ISPA INTERNET SERVICE PROVIDERS' ASSOCIATION

queries@ispa.org.za
010 500 1200
www.ispa.org.za
PO Box 518, Noordwyk, 1687

10 May 2024

ICASA

Attention: The Chairperson (Call Termination Review).

Per email: CTR2021@icasa.org.za

Dear Chairperson

SUBMISSIONS: DRAFT CALL TERMINATION AMENDMENT REGULATIONS 2024

1. The Internet Service Providers' Association of South Africa (**ISPA**) has noted the publication of the Draft Call Termination Amendment Regulations 2024 ("**the Draft Regulations**") for comment and has set out submissions raised by its members below.
2. ISPA's membership includes a substantial number of electronic communications service (ECS) licensees providing fixed voice services who have a direct interest in this process.
3. ISPA is aware that a number of its members are making their own submissions which include substantiation of positions taken below, particularly as regards proposed reductions in wholesale fixed voice call termination costs.

How effective has the CTR regulatory process been in promoting competition and reducing the cost to communicate?

4. A recurring theme from member input received is the limited utility of this exercise given the decline in usage of voice services in South Africa. While a series of rate reductions was necessary in a liberalizing environment, regulated termination rates are now such that they have limited impact on the price paid by consumers for voice calls and limited impact on levels of competition in voice markets.
5. ISPA notes the following:
   - 5.1. The initial impetus for the Authority to utilize its pro-competitive powers in the call termination market was the decision by incumbent MNOs to engineer massive increases in termination rates for mobile calls as a result of the scheduled market entry of Cell C.
   - 5.2. Over the past 14 years of call termination rate regulation the focus has been on reversing these increases. This has been achieved while the debate around the role of asymmetry in the wholesale mobile voice call termination market in promoting competition in that market continues between the dominant and the challenger MNOs.
   - 5.3. The fixed market – far more concentrated and less competitive than the mobile market – was never a focus and it is fair to say that call termination regulation has had no impact on competition in this market.

Board: Sasha Booth-Beharilal (Chairperson), Cheryl Dinkelmann (Deputy Chair), Dave Gale
Gideon le Grange, Jerry Maleka, Nhlanhla Mkhwanazi, André van der Walt, Annel van der Walt, Aurora Vani, Enzio von Diest

5.4. As evidenced by the current proposals, ICASA has given up on promoting competition in the wholesale fixed voice call termination market. Its focus in this market is exclusively on applying cost-based pricing remedies to all licensees irrespective of size or market share.

5.5. In ISPA's view this is at odds with the purpose of Chapter 10 of the ECA.

6. Is the Authority able to quantify the reduction in the cost to communicate or pro-competitive impact of the Draft Regulations in real terms for consumers? As submitted below, ISPA members indicate that, perversely, the Draft Regulations will force them to increase retail prices.

Fixed mobile convergence

7. In its Findings Document on the Review of the 2014 Pro-competitive Remedies imposed on Licensees, the Authority states the following:

4.3.2.7.1. The Authority maintains that fixed and mobile services should be in separate markets for the reasons already provided under fixed product market definition.

…

4.3.2.7.2.The Authority, however, acknowledges some level of convergence between the two services since the last review, which was driven largely by the Covid-19 pandemic. The cost modelling exercise may assist in revealing the extent of the impact of such convergence, if any.

8. ISPA members have noted that the relationship between regulated costs for fixed and mobile costs has remained constant throughout reductions. This gives the appearance that the fixed cost is modelled with reference to the mobile cost rather than independently. This in turn aligns with the sentiment expressed by ISPA members that the Authority has effectively abandoned exercising its pro-competitive powers under Chapter 10 of the ECA in favour of SMME fixed voice providers, evidenced by the lack of any asymmetrical benefit in the wholesale fixed voice call termination market.

9. Members indicated that it appeared that ICASA had reached its conclusions through historically determined assumptions which are no longer valid, and which blur the reality of convergence:

This process has been in progress for 14-years and ICASA continues to hold fast to the same approach. The way that the Regulator had always calculated fixed was by just apportioning the cost of last mile. With mobile infrastructure they had apportioned the whole cost of the service. Fundamentally this dictates the subscription model by which all fixed subscribers and accordingly VoiP type subscribers have to be priced.

ICASA was in fact compelling two (2) fundamentally different price models and has done so for 14-years. This is never going to change unless the Regulator started to accept their role in creating this issue.

Amendment of regulation 1 of the Regulations

10. Insertion of definition of "new entrant"

10.1. This definition must be considered against the proposed sub-regulation 7(5)(b)(iii).

(iii) New entrants will qualify for asymmetry for a limited period of three years after entry into the market.

10.2. ISPA submits that three years is insufficient for a new entrant to establish any meaningful market share noting the entrenched incumbents in both the fixed and mobile call termination markets.

10.3. Historically, those regarded as being new entrants have been afforded the benefits of asymmetry for far longer than three years.

Amendment of regulation 3 of the Regulations

11. ISPA notes the Authority's intention to delete sub-regulation 3(c):

"(c) The market definitions contained in this regulation do not include internationally originated voice traffic terminating on a mobile and/or fixed location within the Republic of South Africa."

Substitution of regulation 7 of the Regulations

12. Sub-regulation 7(3): Market share

12.1. Noting that the Authority has undertaken a full review of the regulatory framework, it is not clear why determinations in this sub-regulation are made on the basis of market share as at 31 December 2016.

12.2. ISPA is, however, unaware of an updated competition analysis informing the Draft Regulations.

13. Sub-regulation 7(5)(b)(i): Proposed reduction of call termination rates

13.1. The Authority is proposing a regulated rate for wholesale fixed call termination of:

13.1.1. R0.04 ex VAT per minute from 1 July 2024; and

13.1.2. R0.01 ex VAT per minute from 1 July 2025.

13.2. This constitutes a reduction of:

13.2.1. 33.33% as between the current rate and the rate effective 1 July 2024; and

13.2.2. 75% as between the rate effective 1 July 2024 and the rate effective 1 July 2025.

13.3. ISPA members providing fixed voice call termination services all agree that the cost to terminate a fixed voice call in South Africa for an SMME provider is significantly higher than 1 cent per minute ex VAT.

13.4. Members further expressed the view that the proposed rates would damage their ability to carry on business.

In terms of the quantum of the FTR, R0.01 is an extraordinarily low termination rate by global standards. At present exchange rates, this places the FTR at just a fraction of the FTR in highly developed markets such as the United States, United Kingdom, and much of Europe. This is particularly at odds with the fact that South Africa is a geographically large country with relatively low population density and the real-world cost of deploying fixed lines being far higher than in major European countries. Furthermore, South Africa has unique challenges, most

notably an unreliable power infrastructure that necessitates costly deployment of backup power generation and battery backup systems, which adds considerably to the cost of providing reliable service, particularly relative to those same developed markets where the FTR is orders of magnitude in excess of USD 0.00053 (R 0.01).

13.5. Further:

Our inbound revenue drops off significantly with these rate decreases – a 55% drop at 1 July 2025. We would need an additional 36mil monthly inbound minutes at the new rates to pull us level with current Inbound revenues (more than double our current volume).

The rate decreases of the magnitude proposed will not benefit consumers, because not matter how Inbound revenue is accounted for by an operator, all operators will also see equitable drops in Inbound revenues.

For some operators to remain viable they would need to increase their retail rates, because they wouldn't be able to offset the rate decreases with commensurate volume increases.

13.6. Further:

The running of a carrier-class fixed voice service entails far more than just the last mile!

- *Fixed/VoIP systems rely on internet bandwidth to deliver clear, high-quality calls, and this comes at a cost in the last mile to customers, core network and interconnects to other operators.*
- *Fixed/VoIP services are subject to various regulatory fees*
- *The infrastructure to provide a fixed voice is also substantial including infrastructure, hardware and software (costly SBCs, media servers, databases, support and maintenance, and a number of additional costs*

We have seen a marked increase of inbound calls to business customers we largely support, almost equaling the volume of outbound calls, so to attribute only 1c in the 2nd year from now, to maintain infrastructure for this is completely and practically inadequate.

13.7. Members also indicated that the proposed reductions would have the unintended consequence of forcing SMME providers to increase their retail rates:

Should ICASA proceed with the uniform reduction of termination rates in the magnitude proposed, these rate cuts will have an adverse impact on the South African voice market. It will not be possible for smaller licensees to continue offering services to the market without increasing the rates that we charge our customers – thus defeating both objectives set out above, and likely reducing the number of voice providers in the country in the medium term.

13.8. ISPA requests that the Authority reconsider its proposal relating to fixed termination rates.

13.9. ISPA has no objection to the use of the term "Large Mobile Operators" to describe licensees previously designated as having enhanced significant market power, subject to it being properly introduced. ISPA submits, however, that the use of this term in Table 1 is incorrect because these rates are also applicable to Telkom as a fixed provider.

13.10. Table 1 should also take into account that Vodacom and MTN also offer fixed termination services where they are not licensees for the purposes of sub-regulation 7(4).

13.11. ISPA suggests the splitting of the current table into two separate tables with the further amendments suggested below. If adopted this will require further consequential amendments where these tables are referenced elsewhere.

Table A1: Termination rates to a mobile location

Period	Maximum call termination rate for licensees identified in sub-regulation 7(4)(a) (ZAR per minute ex VAT)
1 July 2024 – 30 June 2025	R0.07
1 July 2025	R0.04

Table A2: Termination rates to a fixed location

Period	Maximum call termination rate for licensees identified in sub-regulation 7(4)(b) (ZAR per minute ex VAT)
1 July 2024 – 30 June 2025	R0.04
1 July 2025	R0.01

14. Sub-regulation 7(5)(b)(ii): International termination rates

14.1. Under this proposed sub-regulation Vodacom and MTN – in respect of mobile voice calls – and Telkom – in respect of fixed calls, are required to charge "reciprocal international termination rates for voice calls originating outside of South Africa". These rates cannot be lower than the regulated rate for domestically originated calls or "higher than the international termination rates offered by an international operator".

14.2. ISPA welcomes this initiative to curb - to a degree - the excessive costs charged by local licensees for the termination of internationally originated calls. ISPA recognizes that this is a response to requests from ISPA and others for the Authority to intervene as also to the unintended consequences of the Authority's own decision to amend the Call Termination Regulations to exclude internationally originated voice calls from the relevant market definitions.

14.3. The proposed sub-regulation is, however, lacking in required detail and does not take into account the role of international transit carriers in global voice interconnection.

14.3.1. As a general rule calls originated on the network of a foreign operator are not handed over directly to a terminating local licensee. These calls are transited through one or more third party networks – generally the larger providers in the mobile and fixed termination markets – before being terminated to the licensee hosting the destination

number.

14.3.2. Importantly, the terminating licensee is not in these circumstances privy to the routing information handed over by the foreign operator to its transit partner.

14.3.3. The terminating licensee cannot therefore make a determination as to where the call originated, locally or internationally.

This lack of clarity complicates the application of appropriate rates, highlighting the need for robust mechanisms mandated by ICASA to differentiate and classify internationally originated calls. As a result, we have concerns that reciprocity principle will not be complied with, or, worse yet, will be applied discriminatively in a manner that seeks to seeks to preclude ISPA members from providing South African termination services to the international market and to limit competition.

14.3.4. The incumbent operators have gone to substantial expense to protect themselves from the international termination rate (ITR) bypass which was a result of the 2017 amendments. They have also re-engineered their interconnect agreements to provide legal protections.

14.3.5. SMME providers are not in a position to take these measures and have no negotiating power in terms of amendments to interconnection agreements. Nor, for that matter, are the costs of trying to mitigate this fraud taken into account in the rates proposed in the Draft Regulations.

14.4. ICASA is requested to review Ofcom's position in this regard with special refer to Sections 6.91 through 6.155[1], as well as the EU's approach[2].

14.5. The EU approach represents a compromise in terms of which internationally originated calls are rated subject to the prescribed maximum rates for:

14.5.1. calls from EU member states

14.5.2. calls from all other countries that reciprocate with rates no greater than the EU's prescribed maximum rates; and

14.5.3. calls from any other country listed on the annexure to the regulation (which other countries may apply to the EU to be added to by demonstrating that that treat operators within EU member states no less favourably then operators in their home market, even if their rates exceed the EU's prescribed maximum rates). Calls from all other countries not meeting those criteria are not subject to any rate controls.

---

[1] See Statement: Wholesale Voice Markets Review 2021–26, available from https://www.ofcom.org.uk/consultations-and-statements/category-2/2021-26-wholesale-voice-markets-review

[2] COMMISSION DELEGATED REGULATION (EU) …/...of 18.12.2020 supplementing Directive (EU) 2018/1972 of the European Parliament and of the Council by setting a single maximum Union-wide mobile voice termination rate and a single maximum Union-wide fixed voice termination rate, available from https://eur-lex.europa.eu/resource.html?uri=cellar:54e4cc97-414d-11eb-b27b-01aa75ed71a1.0018.02/DOC_1&format=PDF .

14.6. The UK's approach is substantively similar to the EU approach, albeit without option (c). Ofcom's document, however, provides far more detail on their deliberations and reasons for their decisions.

14.7. Importantly, the concept of reciprocity is applied at a country level between regulators and not left to individual licensees to determine. Reciprocal rates are binding on all licensees within a jurisdiction through the regulatory actions of regulators.

14.8. Major advantages of this approach include simplicity, transparency as well as effectively mitigating arbitration risk for licensees, in turn meaning that lower rates can be passed on.

14.9. Stated differently: the impact is to mitigate some of the unintended consequences of ICASA's decision to change the market definitions to exclude internationally originated calls. Over the past five years that decision has led to massive fraud and major costs for providers to find technical measures to reduce the incidence and cost of this fraud.

14.10. ISPA submits that ICASA could simply adopt the approach taken in the EU precedent, with the added benefit that this will allow us to achieve reciprocity with the EU and UK (and other jurisdictions that have adopted this approach).

14.11. Implementation of the reciprocity principle requires more detailed regulatory guidance to ensure fairness and efficiency in implementation.

15. Sub-regulation 7(5)(b)(iii): New entrants

15.1. This is of course – although not explicitly stated – only applicable to new entrants into the market for wholesale mobile voice call termination.

15.2. This means that SMME fixed providers will continue to effectively subsidise Cell C and Telkom Mobile until their asymmetry no longer applies.

In terms of asymmetry, the subsidy for Cell C and Telkom Mobile remains for one more year. While this aligns with their finding document, the fact remains that the imposition of asymmetry in the mobile market alone, and not the fixed market, means that, for yet another year, we retain the perverse situation that ISPA members will far less market share then either Cell C or Telkom Mobile, all of whom have been providing voice services for less time than Cell C and many of whom have been providing voice services for less time than Telkom Mobile, are still expected to subsidise those larger operators. Not only does this not promote competition, it actually inhibits it.

15.3. As noted above, ISPA does not believe that a three-year period is sufficient for a new entrant to even begin to establish itself in this market (or the fixed market for that matter) nor is it equitable given the period of more than 10 years afforded to Telkom Mobile and Cell C.

16. Annexure A: Application of the fair and reasonable obligation

16.1. This Annexure is largely irrelevant given that there is no distinction between rates which can be charged by licensees named in sub-regulation 7(4) and all other licensees that are subject to the requirement to charge "fair and reasonable prices for wholesale voice call termination consistent with Annexure A".

16.2. There is no asymmetry in the fixed market and after 1 July 2025 there will be no asymmetry in the mobile market with the exception of new entrants.

16.3. Stated differently: all licensees in a market – irrespective of their size or market share – are subject to the same regulated rate.

16.4. For example: there is no point in stating that a licensee that has a share of total minutes terminated in the wholesale voice call termination markets of 20% or less of total minutes terminated to a fixed location as at 31st December 2023 may charge higher rates and then providing a table which shows that the rates must be the same as those charged by Telkom.

Conclusion

17. ISPA trusts that the above is helpful to the Authority and confirms its willingness to participate in hearings should the Authority decide to hold them.

Regards

ISPA