

**Submission on the
Discussion Document on “Call termination regulations” pursuant to
Section 67 (4) of the Electronic Communications Act of 2005, issued for
comment by the Independent Communications Authority of South Africa
(ICASA)**

Submitted by the South African Communications Forum (SACF)

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The members of SACF welcome the opportunity to provide comments on the Discussion Document on “Call Termination Regulations” Pursuant to section 67 (4) of the Electronic Communications Act No. 36 of 2005.

The comments that follow take into account the rich mix of ICT industry members that constitutes the SACF, and strive to find a balance between the diverse interests of our members in this critical draft regulatory provision.

1.0 General comments on the focus and scope of the discussion document:

While SACF considers the regulatory developments necessary and urgent, the SACF is cognizant of the fact that our diverse membership, which represents both major established ICT operators and current and potential new entrants, will have diverse concerns and requirements that address their specific needs. It is for this reason that SACF prefers to avoid entering into detailed analysis and comment of the draft proposal, preferring instead to focus on the future development of the national ICT sector and the regulatory requirements that will promote a smooth transition towards an ICT sector that will address the numerous developmental challenges that face our nation. We will in principle support the specific submissions of each of our members even within the expected wide differences of opinion and positions in an effort to encourage open debate on this crucial matter.

2.0 The Background to SACF Concerns:

2.1 The Complexity of ICT Regulation in a changing and converging ICT environment:

In our continuous interaction with ICASA and the Department of Communications (DOC), we have noted, and shared, ICASA's and DOC's concerns over the complexity of finding both policy and regulatory balance between the traditional ICT technological and services environment and the emerging converged ICT sector. We also recognise the significant opportunities that such convergence presents to our nation for improved support of our integrated development processes through ICTs. Specifically, the following complexities have been identified but have yet to be resolved:

- a) Coexistence of highly regulated "Telecommunications" and "Broadcasting" services sectors with a lighter regulated "Mobile Telecommunications" sector, and an even less regulated but rapidly growing "Packet-switched Telecommunications" sector typified by the internet.
- b) The progressive migration of all services towards current and future "packet-switched" platforms, and the regulatory conflicts and uncertainties that arise as identical or similar services are provided on differently regulated technology platforms. In such a transitory phase, it is not uncommon to find large ICT operators providing services across all available technology platforms and regulatory divisions, adding complexity to the desire to promote and support new entrants.
- c) The complexity of ensuring stability in the sector through protection of traditional incumbents and their historical investments, minimising the disruptive potential of technological change, while at the same time promoting competition through new entrants that offer new or similar services at lower investment and operational costs that will ultimately benefit the nation. The SACF notes that this "balancing act" is

particularly pertinent to this discussion on prescribing interconnect call termination rates for predominantly traditional fixed and mobile voice services, while new converged services have the potential of offering such services in wholly unregulated multimedia packages that include voice as a small component of the whole.

2.2 The problem of definitions. The regulatory development process under discussion is based on traditional market definitions and their impact on the competitive environment, and yet both definitions and the environment are changing rapidly, or alternatively should change rapidly, if the nation's developmental challenges are to be overcome. Specifically, the following points on the definition dilemma are noted:

- The "Market Definition" used in the draft document is based on the "Publication of Findings pursuant to Section 4C of the ICASA Act of an Inquiry Conducted in terms of Section 4B". We note ICASA's conclusion that "no significant substantial evidence" has been found to justify a review of the market definition, and question this conclusion based on the evidence of South Africa's declining ICT competitiveness in both Africa and the world in general. The WSIS-derived ITU assessment of the global Information and Communication Development Indicator (IDI) shows that South Africa experienced one of the highest global rank declines in the world, a 15-point decline compared to, for example, Vietnam's 21-point improvement in that nation's global IDI rank and related sub-indicators. (ref: http://www.itu.int/ITU-D/ict/publications/idi/2010/Material/MIS_2010_Summary_E.pdf). Could a flawed definition of the market be a contributory factor in South Africa's declining ICT competitiveness?
- The impact of convergence on the Market Definition. We assume that a narrow market definition based on the traditional regulated "fixed" and "mobile" ICT sector may have been instrumental in arriving at ICASA's conclusion. In particular and in direct relationship to this discussion's focus on fixed and mobile traditional voice services call termination rates, and noting

the comparatively low internet user penetration rate of just over 10%, could it be that VoIP replacement of voice services, both fixed and mobile, or the potential of such replacement, has not been factored in the definition of the market? Was the impact of the prevailing albeit changing regulatory environment that led to an unregulated internet sector depending fully for its backhaul and therefore expansion on regulated ECNS and ECS licensees been factored into the market definition used in the “2007 Findings” market analysis? Would such factoring have made a difference to the definition? The low penetration level of the internet and its broadband transport platform in South Africa (approximately 10% and 2% respectively) must have an impact on technological choices available to both fixed and mobile voice services providers, and must therefore influence the market, and therefore its definition.

- The impact of economic inequality on the market definition. Given the deep socioeconomic inequalities that shape the South African market for all ICT services, and therefore both wholesale and retail pricing of ICT products and services, it is logical to assume that such inequalities would have been factored into the preferred market definition. Affordability therefore assumes an important position in the market definition and the development of the desired competitive environment that results from it. The evidence, based on affordability and price benchmark comparisons between South Africa and its global peers, suggests that such factoring may not have been deep enough. In South Africa’s peer group developing countries, there is a growing trend to include considerations of affordability in the regulation of wholesale and retail ICT prices, and therefore call termination considerations. For example, virtually all Latin American and Caribbean developing countries elected to consider affordability as part of their mobile interconnect development processes (ref: <http://dirsi.net/sites/default/files/DIRSI-ITIC-10-affordability-EN.pdf>). The concept of affordability seems not to be addressed directly, or given the requisite priority, in the discussion document.

- Impact of market definition on the competitive environment. In the Executive Summary of the discussion document, ICASA defines the market in terms of the “wholesale termination market – fixed and mobile”, and discusses the impact of this definition on further definitions of SMP. Are such definitions relevant in a converged environment? How does this definition apply to a large ISP for example that decides (or should decide in the interests of national development) to offer both fixed and mobile voice services as part of its converged services product portfolio as it rolls out Next Generation Access networks (NGA)? And, will the regulatory definitions of SMP in particular apply to an existing SMP defined in terms of traditional networks retain this definition as it strives to enter the new converged competitive environment? These are important questions that must ultimately influence the competitive market structure – retention of traditional vertical market structures or migration to horizontal market structures in line with trends in developed countries as they build next generation converged networks.

3.0 Asymmetric and Symmetric Price Regulation. The flexibility portrayed in the discussion document on this issue is welcome, although SACF believes that the focus on the current market structure needs to be expanded to ensure rapid migration to converged ICT market environments. Incumbent SMPs must be encouraged to migrate to converged network infrastructures while they protect their past investments and asset values, and new entrants must use converged principles for infrastructure development, while large ISPs also become new entrants, perhaps encouraged to do so through appropriate regulation. The target must be expand competition in the emerging converged environment. Setting firm targets for such price regulation may be necessary to maintain stability in the short term, but the process must be flexible so as not to impose entry or migratory barriers to any potential converged ICT operator or services provider. A further consideration that will be influenced greatly by the decision on how to manage asymmetric and symmetric price regulations is the South African call for local loop unbundling (LLU). In the early stages of this critical requirement that could effectively drive the expansion, uptake and use of broadband services, only

Telkom is likely to be impacted, but as converged services evolve, the concept could, and perhaps must, be expanded to embrace all access technologies. The major motivation for LLU must be affordable access to advanced ICT services for all South Africans in the interests of bridging the massive national economic divide.

4.0 The way forward. South Africa faces a complex conundrum as it strives to develop an ICT industry and sector that responds to the nation's complex socioeconomic development challenges. There is in principle no option but to migrate as fast as possible towards a converged ICT environment in order to leverage the full benefits of the technological and economic opportunities presented by the next generation of ICT networks. But, the policy and regulatory challenges are equally great – there are virtually no working models that satisfy both the technological requirements and the South Africa's unique socioeconomic environment. The complexity of building completely new technological infrastructures while expanding services to a very large economically, socially and technologically underdeveloped population, while balancing the national macroeconomic and commercial needs of the nation and the existing ICT industry, must not be underestimated. The complex process includes the subject of this discussion – ICT pricing is intricately linked to both the successful technological development of the sector, and to the vital socioeconomic development of the nation. There are no easy fixes, yet the challenges must be faced directly if the country is to progress and prosper.

In the context of these regulatory discussions, SACF has decided to limit its interventions to the development of the future converged network, and to support the diverse interests of its members by supporting their individual submissions in all possible ways. SACF supports ICASA's decision to limit the draft regulatory provisions to a three-year period, but recommends strongly that the process to develop a clear vision of the policy, regulatory, and technological needs begins as soon as possible. The process should preferably include the whole ICT industry, national policy makers and the regulator, user communities and interest

groups, and international partners from both the developed and developing countries. SACF is ready to provide such a platform, but it needs the support of all its partners in development.

5.0 Conclusions. As indicated throughout the preceding discussions, SACF does not offer any solutions or opinions specific to the immediate document under discussion. This is left to individual members of SACF to interact with ICASA in refining what SACF as a whole recognises as interim provisions for a much more complex but vital process. SACF believes that the desired converged ICT sector will need wholesale revisions of the regulatory process, and that the transitional arrangements will be extremely difficult and demanding. Given this high level of uncertainty, SACF believes that strong public private partnerships should be established as soon as possible, so that the process of setting the environment for South Africa's early and effective entry into the information society for all its citizens can begin. SACF trusts that ICASA will share this view with us, and consider how such partnerships can be formed.

The SACF is grateful for the opportunity to submit written comments on the draft regulations and would appreciate an opportunity to make an oral representation as well.