



Government Gazette Staatskoerant

REPUBLIC OF SOUTH AFRICA
REPUBLIEK VAN SUID-AFRIKA

Vol. 529

Pretoria, 10 July 2009
Julie 2009

No. 32370

*N.B. The Government Printing Works will
not be held responsible for the quality of
"Hard Copies" or "Electronic Files"
submitted for publication purposes*



9771682584003

32370



AIDS HELPLINE 0800-0123-22 Prevention is the cure

GENERAL NOTICES

NOTICE 941 OF 2009



INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA

INTERCONNECTION REGULATIONS PURSUANT TO CHAPTER 7 OF THE ELECTRONIC COMMUNICATIONS ACT NO. 36 OF 2005 (THE ACT)

1. The Independent Communications Authority of South Africa ("ICASA") hereby gives notice in terms of section 4(4) of the Electronic Communications Act No. 36 of 2005 ("the Act") of its intention to prescribe Interconnection Regulations in terms of sections 4 and 38 of the Act and section 4(3)(j) of the Independent Communications Authority of South Africa Act No. 13 of 2000 as amended ("the ICASA Act").
2. Interested persons are invited to submit written representations on these draft Interconnection Regulations by **25 August 2009** by post, hand delivery, facsimile transmission, or electronically (in Microsoft Word) for the attention of:

Mr Thabo Sihlangu
Project Leader
ICASA
Private Bag X10002
Sandton
2146

or

Block A
Pinmill Farm
164 Katherine Street
Sandton

Fax: (011) 566 3688

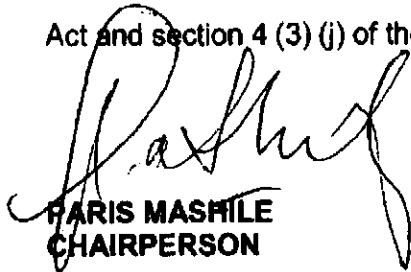
Telephone: (011) 566 3687

E-mail: tsihlangu@icasa.org.za; cc pcokie@icasa.org.za

3. Persons making written representations are notified that no public hearings will be held with respect to these draft regulations.
4. All written representations submitted to ICASA pursuant to this notice will be made available for inspection by interested persons at the ICASA library and copies of such representations will be obtainable on payment of the prescribed fee.
5. At the request of any person who submits written representations pursuant to this notice, ICASA will determine whether such representations or any portion thereof is confidential in terms of section 4D of the ICASA Act. If the request for confidentiality is refused, the licensee making the request will be allowed to withdraw such representations or portion thereof.
6. The final regulations will be published in the Government Gazette.

INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA**REGULATIONS IN TERMS OF SECTIONS 4 AND 38 OF THE ELECTRONIC COMMUNICATIONS ACT OF 2005 (Act No 36 of 2005) READ WITH SECTION 4 (3) (j) ICASA ACT OF 2000 (ACT No 13 OF 2000) IN RESPECT TO INTERCONNECTION REGULATIONS**

I, Paris Mashile, Chairperson of the Independent Communications Authority of South Africa ("ICASA") hereby approve and publish the draft regulations in the schedule made in terms of sections 4 and 38 of the Electronic Communications Act and section 4 (3) (j) of the ICASA Act of 2000.



PARIS MASHILE
CHAIRPERSON

INTERCONNECTION REGULATIONS

PART I

Preliminaries

1. Definitions

(1) In these regulations, any word or expression to which a meaning is assigned in the Act or the ICASA Act shall have the same meaning unless otherwise specified.

(2) The following words and phrases shall have the following meanings:

"Act" means the Electronic Communications Act, 2005 (Act 36 of 2005);

"Compliance notice" means the certificate issued by the Authority in terms of regulation 18;

"ICASA Act" means the Independent Communications Authority Act, 2000 (Act 13 of 2000)

"Interconnection provider" means any person who is requested to provide interconnection in terms of section 37(1) of the Act and it includes any person who is currently providing interconnection;

"Interconnection seeker" means any person licensed in terms of Chapter 3 of the Act that is requesting interconnection, including an applicant for an individual licence.

2. Purpose of regulations

The purpose of these regulations is to:

(a) facilitate the conclusion of interconnection agreements by stipulating:

(i) agreement principles;

(ii) timeframes and process to be followed by parties; and

(iii) the procedures for the submission, review and filing of agreements;

(b) provide for and require the provision of interconnection services to enable licensees to interconnect with each other; and

(c) encourage interoperability.

PART II

Interconnection

3. Requests for interconnection

- (1) A request for interconnection must be in writing and must include:
 - (a) the date of the request;
 - (b) the interconnection seeker's technical requirements, based on the technical standards of the interconnection provider; and
 - (c) the type of the interconnection that is required.
- (2) An interconnection provider must respond to a request for interconnection within 7 days of receipt of the request.
- (3) The parties must finalise an interconnection agreement within 45 days from the date of request provided that the parties may agree on a longer period, which longer period must not exceed 60 days.

4. Financial feasibility

- (1) For purposes of section 37(3) of the Act, a request is financially feasible where an interconnection request results to an interconnection provider's existing capacity being used efficiently with reference to productivity and will be determined on a case by case basis by the Authority.
- (2) The minimum requirements for financial feasibility are that:
 - (a) there are no adverse financial consequences due to overloading the network of the interconnection provider;
 - (b) the interconnection provider does not have to build further network capacity ahead of budgeted spend; or
 - (c) in the event that the granting of the request to interconnect will require the interconnection provider to expand the available network capacity ahead of budgeted spend, the interconnection seeker has agreed to cover a proportion of the costs involved to facilitate the expansion.

5. Technical feasibility

- (1) For the purposes of section 37(3) of the Act a request is technically feasible if the aspect of an interconnection request relating to use or access of technology, connectivity, configuration, design, operation and maintenance in support of electronic communications will be capable of being brought about by the interconnection provider with the means at hand and in the prevailing circumstances and will be determined on a case by case basis by the Authority.
- (2) The minimum requirements for technical feasibility are that:
 - (a) the network does in fact meet the technical parameters of the requesting party's network at the time that the request is made; and
 - (b) offering connection to the interconnection seeker will not have negative effect on the interconnection provider's physical network, network elements, capacity or integrity.

6. Maintenance of any to any connectivity

The terms and conditions of each interconnection agreement must:

- (1) aim at facilitating interoperability and promote interconnection in a manner which promotes any to any connectivity so that:
 - (a) an end-user of an interconnection seeker is able to communicate electronically with an end-user of an interconnection provider and vice versa; and
 - (b) the transmission of electronic communications across and within electronic communications networks is seamless.
- (2) not preclude an interconnection seeker from entering into different types of interconnection agreements with different interconnection providers.

PART III

Principles for interconnection agreements

7. Quality of service and standards

The parties to an interconnection agreement must ensure that their agreement:

- (a) contains the technical standards of both parties; and

- (b) complies with all relevant international standards and recommendations of the International Telecommunications Union and any other standards prescribed by the Authority.

8. Service level agreements

An interconnection agreement must contain service levels and provide reasonable remedies and penalties for any unremedied or repeated failure to meet those service levels.

9. Confidentiality

Subject to the provisions of section 4D of the ICASA Act, an interconnection agreement may not contain a provision that prevents the public disclosure of the agreement by the Authority or by either of the parties.

10. Non discrimination

- (1) The parties to an interconnection agreement must not discriminate in the negotiation, conclusion and implementation of such agreement.
- (2) Requests from an interconnection seeker, including requests for additional interconnection in terms of an already concluded interconnection agreement, must be dealt with in the order in which they are received.
- (3) An interconnection provider must apply similar terms and conditions, including those relating to charges, in similar circumstances to interconnection seekers providing similar services.

11. Transparency

- (1) Billing and settlement procedures must be transparent.
- (2) Where the provision of one service or facility is contingent in practice on the provision of another service or facility, this relationship must be clearly identified.
- (3) Charges for interconnection must be sufficiently unbundled so that an interconnection seeker does not have to pay for anything it does not require for the requested interconnection.
- (4) An interconnection provider's charges for interconnection may not exceed its retail charges for the provision of substantially similar or equivalent services.

12. Interconnection information

Interconnection providers may publish on their websites and must provide to interconnection seekers, on request and within 10 days, information that is in their possession or control and that may assist the interconnection seeker to:

- (a) formulate a request for interconnection; and
- (b) plan, establish or maintain its electronic communications network service for the purpose of interconnection, and includes, but not limited to:
 - (i) the technical specifications of the electronic communications network;
 - (ii) switching, routing and transmission equipment used in the network;
 - (iii) signaling protocols used;
 - (iv) traffic volumes; and
 - (v) any material changes to interconnection arrangements that may affect the interconnection arrangements or plans of an interconnection seeker or the interconnection services such party provides or intends to provide.

13. Point of interconnection

- (1) An interconnection agreement must provide for a location that constitutes a point of demarcation between the network of the interconnection provider and the interconnection seeker.
- (2) These locations may include but are not be limited to:
 - (a) mobile switching centers;
 - (b) media gateways;
 - (c) local exchanges; and
 - (d) tandem exchanges.
- (3) The interconnection provider must offer interconnection services at any financially and technically feasible point of its electronic communications network, upon request by an interconnection seeker.
- (4) The interconnecting parties must agree on operations and maintenance expenses of the facilities necessary to reach the point or points of interconnection within the network of the interconnection provider.

- (5) Where the interconnection provider has informed the interconnection seeker that the requested point of interconnection has insufficient capacity, it must provide to the interconnection seeker details of the nearest point of interconnection.
- (6) The interconnection seeker must be afforded an opportunity to make representation to the interconnection provider regarding the nearest point of interconnection

14. Exemption

Licensees who are found not to have significant market power in terms of section 67 of the Act shall not be required to comply with regulations 10(3) 11(3) and 11 (4).

PART IV

Framework, model terms and conditions of agreements

15. Terms and conditions of interconnection agreements

The interconnection agreement must address the following matters, except where a matter is not relevant to the interconnection service in question:

- (a) definitions of terms and abbreviations;
- (b) the technical scope of the interconnection which includes:
 - (i) a description of the purpose of the interconnection;
 - (ii) a description of the connection services sought;
 - (iii) a description of the technical scope and specifications of the interconnection;
 - (iv) mechanisms for changes to the purpose, scope and specifications for interconnection;
 - (v) details regarding access to numbers by the parties; and
 - (vi) data interchange format;
- (c) point of interconnection, which includes:
 - (i) location of point of interconnection and related facilities' specifications;

- (ii) mechanisms for changes to the location of point of interconnection or related facilities;
 - (iii) signaling interconnection description; and
 - (iv) charges for each point of interconnection.
- (d) billing and settlement which includes:
 - (i) billing procedures;
 - (ii) payment terms and conditions; and
 - (iii) billing and settlement disputes procedures;
- (e) charges, setting out:
 - (i) detailed charges per service provided;
 - (ii) mechanisms for review of charges; and
- (f) quality of service and service levels, covering:
 - (i) service levels and quality of service obligations;
 - (ii) penalties;
 - (iii) testing and maintenance;
 - (iv) fault reporting;
 - (v) service level disputes; and
 - (vi) system protection and safety measures.
- (g) termination of agreement covering:
 - (i) grounds for termination; and
 - (ii) termination procedures;
- (h) contractual dispute resolution and arbitration procedures.

PART V**16. Dispute Resolution**

- (1) Where reasonableness of any request is disputed, the party requesting interconnection may notify the Authority in accordance with this regulation 16.
- (2) Where an interconnection provider has not responded to the request for interconnection within the time set out in regulation 3(2) then interconnection seeker may notify the dispute to the Authority.
- (4) Where parties have not reached agreement on the terms and conditions of an interconnection agreement within the time prescribed in regulation 3 (3), then any party may notify a dispute to the Authority.
- (5) A dispute notified to the Authority in terms of regulation 16 (2) must be in writing and must set out the details of the alleged dispute.
- (6) Where the Authority is notified of a dispute such party must provide the Authority with sufficient information to allow it to make its decision on the complaint notified with it.
- (7) The Authority must, within 14 days of the notification of dispute and after considering all relevant information, determine whether the dispute warrants further investigation and, if not, dismiss it accordingly.
- (8) Where the Authority, after considering all relevant information, determines that the dispute warrants further investigation then the Authority shall:
 - (a) provide the other party to the dispute with a copy of the complaint setting out the nature of the alleged unreasonableness or details of the unwillingness to negotiate or agree;
 - (b) afford the other party to the dispute with a reasonable opportunity to respond to the allegations in writing within 14 days; and
 - (c) afford the party which notified the dispute a reasonable opportunity to reply to the response in writing within 14 days.
- (9) The Authority may call for oral representations after the submissions made by the parties referred to in sub-regulation (7).

- (10) Notwithstanding this section, the Authority may determine the matter on the papers submitted to it by the parties where the Authority is of the opinion that the matter is urgent.
- (11) The Authority shall, within 14 days of the last day as provided for in sub-regulation 6 or 7 (b) or 7 (c) or 8 whichever occurs last, furnish the parties to the dispute with its final decision.
- (12) Regulation 16 does not, in any manner, limit the power of the Authority to refer a matter to the Complaints and Compliance Committee in terms section 37 (4) (c) of the Act.

PART VI

Submission, filing, review and timeframes of agreements

17. Submission and review of interconnection agreements

- (1) An interconnection agreement and interconnection amendment agreements must be submitted to the Authority in terms of section 39(1) of the Act within 3 days of the date of signature of the agreement.
- (2) The Authority shall review the interconnection agreement and interconnection amendment agreements in terms of section 39(4) of the Act to ensure that the interconnection agreement is consistent with these regulations and the provisions of the Act.

18. Consideration by the Authority and the compliance notice

- (1) The Authority shall notify the parties in writing within 20 days of submission whether the agreement is consistent with the Act and these regulations.
- (2) Where the Authority determines that the interconnection agreement is consistent with the Act and these regulations, the Authority must issue a compliance notice.
- (3) Where the Authority determines that the agreement is not consistent with these regulations, the parties must agree on new terms within a period determined by the Authority which period must not exceed 30 days.
- (4) Where the parties submit an amended agreement in terms of section 39(6) of the Act, the Authority shall notify the parties in writing within 20 days whether or not the amended agreement is consistent with the Act or these regulations.

19. Filing of interconnection agreement

An interconnection agreement is considered to be filed with the Authority in terms of section 39(2) of the Act after the Authority has reviewed the agreement and issued a compliance notice. The date of filing is the date when the compliance notice is issued by the Authority.

PART VII

General

20. Date of operation of agreement

The parties may agree on a date when the interconnection agreement comes into operation which date must be after the issue of a compliance notice by the Authority.

21. Suspension and termination of agreement

- (1) An interconnection agreement must provide for suspension and termination procedures that minimize any adverse effect of the suspension or termination of services on end users.
- (2) An interconnection agreement must not allow the suspension of interconnection except where this is necessary to address quality of service degradation of electronic communication networks or services as perceived by the end-users or other material threat to the maintenance of the interconnection.
- (3) An interconnection provider may not terminate an interconnection agreement unless:
 - (a) the termination is as a result of:
 - (i) material breach of the interconnection agreement;
 - (ii) *vis major*; or
 - (iii) the liquidation, deregistration or insolvency of one of the parties to the interconnection agreement; or
 - (b) both parties have agreed to terminate the agreement; and

- (4) Before terminating an interconnection agreement, the interconnection provider must give written notice of its intention to terminate to the Authority, specifying in that notice the grounds for termination and, in the case of material breach, requiring that the breach be remedied within a period not less than 30 days.

22. Contraventions and Penalties

- (1) Upon a determination of non-compliance by the Complaint and Compliance Committee in terms of the ICASA Act, the Authority may impose a fine not exceeding:
- (a) Five Hundred Thousand Rand(R 500 000.00) for contravention of regulations 10; 17(1); and 21;
 - (b) One Hundred Thousand Rands (R100 000.00) for contravention of sub-regulations 3(2); 3(3); 11(3) and 11(4);
 - (c) Fifty Thousand Rands (R50 000.00) for contravention of all regulations not specified in regulations 22 (1) (a) and (b);

23. Short title and commencement

These regulations are called the Interconnection Regulations, 2009 and commence on the date of publication in the Gazette.

24. Transitional provisions

- (1) Any interconnection agreement concluded prior to the commencement of these regulations must be submitted to the Authority in terms of section 39(1) of the Act in accordance with the time periods set out in the following table:

Year interconnection agreement entered into	Date to be submitted to Authority
On or before 01 January 2007	Within 3 months of the date of publication of these regulations
On or after 01 January 2007	After the 3 months mentioned above within 6 months after the coming into effect of the regulations

- (2) Before submitting an interconnection agreement to the Authority in terms of this section, the parties must review the interconnection agreement and amend the agreement where necessary to ensure that the agreement complies with the requirements of these regulations and the Act.

- (3) The process set out in the Act and these regulations applies with the necessary changes to the review by the Authority of interconnection agreements submitted in terms of this regulation.

25. Repeals

The Interconnection guidelines published in Notice 1259 of 2000 Government Gazette Number 20993, the Supplementary Interconnection Guidelines published in Notice 3457 of 2002, Government Gazette 24203; the Interconnection and facilities leasing guidelines and supplements published in Notice 1301 of 2004, Government Gazette 26539 are hereby repealed.

ANNEXURE A

EXPLANATORY NOTE: DRAFT INTERCONNECTION REGULATIONS

1. INTRODUCTION

1.1 Purpose

- 1.1.1 The purpose of this explanatory note is to provide stakeholders with an explanation of the contents of the latest draft of the Interconnection regulations.
- 1.1.2 Given the time delay since the last published drafts (i.e. December 2007) this explanatory note seeks to: (a) contextualize the introduction of new concepts including financial and technical feasibility and dispute resolution, as required by the Electronic Communications Act, Act No 36 of 2005 ("the Act"); (b) explain why certain provisions have either been included or omitted with reference to the history of the regulations on interconnection in South Africa and the needs of the industry as set out in the written and oral responses made to the Authority as reflected in the December 2007 draft regulations; and (c) set the regulations in context with reference to international best practice.
- 1.1.3 This note is not legally binding, nor is it a legal opinion. It is published purely to assist stakeholders and to provide insight into the thinking behind the regulations.

1.2 Background

- 1.2.1 Interconnection is an important way of introducing competition in the electronic communications sector. The Authority notes that while interconnection agreements are in essence commercial agreements, they are always subject to some form of regulation, particularly in the absence of a competitive environment.
- 1.2.2 The Authority does not intend to regulate the parties' commercial relationships, but to instruct parties on the required form and minimum requirements in relation to the content of interconnection agreements and to facilitate the attainment of the objectives of the Act particularly those set out in Chapter 7.

- 1.2.3 The first draft interconnection regulations drafted in terms of Chapters 7 of the Act were published in March 2007 under Notice 1795 of 2007 to replace the Interconnection Guidelines of 2000 published in Notice 1259 of 2000, the Supplementary Interconnection Guidelines of 2002 published in Notice 3457 of 2002.
- 1.2.4 ICASA then held a public consultation process, received written comments from interested parties and held hearings in October 2007.
- 1.2.5 A revised set of regulations was published in Notice 1795, Government Gazette 30611 of 19 December 2007 incorporating the comments received from the earlier public consultation process.
- 1.2.6 This was followed by a public workshop held in April 2008.
- 1.2.7 The current draft regulations thus capture stakeholders' comments and concerns raised through the public workshop and consultation processes referred to hereinbefore.
- 1.2.8 The remainder of the explanatory note sets out the key changes to the latest draft of the regulations and provides the Authority's rationale for such changes.

2. DRAFT REGULATIONS

2.1 Definitions (regulation 1)

The regulations do not attempt to define a lot of concepts as these concepts are dealt with in the body of the regulations. We have only provided definitions where it is necessary. Hereinafter are the terms we have defined:

2.1.1 "Compliance Notice"

This notice will be issued by the Authority in the discharge of its obligations in terms of section 39 (4) of the Act. The regulations refer to a Compliance Notice to be issued by the Authority once the agreement submitted to it has been found to be in compliance with the regulations and the Act ("the governing framework"). If the agreement is not

compliant, the parties will receive certificate from the Authority within the stipulated timeframes indicating the amendments that need to be made in order to align the agreement with the governing framework. Once a Compliance Notice has been issued, the agreement is considered to have been filed with the Authority and will become effective and enforceable.

2.1.2 "Interconnection Provider"

In the regulations, the definition of the term interconnection provider includes those licensees who may not be obliged to interconnect but are *actually* providing interconnection and therefore fall under the regulatory framework for interconnection.

2.1.3 "Interconnection seeker"

The definition of interconnection seeker is not limited to existing licensees, but includes applicants for an individual licence.

2.2 Purpose of regulations (regulation 2)

- 2.2.1 The regulations seek to guide the industry on how the process of conducting negotiations and concluding agreements should be handled. In the case of interconnection this is done with a view to facilitating any to any and end to end electronic communications.

2.3 Requests for interconnection (regulation 3)

- 2.3.1 The Act requires the Authority to determine time periods for responses to requests from interconnection seekers. These timeframes form the basis of disputes on the inability or unwillingness to agree or negotiate an agreement under section 37(4). Where a request is made it should refer to an interconnection seeker's technical standards requirements in relation to the interconnection providers' technical standards. This will minimise the number of frivolous requests received by interconnection providers. It will also assist in the speedy determination of disputes on reasonableness in terms of section 37(2) of the Act.
- 2.3.2 The Authority has taken account of suggestions on time periods for the negotiation of agreements and considers 45 days, which are business

days as defined in the Act, to be sufficient to conclude a standard interconnection agreement.

- 2.3.3 The debate about the ability of broadcasters to provide interconnection services has been duly noted by the Authority. The Authority believes that the inclusion of broadcasters in the scope of the regulations is necessary legally, given that the definition of "interconnection" in the Act includes broadcasting service licensees.

2.4 Financial and technical feasibility (regulation 4 and 5)

"Financially feasible" and "technically feasible"

- 2.4.1 The important concepts of "technical feasibility" and "financial feasibility" will assist the Authority and the industry in establishing useful guidelines and benchmarks for the determination of what is "reasonable" in relation to the provision of interconnection, but in the future, in relation to other forms of access as well. The concepts also introduce an important commercial consideration namely that a request for interconnection must be considered in relation to the spreading of or allocation of risk between the parties' respective networks, their businesses, and ultimately, their financial viability.
- 2.4.2 Disputes are dependent on the Authority's determinations regarding the "reasonableness" of a request. The Act stipulates that "reasonableness" will be measured by technical and financial feasibility, and promotion of efficient use of networks and services. These concepts as set out in the regulations seek to guide the industry on the Authority's thinking on how a technical feasibility or financial feasibility determination will be made. It should be noted that the Authority has defined "financially feasible" to include "economically feasible" since licensees are likely to follow different accounting and financial models whereas the principles of economics are uniformly applied.
- 2.4.3 The Authority is aware that the criteria for determining technical and financial feasibility are not applied in quite the same way in other countries, and in cases where the criteria are similar or the same those countries have had the benefit of many years of precedent – when the terms were applied in a particular way having regard to the circumstances subsisting at the time and arguments raised then by operators. *Technical*

feasibility" and *financial feasibility*" have therefore become 'terms of art' which do not need specific definition but are generally applied by all parties in the same way. The Authority notes this, but for the sake of clarity to the industry the Authority has developed its own meaning given the stage of development of the industry and the lack of precedent on these issues in South Africa. The Authority has nonetheless identified requirements and an approach to the application of such definitions will be set out in the dispute resolution regulations.

2.5 Maintenance of any to any connectivity (regulation 6)

The primary reason for interconnection regulation is to facilitate any to any, end to end communications. This must be facilitated in a technology-neutral manner, hence the technology-neutral approach taken in drafting these regulations. Technology specific terminology is used in these regulations in a descriptive manner, to illustrate for example the types of Points of Interconnection. The use of technology-specific terms is not intended to limit the technology choices for licensees.

2.6 Principles for interconnection agreements (Part III)

2.6.1 Quality of service for interconnection is regulated with reference to other regulations published by the Authority and in this regard (i.e. end user regulations, and technical standards regulations), and international obligations.

2.6.2 Interconnection information, which is basic information, must be made generally available in order to prevent discrimination, and to facilitate the conclusion of agreements.

2.6.3 The Authority has noted the concerns raised in stakeholders' submissions on the previous drafts of the regulations regarding the confidential treatment of information. As stated hereinbefore, the relevant general provisions in relation to confidentiality under the ICASA Act (section 4D) will be applicable in this regard.

2.7 Interconnection information (regulation 12)

2.7.1 The Authority believes that the provision of interconnection information is an important requirement in that information must be available as provided

by the interconnection provider and based on such provider's own requirements. This will cut down on frivolous requests and will similarly facilitate reasonable requests.

2.7.2 This provision is a specific requirement of the Act.

2.8 Required terms and conditions of agreements (regulation 15)

2.8.1 This section sets out the required 'standard' terms and conditions for interconnection agreements. The list of terms and conditions has been considered against international best practice and the detail of the agreements, under the proposed headings, will be left to commercial negotiations between the parties.

2.9 Disputes (regulation 16)

2.9.1 The dispute resolution regulation is an important part of the interconnection regulatory framework in particular where there is information asymmetry and where operators have different positions in the market. To leave disputes to operators to resolve between them may well result in complete failure to agree. Such failure to agree, particularly where one operator holds a dominant position, can cause prejudice to other operators and eventually have a negative effect on consumers.

2.9.2 The Authority notes that the industry should be guided, by a single set of dispute resolution procedures which will be consistent, for both disputes emanating from interconnection agreements and other disputes brought before the Authority and the Complaints and Compliance Committee ("CCC").

2.9.3 Given the above, we have included a framework for the types of dispute that may be lodged with the Authority.

2.10 Requirements for submission of information to the Authority

2.10.1 The Authority notes concerns raised by parties in their submissions around the treatment of confidential information. The Authority confirms that confidentiality applies where relevant, under section 4D of the ICASA Act.

2.10.2 Concern was raised in some submissions with respect to ICASA's ability to request information from time to time regarding interconnection information from the industry. ICASA confirms that it may, under section 4(3)(g) of the ICASA Act, request such information.

2.11 Review and filing of agreements (regulation 17, 18, and 19)

2.11.1 A distinction must be made between the date on which the agreement is effective and enforceable, and the commencement date. The commencement date is a date that is commercially agreed by the parties, with reference to their internal requirements (such as a target launch date), and must be a date after the Compliance Notice is issued.

2.11.2 The Act requires that interconnection agreements be "submitted" to the Authority once concluded. It furthermore requires that such agreements must be "reviewed" by the Authority to ensure consistency with the Act and the regulations. Once reviewed and if the agreement complies with the regulations a Compliance Notice will be issued and the agreement would be filed by the Authority. The agreement will become effective and enforceable upon filing.

2.11.3 The Authority is the central repository for interconnection agreements and will take responsibility for the pro-active publication of the agreements and ensure that such agreements are available in its library. Operators are not required to publish their agreements but must provide agreements upon request.

2.11.4 The Authority proceeds on the understanding that it is the current practice, and given the nature and history of interconnection in South Africa, that all interconnection agreements must be reviewed by the Authority.

2.12 Operation, suspension and termination of agreements (regulation 20 and 21)

This section of the regulations is consistent with previous approaches in previous drafts of the regulations. In addition to the previous requirements, this section now provides for the commencement of agreements and requires that, for the avoidance of doubt, the commencement date of an agreement must be after the issuance by the Authority of a Compliance

Notice.¹ This section furthermore provides for the termination of an agreement for convenience as agreed between the parties.²

2.13 Contraventions and penalties (regulation 22)

The penalties imposed will be relative to the offence and it is anticipated that in relation to interconnection offences will in the main be for non-compliance by a licensee with an order of the Authority or the CCC.

2.14 Transitional arrangements (regulation 24)

2.14.1 The Authority shall ensure that all agreements that have been entered into historically, in terms of the Telecommunications Act of 1996, Act No. 103 of 1996, (as amended), are amended and aligned with the new governing framework. It is therefore incumbent on stakeholders who have entered into existing agreements to review and where necessary amend them for submission to the Authority within the timeframes stipulated.

2.14.2 The Authority is of the view that a total of six months is required to review all of the agreements in the sector. The table set out below will assist the Authority in ensuring that it is not inundated with agreements that are submitted at the last minute, but rather that the submission is staggered thus enabling the Authority to manage its workload. The Authority has used 2006, the year in which the Act became effective, to determine when agreements should be submitted for review.

Year agreement entered into	Date to be submitted to ICASA
On or before 01 January 2007	Within 3 months after the coming into effect of the regulations
On or after 01 January 2007	After the 3 months mentioned above within 6 months after the coming into effect of the regulations

¹ See regulation 20

² See regulation 21

2.15 Repeal of regulations (regulation 25)

Once published, these regulations will repeal the previous regulations published under the Telecommunications Act, 1996 (as amended), in their entirety hence the requirement to resubmit existing agreements to the Authority and to make them consistent with these regulations.

3 CONCLUSION

The Authority has published this explanatory note along with the latest draft of the regulations in the hope that it provides interested parties with a context for the present drafts.