GENERAL NOTICE

NOTICE of 2013

INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA

**“DRAFT CALL TERMINATION REGULATIONS”
PURSUANT TO SECTION 67(4) OF THE ELECTRONIC
COMMUNICATIONS ACT NO. 36 OF 2005**

I, Stephen Mncube, Chairperson of the Independent Communications Authority of South Africa hereby publish the draft Regulations set out in the Schedule in terms of section 4 read with section 67(8) of the Electronic Communications Act No. 36 of 2005.

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Dr Stephen Mncube
Chairperson

SCHEDULE

"DRAFT CALL TERMINATION REGULATIONS" PURSUANT TO SECTION 67(4) OF THE ELECTRONIC COMMUNICATIONS ACT NO. 36 OF 2005

1. DEFINITIONS

In these Regulations, unless the context indicates otherwise, a word or expression to which a meaning has been assigned in the Act or the ICASA Act, 2000 (Act No. 13 of 2000), as amended, has the meaning so assigned, and the following words and expressions shall have the meaning set out below:

"0N" means a geographic area code as specified in the Numbering Plan Regulations published by the Authority;

"the Act" means the Electronic Communications Act, 2005 (Act No. 36 of 2005);

"ECNS" means an electronic communications network service as defined in the Act;

"ECS" means an electronic communications service as defined in the Act;

"Fixed voice call termination service" means a wholesale voice call termination service provided by an ECNS or ECS licensee to a fixed location, and includes such a service provided by a licensee providing call termination using fixed wireless services;

"LRIC" means the Long Run Incremental Cost Standard

"Mobile voice call termination service" means a wholesale call termination service provided by an ECNS or ECS licensee to mobile subscriber equipment enabled by wireless technology;

"Retail service" means a service offered by an ECS licensee to end-users;

"SMP" means significant market power as defined in section 67(5) of the Act;

"Wholesale service" means a service that an ECS or ECNS licensee offers other ECS or ECNS licensees.

2. PURPOSE OF REGULATIONS

The purpose of these Regulations is to: -

(a) Define and identify the wholesale call termination markets that exist within the Republic of South Africa based on trends post 2010;

(b) Set out the methodology used in the review of the effectiveness of competition in such markets post 2010;

(c) Declare licensees that have SMP in terms of paragraphs (a) and (b) above;

(d) Set out the pro-competitive measures to be imposed to remedy market failure in the relevant markets found to have ineffective competition;

(e) Set out the schedule for periodic review of the relevant markets and the effectiveness of competition in such markets; and

(f) Provide for the enforcement of these Regulations.

3. MARKET DEFINITION

The markets are categorised according to the type of service provided to the end-user and are defined as follows:

(a) Market 1: The market for wholesale voice call termination services to a mobile location on the network of each ECS/ECNS licensee who offers such a service within the Republic.

(b) Market 2: The market for wholesale voice call termination services to a fixed location on the network of each ECS/ECNS licensee who offers such a service within the Republic, consisting of:

i. The market segment for wholesale voice call termination to a fixed location within an 0N area code; **and**
ii. The market segment for wholesale voice call termination to a fixed location between 0N area codes.

4. METHODOLOGY

In determining the effectiveness of competition in the wholesale voice call termination markets, the Authority has applied the following methodology:

(a) the identification of relevant markets and their definition according to the principles of the Hypothetical Monopolist Test, taking into account the non-transitory (structural, legal, or regulatory) entry barriers to the relevant markets and the dynamic character and functioning of the relevant markets;

(b) the assessment of licensees' market shares in the relevant markets; and

(c) the assessment on a forward-looking basis of the level of competition and market power in the relevant markets.

5. EFFECTIVENESS OF COMPETITION

Pursuant to regulation 4, the Authority has determined that competition in the wholesale voice call termination markets, as defined in regulation 3, is ineffective owing to inefficient pricing.

6. SMP DETERMINATION

The Authority determines that each ECNS and ECS licensee that offers wholesale voice call termination services has SMP in its own market.

7. PRO-COMPETITIVE TERMS AND CONDITIONS

(1) The Authority has identified the following market failures in the respective wholesale voice call termination markets:

(a) inefficient pricing

(2) All licensees must comply with the following pro-competitive terms and conditions to overcome the market failures identified in sub regulation (1):

(a) Charge fair and reasonable prices for wholesale voice call termination consistent with Appendix A

(3) The Authority has determined that additional pro-competitive terms and conditions are necessary to correct the market failures identified in regulation 7(1), which are to be imposed on the following licensees:

(a) Licensees that have historically benefitted from reciprocal treatment by the Authority in the allocation of spectrum;

(b) Licensees that benefit from economies of scale and scope in maintaining a share of total minutes terminated in the respective markets of greater than 20 per cent as of December 2012.

(4) The Authority determines that the following licensees have the characteristics listed in sub regulation (3):

(a) Market 1:

i. MTN Pty Ltd (MTN)
ii. Vodacom Pty Ltd (Vodacom)

(b) Market 2:

i. Telkom SA SOC Limited (Telkom)

(5) Additional pro-competitive terms and conditions

(a) Price Control: Cost oriented pricing

i. This obligation is imposed on those licensees listed in sub regulation (4).
ii. For the period 01 March 2014 to 01 March 2016, the licensees identified in sub regulation(4)(a) must charge the wholesale voice call termination rates to a mobile location as specified in Table 1:

Table 1: Wholesale voice call termination rates to a mobile location (Market 1)

Period	Rate
1 March 2014	R 0.20
1 March 2015	R 0.15
1 March 2016	R 0.10

iii. For the period 01 March 2014 to 01 March 2016, the licensees identified in subregulation(4)(b) must charge the wholesale voice call termination rates to a fixed location as specified in Table 2:

Table 2: Wholesale voice call termination rates to a fixed location (Market 2)

Period	Within ON area code	Between ON area code
1 March 2014 to 1 March 2016	R 0.12	R 0.19

(b) Bottom-up LRIC Cost Model

i. This obligation is imposed on those licensees listed in subregulation (4).
ii. Such licensees are obliged to provide any information the Authority deems necessary to develop such a Cost Model
iii. Information requests are to be complied with within 30 days of receiving the request.
iv. The Authority will amend existing rates if shown to be necessary, based on the outcomes of this model.

8. SCHEDULE FOR REVIEW OR REVISION OF MARKETS

The Authority will review the wholesale voice call termination markets to which these regulations apply, as well as the effectiveness of competition and the application of pro-competitive measures in those markets, as and when necessary, based on observable trends in the defined markets.

9. CONTRAVENTIONS AND PENALTIES

(1) A licensee that contravenes regulation 7(2) is liable to a fine of Five Hundred Thousand Rand (R 500 000.00).

(2) A licensee that contravenes regulation 7(5)(a), (b) is liable to a fine not exceeding One Million Rand (R 1 000 000.00).

10. SHORT TITLE AND COMMENCEMENT

These Regulations are called the _________ and will become effective upon date of publication.

Appendix A: APPLICATION OF THE FAIR AND REASONABLE OBLIGATION

1. PRINCIPLES OF IMPLEMENTATION OF FAIR AND REASONABLE OBLIGATION

1.1. For the purposes of regulation 7(2)(a), “fair and reasonable” prices are rates that are equivalent to the cost-oriented rates imposed on the licensees identified in Regulation 7(4).

1.2. Licensees must charge the following rates:

1.2.1. Reciprocal rates with the rate set for MTN and Vodacom if these licensees are in Market 1;

1.2.2. Reciprocal rates with the rate set for Telkom if these licensees are in Market 2.

2. Licensees not listed in Regulation 7(4)(a) may charge higher termination rates based on the following factors:

2.1. Spectrum allocation. A licensee must justify why it is adversely affected by current spectrum allocation.

2.2. Economies of scale and scope based on the share of total minutes terminated in the relevant market. A licensee qualifies, for a period of 5 years from the 1st March 2014, for an asymmetric rate if it has less than 20 per cent of total terminated minutes in the relevant market as of December 2012.

2.3. Thereafter, a licensee qualifies for an ongoing asymmetric rate of 40% if it has a market share of less than or equal to 10 per cent of total terminated minutes in the relevant market.

2.4. Licensees with a market share of greater than 10% after five years have passed are obliged to charge symmetrical rates.

2.5. A licensee may only qualify for an asymmetric rate if both factors are applicable.

2.6. A licensee who qualifies for an asymmetric rate in Market 1 may charge a maximum rate) according to the following table:

Table A1: Maximum Asymmetry Rate

	Maximum rate that may be charged
Current	R 0.44
01-Mar-14	R 0.39
01-Mar-15	R 0.33
01-Mar-16	R 0.26
01-Mar-17	R 0.20
01-Mar-18	R 0.14
01-Mar-19	R 0.10

3. Licensees not listed in Regulation 7(4)(b) may charge higher termination rates based on the following factor:

3.1. Economies of scale and scope based on the share of total minutes terminated in the relevant market. A licensee qualifies, for a period of 5 years from the 1st March 2014, for an asymmetric rate of 10% above the rates specified in Table 2 of these Regulations if it has less than 20 per cent of total terminated minutes in the relevant market as of December 2012.

3.2. Thereafter, a licensee qualifies for an ongoing asymmetric rate of 10% if it has a market share of less than or equal to 10 per cent of total terminated minutes in the relevant market.

3.3. Licensees with a market share of greater than 10% after five years have passed are obliged to charge symmetrical rates.