



**SOUTH AFRICAN TELECOMMUNICATIONS SERVICE  
PROVIDERS ASSOCIATION (SATSPA)  
RESPONSE TO INDEPENDENT COMMUNICATIONS  
AUTHORITY OF SOUTH AFRICA (ICASA)  
INVITATION TO SUBMIT WRITTEN  
REPRESENTATIONS ON  
DRAFT “CALL TERMINATION REGULATIONS”  
PERSUANT TO SECTION 67(4) OF THE  
ELECTRONIC COMMUNICATIONS ACT NO. 36 OF 2005**

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# 1 Introduction

The South African Telecommunications Service Providers Association (SATSPA) welcomes the opportunity to respond to the draft “Call Termination Regulations” issued by ICASA pursuant to Section 67(4) of the Electronic Communications Act No. 36 of 2005. SATSPA would also like to request an opportunity to present these responses to a Panel of Commissioners on the 28<sup>th</sup> of June 2010 at the industry hearing on this matter.

SATSPA believes that an important evolution is taking place in telecommunications markets - in particular, with regard to the development of alternative telephony networks. It is essential that the regulatory framework keeps pace with these shifts and does not hinder potential growth by imposing unnecessary burdens on new services, by inhibiting investment through poorly targeted regulation, or by failing to address the problems of market power.

ICASA's initiative in discussing the proposed regulations will assist in establishing an effective regulatory environment and allow participants in the industry to shape regulation positively.

SATSPA has approached its response to the draft regulations with two aims in mind:

- (a) to offer its views on specific definitions of the relevant markets as defined by ICASA in the draft regulations and provide a commentary on the perceived effectiveness of the methodologies defined therein to increase competition in the market.
- (b) to outline what SATSPA perceives to be the most important features of the regulatory framework that should apply in order to foster the development of a competitive and levelled playing field, particularly for new entrant networks and services.

SATSPA has not attempted to address every issue arising in the draft Regulations and the explanatory notes accompanying the draft regulations. Instead, it has concentrated on those issues that are relevant to its membership - as operators primarily of VoIP-based networks.

This response is structured as follows:

- (a) A brief introduction to SATSPA,
- (b) An opinion of key market and technological developments that have shaped our definition of the relevant markets, SMP determination, effectiveness of competition and issues surrounding price control as relates to new entrants in particular,

(c) A final summary position regarding the draft regulations.

## 2 Overview of SATSPA

The South African Telecommunications Service Providers Association is a newly formed industry body which has set out to complement the efforts of existing industry bodies (such as ISPA) in lobbying and advocating for issues that affect the well-being of new entrants in the industry, specifically around the telephony space. SATSPA intends to become recognised as an Industry Representative Body as defined by Section 71 of the Electronic Communications Act. The clear mandate of SATSPA as agreed by its founding members is to:

- Lobby industry stake-holders (including regulatory agencies, competition agencies and government) in order to promote competition and self-regulation,
- Present regulatory bodies with one voice regarding issues that affect the industry's telephony environment especially as relates to competition issues affecting new entrants,
- Promote quality assurance of the emerging VoIP industry by a peer review mechanism and
- Enhance consumer understanding by educating the market on emergent VoIP services to the benefit of all member.

The members that are eligible to participate in SATSPA currently are as follows:

- South-African based companies who have an interest in shaping the competitive environment for increased transparency and levelled conditions for participation,
- Licensed entities who hold either an ECS or ECNS license from ICASA, and
- Other complementary businesses (i.e. either hardware or software vendors) that are involved in the provision of IP-based voice services to businesses, residential or the reseller chain.

## 3 Issues Arising from Draft Call Termination Regulations

### 3.1 Market Definition

- The draft regulations state that *“ICASA has identified separate wholesale call termination markets for each fixed and mobile operator that has control over the price of call termination on its network”*
- SATSPA would urge the Authority to review the above wholesale market definitions which form the basis of the determination of market power.
- The defined wholesale markets, being either fixed line market or mobile markets, may not accurately describe or encompass most new entrant networks, particularly those based on VoIP. It is our belief that VoIP networks need to be further categorised.
- Due to the very nature of the IP-based network that VoIP is built upon, VoIP services may be nomadic and are not necessarily restricted to any particular fixed or geographic area. This is something the VoIP network provider may have very little control over as the subscriber may elect to move his / her access device from location to location, IP network to IP network without informing or consent of the Service Provider while still maintaining his / her service. Simultaneously, Mobile VoIP services may also be provided via the auspices of a 3G mobile network. Therefore to identify VoIP network with either a fixed line network or mobile network seems flawed, as the manner of service delivery is fundamentally different from the traditional approach.
- It could be further argued that VoIP networks do not have complete control of the price of call termination into their network as defined in the ICASA definition above, particularly as relates to unregulated transmission and switching elements that are currently controlled by competitors.
- Historically, PSTN and PLMN networks couple the physical delivery platform with the logical network layer in order to deliver voice services. In this way, it makes absolute sense to define traditional fixed and mobile networks as having control over the price of call termination on their networks.
- However due to the setup described above, VoIP networks may not have complete control of the price of call termination into their networks particularly where economic regulation is

still required in areas where there are persistent market power problems stemming from control over last mile transmission facilities in order to reach customer physically situated on another network.

- In addition, it may be necessary to further define wholesale markets dealing with Transit as some VoIP networks will be indirectly accessible via other transit networks of their choice. There are currently many potential market failures that can result from continuing to leave the issue of transit unregulated as certain natural monopolies can develop.

### **3.2 Significant Market Power**

- SMP determination of new entrant networks may be pre-mature as this subjects new entrant networks to potential over-regulation, which might work to stifle competition (over-regulation) before the market is fully developed. This might, in turn, may serve to prematurely terminate emerging services and business models.
- SATSPA would urge the authority to re-define the market for VoIP services and having done so, evaluate SMP in relation to the market share of individual networks in the VoIP market as a whole.
- Currently it is our belief that the VoIP market is still too small to be significant in shaping competitive conditions.
- Additionally, since the VoIP network is often de-coupled from the underlying access network, the logical service is subject to high substitution as defined in the SSNIP test since the high barriers to exit of the network by customers are more closely related and correlated to infrastructure than to the VoIP number and the voice service which is largely undifferentiated from other VoIP numbers and services or non-VoIP numbers and services.
- Most VoIP providers can not currently claim to have a position (even within their own networks) that enables them to enjoy a position equivalent to dominance i.e. a position of economic strength affording it the power to behave independently of competitors, customers and consumers.

### **3.3 Effectiveness of Competition**

- SATSPA is in agreement with ICASA that competition in both fixed line and mobile termination markets is currently very ineffective and inefficient.
- These markets will probably not self-regulate and therefore there is indeed a need for

regulatory intervention until such a time as the market begins to regulate itself.

- SATSPA believes that the key areas in which the Regulator must actively intervene are as follows:
  - Ensure that there is not an inefficient transfer of economic resources from fixed / VoIP markets to mobile markets as can so easily happen if pricing control on wholesale markets is exerted without due attention to both sides of the market (origination and termination) which are highly inter-related.
  - Pro-competitive regulations will remain ineffective unless simultaneously accompanied by the Regulator dealing with related issues, including but not limited to, infrastructure sharing, local loop unbundling, regulation of rates and cross subsidisation
  - Address the issue of the current lack of “pass-through” of wholesale termination rate reductions to the retail market which determines whether new entrant networks can achieve critical mass in the termination market which results in better economies of scale.
  - Actively participate in ensuring that Established SMPs do not employ mechanisms designed to threaten smaller licensees, including, raising the off-net retail call prices of the smaller network, or degrading service quality in order to discourage its subscribers from calling the terminating network.
  - SATSPA agrees that these pro-competitive measures must be proportional, justifiable, flexible and forward-thinking.

### **3.4 Price Control**

- ICASA has stated the expectation that fair and reasonable pricing is that “non-established licensees charge a reciprocal rate with the rate set for Telkom if these licensees offer a fixed service, and non-established licensees to charge a reciprocal rate with the rate set for Cell C, MTN and Vodacom if these licensees offer a mobile service.”
- It is SATSPA's belief that the definition of fair and reasonable wholesale termination pricing as defined above is restrictive, over regulation which might result in many new entrants failing to remain viable and competitive.
- Additionally SATSPA believes that commercially negotiated rates between non-established operators with established operators could never be discriminatory in any way as non-established operators do not currently have the power to force / coerce an established

operator in one way or another.

## **4 Conclusion**

- SATSPA urges the Authority to proceed with caution in setting the regulations around new entrants and burdening them with compliance issues and pricing controls, as it is our belief that this stance will service to weaken competition rather than to strengthen it. The evolving industry is still in its infancy and over-regulation of new entrants too early may cause an adverse outcome rather than promoting competition.