270 franchisees, consisting of retail franchisees, Least Cost Routing Franchisees and Mobile Solution Franchisees, who employ in excess of 2000 people. These Franchisees are solely reliant on incentives received from Nashua Mobile, who in turn is

reliant on incentives from the network operators as previously stated. Nashua Mobile cannot assess the impact of these draft regulations on itself nor in turn on its Franchisees without knowing what impact the regulations will have on the network operators and how in turn it will affect Nashua Mobile.

3.5. The interconnect rate dropped on 1 March 2010 and the draft regulations now propose a further drop from July 2010 and then annually thereafter. It is respectfully submitted that insufficient time has been provided to the mobile networks and to Nashua Mobile to properly assess and plan for the impact on its business and its Franchisees who are wholly reliant upon Nashua Mobile providing such franchisees with a workable business model accounting for the implementation and impact of the draft regulations.

3.6. In order to moderate any negative impact which the implementation of the draft regulations may have on Nashua Mobile's franchisees and to allow Nashua Mobile and its franchisees to recover losses in the event of a negative impact of such implementation (by perhaps pursuing different business avenues), it is submitted that sufficient notice be given in respect of any drop in interconnection rates to afford the affected industry players an opportunity to reorganise their business models as well as the business models of their franchisees to properly account for the impact of any such change. In particular, this will also be to the advantage of consumers who would benefit from any new packages and models that arise from such reorganisation.

4. CONTENT SPECIFIC COMMENTS

4.1. Ad Paragraph 3

- 4.1.1. In defining the relevant markets, it is respectfully submitted (for reasons set out below) that the Authority has not adequately analysed the downstream markets and participants in these markets.
- 4.1.2. It is submitted that had the Authority had an opportunity to assess the effect of the implementation of the draft regulations at such short notice on the downstream markets and the participants in such markets such as Nashua Mobile, its dealers and franchisees, the Authority would have afforded these participants sufficient time to reassess their respective business models in the interests of both their own businesses as well as the millions of consumers serviced by these participants in the formal and informal sectors.

4.2. Ad Paragraph 7

- 4.2.1. Nashua Mobile notes that the draft regulations have been promulgated pursuant to the Authority's jurisdiction to deal with competition matters.
- 4.2.2. In this regard, the attention of the Authority is drawn to the provisions of section 67(6)(b)(hh) of the ECA enjoining the Authority to consider "the dynamic characteristics of the market, including growth, innovation, and products and services diversification".
- 4.2.3. It is submitted that the report contained in the Explanatory Note accompanying the draft regulations does not adequately analyse the effect of the timing and implementation of the draft regulations on the downstream service provision and dealer channel markets.
- 4.2.4. While paragraph 2.3.4.2 of the Explanatory Note acknowledges the role of service providers in the retail market, the pricing model and timing of implementation contained in the draft regulations make no material reference to the knock-on effect of such pricing model and timing of implementation on this market and the service providers competing in the retail market.
- 4.2.5. Accordingly, it is submitted that the implementation of the draft regulations without a proper analysis of the impact on the service provision market would be premature.

4.3. Ad Paragraph 8

Nashua Mobile supports the submission and finalisation of Reference Interconnect Offers between the SMP licensees.

4.4. Ad Paragraph 9

4.4.1. For reasons set out above, it is respectfully submitted that the time periods stipulated in Table 1 contained in this paragraph may cause extreme hardship to mobile service providers and their dealers and franchisees as a July 2010 implementation would not afford companies such as Nashua Mobile, its franchisees and dealers an opportunity to reorganise their respective businesses to cater for the change in interconnect.

4.4.2. To the extent that the implementation of the proposed July 2010 termination rates takes place during July 2010, this would have the following knock-on effect on Nashua Mobile and its franchisees and dealers –

4.4.2.1. the reduction of call termination prices would in turn give rise to a reassessment by the mobile operators of the pricing and incentives that they are able to offer through their channels. Without adequate time given to the networks and their channels (such as Nashua Mobile and its franchisee and dealer network), any reduction of incentives or change in pricing could have an impact on the sustainability of numerous small businesses including franchisees and dealers of Nashua Mobile and other service providers;

4.4.2.2. there are a number of subscribers who have entered into agreements with Nashua Mobile based upon the terms of the existing termination and a precipitous change in termination rates without a proper opportunity to re-assess these agreements could be detrimental to both Nashua Mobile and to its customers under these agreements;

4.4.2.3. the mobile industry is one of the most active and competitive industries in South Africa and is responsible for the employment of many South Africans in the formal and informal sectors. In turn, these industry participants are wholly reliant upon incentives provided to them by the SMP licensees whose products they distribute and it is respectfully submitted that in the event that the draft regulations are implemented too swiftly, this would be at the expense of such industry participants and would be against the objects of the ECA contained in sections:

4.4.2.3.1. 2(d) – the encouragement of investment, including strategic infrastructure investment and innovation in the communications sector by [all] industry participants;

4.4.2.3.2. 2(y) – the refraining by the Authority from undue interference in the commercial activities of licensees while taking into account the electronic communication needs of the public;

4.4.2.3.3. 2(z) – the promotion of stability in the ICT sector.

4.4.3. Ad Paragraph 13

For reasons set out above, it is submitted that the proposed effective date is premature and that a further analysis of the impact of the draft regulations on the downstream retail industry should be undertaken by the Authority. Furthermore, the participants in the downstream market should be afforded adequate notice and adequate opportunity to respond to any changes in business rules and incentives published by the SMP licensees eventuating from the implementation of the draft regulations.

5. CONCLUSION

- 5.1. Nashua Mobile is committed to co-operating with all other licensees and resellers and requests that ICASA keep Nashua Mobile informed of all meetings and plenary sessions which ICASA may facilitate between interested parties in order to give effect to the Code of Conduct.
- 5.2. Nashua Mobile thanks ICASA for this opportunity to comment on the draft Code of Conduct and wishes to be informed of any developments which take place in this regard. Furthermore, Nashua Mobile would also like to be involved in any other opportunities to provide further comments and to the extent that public hearings may be held in respect of the draft Code of Conduct, Nashua Mobile wishes to present at such hearings.