10 May 2024

The Chairperson – Call Termination Review
Independent Communications Authority of South Africa
350 Witch-Hazel Avenue, Eco Point Office Park,
Eco Park, Centurion

CTR2021@icasa.org.za.

SACF COMMENTS – DRAFT AMENDMENT TO THE CALL TERMINATION REGULATIONS, 2014

1. INTRODUCTION AND GENERAL COMMENTS

1.1 The South African Communications Forum (the SACF) is a voluntary industry association which is member funded and represents members across the ICT ecosystem. We primarily participate in advocacy in the policy and regulatory environment to contribute towards a competitive and inclusive sector that is capable of attracting and sustaining investment.

1.2 We welcome the opportunity to provide comments on the Draft Amendment to the Call Termination Regulations 2014 ("Draft Regulations").

1.3 Should the Authority decide to hold public hearings, the SACF confirms its intention to participate in such public hearings.

1.4 The SACF understands that reducing the cost to communicate has been a national priority project over more than a decade and through the varied and complimentary efforts of regulators we have noted the continued downward trend of the pricing of communications – both voice and data. This clearly suggests that the combination of the regulatory outcomes and competition have driven prices down.

1.5 While, the objective of ensuring affordability is to ensure the broadest levels of connectivity, it must be balanced with an approach that enables licensees to retain sufficient capital to support infrastructure expansion and upgrades in an increasingly difficult investment climate. Therefore, it is difficult to understand the rationale for the proposed change away from LRIAC+ which recognizes shared costs to pure LRIC which only recognises marginal costs. The accompanying explanatory memo furthermore does not adequately explain the rationale for the attempt to change the costing methodology.

1.6 Further, there are on average three mobile operators per jurisdiction with outliers having four. South Africa has at least four national mobile operators with extensive coverage with continued expansion which is indicative of healthy competition.

1.7 It is noted that these regulations were preceded by a complex process wherein the pro-competitive conditions were reviewed in a four phased process, followed by a cost modelling phase. The conclusion of this phase will result in final call termination regulations and the SACF trusts that its comments would be considered prior to such finalisation.

1.8 The SACF's submission will focus on high level principles that are important to be considered to create a growing and competitive market while, our members will each address their particular concerns in their individual submissions.

1.9 A final consideration in this regard is that, ICASA ought to consider the impact that any regulation potentially has on the market, players and beneficiaries before embarking on the regulation.

2. BACKGROUND

Broader Market

82.1 The Draft Regulations are published in an environment where the ICT sector in South Africa is facing significant challenges. It is the SACF's view that a market review has to take a holistic view of the South African market. This includes taking the following factors into consideration:

- South Africa is facing an ongoing energy crisis, where rolling blackouts have transformed the way in which our members have to make network design and network investment decisions. Networks and communications facilities as the backbone of the economy have to be adapted as they can no longer primarily rely on the grid for power. This crisis is expected to continue for the foreseeable future at least until the next expected market review.
- The state of security in the country has had a further impact on the ability of networks to provide services with network providers having to weather high levels of theft, vandalism, and sabotage with little support from law enforcement.
- Network operators have accordingly had to divert funds away from expansion projects and the migration toward new technologies, in favour of security, energy infrastructure and fuel costs.
- Access to funding has furthermore become progressively more difficult due to South Africa being FATF grey listed and being viewed by analysts and investors as a less desirable investment destination. This has discouraged foreign investors and lenders from providing additional funding to companies and projects, or in some cases, even from maintaining current funding levels.

SOUTH AFRICAN Communications Forum

Impact of OTT

2.2 Another interesting consideration with a South Africa specific dimension is that recent reports[1] indicate that load-shedding is accelerating the decline of traditional voice telephony in South Africa. It seems that user experience shows that over-the-top ("OTT") type services such as WhatsApp often provides better voice quality than regular mobile calls during load shedding. This could in part be attributed to the fact that end-users increasingly have access to access to Wi-Fi and alternate connectivity during protracted periods of power outages. ICASA needs to explore this phenomena as this substitutability was not a consideration at the time that costing models were conceptualised. The literature shows that OTT services is becoming entrenched to the extent that even if there were to be an end to load shedding it would not disrupt the persistent trend of substituting traditional voice calling with OTT. In order to understand the impact on the market, it is imperative for ICASA to conduct the necessary studies to better understand the role of OTTs. Without this being done, the costing model should not be changed as there is no thorough understanding of the impact of OTT on the market.

The *SA Voice Services and UC&C Report* published by BMIT indicates that this decline in call volumes and revenues across both the fixed and mobile voice services market is expected to continue. There is an increasing preference by consumers for omnichannel communication platforms that offer more flexibility and features than traditional voice services. This shift is influenced by technological advancements, changing consumer preferences, regulatory challenges, and external factors like load-shedding.

The Authority's statement in paragraph 4.6.5.1 of the Findings document is noted, wherein it states that "*the Authority maintains OTT voice calls are unlikely to be a sufficiently close substitute for traditional voice calls to mobile and fixed locations for reasons already provided under the product market definition above.*" Consumers may in this instance indicate that the market dynamics are indeed different from how it has been viewed traditionally. In markets where competition is based significantly on quality, innovation, or other non-price attributes, the SSNIP test, which conventionally measures consumer response to price increases, may not effectively reflect the true competitive dynamics, typically zero priced digital markets. To address these limitations, the concept of the Small but Significant Non-transitory Decrease in Quality (SSNDQ) test has been introduced[2]. This test assesses market dynamics by considering whether a small but significant decrease in the quality of a product would lead consumers to switch to another

[1] https://techcentral.co.za/load-shedding-killing-voice-calls/232659/
[2] https://digitalregulation.org/approach-to-market-definition-in-a-digital-platform-environment/

product, thus providing a more relevant analysis in markets driven by quality competition.

The SACF accordingly implores the Authority to keep the dynamic nature of this industry in mind when reviewing this market. It does not ring true for the Authority to state that "*Promoting lower termination rates arising from applying the pure-LRIC standard will help licensees emulate this success where traditional voices are concerned*" in referring to its consideration of the impact of OTTs, without also considering it has to provide the underlying infrastructure used by OTTs.

Competition issues

82.3 The Authority has made a determination that there are still competition issues in the call termination market that may require regulatory intervention. This statement was made in the Market Review phase referred to in the introduction above. The Authority further indicated that it engaged in an appraisal of the pro-competitive conditions imposed on licensees in terms of the Call Termination Regulations in 2014[3]. A Findings Document was published on 28 March 2022 in which the Authority indicated it has reviewed the market for wholesale voice call termination services as well as the effectiveness of competition in the telecommunications market.

The Authority made various determinations including the following:

- Licensees must charge cost-based pricing.
- Mobile termination rates will move to symmetry within a transitional period of twelve months.
- New licensees will qualify for asymmetry for a limited period of three years after entry into the market.
- South African licensees must charge reciprocal international termination rates for voice calls originating outside of South Africa.

It is not clear how the determination mentioned above were made, and it has not been justified in any of the preceding processes.

The rest of this submission will focus on the determinations made by the Authority in the findings document, which formed the basis of the Draft Regulations.

3. FAIR ADMINISTRATION OF JUSTICE AND IMPACT ANALYSIS

3.1 One of the main characteristics of the constitutional transformation brought about in South Africa was the shift towards a culture of justification, in which every

[3] ICASA Methodology Briefing Note on CTR Review 2012 Cost Modelling Phase August 2023.

exercise of power is expected to be justified. Deliberation and accountability are fundamental normative commitments that ensure an understanding of the true considerations that motivates a particular outcome.

3.2 Throughout this process the sector has expressed a high level of discomfort as to the reason for the change in costing methodology.

In the findings document, the following statement is made by the Authority; "*The Authority found that competition in the Mobile termination markets and Fixed termination markets would be ineffective without regulatory intervention.*"

The Authority proceeds to state that it has determined that to retain the following pro-competitive terms and conditions:

- Licensees must charge cost-based pricing;
- Licensees must publish a reference interconnection offer.

However, it never explains its rationale for moving away from the current LRAIC+ approach nor does it provide clarity whether it believes the previously used LRAIC+ methodology did not achieve the desired objective, or if there is any other reason why it believes it is no longer deemed appropriate. It only proceeds to explain why it deems pure LRIC to be appropriate by stating that "*applying LRIC+ is no longer proportionate, since any potential harm has not arisen, despite the substantial change in termination rates over time*."

3.3 Pure LRIC is a very complex model to implement. It requires detailed forecasting and an understanding of how costs evolve with technology. Furthermore, it might not capture the real-world risks and costs in the model. By focusing on the costs of an efficient hypothetical operator the true level of risk and investment required may be under estimated. The SACF accordingly maintains that the Authority (1) did not justify the change and (2) articulate the benefits to the value chain, the Authority is imposing a huge regulatory burden for an unproven benefit when making this change from LRAIC+ to pure LRIC.

3.4 The last decade has witnessed a revolutionary development of global mobile telecommunications industry while playing the crucial role in empowering people, triggering a positive change in business processes and in the global economy with a 4.1 USD trillion contribution in GDP (Gross Domestic Product) at 2019 according to the GSMA.[4] The sector is a cornerstone of the economy.

The barriers to entry into the communications market have been lowered due to the widespread adoption of mobile internet access, specifically with 4 and 5G

[4] https://wjarr.com/sites/default/files/WJARR-2024-0113.pdf

mobile technology advancements in telecommunications allowing application based market players to offer their services in the market. These players benefit from the significant network investments made by mobile operators.

3.5 Implementing a costing model that does not recognise the continuously evolving regulatory landscape nor the regulatory compliance burden without being in a position to show an overwhelming benefit does not seem to justify the change or meet our constitutionally required standards for administrative action.

3.6 It is therefore proposed that an impact analysis be conducted, that takes the overall impact of new technologies, the ultimate benefit to the market and that clearly considers the regulatory objective of the process into account prior to the finalisation of the process.

4. SPECIFIC COMMENTS

International Termination Rates

4.1 The SACF submits that the status quo regarding international termination rates should be retained. The SACF is of the view that regulatory interventions must seek to cure an identified problem. The motivation for ICASA's tenacious approach to International Interconnection Rates is unclear particularly as it has attempted to regulate this before in tandem with other regulators with limited if any success. The biggest obstacle that ICASA and licensees faced was that ICASA jurisdiction is limited and as such had no control over licensees and pricing in other jurisdictions.

The SACF believes that the Authority's initial view in this process was correct. The Authority stated in paragraph 2.1.2 of the Discussion Document (published on 5 November 2021 in Notice No 1480) that:

> *"The Authority's preliminary view is that deregulating the international termination market is in the best interest of the country as SA licensees are given pricing freedom to charge reciprocal rates in order to minimise or mitigate exploitation of SMP by licensees in other jurisdictions. The Authority is also of the view that this approach is the best option for SA given that the Authority does not have legislative powers to directly control the international termination rates charged by terminating licensees for voice calls that originate in SA. While the Authority is mindful that reciprocity might not necessarily deliver the preferred low international termination rates, the Authority's view is that the impact of high international termination rates on licensees' revenue and traffic volumes as well as the prevalence of OTT services*

in the international calling market should disincentivise licensees from charging high international termination rates."

4.2 Bypass fraud or toll bypass is a global problem and reciprocal rates is not expected to resolve the problem. Despite Europe implementing reciprocal international termination rates, they are still experiencing high levels of bypass fraud. As suggested in a number of submissions throughout this process, a more appropriate way forward would be to commence with a regulatory process to address bypass fraud.

4.3 It is accordingly proposed that draft regulation 7(b)(ii) be removed and that the Authority continue to allow pricing freedom.

Yours sincerely,

Katharina Pillay
Managing Director
SACF

Signed electronically