

CASE NUMBER: 45443 / 2014

In the matter between

CELL C PROPRIETARY LIMITED

Applicant

and

**THE CHAIRPERSON OF THE INDEPENDENT
COMMUNICATIONS AUTHORITY OF SOUTH AFRICA**

First Respondent

**THE INDEPENDENT COMMUNICATIONS
AUTHORITY OF SOUTH AFRICA**

Second Respondent

**THE MINISTER OF TELECOMMUNICATIONS
AND POSTAL SERVICES**

Third Respondent

THE MINISTER OF COMMUNICATIONS

Fourth Respondent

**MOBILE TELEPHONE NETWORKS
PROPRIETARY LIMITED**

Fifth Respondent

VODACOM PROPRIETARY LIMITED

Sixth Respondent

TELKOM SA SOC LIMITED

Seventh Respondent

THE INTERESTED PARTIES

Eighth to Forty-Sixth Respondents

NOTICE OF MOTION

TAKE NOTICE that, on a date and at a time to be agreed between the parties or determined by the Registrar, the applicant ("Cell C") will make application to this Court, in terms of Rule 53, for an order:

- 1 reviewing and correcting or setting aside:
 - 1.1 the "*Call Termination Regulations, 2014*" in the *Government Gazette* of 30 September 2014 ("**the September 2014 Regulations**"); *alternatively*
 - 1.2 the mobile termination rates ("MTRs") and/or asymmetric MTRs ("AMTRs") determined by ICASA in terms thereof;
- 2 directing that, pending the determination of lawful MTRs and AMTRs by the promulgation of valid regulations in substitution of the September 2014 Regulations, the "*Second Call Termination Amendment Regulations*" published in the *Government Gazette* of 26 March 2014 *alternatively* the MTRs and/or AMTRs determined by ICASA in terms thereof shall be of force and effect;
- 3 ordering ICASA and such other respondents as may oppose this application to bear and pay the costs hereof, including the costs of two counsel, jointly and severally, the one paying the other to be absolved; and
- 4 granting Cell C such further and/or alternative relief as the Court may deem appropriate.

TAKE NOTICE that the founding affidavit of Graham Neil Mackinnon (together with its annexes) will be used in support of this application.

TAKE NOTICE FURTHER that Cell C appoints Norton Rose Fulbright SA (incorporated as Deneys Reitz Inc) as its attorneys of record and nominates the address set out below as the address at which it will accept notice and service of all documents in this application.

TAKE NOTICE FURTHER that the first respondent (“**the Chairperson**”) and the second respondent (“**ICASA**”) are called on, in terms of Rule 53(1)(a), to show cause why the Court should not review and correct or set aside the September 2014 Regulations *alternatively* the MTRs and/or AMTRs determined by ICASA in terms thereof.

TAKE NOTICE FURTHER that the Chairperson and ICASA are called on, in terms of Rule 53(1)(b), within 15 days of receipt of this application, to dispatch to the Registrar:

- 1 a complete record of the proceedings embodying and/or evidencing ICASA’s decision to promulgate the September 2014 Regulations *alternatively* the MTRs and/or AMTRs determined by ICASA in terms thereof (“**the Record**”), including:
 - 1.1 any and all draft and/or final reports produced by consultants Genesis Analytics Proprietary Limited (“**Genesis**”) and/or their subcontractors pursuant to their agreement with ICASA of 19 May 2014;
 - 1.2 Genesis’ top-down long-run incremental cost (“**LRIC**”) model (“**the TD Model**”) built in terms of such agreement and used in determining MTRs and/or AMTRs. Cell C requires production of all hard and soft copies of the

model, including unfettered access by its cost modelling experts, Analysys Mason Limited (UK) (“Analysys Mason”), subject only to reasonable measures aimed at protecting confidential information;

- 1.3 any and all draft and/or final reports produced by consultants Detecon International GmbH (“Detecon”) and/or their subcontractors Pygma Consulting pursuant to their agreement with ICASA of 2 June 2014;
- 1.4 Detecon’s bottom-up LRIC model in respect of small operators and its bottom-up LRIC model in respect of large operators (collectively “the BU Model”) built in terms of such agreement and used in determining MTRs and/or AMTRs. Cell C requires production of all hard and soft copies of the model, including unfettered access by Analysys Mason, subject only to reasonable measures aimed at protecting confidential information;
- 1.5 the findings of any benchmarking study of termination rates in foreign jurisdictions taken into account in the determination of MTRs and/or AMTRs, including any record embodying and/or evidencing any *“fair comparison of the costs calculated using Top-Down and Bottom-Up LRIC+ cost models and a comparison of calculated termination rates in other jurisdictions”* referred to in ICASA’s document of 26 August 2014 entitled *“LRIC+ Bottom-Up Cost Model’ Assumptions to Determine Fixed and Mobile Voice Call Termination Rates in South Africa”*; and
- 1.6 the minutes of any meetings of the Council of ICASA at which:

- 1.6.1 the ICASA briefing notes and other formal communications referred to in Cell C's founding affidavit were considered and/or approved by ICASA for publication;
- 1.6.2 the TD and/or BU Models were considered and/or endorsed by ICASA for use in the determination of MTRs and/or AMTRs;
- 1.6.3 the Genesis and/or Detecon reports were considered and/or endorsed by ICASA for use in the determination of MTRs and/or AMTRs;
- 1.6.4 the findings of any benchmarking study of termination rates in foreign jurisdictions (including any record embodying and/or evidencing any "*fair comparison of the costs calculated using Top-Down and Bottom-Up LRIC+ cost models and a comparison of calculated termination rates in other jurisdictions*" referred to in ICASA's document of 26 August 2014 entitled "*LRIC+ Bottom-Up Cost Model' Assumptions to Determine Fixed and Mobile Voice Call Termination Rates in South Africa*") were considered and/or taken into account in the determination of MTRs and/or AMTRs;
- 1.6.5 the draft regulations published in the *Government Gazette* of 9 September 2014 were considered and/or adopted by ICASA for promulgation; and

1.6.6 the September 2014 Regulations were considered and/or adopted by ICASA for promulgation; and

- 2 such written reasons for its decision to promulgate the September 2014 Regulations *alternatively* the MTRs and/or AMTRs determined by ICASA in terms thereof as ICASA may be required by law or otherwise minded to give (“the Reasons”)

and notify Cell C that they have done so.


TAKE NOTICE FURTHER that Cell C is permitted, in terms of Rule 53(4), within 10 days of receipt of the Record and the Reasons, to amend the relief sought in this application and/or to revise and supplement the grounds on which the relief is sought, including by delivering supplementary founding papers.

TAKE NOTICE FURTHER that, if any respondent intends opposing this application, it is required:

- (a) within 15 days of receipt of this notice of motion or any amendment hereto in terms of Rule 53(4), to deliver notice of its intention to oppose the relief sought by Cell C and in such notice to appoint an address within eight kilometres of the office of the Registrar at which notice and service of all documents in this application will be accepted; and
- (b) within 30 days of expiry of the period referred to in Rule 53(4), to deliver any affidavit in answer to Cell C’s allegations.

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DATED at Sandton on this the 15th day of December 2014



**NORTON ROSE FULBRIGHT SA
(INCORPORATED AS DENEYS REITZ INC
ATTORNEYS FOR THE APPLICANT**

15 Alice Lane

Sandton

Gauteng

Tel: 011 685 8500

Fax: 011 301 3200

Ref: Ms H Irvine / Ms L Granville / OTS304

TO:

**THE REGISTRAR OF
THE GAUTENG LOCAL DIVISION**
Johannesburg

AND TO:

**THE CHAIRPERSON OF THE INDEPENDENT
COMMUNICATIONS AUTHORITY OF SOUTH AFRICA**
THE FIRST RESPONDENT
Blocks A-D
Pin Mill Farm
164 Katherine Street
Sandton
Gauteng

SERVICE PER SHERIFF

AND TO:

**THE INDEPENDENT COMMUNICATIONS
AUTHORITY OF SOUTH AFRICA
THE SECOND RESPONDENT**

Blocks A-D
Pin Mill Farm
164 Katherine Street
Sandton
Gauteng

SERVICE PER SHERIFF

AND TO:

**THE MINISTER OF TELECOMMUNICATIONS
AND POSTAL SERVICES
THE THIRD RESPONDENT**

iParioli Office Park
1166 Park Street
Hatfield
Pretoria
Gauteng

SERVICE PER SHERIFF

AND TO:

**THE MINISTER OF COMMUNICATIONS
THE FOURTH RESPONDENT**
Tshedimosetso House

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1035 Frances Baard Street (corner Festival Street)
Hatfield
Pretoria
Gauteng

SERVICE PER SHERIFF

AND TO:

**MOBILE TELEPHONE NETWORKS
PROPRIETARY LIMITED**
THE FIFTH RESPONDENT
216 14th Avenue
Fairland
Roodepoort
Gauteng

SERVICE PER SHERIFF

AND TO:

VODACOM PROPRIETARY LIMITED
THE SIXTH RESPONDENT
Vodacom Corporate Park
82 Vodacom Boulevard
Vodacom Valley
Midrand
Gauteng

SERVICE PER SHERIFF

AND TO:

TELKOM SA SOC LIMITED
THE SEVENTH RESPONDENT
Telkom Towers North
152 Proes Street
Pretoria
Gauteng

SERVICE PER SHERIFF

AND TO:

THE INTERESTED PARTIES
THE EIGHTH TO FORTY-SIXTH RESPONDENTS
Addresses in Annexe A
Gauteng

SERVICE PER SHERIFF

TABLE OF INTERESTED PARTIES

RESP	NAME	STATUS	ADDRESS
8	45 Degrees Consulting (Pty) Ltd	Company incorporated and registered in terms of the company laws of RSA	14th Floor, Marble Towers, 208-212 Jeppe Street, Johannesburg, Gauteng
9	Altech Technology Concepts (Pty) Ltd	Company incorporated and registered in terms of the company laws of RSA	Waterfall Office Park, 2 Augrabies Road, Bekker Road, Midrand, Gauteng
10	Amatole Telecommunications Services (Pty) Ltd	Company incorporated and registered in terms of the company laws of RSA	63 Devereux Avenue, Vincent, East London, Eastern Cape
11	Avoxi (Pty) Ltd	Company incorporated and registered in terms of the company laws of RSA	30A Dias Crescent, Douglasdale, Johannesburg, Gauteng
12	Business Connexion (Pty) Ltd	Company incorporated and registered in terms of the company laws of RSA	789 16 th Road, Randjespark, Midrand, Gauteng
13	CMC Global Consulting (Pty) Ltd	Company incorporated and registered in terms of the company laws of RSA	4b Naivasha Road, Sunninghill Park, Johannesburg, Gauteng
14	Communications Global Network Services Ltd t/a BT Global Services	Company incorporated and registered in terms of the company laws of RSA	BT Building, Woodmead North Office Park, 54 Maxwell Drive, Woodmead, Gauteng
15	Compatel Africa (Pty) Ltd	Company incorporated and registered in terms of the company laws of RSA	1 st Floor, 25 Waterford Office Park, Waterford Road, Maroeladal, Fourways, Gauteng
16	Connect First Telecoms (Pty) Ltd t/a FNB Connect	Company incorporated and registered in terms of the company laws of RSA	1 First Place, Bank City, corner Jeppe and Simmonds Streets, Johannesburg, Gauteng

1 As far as Cell C is aware, each address set out in this column is the registered office and/or principal place of business of the relevant respondent.

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RESP	NAME	STATUS	ADDRESS
17	Dimensions Data (Pty) Ltd trading through Internet Solutions (Pty) Ltd	Company incorporated and registered in terms of the company laws of RSA	The Campus, 57 Sloane Street, corner Sloane Street and Main Road, Bryanston, Gauteng
18	Du Pont Telecom (Pty) Ltd	Company incorporated and registered in terms of the company laws of RSA	382 Kent Avenue, Ferndale, Randburg, Gauteng
19	ECN Telecommunications (Pty) Ltd t/a Nashua Communications	Company incorporated and registered in terms of the company laws of RSA	1 st Floor, South Block, Rosebank Terrace North, 23-25 Sturdee Avenue, Rosebank, Gauteng
20	EOH Mthombo (Pty) Ltd	Company incorporated and registered in terms of the company laws of RSA	Gillooly's View Office Park, 1 Osborne Lane, Bedfordview, Gauteng
21	Exotic Systems CC t/a Advinne	Close corporation incorporated and registered in terms of the laws of RSA	20 Georgian Crescent, Bryanston, Sandton, Gauteng
22	FirstRand Bank Ltd	Company incorporated and registered in terms of the company laws of RSA	1 First Place, Bank City, corner Jeppe and Simmonds Streets, Johannesburg, Gauteng
23	Frogfoot Networks (Pty) Ltd	Company incorporated and registered in terms of the company laws of RSA	Frogfoot HQ, Suite 302, Building 20, Waverley Business Park, Koetsee Road, Mowbray, Cape Town, Western Cape
24	Gateway Communications (Pty) Ltd	Company incorporated and registered in terms of the company laws of RSA	Harrowdene Office Park, Harrowdene Service Road, Bryanston, Gauteng
25	Green Flash Trading 72 (Pty) Ltd	Company incorporated and registered in terms of the company laws of RSA	51 Spata Street, Highveld Park, Centurion, Gauteng
26	Hymax Talking Solutions (Pty) Ltd	Company incorporated and registered in terms of the company laws of RSA	1 st Floor, Block C, M5 Park, Eastman Road, Maitland, Gauteng
27	iConnect (Pty) Ltd	Company incorporated and registered in terms of the company laws of RSA	Muirfield Building, Roos Street, Fourways, Gauteng

RESP.	NAME	STATUS	ADDRESS
		terms of the company laws of RSA	
28	ICT Globe Management Solutions (Pty) Ltd	Company incorporated and registered in terms of the company laws of RSA	Unit 20 Cambridge Office Park, 5 Bauhinia Street, Highveld Techno Park, Centurion, Gauteng
29	InterceI Online Africa (Pty) Ltd	Company incorporated and registered in terms of the company laws of RSA	1 Donkin Place, Wendywood, Gauteng
30	Liquid Telecommunications Operations SA (Pty) Ltd	Company incorporated and registered in terms of the company laws of RSA	150 Bryanston Drive, Bryanston, Gauteng
31	MIA Telecommunications (Pty) Ltd	Company incorporated and registered in terms of the company laws of RSA	134 Walton Road, Carlswald, Midrand, Gauteng
32	Multisource Telecom (Pty) Ltd	Company incorporated and registered in terms of the company laws of RSA	609 Lanseria Corporate Estate, Falcon Lane, Lanseria Ext 26, Johannesburg, Gauteng
33	MWEB Connect (Pty) Ltd	Company incorporated and registered in terms of the company laws of RSA	MWEB, 100 Fairway Close, Parrow, Western Cape
34	Neotel (Pty) Ltd	Company incorporated and registered in terms of the company laws of RSA	44 Old Pretoria Main Road, Midrand, Gauteng
35	Netvolp (Pty) Ltd	Company incorporated and registered in terms of the company laws of RSA	308 Phidias Centre, 89 Van Riebeeck Avenue, Edenvale, Gauteng
36	Ohren Telecom CC t/a O-Tel Telecoms	Company incorporated and registered in terms of the company laws of RSA	O-Tel Building, 9 Wiek Street, Bardene, Boksburg, Gauteng
37	Rose Courtz Trading (Pty) Ltd t/a Bitco Data Communications	Company incorporated and registered in terms of the company laws of RSA	Paracon House, Olivedale Office Park, corner Lima and Olive Street, Olivedale, Gauteng
38	SAICOM Technology (Pty) Ltd	Company incorporated and registered in terms of the company laws of RSA	1 st Floor, East Wing, The Oval, Wanderers Office Park, 52 Corlett Drive, Illovo, Gauteng

RESP	NAME	STATUS	ADDRESS
39	Sky Connect Internet (Pty) Ltd	Company incorporated and registered in terms of the company laws of RSA	971 Kudu Street, 10 Panorama Office Estate, Allen's Nek, Roodepoort, Gauteng
40	Skycall Networks (Pty) Ltd	Company incorporated and registered in terms of the company laws of RSA	90 Regency Drive, Route 21 Office Park, Centurion, Gauteng
41	Switch Telecom (Pty) Ltd	Company incorporated and registered in terms of the company laws of RSA	Building 11A, The Woodlands Office Park, Woodmead, Gauteng
42	Telfree Communications (Pty) Ltd	Company incorporated and registered in terms of the company laws of RSA	254 Carina Street, Waterkloof Ridge, Pretoria, Gauteng
43	The Java SIM Project (Pty) Ltd	Company incorporated and registered in terms of the company laws of RSA	151 Campground Road, Newlands, Western Cape
44	Vlocity Communications (Pty) Ltd	Company incorporated and registered in terms of the company laws of RSA	25 Hermes Street, Paardenelland, Cape Town, Gauteng
45	Vox Telecom (Pty) Ltd	Company incorporated and registered in terms of the company laws of RSA	Block D, Vox Telecom Building, Rutherford Estate, 1 Scott Street, Waverley, Gauteng
46	Wireless Business Solutions (Pty) Ltd t/a iBurst	Company incorporated and registered in terms of the company laws of RSA	3012A William Nicol Drive, Bryanston, Gauteng