

Independent Communications Authority of South Africa

Attention: Pieter Grootes

Per e-mail: pgrootes@icasa.org.za
pcokie@icasa.org.za

18 June 2010

Dear Sir

**SUBMISSION IN RESPECT OF THE DRAFT CALL TERMINATION REGULATIONS
(GG33121, NOTICE 314 OF 2010)**

Switch Telecom thanks ICASA for the opportunity to make a submission in respect of the draft call termination regulations. We applaud the move to make communications more affordable for the consumer and accordingly will focus on the implementation issues rather than the actual rates.

INTRODUCTION

Switch Telecom is the holder of i-ECS and i-ECNS licences and a provider of next generation telephone and telecommunications services. We currently provide over 1,800 phone lines to several hundred clients ranging from individuals to small businesses, corporates and call centres as well as hosted switchboard and other value-added services. We see universal service as an opportunity rather than an obligation; consequently, in excess of 15% of our clients are in under-serviced areas where Telkom is unable or unwilling to provide service and GSM cellular coverage is limited. As at the date of this submission, Switch Telecom is one of only four licensees (Telkom, Neotel and ECN being the others) that has successfully ported geographic telephone numbers in terms of the GNP regulations.

CONVERGENCE

The Electronic Communications Act provides for a technologically neutral licensing regime. It is therefore concerning that the Call Termination Regulations seek to define call termination only in terms of fixed and mobile.

In particular, ICASA seems to have overlooked the fact that services such as toll-free and value-added services (e.g. premium rate, information services, conferencing services, etc.) form two categories that are neither fixed nor mobile but are nonetheless in widespread use. As long as ICASA fails to provide for such services in the call termination regulations, it will be impossible to facilitate a cross-network toll-free regime (as envisaged by the draft Numbering Plan regulations) and only licensees providing mobile services will be in a position to offer Value Added Services (due to their ability to terminate calls at a higher rate).

Switch Telecom appreciates that ICASA has concluded a study that has identified separate fixed and mobile markets, however, contends that while the markets may - at present - remain separate, the networks are essentially converged. This is clearly evident by examples such as Telkom launching mobile services (and fixed-line replacement services using mobile technology) and Vodacom launching fixed services (under the "Vodacom Business" brand). This would indicate that in the future, convergence of services will become more commonplace.

Switch Telecom believes that it is quite viable for a mobile operator to terminate calls at the fixed termination rate if it charges a high line rental or for a fixed line operator to provide lines with no monthly line rental service fee if it charges mobile termination rates. In essence, there exists two pricing models: one with higher call tariffs and zero (or low) rental and another with lower call tariffs and a high monthly line rental. The draft numbering plan regulations correctly identify this and introduce the concepts of "lower-band communication" and "higher-band communication."

Switch Telecom has no objection to ICASA utilising the "fixed call termination" and "mobile call termination" definitions as derived from the market study in respect of the Established SMP operators that have already elected to structure their pricing models in a specific manner and are unlikely to significantly deviate from such within the next three years. However, Switch Telecom does not agree with ICASA defining "fair and reasonable" as it has done in section 1.2 of annexure 1, thereby forcing non-established SMPs to de-converge their services and adopt pricing models of the established SMP operators. This will only serve to reduce competition and remove choice from the consumer.

Furthermore, it seems entirely impractical to expect that non-established SMP operators will have any form of negotiating power against established SMPs. Given the manner in which ICASA has worded section 1.2 of annexure 1, the established SMP operators will simply force the non-established SMP operators to adopt the fixed line termination rate, irrespective of actual applicability or fairness.

Rather, non-established operators should have the choice to offer "lower-band communication" and/or "higher-band communication" as envisaged in the draft numbering plan regulations and based on the type of services that they actually offer. In such instances, the "lower-band communication" should be terminated at the "fixed line termination" rate and the "higher-band communication" should be terminated at the mobile line termination rate. Note that terminate rates should apply per service, not per licensee.

All licensees - establish and non-established - should charge the termination rates in accordance with the service provided and, for purposes of clarity and to avoid endless disputes and abusive tactics by the established operators against non-established operators, the use of either the fixed or mobile termination rate should apply based on the numbering resources in use. E.g. Where termination is towards a geographic or "lower-band" number, the fixed termination rate must apply and where termination is towards a mobile or "higher-band number, the mobile termination tariff must apply.

It seems, given the wording of the draft Numbering Plan regulations, that it is ICASA's intention to move in such a direction, however, the Call Termination regulations are too ambiguous to achieve this.

DEFINITIONS AND THE NUMBERING PLAN

Perhaps the biggest problem with the draft Call Termination Regulations is that the definitions are not linked directly to the Number Plan regulations (either GG28839 or the new draft GG33269).

The reality of the manner in which call termination is charged for is that a rate applies in respect of a number range. For example the rate payable by Switch Telecom to Telkom, taking into consideration the points of interconnection, are essentially as follows:

To 010, 011 numbers:	R0.23+VAT per minute (peak)
To other 01, 02, 03, 04, 05 numbers:	R0.33+VAT per minute (peak)
To 080 numbers:	no charge
To 0860, 0861 numbers:	R0.26+VAT per minute (peak)
To 082, 083, 084 numbers (transit):	R0.95+VAT per minute (peak)

If disputes are to be avoided, the only logical and practical approach that ICASA can take is to ensure a clear and defined link between the Call Termination and Numbering Plan regulations.

Switch Telecom urges ICASA to amend the definitions of fixed and mobile call termination as follows:

"Fixed call termination" means a wholesale call termination service provided by an electronic communications network services or electronic communications services licensee to a service identified by a number defined as geographic or lower-band in the numbering plan regulations ~~and includes licensees providing call termination using VoIP to a fixed location and fixed wireless services;~~

"Mobile call termination" means a wholesale call termination service provided by an electronic communications network services or electronic communications services licensee to ~~mobile subscriber equipment enabled by wireless technology~~ a service identified by a number defined as mobile or higher-band in the numbering plan regulations;

There are many other good reasons for linking the termination rates to numbering. For a start, if termination rates are not fixed per numbering range, the implementation of number portability creates an arbitrage opportunity that can cost operators dearly. For example, right now it is possible to terminate to a Telkom number range via an international carrier at Telkom's rate of the US\$ equivalent of approximately R0.23. However, if that number is ported to another operator whose termination rate is R0.33, that operator can set up thousands of automated calls via the foreign carrier, pay R0.23 per minute in termination fees, but receive R0.33 per minute back from Telkom. In essence, a licensee can lose millions of Rands in a matter of weeks and, according to the number portability regulations, all number block operators (not just Telkom) are obliged to onward route such calls, even if they lose money in the process. It is therefore essential that call termination tariffs are applied harmoniously in respect of groups of number ranges.

Another good example is the current problem in the market whereby certain large international carriers have been blocking calls to certain number blocks within ranges where the termination rates vary from what they expect. For example, Tata Communications blocked all international calls towards South African geographic numbers not belonging to Telkom or Neotel as they deemed it impractical to manage thirty different rate groups for the other operators with geographic numbers. The result has been a chilling breakdown of international calls from many major networks (BT, AT&T, Verizon Wireless to name but a few) towards the geographic telephone number ranges over 30 different South African licensees. Worst of all, this has happened during the World Cup. This sort of market failure would simply not occur if the Call Termination regulations linked "Fixed line termination" to geographic numbers.

Finally, and most importantly, there is the consumer protection aspect. Consumers need to have an idea of what they are going to pay for telephone calls before making calls. The only way that this can reasonably be implemented is if the definitions of "Fixed line termination" and "Mobile line termination" are linked to number ranges within the Numbering Plan regulations. If any operator (established or non-established) is able to negotiate its termination rates without due regard to the numbering resources it is using, this will continue to result in confusing retail tariffs and the consumer will pay the price.

The issues remains as to whether 087 numbers should then be deemed mobile or fixed. Given (a) the variance in existing termination rates in the market for VoIP call termination; and (b) the fact that VoIP operators providing fixed-line replacement services are generally doing so using Geographic numbers; it makes sense to treat 087 numbers as "higher-band" or "mobile." This is further supported by the fact that they are non-geographic in nature and by the fact that most consumers still identify them as being priced similarly to mobile calls. This will also ensure that the non-established operators are not forced to take a huge loss in revenue in respect of ALL of their services (only those terminating on geographic numbers) or to change their business models overnight.

CONCLUSION

Switch Telecom welcomes this urgently needed regulation and hopes that ICASA will strengthen the draft regulations by aligning them to the Numbering Plan regulations. We also hope that ICASA will ensure that provision is made for the zero-rating of call termination towards toll-free service numbers as well as for premium-rate termination towards VAS service numbers.

We thank ICASA again for the opportunity to make a submission.

Yours faithfully

Gregory Massel
Managing Director: Switch Telecom