



10 May 2024

The Chairperson: Call Termination Review
Independent Communication Authority of South Africa
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DRAFT AMENDMENT TO THE CALL TERMINATION REGULATIONS, 2014

The Association of Comms and Technology (“ACT”) thanks the Independent Communications Authority of South Africa (“ICASA/ the Authority”) for the opportunity to submit its written representation on the intention to amend the Call Termination Regulations, 2014 as amended (“the Regulations”) in terms of section 4(3)(j) of the Independent Communications Authority of South Africa Act, 2000 (Act No. 13 of 2000) read with sections 4(1) and 67(8) of the Electronic Communications, 2005 (Act No. 36 of 2005).

Given that the process leading up to this penultimate publication regarding call termination has been arduous, ACTs contribution will be targeted to specific issues. These specific issues are the International Termination Rates (“ITR”) and the unresolved issue of bypass fraud.

ITR

The regulation of ITR in South Africa, is a cautionary tale as to the unintended consequences of unduly intervening in a market. In 2017¹, the Authority had to amend

¹ Amendment of the Call Termination Regulations 2014, Notice 811 of 2017 published on 6 October 2017

its position paper published in 2015², after being confronted with the consequences of its regulatory intervention which regulated international rates to be similar to local rates. It resulted in operators in other countries charging South African operators termination rates higher than the national termination rates resulting in a significant negative balance of payments or outflow of funds from South Africa to other countries.

Since the deregulation of ITRs in 2017, the South African operators still make net outpayments for ITRs which results in South African mobile users continuing to cross-subsidise telecom users in other countries.³ The market has furthermore changed quite significantly with the role of over the top (“OTT”) players in recent years, which act to disincentivise licensees from charging excessive ITRs⁴. As recognized by the Authority, OTT voice calls are substitutes for international voice calls.

The entire basis of intervening into a market is to only do so if inefficiencies cannot be adequately addressed through competition alone. It is submitted that competition in the international calling space is fierce, and no regulatory interventions can be justified in this instance, including a requirement for reciprocity.

Bypass Fraud

The Issue of bypass fraud remains a concern for the operators. Whilst the Authority considered three options pertaining to the termination of internationally originated voice calls and settled on a proposal to impose the principle of reciprocity, it did not explicitly address the issue of bypass fraud. The Authority has the power in terms of section 4 of the ECA, to deal specifically with the illegal bypassing of interconnection

² ICASA Media release published on 20 March 2015 entitled “*ICASA Position Regarding International Interconnection Rates*”.

³ As mentioned in paragraph 4.2.3.12.2 page 23 of Findings Document on the Review of the 2014 Pro-competitive Remedies imposed on Licensees in terms of the Call Termination Regulations, 2014, published in Notice No 1937 on 28 March 2022.

⁴ As mentioned in paragraph 4.3.2.12.1 page 23 of the Findings Document on the Review of the 2014 Pro-competitive Remedies imposed on Licensees in terms of the Call Termination Regulations, 2014, published in Notice No 1937 on 28 March 2022



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and to impose sanctions proportional to the harm caused and it is proposed that this is an opportunity for the Authority to yield its power.

Conclusion

The ACT and its members strongly submit that allowing pricing freedom in a competitive market and retaining the status quo is the correct approach. Furthermore, the Authority should use its powers to deal specifically with the illegal bypassing of interconnection and to impose sanctions proportional to the harm caused.

Yours Sincerely,

A handwritten signature in black ink, appearing to read 'Batyi', is written over a light blue horizontal line.

Ms Nomvuyiso Batyi

Chief Executive Officer

Association of Comms and Technology