

**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG**

CASE NO: 2018 / 20057

In the matter between:

CELL C PROPRIETARY LIMITED

Applicant

And

**INDEPENDENT COMMUNICATIONS
AUTHORITY OF SOUTH AFRICA**

First Respondent

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

Second Respondent

AMANDLA.MOBI

Third Respondent

**CRYSTAL WEB MOBILE AND LEASP
(PTY) LTD**

Fourth Respondent

FREE MARKET FOUNDATION

Fifth Respondent

**INTERNET SERVICE PROVIDERS'
ASSOCIATION NPC**

Sixth Respondent

**LIQUID TELECOMMUNICATIONS
SOUTH AFRICA (PTY) LTD**

Seventh Respondent

MARK P LISTER

Eighth Respondent

**MOBILE TELEPHONE NETWORK
(PTY) LTD**

Ninth Respondent

MWEB

Tenth Respondent

NATIONAL CONSUMER COMMISSION

Eleventh Respondent

**WIRELESS ACCESS PROVIDERS'
ASSOCIATION NPO**

Twelfth Respondent

TELKOM SOC SA LTD

Thirteenth Respondent

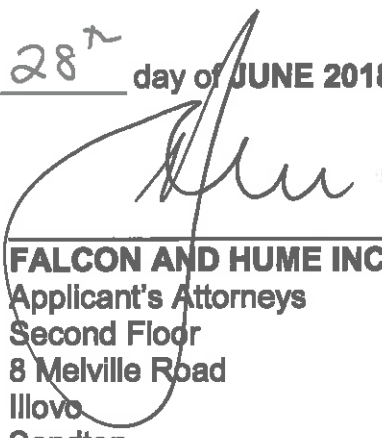
VODACOM (PTY) LTD

Fourteenth Respondent

FILING SHEET: APPLICANT'S REPLYING AFFIDAVIT

TAKE NOTICE THAT the Applicant hereby files its Replying Affidavit.

SIGNED at Ilovo on the 28th day of **JUNE 2018**.



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**IN THE HIGH COURT OF SOUTH AFRICA
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TELKOM SOC SA LTD

Thirteenth Respondent

REPLYING AFFIDAVIT

I, the undersigned,

GRAHAM NEIL MACKINNON

do hereby make oath and say that:

DEPONENT, KNOWLEDGE AND AUTHORITY

1. I am an adult male and the Chief Legal Officer of the applicant ('Cell C'), and the deponent to the founding affidavit in this application. I remain authorised as before to represent Cell C in these proceedings and to depose to affidavits in relation to this application.
2. The allegations contained in this affidavit are, save where the context indicates the contrary, within my personal knowledge and are true and correct. Where I make legal submissions, these are made on the advice of Cell C's legal representatives, which advice I accept as correct.

SUMMARY OF THE CELL C APPROACH IN REPLY

3. I have read and considered the answering affidavits filed by the first and second respondents ('ICASA'), and the thirteenth respondent ('Telkom'), as well as the counter-application filed by the ninth respondent ('MTN').
- 3.1. Cell C aligns itself with the content of the MTN counter application and will file the requisite notices in this regard.

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- 3.2. No reply is required in respect of the answer filed by Telkom, given the stance that it takes in the litigation, which is supportive of Cell C's application for relief.
- 3.3. This replying affidavit deals solely with ICASA's answering affidavit, filed in opposition to the application in Part A of the notice of motion.
4. Before dealing with the content of particular paragraphs of the answering affidavit, I note that much of the answering affidavit comprises legal argument, which I shall not respond to in this replying affidavit. Cell C stands by the averments set out in its founding affidavit, and the substance of legal argument made in the answering affidavit will be dealt with in legal submissions at the hearing of the application.
5. A close reading of the answering papers reveals that ICASA is not in a position to dispute that the time between the publication of the End-User and Subscriber Services Charter Amendment Regulations, 2018, published by way of Government Notice 233 in *Government Gazette* 41613 of 7 May 2018 ('the **Amendment Regulations**') and the intended date for Implementation (one month) was too short for a licensee to ready itself for compliance. The theme that ICASA pursues is that the licensees, including Cell C, ought to have taken earlier steps in anticipation of the publication of the Amendment Regulations. That approach is irrational:
- 5.1. ICASA ought not to have published regulations for implementation by a date that it had understood and had been advised would be unfeasible, except if a licensee had taken steps in the hope that it guessed correctly at what the final content of the Amendment Regulations might be.

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5.2. Moreover, given the complexity of the submissions by Cell C and other licensees during the consultation process, it appears that ICASA had scarcely applied its mind to the submissions made to it (whether generally or in relation to the period required for implementation), since the final version of the Amendment Regulations was published shortly after the final sets of submissions were received.

6. Essentially, the answering affidavit deals with the question of urgency. Cell C will argue more fully at the hearing of this application that the question of urgency is no longer appropriately to be raised by ICASA in its response to Cell C's application:

6.1. Part A of this application was launched on the basis of urgency, given that the Amendment Regulations were due to come into force on 8 June 2018, by which date Cell C, would have found itself non-compliant, despite its best efforts to achieve compliance and through no fault of its own.

6.2. Part A of this application was accordingly set down for hearing on Thursday 7 June 2018.

6.3. ICASA filed no answering papers at the time and made no effort to oppose the matter on the basis of urgency, for example, by opposing urgency by arguing off the founding papers (an option that was open to it if it wished to pursue it). Rather, ICASA proposed that the matter be removed from the roll, and that the implementation date of the Amendment Regulations be postponed until the final determination of Part A of Cell C's application, with licensees not to be found to be non-compliant with the Amendment Regulations. It also proposed time-frames for the filing of affidavits, and

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asked Cell C to prepare a draft order along these lines. A copy of an email from ICASA's attorneys is attached as annexure "RA1".

- 6.4. Cell C drafted an order as requested, and ICASA agreed to the draft order as proposed, which formed the subject-matter of engagement by all of the respondents in this application. The draft, which obliged ICASA not to take any steps to implement the Amendment Regulations, and which provided for time periods for the filing of answering and replying affidavits, was made an order of this Honourable Court. Neither ICASA, nor any other respondent, reserved the right to contest urgency when the matter came to be heard. A copy of the order forms part of the court file and it is accordingly not attached.
- 6.5. On 11 June 2018, ICASA published a notice suspending the effective date of the Amendment Regulations pending the determination of this application, as appears from annexure "RA2" hereto.
- 6.6. The conduct of ICASA indicates that it waived reliance on urgency as a ground of opposition and accepted the urgency of the matter in the circumstances. It will be argued more fully at the hearing that ICASA, through its actions, forfeited any right to rely on the alleged absence of urgency.
- 6.7. The court may appropriately deal with the application on the merits without further regard to the question of urgency.
7. Insofar as urgency is to be considered by the court, I note that ICASA relies on alleged self-created urgency on the part of Cell C. In advancing this argument, ICASA raises the stage at which Cell C brought to ICASA's attention the technical

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difficulties with implementing the Amendment Regulations within one month of publication in the Government Gazette. ICASA appears to submit that, in circumstances where the timeframe necessary for operationalising the Amendment Regulations had not been brought to ICASA's attention during the public participation process, ICASA cannot be challenged by licensees even when the timeframe provided for by ICASA is impractical, unfeasible and thus irrational in the circumstances.

- 7.1. First, the suggestion that Cell C had not raised the significant implications for it (and other licensees) from an accounting and technical (including billing) point of view is simply wrong. The point was most certainly made in submissions to ICASA. Cell C made it quite clear that ICASA's proposals, particularly on out of bundle billing, rollover and transfer of data (for prepaid as well as post-paid consumers) would have very significant implications for Cell C (and other licensees) from an accounting and technical (including billing) point of view, and would require substantial dedicated resources to implement consequential changes to Cell C's processes and procedures.
- 7.2. The second point to note in this context is that it is completely unreasonable for ICASA to have expected the licences to make detailed submissions on the time required to implement the (then proposed) Amendment Regulations in circumstances where the licensees were insisting that the Amendment Regulations did not appropriately provide for aspects like roll-over and transfer of data at all. The licensees had hoped to persuade ICASA to make substantial changes to the regulations in consequence of the participation process. In its submissions of 3 January 2018 (attached to the answering affidavit as annexure AA3), Cell C took the opportunity to:

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- 7.2.1. make the general submission that the (then proposed) Amendment Regulations sought to dictate the commercial terms upon which a licensee and end-user may contract (para 8) and that the draft Amendment Regulations went beyond the powers of ICASA to regulate;
- 7.2.2. submitted in respect of Regulation 8B(3) (Expiry of data bundles (prepaid)) that –
- 7.2.2.1. ICASA lacked the authority to dictate commercial terms, given the power to regulate afforded to it under the Electronic Communications Act 36 of 2005 ('ECA') (paras 14 – 16);
- 7.2.2.2. the regulation was irrational for its (unintended) cost impact upon consumers brought about *inter alia* by the realities of bandwidth availability and IT requirements (para 17 – 31);
- 7.2.2.3. the substantial interference in commercial terms was unreasonable in the circumstances (para 32 – 33);
- 7.2.2.4. ICASA had failed to take relevant considerations into account, which relevant considerations had been brought to its attention by licensees who had made submissions in earlier rounds (including Cell C) (para 34);
- 7.2.2.5. the purported regulation aimed at compliance with the Consumer Protection Act 68 of 2008 ('CPA') constituted an error in law (para 35 – 38);
- 7.2.2.6. the then proposed regulation would undermine competition in the data market (paras 39 – 42);

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7.2.3. complained in respect of regulation 8B(1) and (2) (Disconnection of service upon expiry of bundles – post-paid) that it was –

7.2.3.1. impermissibly vague for the reasons set out in the submission (paras 43 – 45); and

7.2.3.2. unreasonable for its effect on consumer choice (paras 46 – 47); and

7.2.4. asserted in respect of regulation 8B(4) (rolling over of unused data and transfer of data) that –

7.2.4.1. it would lead to network provisioning problems (para 49); and

7.2.4.2. it was vague and that it was not clear what licensees' obligations were under the proposed regulation (para 50).

7.3. The third point is that the (uncontested) version in the founding affidavit sets out the evolution of the Amendment Regulations over time. This chronology and ICASA's own pleading in answer (read with the content of annexures AA1 and AA2 to ICASA's answer) show that the 7 August 2017 and 17 November 2017 versions of the Amendment Regulations proposed the coming into force of the Amendment Regulations upon publication, with the final version published on 7 May 2018 (annexure FA3 to the founding affidavit) making provision for the Amendment Regulations within one month after publication, as had been indicated at the press briefing of 26 April 2018.

7.3.1. It is apparent from the documents serving before this Court that the content of the August and November draft versions of the Amendment Regulations were affected by the engagement with licensees and this

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resulted in a number of changes to the Amendment Regulations, including the date of entry into force.

7.3.2. Cell C could not be expected to anticipate what the final version of the Amendment Regulations would prescribe and/or proscribe (in terms of obligations imposed upon licensees) and thus the precise nature of the technical operations that would be necessitated in order to comply with the statutory obligations imposed until such time as it was informed of the content of the final version of the Amendment Regulations.

7.3.3. The final version of the (then proposed) Amendment Regulations was only received by Cell C on 26 April 2018, pursuant to an ICASA media briefing.

7.4. The fourth point is that, shortly after being informed of the proposed implementation time-frame on 26 April 2018 and, most notably before the publication of the Amendment Regulations in the Government Gazette, Cell C actively engaged with ICASA on the feasibility of the proposed one month timeframe provided for in clause 8 of the draft Amendment Regulations (as appears from annexure FA3 to the founding affidavit). Cell C explained in its 4 May 2018 letter (given to ICASA before the publication of the Amendment Regulations in the Government Gazette) that it had proactively undertaken an assessment of the time-frame required to secure compliance. The failure of ICASA to respond to the complaints raised by Cell C up until the launch of this application (as set out fully in the founding papers) necessitated an approach to this court to ensure that Cell C would not be found to be in breach of its obligations imposed under the Amendment Regulations. Of course, on ICASA's own version, it had

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received submissions even prior to 26 April 2018 on the technical impossibility of compliance within a short time-frame (albeit not from Cell C). ICASA was so determined to implement the Amendment Regulations within a short space of time that it elected not to engage with parties raising concerns in this regard.

7.5. The fifth point is that ICASA's approach is inconsistent with the one adopted in respect of the implementation of other regulations in the past. I attach hereto extracts from the following regulations, which came into effect upon publication, but in respect of which ICASA provided for longer periods for implementation, on the basis that compliance could not be achieved with immediate effect:

7.5.1. Number Porting Regulations of 2005 (annexure "RA3A"), in respect of which ICASA allowed a period of nine months for network operators to offer mobile number portability to its subscribers after the promulgation of the regulations;

7.5.2. Call Termination Regulations of 2010 (annexure "RA3B"), in respect of which ICASA allowed a period of approximately six months until new rates came into effect; and

7.5.3. Numbering Plan Regulations (annexure "RA3C"), in respect of which ICASA allowed a period of six to twenty-four months for implementation of the various frameworks and strategies.

8. To this date, ICASA has failed to respond to any of the Cell C correspondence in which technical difficulties were set out. Notably, on 19 June 2018, Cell C's attorney wrote to ICASA to record that it had not received any response to

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correspondence of 4 May 2018 and 28 May 2018. The technical difficulties were restated and Cell C's attorney invited ICASA to *'arrange such meetings and/or site visits as may be required to enable the Authority to apply its mind to our client's submissions, and consider the request for an extension for a period of at least 6 months made by Cell C to comply with the Amended Regulations'*. It was also made plain that *'in the event that the Authority requires assistance from one or more external technical or business process experts to assist it in this evaluation, Cell C would similarly be willing to consult with them and to provide them with reasonable access to its internal technical facilities, and where possible, to arrange for access to those of relevant external standalone technical platforms'*. This much appears from annexure "RA4", another piece of correspondence that has not been met with the courtesy of a reply. Irrationally, ICASA has proven completely unwilling to engage with Cell C to find a solution to the problem.

REPLY TO SELECTED PARAGRAPHS OF THE ICASA ANSWERING AFFIDAVIT

9. Ad para 1

9.1. I deny that the contents are true and correct. Anything in the answer that is inconsistent with the contents of the founding affidavit and the allegations herein, must be taken to be denied as incorrect.

9.2. The remainder of the contents of this paragraph are not disputed for purposes of this application.

10. Ad para 2

10.1. I admit the description of ICASA and the legislative basis for the performance of functions by it.

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- 10.2. The impact of the doctrine of separation of powers on the relief sought in Part A of the notice of motion comprises legal argument and will be argued at the hearing of the application. Suffice it to record that there is no reason to believe that the exercise of powers by ICASA cannot be subjected to evaluation for compliance with the Promotion of Administrative Justice Act 3 of 2000 ('PAJA') and principle of legality.

11. Ad paras 3

- 11.1. The exercise of public power is appropriately subjected to scrutiny, and the exercise of such powers may be prevented if a proper case is made out for it.
- 11.2. The impact of seeking an interdict against ICASA carrying out its statutory powers does not alter the legal requirements that are to be satisfied in the seeking an interim interdict. The considerations that are to be taken into account under each requirement are affected by the separation of powers principle and this will be argued at the hearing of the application.

12. Ad paras 4.1 – 4.4

- 12.1. The relief is aimed at securing the lawful exercise of powers by ICASA. The exercise of powers granted to ICASA cannot be unfettered, and it must comply with the law. If the exercise of powers is irrational or in some other way defective, it is open to challenge.
- 12.2. Cell C denies that the standard sought to be imposed upon it by ICASA, in seeking the interim relief that it does, is the appropriate standard. Full legal argument will be presented at the hearing of this application.

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13. Ad para 4.5

- 13.1. ICASA's decision on the implementation date of regulations must comply with the requirement that it is rational and lawful.
- 13.2. ICASA does not have to agree with any licensee on the implementation date of regulations in order for such an implementation date to be rational, but ICASA is compelled to take all relevant considerations (such as the ability of licensees to comply with its regulations within the time-frames contemplated) into account in setting a date for compliance. ICASA's steadfast refusal to engage the licensees in this regard (both before and after the publication of the Amendment Regulations in the Government Gazette, and before and after the launch of this application) provides evidence of its refusal to bring relevant considerations into account.
- 13.3. In the present case, Cell C was in no position to comply with the Amendment Regulations, having only received notice of their imminent publication and one-month time-period for implementation on 26 April 2018. Before then, Cell C could not have known with precisely what requirements it would have to comply under the Amendment Regulations and could not have prepared itself accordingly.
- 13.4. There is no alternative available to Cell C (and ICASA does not state what that alternative might be). The inevitable failure to comply with the Amendment Regulations (given the technical impossibility that has repeatedly been communicated to ICASA, as well as the financial and other consequential effects) will expose Cell C to compliance actions by ICASA. Cell C cannot sit back and wait in the knowledge that it will be acting in breach of regulations.

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- 13.5. In any event, Cell C submits that regulators are obliged to act in a manner that is proportionate and appropriate to the harm sought to be remedied or avoided. Although ICASA has noted that it wants to protect consumers from *'bill shock'*, unfair *'loss of data'*, and *'out of bundle'* charges which are too high, it is not clear that the number of customers affected warrants a wholesale change in the regulatory regime, as is brought into effect through the Amendment Regulations. It is important to note that the Amendment Regulations are aimed at prepaid as well as post-paid consumers. Prepaid consumers, who make up the largest number of customers in the South African market, do not receive any bills, and so they will not experience the *'bill shock'* that ICASA relies on.

14. Ad para 5

- 14.1. It is indeed true that a public participation process was followed, and that Cell C participated. The time-lines indicate that ICASA took its time in consulting with interested parties, but for some reason now it insists on compliance within a very short time-period, even though it has been informed that compliance is not possible within the time-period provided.
- 14.2. It is a fallacy to suggest that Cell C had been in a position to make submissions on the time-frame within which it had to comply with the Amendment Regulations even before it was known precisely what these would entail in their final form and/or before it was known what notice period would apply before compliance was required. As I have explained hereinabove, Cell C had challenged the proposed Amendment Regulations in substance, so that it may have expected that its submissions might sway ICASA and that the content of the Amendment Regulations might differ from

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what had been proposed at various times prior to formal publication of the Amendment Regulations.

14.3. Be that as it may, once the Amendment Regulations were released at the press briefing of 26 April 2018, Cell C did engage with ICASA, to no effect.

14.4. The inferences sought to be drawn and legal argument contained herein will be addressed at the hearing of this application. For present purposes, I simply deny the suggestion that the legal position would have been different had Cell C made more elaborate submissions on the technical requirements for timeous compliance with the Amendment Regulations at an earlier stage.

14.4.1. On ICASA's own version, concerns were raised (if not explicitly by Cell C), but it had not been swayed by submissions to it that technical compliance would require an implementation period of up to six months. Cell C is not yet in possession of the record of proceedings and is therefore unaware of the number of licensees who raised the concern regarding the implementation period of the Amendment Regulations but does not dispute ICASA's allegation in this regard.

14.4.2. Why it would have responded differently to similar submissions by Cell C, is not explained. Indeed, even in the face of what it describes as detailed description of the technical difficulties, ICASA persists with its position that it is not technically impossible to achieve compliance within the prescribed time-period. As I explained hereinabove, an invitation has been made to ICASA to assess Cell C's submissions on technical impossibility, but ICASA has not taken up the invitation. At no stage has ICASA proved itself willing to be confronted with the facts

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that undermine its assertion that technical compliance is possible within the time-frame provided.

14.4.3. It is not a question of which licensee drew to the regulator's attention the issues of concern in the draft Amendment Regulations but rather that the issues were in fact raised. Cell C cannot be regarded as non-suited on the grounds set out in the answering affidavit. All licensees are to be regulated on an equal basis, and no distinction is appropriately to be drawn between Cell C and others in the circumstances. What is evident, is that ICASA had not brought into account submissions made to it in respect of the time-frame required for compliance.

14.5. Moreover, Cell C did not '*keep its powder dry*' in an effort to subvert the public participation process. Quite simply, it could not have been expected to know what the law was going to be until the final version of the Amendment Regulations was published. It is a central tenet of the rule of law, a founding provision of the Constitution of the republic of South Africa Act 108 of 1996 ('**the Constitution**') that the law must be known. How can a party be expected to ready itself for compliance with a regulation, the final content of which was not known before 26 April 2018? The insinuation that Cell C sought to actively prejudice ICASA by withholding information is unsubstantiated, inflammatory and denied.

14.6. Full legal argument will be presented at the hearing of this application.

15. Ad para 6

15.1. The nature of the public participation process is admitted.

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15.2. I deny in the strongest possible terms that Cell C wilfully withheld Information from ICASA in the public participation process. Cell C responded to the substance of the (then proposed) Amendment Regulations. It was only when it was placed in a position to know what the final content of the Amendment Regulations entailed that Cell C was in a position to assess the time it would take for it to comply. The suggestion that Cell C ought to have readied itself for compliance with proposals that did not have legal force, in order to avoid potential difficulties in timeously complying with the published version of the Amendment Regulations, cannot be accepted. A party has no obligation to guess at what the state of the law might be and arrange its affairs on the basis of guess-work on what the state of law might be.

15.3. As soon as Cell C became aware of the impossibility of compliance, it brought this to the attention of ICASA, first at the press briefing of 26 April 2018 and then in correspondence of 4 May 2018 (issued before the publication of the Amendment Regulations on 7 May 2018, but after the final form of the Amendment Regulations was made known at the press briefing). There was no delay on the part of Cell C in this regard.

15.4. Full legal argument will be presented at the hearing of this application.

16. Ad para 7

16.1. As explained hereinabove, I deny the allegation that the urgency was self-created. I deny in any event that the issue of urgency remains live between the parties, given ICASA's response to the launch of this application that included suspension of the coming into effect of the Amendment Regulations.

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- 16.2. Urgency was created by ICASA's insistence to push ahead with the implementation of a set of regulations that it had been told could not be complied with in a short time-frame. Had ICASA responded to the correspondence directed at it, an application could have been avoided. It did not and has refrained from reacting to Cell C correspondence dating back to as early as 4 May 2018 to this day.

17. Ad para 10

- 17.1. The very purpose of the public participation process is to allow interested parties an opportunity to make submissions to ICASA in an effort to sway it in its approach as evidenced in published proposals. What ICASA suggests, is that the public participation process is a sham that cannot result in meaningful changes to that which has been proposed, so that parties must ready themselves to comply with the earliest proposals, even while attempting to argue for changes to them. This position cannot be accepted.
- 17.2. Cell C could not, and was not obliged to, ready itself for compliance with the content of regulation that was not finally known to it.
- 17.3. Had Cell C commenced its analysis of technical changes necessitated, it would have had to conduct an assessment of this nature on each iteration of the draft Amendment Regulations, taking into account the changes in the obligations imposed in each draft. This would amount to a costly, time-consuming and wasteful exercise. It is entirely prudent and efficient that Cell C wait for the final version of the Amendment Regulations to ascertain the technical changes warranted by the Amendment Regulations.

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17.4. It was only by 26 April 2018 that Cell C was in a position to know what would be required of it under the Amendment Regulations. That is why it was only able to respond in substance to the proposed implementation period when it directed its (hitherto unanswered) letter to ICASA on 4 May 2018. There was no delay on the part of Cell C.

17.5. I deny any suggestion that ICASA would have been more responsive to the concerns raised at an earlier stage. It had been unresponsive to the submissions of others, and it has proven itself unwilling to engage with the concerns for almost two months since 4 May 2018, despite repeated requests from Cell C and an invitation to conduct its own assessment.

17.6. Full legal argument will be presented at the hearing of this application.

18. Ad paras 11.1 – 11.4

18.1. There is no obligation on a licensee to comply with regulations that have been proposed and that are the subject of a public participation process that might well lead to changes to the proposals.

18.2. A I must point out that ICASA has, in the past, consulted on regulations and then did not finalize or implement such regulations. This provides an even greater reason for licensees not to do ready themselves for implementation until a final version is published. Examples include the Interconnection Guidelines – Notice 1259 of 2000, Government Gazette No 20993, Electronic Communications Facilities Leasing Regulations, 2010, - Government Gazette No 33252 and the 2008 Draft Essential Facilities Regulations - Notice 1800 of 2007, Government Gazette No 30612.

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- 18.3. Moreover, in the past, even when new regulations were supposed to come into effect, ICASA has extended the validity of the then existing regulations, as was the case for example in the Call Termination Regulations of 2014.
- 18.4. It cannot be that a regulator's decision must be anticipated in these circumstances.
- 18.5. Cell C stands by the allegations in its founding affidavit, which are not undermined by ICASA's bare denials (including the one in paragraph 11.4).
- 18.6. Full legal argument will be presented at the hearing of this application.

19. Ad para 11.5

- 19.1. Cell C does not contend that the technical changes necessitated by the Amendment Regulations amount to an '*insurmountable impediment*' to compliance with the Amendment Regulations, and it has never advanced this position as an absolute.
- 19.2. Rather, the position adopted is that the technical changes required render it impossible to comply with the Amendment Regulations within a one month period. ICASA does not engage with this allegation.

20. Ad paras 11.6 – 11.15

- 20.1. I reiterate that it was not for Cell C to raise time-frames for compliance before the content of the Amendment Regulations (including the implementation date) became known to it.
- 20.2. I deny that ICASA would have responded differently, since it accepts that it was unaffected in its decision-making by submissions of others on the time-frames required for compliance.

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20.3. Cell C, a consumer champion with a record of introducing pro-consumer products into the market, has no interest in delaying an offer to the detriment of its customers. As Cell C indicated to ICASA in its presentation to ICASA at the public hearings, it has already implemented a series of measures designed to protect consumers, such as SMS notifications alerting consumers once they have less than 15 megabytes of data remaining as well as alerting them once their data has been depleted, two options allowing customers to set limits in respect of data usage and recharge options providing consumers with certainty of spend. However, it cannot comply with the requirements in a time-frame as short as the one provided for by ICASA. It must ensure that it is not found to be non-compliant and it can only do so by securing a later implementation date for the Amendment Regulations.

21. Ad paras 11.16 – 11.23

21.1. Cell C raised its concerns as early as 4 May 2018. ICASA would have this court believe that, even given the seriousness of the matter, ICASA made no attempt to engage with concerns raised before 6 June 2018.

21.2. ICASA criticizes Cell C for waiting until the last moment to come to court, but it says that it was only willing to consider the issue by as late as 6 June 2018, a mere two days before the Amendment Regulations were due to take force.

21.3. Not only that, but the 6 June 2018 meeting of ICASA has not resulted in a reasoned response (let alone any response at all) by ICASA. On ICASA's version, it decided to suspend the regulations, but clearly such suspension was premised on the bringing of an application by Cell C. There was no

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attempt to suspend implementation for a period that related to submissions made to ICASA.

- 21.4. Had ICASA responded in a meaningful manner to the correspondence, the need for this application could have been avoided. The suggestion that Cell C *'jumped the gun'* are disingenuous, to say the least.

22. Ad para 12

- 22.1. These paragraphs deal with Cell C's submissions on urgency.
- 22.2. In light of ICASA's response to the application (including suspension of the Amendment Regulations), the question of urgency may be taken not properly to be in dispute any longer. I refer to what I have stated hereinabove.
- 22.3. As I indicated above, the urgency was not self-created, since Cell C acted with due diligence once it became aware of the final content of the Amendment Regulations. Before that moment it was not required to ready itself for compliance with a law, the final content of which was not known to it.
- 22.4. For the sake of completeness, I assert once more that Cell C could not have risked non-compliance with the law, which would have inevitably followed had the implementation of the Amendment Regulations not been suspended. The decision was only formally suspended in consequence of the launch of this application.
- 22.5. Given that ICASA has suspended implementation of the Amendment Regulations until this application is determined, the matter need no longer be enrolled on an urgent basis.

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- 22.6. Full legal argument will be made at the hearing of the application, including in respect of the legal argument regarding the separation of powers.

23. Ad para 13

- 23.1. Insofar as ICASA accepts that there was a need to provide for a time-period to allow for compliance (and thus provided for a one month period), it must be accepted that the time-period must be rational in the circumstances. Once it was accepted that compliance could not be achieved with immediate effect, ICASA was obliged to provide to a reasoned basis for the time period for compliance. It is of no use to create a regulatory regime that ICASA itself knows is not capable of being complied with in the short term. However, ICASA has throughout proven itself unwilling to engage with the submissions made to it in relation to compliance.
- 23.2. What ICASA argues for is a hasty implementation to the detriment of consumers, in the alleged pursuit of consumers' interests. In any event, if Cell C cannot comply, then the benefits to consumers cannot be achieved, even if ICASA insists on the irrationally short compliance period. The balance of convenience favours the grant of relief.
- 23.3. I deny that Cell C's customers are being subjected to unfair business practices.
- 23.4. Full legal argument will be presented at the hearing of this application.

24. Ad para 14

- 24.1. The regulatory process applicable to the imposition of a statutory fine against licensees for non-compliance with regulatory obligations is admitted.

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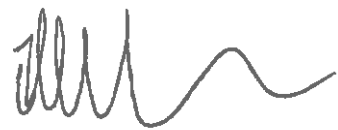
- 24.2. What ICASA argues for is that Cell C was to have taken the risk that ICASA might not have been responsive to its submissions in such a process, or that it might have raised arguments such as those raised in this application (such as that Cell C ought to have taken earlier steps to comply with a regulation, the final content of which was not known to it).
- 24.3. It cannot be asked of a party to await compliance steps being taken against it, in the hope that it might successfully defend itself in due course. A party in the position of Cell C had to ensure that its actions would provide no basis for compliance actions being taken against it.
- 24.4. That ICASA should suggest that the technical failures that are anticipated ought to be tolerated, since consumers have experienced such failures in the past, is astounding. It would be highly undesirable to expose consumers to large-scale technical failures simply because ICASA is over-hasty in its implementation of the Amendment Regulations. The mobile industry is highly competitive and a smooth, efficient and reliable service is paramount to consumers. Disruptions in service and any errors in billing and invoicing is hugely detrimental to customer perception of Cell C, as the third mobile network operator.
- 24.5. Moreover, I point out that the anticipated problem is not limited to technical failures. The required implementation at this stage will lead to significant financial burdens and costs to Cell C, and requires dedicated resources to make the necessary changes to processes and procedures.
- 24.6. One would expect a regulator such as ICASA to have a basic understanding of what the effects of this regulatory measure might be before it seeks to have it implemented. ICASA's insistence on the over-hastily

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implementation of these Amendment Regulations, and in its response to this application, provides evidence that it lacks such basic understanding.

24.7. Full legal argument will be presented at the hearing of this application, particularly in relation to the requirements for an interim interdict and on the separation of powers.

WHEREFORE Cell C persists in praying for the relief as set out in its notice of motion.



GRAHAM NEIL MACKINNON

I CERTIFY that this affidavit was signed and sworn to before me at ^{SANDHURST} on this the 28th day of JUNE 2018, by the deponent who acknowledged that he knew and understood the contents of this affidavit, had no objection to taking this oath, considered this oath to be binding on his conscience and who uttered the following words: "I swear that the contents of this affidavit are true, so help me God".



COMMISSIONER OF OATHS

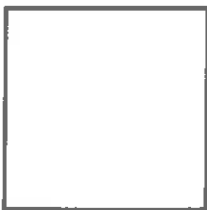
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From: Simpiwe Njokweni <SCN@khl.co.za>
Sent: Thursday, 07 June 2018 12:40 PM
To: Heather Irvine <heather@fhinc.co.za>; Niel Jacobs <Niel@fhinc.co.za>
Cc: Pumezo David <PD@khl.co.za>; Olwethu Moses <OM@khl.co.za>
Subject: FW: Cell C / ICASA - End User and Subscriber Charter Regulations - urgent - Court 9E at 14h00



Dear Sirs,

Our client has resolved to oppose the matter. Herewith attached is our client's notice of intention to oppose.

Our client propose that:

the matter be removed from the roll;

The implementation date be postponed until the final determination of Part A of your application.

The licensees will not be penalised for non-compliance pending the final determination of Part A of the application.

We deliver our opposing papers with 10 days from the date of the order and reply, if any, be delivered in 5 days.

If you are in agreement, kindly prepare a draft order and let us peruse same.

Regards

SIMPIWE NJOKWENI | Senior Associate

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-----Original Message-----

From: kyocera@khl.co.za [mailto:kyocera@khl.co.za]
Sent: 07 June 2018 11:49 AM
To: Simpiwe Njokweni
Subject:

TASKalfa 6500i
[00:c0:ee:a6:ce:7d]

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GOVERNMENT NOTICES • GOEWERMENTSKENNISGEWINGS

INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA

NO. 582

11 JUNE 2018



**SUSPENSION OF THE EFFECTIVE DATE OF THE END-USER AND
SUBSCRIBER SERVICES CHARTER AMENDMENT REGULATIONS, 2018
NOTICE 233 OF GOVERNMENT GAZETTE 41613 PUBLISHED ON 07 MAY
2018**

The Independent Communications Authority of South Africa hereby publish the attached notice regarding the suspension of the effective date of the End-User and Subscribers Service Charter Amendment Regulations, 2018, published in Notice 233 of Government Gazette 41613.


Rubben Mohlaloga
Chairperson

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THE INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA

General Notice – Suspension of the effective date of the End-User and Subscriber Services Charter Amendment Regulations, 2018, Notice 233 of Government Gazette 41613 published on 07 May 2018

1. The End-User and Subscriber Services Charter Amendment Regulations, Notice 233 of Government Gazette 41613 ("the Amendment Regulations") will no longer be effective as from 8 June 2018. The effective date is suspended pending the final determination of Part A of an urgent application launched by Cell C Limited in the High Court, Gauteng Local Division, Johannesburg.
2. The suspension of the effective date is consequent to a Court Order in terms of which the High Court, by agreement, ordered that, until Part A of the urgent application has been determined, the Authority will not take any steps to

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Implement the Amendment Regulations, nor will It take any action against Licensees for non-compliance with the Amendment Regulations.

3. The Authority will now file its answering affidavit responding to the application, and Cell C its replying affidavit, whereafter the application will be argued.
4. The Authority will continuously update Licensees on the developments in the dispute.

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Government Gazette Staatstydskrif

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REPUBLIEK VAN SUID-AFRIKA

Regulation Gazette

No. 8320

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Vol. 483

Pretoria, 30 September 2005

No. 28091



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**THE GOVERNMENT PRINTING WORKS****PUBLICATIONS DIVISION**

NB: The Publications Division of the Government Printing Works will be relocating to its new premises within the:

**MASADA BUILDING at 196 PROES STREET, PRETORIA
(I.e. CORNER OF PAUL KRUGER AND PROES STREETS)
with effect from 3 May 2005.**

For enquiries and information:

**Mr M Z Montjane
Tel: (012) 334-4653
Cell: 083 640 6121**

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GOVERNMENT NOTICES

DEPARTMENT OF COMMUNICATIONS

No. R. 963

30 September 2005

I, Dr, Ivy Matsepe-Casaburri, Minister of Communications in terms of section 96 of the Telecommunications Act, of 1996 (Act No. 103 of 1996), hereby give notice that I have approved the regulations in the schedule, made by the Independent Communications Authority of South Africa under section 96 of the said Act.

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SCHEDULE

DEFINITIONS

In these Regulations any word or expression to which a meaning has been assigned in the Act shall have the meaning so assigned and unless the context otherwise indicates

'block operator' means a network operator that is subject to requirements in respect of number portability and that has been allocated a number block that is subject to number portability;

'CLI' means a caller line identity;

'donor operator' means a network operator that is subject to requirements in respect of number portability and that ceases to serve a number that is being ported;

'donor service provider' means a service provider that ceases to serve a number that is being ported;

'functional specification' means a regulation determining the rules applicable to operators and through operators to service providers for the implementation, management and performance of number portability;

'geographic number' means a number that is part of a block that has been allocated for use in a specified geographic area;

'ordering system specification' means a specification of the procedures by which a recipient service provider, a recipient operator, a donor operator, and a donor service provider exchange information between each other in order to provide number portability to a subscriber, including the information to be sent, the format of the information, the means of communication, the times when communications may be sent, the time limits for responses and the handling of error conditions;

'recipient operator' means a network operator that is subject to requirements in respect of number portability and commences or continues to serve a number that is or has been ported;

'recipient service provider' means a service provider that commences or continues to serve a number that is or has been ported;

'service provider' means

- (a) an entity that sells to a subscriber the ability to make and receive telephone calls;
- (b) a network operator;

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- (c) an entity person that buys network services from a network operator and resell these services to subscribers;

'subscriber' means any person or entity that is a party to a contract or other similar arrangement that is in force with a service provider or network operator for the supply of telecommunications services, including-

- (a) in respect of making and receiving calls, any caller who makes or terminates or receives calls that are the subject of such a contract or arrangement; and
(b) in the case of mobile services, pre-pay customers;

'the Act' means the Telecommunications Act, 1996 (Act No.103 of 1996);

'winback' means a donor network operator or donor service provider who contacts subscribers to offer discounts, free services or other inducements in order to convince those subscribers not to change operators or to revert back to their original operator in the first two months after requesting number portability; but does not include offers made to subscribers in general that do not refer to number portability or the individual subscriber's current or past services.

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Requirements to provide number portability in respect of blocks of geographic numbers

- 2 (1) All network operators who are subject to requirements in respect of number portability and who terminate calls to subscribers who are identified by geographic numbers and are connected directly to their network shall offer number portability to subscribers who have been assigned more than ten different numbers within the same block of 10,000 contiguous numbers provided that-
- (a) no numbers within the same block are assigned to other subscribers;
 - (b) the network termination points remain within the geographic boundaries associated with the number block by the Authority; and
 - (c) the numbers will be ported to another network operator who is subject to requirements in respect of number portability.
- (2) Telkom and all other operators who are required in terms of sub-regulation (1) to offer number portability shall cooperate together to provide such portability as soon as possible; Provided that every pair of operators between whom number portability in accordance with sub-regulation (1) is possible shall provide such number portability not later than two months after the launch of those services by whichever operator launches services later or any longer time that the Authority may on request determine before the launch of the said services.
- (3) All network operators who are subject to requirements in respect of number portability and who terminate calls to subscribers who are identified by geographic numbers and are connected directly to their network shall offer number portability to subscribers who have been assigned more than ten different numbers within the same block of 1,000 contiguous numbers:- Provided that-
- (a) no numbers within the same block are assigned to other subscribers;
 - (b) the network termination points remain within the geographic boundaries associated with the number block by the Authority; and
 - (c) the numbers will be ported to another network operator who is subject to requirements in respect of number portability.
- (4) Telkom and all other operators who are required in terms of sub regulation (3) to offer number portability shall cooperate together to provide such portability as soon as possible; Provided that every pair of operators between whom number portability in accordance with sub-regulation (3) is possible shall provide such

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number portability no later than four months after the launch of those services by whichever operator launches services later or any longer time that the Authority on request may determine before the launch of the said services.

- (5) The implementation of number portability in respect of blocks of geographic numbers shall conform to a functional specification to be promulgated by way of Government Notice. The functional specification shall be developed and maintained by the Authority in consultation with the network operators, service providers and other interested parties including user organisations. The Authority shall enforce the functional specification.

Requirements to provide number portability in respect of individual geographic numbers

- 3 (1) All network operators who are subject to requirements in respect of number portability and who terminate calls to subscribers who are identified by geographic numbers and are connected directly to their network shall on request in writing from another network operator who is subject to requirements in respect of number portability provide the capability for subscribers to have number portability when transferring to the said other operator: Provided that any network termination point remains at a location that conforms to the geographic boundaries associated with the number block as determined by the Authority.
- (2) Every network operator who makes a request contemplated in sub-regulation (1) shall send a copy of that request to the Authority.
- (3) The capability to provide number portability as contemplated in sub-regulation (1) shall be made available between the operators concerned within 12 months of the request contemplated in that sub-regulation.
- (4) The implementation of number portability in respect of individual geographic numbers shall conform to a functional specification to be promulgated by way of Government Notice. The functional specification shall be developed and maintained by the Authority in consultation with the network operators, service providers and other interested parties including user organisations. The Authority shall enforce such functional specification.
- (5) The network operators who serve geographic numbers and who are subject to requirements in respect of number portability for individual numbers shall prepare and maintain an ordering system specification.

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- (6) The ordering system specification contemplated in sub-regulation (5) shall be completed and lodged with the Authority within three months of the date of the request contemplated in sub-regulation (1).
- (7) The preparation of the ordering system specification shall be carried out in consultation with other interested parties including user organisations.
- (8) Network operators shall include in the ordering system specification any measures that the Authority may request; and shall invite the Authority with at least five working days notice of the main meetings to be held to prepare the ordering system specification.
- (9) Every network operator whose subscribers have ported its numbers from another operator shall maintain and make available free of charge or through a third party included but not limited to the on the Internet a list of the ported numbers of its subscribers.
- (10) The list shall be updated at least once per day and shall be publicly available unless, the Authority on request determines otherwise.
- (11) The Authority shall publish the ordering system specification in the government gazette to afford interested parties an opportunity to comment thereon. Upon finalization of the ordering system specification, the Authority shall incorporate the ordering system specification to these regulations to become an integral part thereof.

Requirements to provide mobile number portability

- 4 (1) All mobile network operators who are subject to requirements in respect of number portability shall work together to offer number portability to their subscribers as soon as reasonably possible and not later than nine months after promulgation of this regulation.
- (2) Where a mobile network operator provides services through a service provider the mobile operator shall secure the cooperation of the service providers in the provision of number portability through their contractual relationships with them.
- (3) The implementation of mobile number portability shall conform to the mobile functional specification to be promulgated by way of Government Notice. The functional specification shall be developed and maintained by the Authority in consultation with the mobile network operators, mobile service providers and other interested parties including user organisations. The Authority shall enforce the functional specification.

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- (4) The network operators who serve mobile numbers and who are subject to requirements in respect of number portability shall prepare, maintain and lodge with the Authority within one month of the publication of these regulations an ordering system specification.
- (5) The preparation of the ordering system specification shall be carried out in consultation with the service providers and other interested parties including user organisations.
- (6) The network operators shall include in the ordering system specification any such measures as the Authority may request.
- (7) The network operators shall inform the Authority with at least five working days notice of the main meetings to be held to prepare the ordering system specification and the Authority shall have the right to attend.
- (8) The Authority shall publish the ordering system specification in the government gazette to afford interested parties an opportunity to comment thereon. Upon finalization of the ordering system specification, the Authority shall incorporate the ordering system specification to these regulations to become an integral part thereof.
- (9) Each mobile network operator whose subscribers have ported their numbers from another operator shall maintain and make available themselves, via a third party or via the Internet, free of charge a list of the ported numbers of their subscribers.
- (10) The list shall be updated at least once per day and shall be publicly available unless the Authority agrees otherwise.
- (11) A mobile network operator shall not discriminate against service providers in any aspect of the implementation of number portability; Including charging and offering incentives to independent service providers and service providers that they own in whole or in part.
- (12) A network operator or service provider may refuse to import a short number or a number used for information or other such services.

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- (13) A network operator may refuse to import a number that would clash with another number or code that is in use, or is planned to be used, in their network.

Routing

- 5 (1) An operator who originates a call or other communication to a ported number or who handles a call or other communication from outside the Republic to a ported number inside the Republic shall be responsible for ensuring that the call will be routed directly or indirectly to the operator that serves the called number.
- (2) A block operator shall ensure that any calls, and where practicable other communications, to ported numbers within number blocks allocated to that operator shall be routed to the network that currently serves the called number and that any value of the original CLI shall be unchanged by the re-routing process.
- (3) Telkom shall offer to all other network operators a service whereby it will route calls directly or indirectly to ported numbers.

Cost recovery and charging

- 6 (1) An operator that is required to provide number portability shall bear its own set-up costs and all originating operators shall bear any set-up costs that are incurred as a consequence of regulation 5 (1).
- (2) The recipient operator shall pay the donor operator or the recipient operator shall ensure that the recipient service provider pays the donor service provider their reasonable per-customer costs necessarily incurred when a customer ports their number successfully.
- (3) No payments shall be made for unsuccessful portings.
- (4) Per-customer costs between operators shall be cost based and shall be lodged with the Authority.
- (5) A donor operator shall not charge a subscriber when the subscriber ports their number and shall ensure that the donor service provider does not charge the subscriber when the subscriber ports its number.
- (6) This regulation does not prohibit the recipient service provider or recipient operator from charging the customer for successful portings.

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- (7) An operator whose retail prices are controlled by regulation, may apply to the Authority to have reasonable set-up costs of number portability and any incremental costs incurred in performing the requirements that are contemplated in regulation 4 (1) be taken into consideration in the next revision of its price control.
- (8) An operator that is required by regulation 5 (2) or 5 (3) to incur additional costs in routing calls or other communications to ported numbers may charge the operator from which they receive the calls or other communications for those additional costs.
- (9) The additional charges contemplated in sub-regulation (8) may be applied to each call or other communication individually or averaged over all the calls or other communications from the said operator.
- (10) Where an operator that is subject to the requirements of regulation 5 (2) or 5 (3) has its interconnection charges controlled by regulation, that operator may apply to the Authority to have the reasonable incremental costs necessarily incurred taken into account in the next revision of its price control.

Service and other requirements

- 7 (1) A recipient operator shall not order number portability for any subscriber unless it has received a request from that subscriber and shall ensure that the recipient service provider does not order number portability for any subscriber unless it has received a request from that subscriber.
- (2) A donor operator shall not engage in winback and shall ensure that the donor service provider does not engage in winback.
- (3) Operators shall not make offers to subscribers with ported numbers that are not also made to subscribers without ported numbers and shall ensure that the service providers do not make offers to subscribers with ported numbers that are not also made to subscribers without ported numbers.
- (4) To ensure adequate tariff transparency for callers, where as a result of number portability the termination rate charged for a call to a ported number is more than 10% higher than the termination rate charged by the operator allocated the number block that contains the ported number, the terminating operator shall apply a warning to be agreed with the Authority before connecting the call and shall not charge for the period during which the warning is applied.

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- (5) The Authority may waive the requirement contemplated in sub-regulation (4) or to alter the percentage quoted.
- (6) To ensure adequate tariff transparency for callers from networks where on-net discounts are offered the following shall apply: Where as a result of number portability an on-net discount that might be expected does not apply and the retail rate charged for a call to the ported number is more than 10% higher than the retail rate with on-net discount for a call to an unported number in the number block that contains the ported number, the originating operator shall apply a warning before connecting the call.
- (7) The form of the warning shall be agreed with the Authority and the originating operator shall not charge for the period during which the warning is applied.
- (8) Operators who import numbers shall include in their tariff information an explicit statement about whether or not these numbers qualify for on-net discounts. The Authority shall have the right to waive this requirement or to alter the percentage quoted.
- (9) Network operators who are required to offer number portability and their service providers shall develop, maintain and enforce amongst themselves a code of practice relating to marketing and sales practices and communications with subscribers who request number portability.
- (10) The preparation of the code of practice shall be carried out in consultation with other interested parties including user organisations.
- (11) All operators shall ensure that their service providers also comply with this code of practice.
- (12) The code of practice shall be lodged with the Authority within two months of the publication of this regulation.
- (13) The network operators and their service providers shall include in the code of practice any measures that the Authority may request. The network operators shall inform the Authority with at least five working days notice of the main meetings to be held to prepare the code of practice and the Authority shall have the right to attend.

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- (14) Except where otherwise indicated, network operators required to offer number portability and their service providers shall develop, publish and maintain a code of practice for resolving disputes within four weeks between themselves relating to number portability.
- (15) The procedures shall include any measures that the Authority may request and unresolved disputes may be referred to the Authority.
- (16) The network operators shall inform the Authority with at least five working days notice of the main meetings to be held to prepare the code of practice.
- (17) Nothing in these regulations shall be interpreted as to imply that a network operator or service provider is required to start to serve an entity who is requesting service with number portability if the network operator or service provider would not offer service if that entity were not requesting number portability.

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No. R. 964**30 September 2005**

I, Dr, Ivy Matsepe-Casaburri, Minister of Communications in terms of section 96 of the Telecommunications Act, of 1996 (Act No. 103 of 1996), hereby give notice that I have approved the regulations in the schedule, made by the Independent Communications Authority of South Africa under section 96 of the said Act.

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SCHEDULE

FUNCTIONAL SPECIFICATION FOR MOBILE NUMBER PORTABILITY UNDER THE NUMBER PORTABILITY REGULATIONS

General

- 1 (1) Where these functional specification places a requirement on the donor side, the donor operator shall ensure that the donor service provider fulfils that part of the requirement that is relevant to them. Where this functional specification places a requirement on the recipient side, the recipient operator shall ensure that the recipient service provider fulfils that part of the requirement that is relevant to them. In some circumstances, for a given porting, the same entity may be a donor service provider in relation to one operator and a recipient service provider in relation to another operator and therefore these terms should be interpreted in terms of function rather than identity.

Definitions

- 2 The definitions contained in the number portability regulations apply.

- (1) "CLI" means caller line identity
- (2) 'donor side' means the donor operator or the donor service provider.
- (3) "MSISDN" means the mobile station international integrated services digital network (ISDN) number
- (4) 'recipient side' means the recipient operator or the recipient service provider.

Scope

- 3 (1) This functional specification applies to the portability of subscriber numbers in all the number ranges that have been or will be allocated for use by mobile network operators and their service providers and includes the following mobile number ranges-
- 072, 073, 076, 082, 083, and 084.
- (2) Numbers within the referred to in sub-regulation (1) ranges that are used for-
- (a) on-net short codes,

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- (b) community service telephone,
 - (c) voicemail message retrieval by the subscriber to whom the message is sent, or
 - (d) that are not reachable from outside the network that serves the numbers are excluded from the scope of number portability. For an exclusion of any other range not listed in sub item (a) prior approval has to be obtained in writing from the Authority.
- (3) Numbers used for information and other similar services and short numbers are included if these numbers can be reached from outside the network.
- (4) This functional specification applies to:
- (a) Mobile network operators in accordance with the number portability regulations;
 - (b) Other network operators, other than those referred in paragraph (a) who route calls to portable mobile numbers in accordance with the number portability regulations, and
 - (c) Service providers who are placed under obligations through contracts with mobile network operators in accordance with the number portability regulations and sub regulation (3) above.

Requirements on the porting procedure

- 4 (1) The procedure for number portability shall provide for requests for number portability from the subscriber to be handled by the recipient side.
- (2) Network operators shall-
- (a) agree on the times for supporting number portability procedures and shall include at least 09H00-17H00 Monday to Friday and 09H00-13H00 on Saturdays, excluding public holidays; and
 - (b) ensure that service providers support the number portability procedures during the times referred in paragraph (a).
- (3) In this regulation all references to "hours" refer to hours within the period agreed between the operators for supporting number portability in accordance with sub regulation (2).
- (4) When the recipient side receives a request for number portability, it shall advise the subscriber to retrieve any message or any other information stored by the donor side that could be lost when the account is closed.

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- (5) Recipient shall advise subscriber that credit and unused usage allowances are not portable from one account to another and that third party services used by the subscriber that work only on the donor network will not work on the recipient network.
- (6) Requests for the porting of a mobile number passing between a recipient side and a donor side shall not include the name or address of the subscriber: Provided that in the case post-pay subscribers, the requests may include subscriber's account number with the donor service provider.
- (7) A recipient side shall validate a porting request.
- (8) In the case of pre-pay mobile numbers, the only validation of the subscriber's right to the number shall be a CLI check of possession of the number: Provided that other checks may apply for the opening of the new account.
- (9) A donor side may reject a request to port only on the following grounds:
 - (a) the MSISDN number is not a valid number on the donor operator's network,
 - (b) the MSISDN number is excluded from number portability under sub-regulation 2 (2),
 - (c) the account number in the request is not the account number used by the donor side for the MSISDN for which porting is requested (post-pay only);
 - (d) the classification of the account does not match, example a request is made under the pre-pay procedure for a post-pay account;
 - (e) the subscriber is already subject to suspension of outgoing or incoming calls because of failure to pay a bill;
 - (f) the number is already subject to a porting process
 - (g) the number has already been ported in the last two months;
 - (h) any other reason agreed to by the Authority and notified to the operators in writing.
- (10) At the time when a donor side rejects a request, it shall report the reason for rejection to the recipient side.
- (11) A donor side shall not reject a request to port a mobile number under a post pay account on the grounds that the subscriber still owes money, nor may they delay the porting until the debt is collected,

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- unless the subscriber is already subject to suspension of outgoing or incoming calls because of failure to pay a bill.
- (12) A donor side shall not reject a request to port a mobile number on a pre-pay or post-pay account because the subscriber's terminal is locked to the operator's network.
 - (13) The arrangements for removing locks referred to in sub regulation (12) shall be independent of the implementation of number portability.
 - (14) The procedure for number portability shall result in the ported number being activated on the network of a recipient operator before the number is de-activated on the network of the donor operator.
 - (15) A recipient side may make temporary use of numbers for subscribers who are awaiting number portability.
 - (16) The donor side shall respond to requests from a recipient side, and effect any actions requested, as soon as possible and within one hour where the responses or actions are required as soon as possible.
 - (17) Where a recipient side requests a donor side to deactivate an account and apply rerouting at a specific time, the donor side shall effect these actions as close as possible to the time requested and not earlier than the time requested and no later than one hour after the time requested.
 - (18) Where network operators synchronise changes to their networks, the changes shall be made at a time of low network traffic to be agreed between the operators and specified in the ordering system specification and shall be completed within one hour.

Quality requirements

- 5(1) The arrangements for number portability may not result in an increase in the call set up time for a call to a ported number of more than two seconds compared to the call set up time for a call to the same subscriber on the same network if they were using a non-portable number.
- (2) The arrangements for number portability may not result in an increase in the one-way transmission time for a call to a ported number of more than 20 milliseconds compared to the one-way transmission time for a call to the same subscriber on the same network if they were using a non-portable number.
- (3) Every mobile network operator or its nominated agent shall report to the Authority at six month intervals for the first two years of operation and thereafter annually the following statistics:
 - (a) The number of requests received as recipient for the porting of individual numbers, with the figures shown separately for prepay and post-pay (recipient operator reports);

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- (b) The number of requests made by the recipient side that have been rejected by the donor side for the porting of individual numbers, with the figures shown separately for prepay and post-pay (recipient operator reports, separate figures for each donor operator);
- (c) Reasons for the donor side to reject requests for portings (donor operator reports);
- (d) The number of portings where responses were not received or actions were not effected within the time limits specified in this functional specification;
- (e) Recipient operator reports separate figures for each donor operator;
- (f) The number of ported numbers that have been returned to the block operator under sub regulation 6 (5) below; and
- (g) Recipient operator reports separate figures for each block operator

Other requirements

- 6(1) Where a number that is subject to number portability is used for more than one service, for example for both voice calls and SMS, a subscriber may not take one service from one service provider or network operator and another service with the same number from another service provider or network operator.
- (2) Neither a donor service provider nor a donor operator is required to disclose a subscriber's service profile to the recipient service provider or the recipient operator.
- (3) When an operator who is handling a call determines that the called number is ported and determines the identity of the operator currently serving that called ported number, the operator shall add a prefix to the called number that identifies the current recipient operator.
- (4) Where the retail or interconnection charges for calling a number change as a result of the number being ported, the operators affected are not required to apply the new charges until midnight at the end of the first whole working day after the recipient operator adds the number to the list of ported numbers that it serves and makes the updated list available to other operators: Provided that the Authority may vary this requirement as necessary and may introduce a requirement for all operators to synchronise changes to billing and charging if it considers it necessary.
- (5) Every recipient operator shall provide test numbers that enable users who have ported their numbers-

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- (a) to check that their CLI is being sent correctly; and
 - (b) to request an incoming test call to be made within the next five minutes and routed via the Telkom network to check that incoming calls are being routed correctly
- (6) These test services contemplated in sub-regulation (5) shall be available at no more than a cost based charge to the users who have ported their numbers and the operators concerned may levy interconnection charges on a cost basis for them. Provided that the provision of the test numbers shall be dimensioned to a 2% grade of service.
- (7) Where service is ceased on a ported number without the number being ported again, the operator who was serving that number shall inform other operators and remove that number from the list of ported numbers that it serves when it next updates that list.
- (8) The operator who was serving the number shall not re-use that number for another subscriber.
- (9) The number contemplated in sub-regulation (7) shall return to the block operator concerned to whom it was originally allocated and the block operator shall quarantine the number for at least three months.
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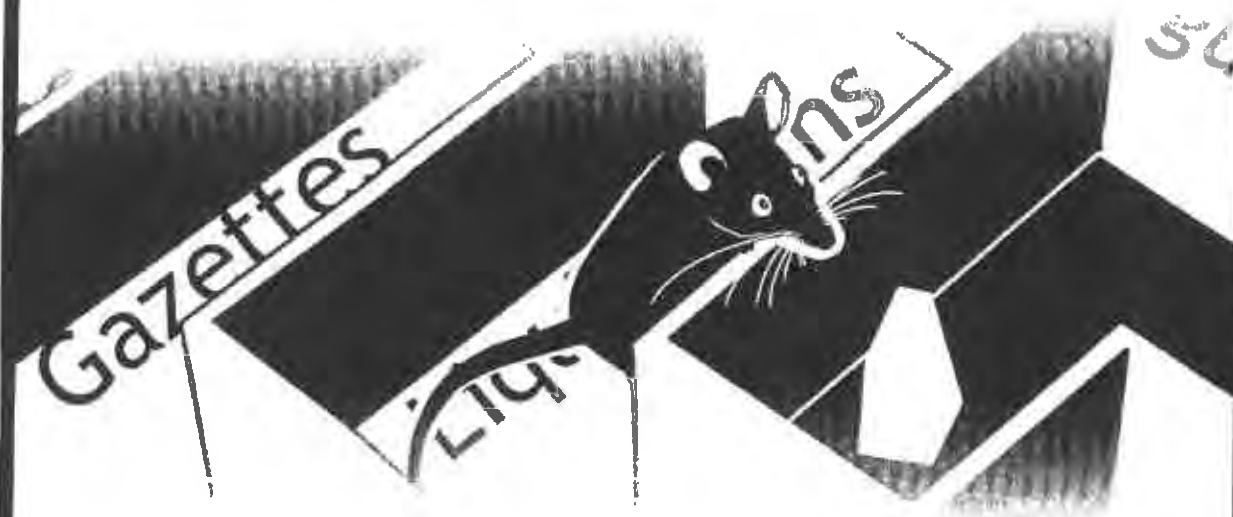
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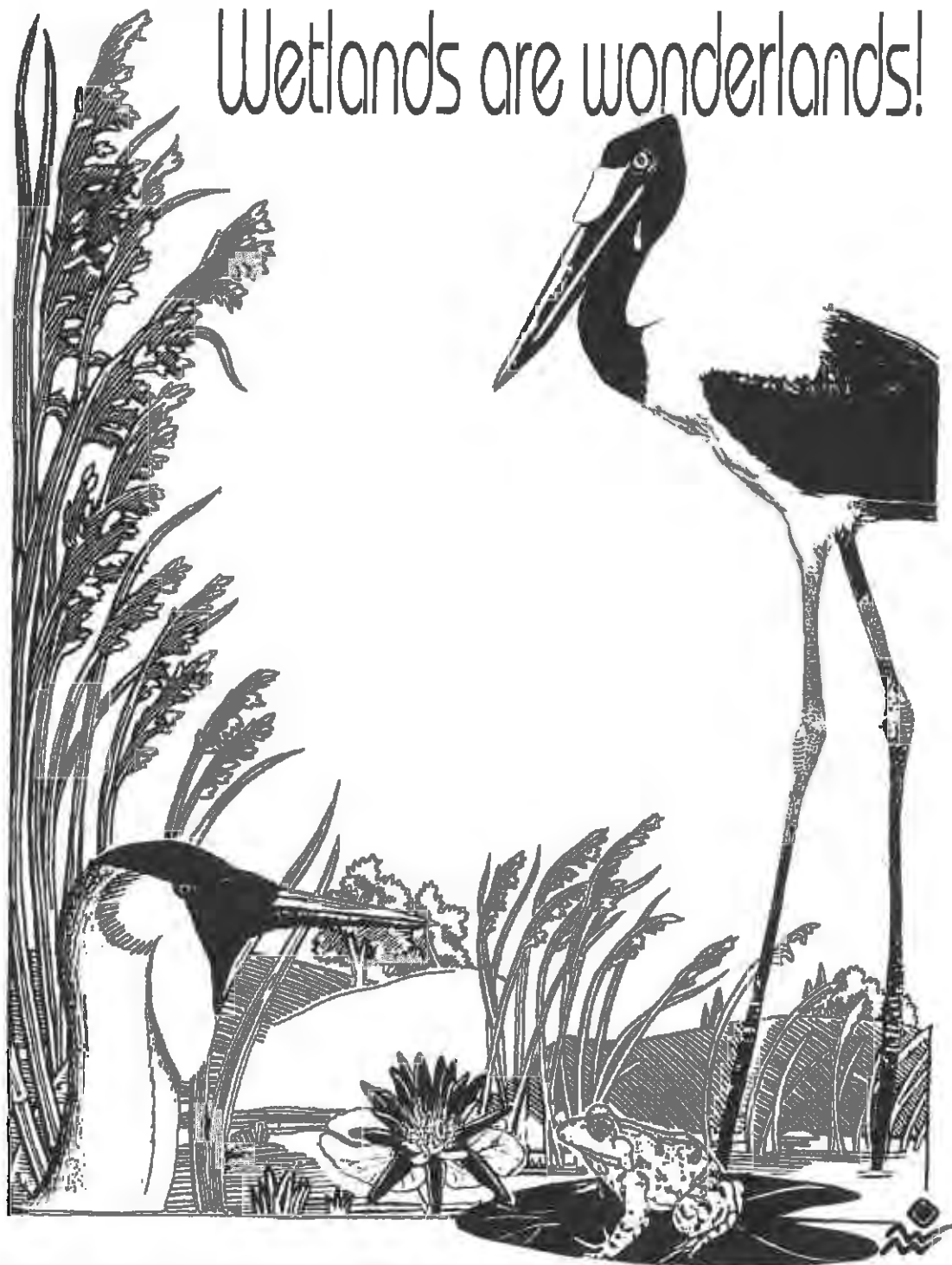
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GENERAL NOTICE

NOTICE 1015 OF 2010



INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA

**"CALL TERMINATION REGULATIONS"
PURSUANT TO SECTION 67(4) OF THE ELECTRONIC
COMMUNICATIONS ACT NO. 36 OF 2005**

I, Stephen Mncube, Chairperson of the Independent Communications Authority of South Africa hereby publish the regulations set out in the Schedule in terms of section 4 read with section 67(4) of the Electronic Communications Act No. 36 of 2005.


Dr Stephen Mncube
Chairperson

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SCHEDULE**"CALL TERMINATION REGULATIONS"
PURSUANT TO SECTION 67(4) OF THE ELECTRONIC
COMMUNICATIONS ACT NO. 36 OF 2005****1. DEFINITIONS**

In these Regulations, unless the context indicates otherwise, a word or expression to which a meaning has been assigned in the Act or the ICASA Act has the meaning so assigned, and the following words and expressions shall have the meaning set out below:

"ON" means a geographic area code as specified in Regulation 6 of the Numbering Plan Regulations;

"Authority" means the Independent Communications Authority of South Africa;

"the Act" means the Electronic Communications Act, 2005 (Act No. 36 of 2005);

"ECNS" means an electronic communications network service as defined in the Act;

"ECS" means an electronic communications service as defined in the Act;

"Fixed voice call termination service" means a wholesale voice call termination service provided by an ECNS or ECS licensee to a fixed location, and includes such a service provided by a licensee providing call termination using fixed wireless services;

"ICASA Act" means the Independent Communications Authority of South Africa Act, 2000 (Act No. 13 of 2000);

"Mobile voice call termination service" means a wholesale call termination service provided by an ECNS or ECS licensee to mobile subscriber equipment enabled by wireless technology;

"Reference Interconnection Offer" or "RIO" means a document, approved by the Authority, setting out the standard terms and conditions for interconnection agreements;

"Retail service" means a service offered by an ECS licensee to end-users;

"SMP" means significant market power as defined in section 67(5) of the Act;

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"Wholesale service" means a service that an ECS or ECNS licensee offers other ECS or ECNS licensees.

2. PURPOSE OF REGULATIONS

The purpose of these Regulations is to: -

- (a) Define and identify the wholesale call termination markets that exist within the borders of the Republic of South Africa;
- (b) Set out the methodology used to determine the effectiveness of competition in such markets;
- (c) Declare licensees that have SMP;
- (d) Set out the pro-competitive measures the Authority imposes to remedy market failure in the relevant markets found to have ineffective competition;
- (e) Set out the schedule for periodic review of the relevant markets and the effectiveness of competition in such markets.

3. MARKET DEFINITION

- (1) The markets in which the Authority intends to impose pro-competitive measures, if such markets are found to have ineffective competition are the markets for mobile and fixed wholesale call termination services in the Republic.
- (2) These markets are categorised according to the type of service provided to the end-user and are defined as follows:
 - (a) Market 1: The market for wholesale voice call termination services to a mobile location on the network of each licensee who offers such a service within the Republic.
 - (b) Market 2: The market for wholesale voice call termination services to a fixed location on the network of each licensee who offers such a service within the Republic, consisting of:
 - i. The market segment for wholesale voice call termination to a fixed location within an ON geographic area code; and
 - ii. The market segment for wholesale voice call termination to a fixed location between ON geographic area codes.

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4. METHODOLOGY

In determining the effectiveness of competition in the wholesale voice call termination markets, the Authority has applied the following methodology:

- (a) the identification of relevant markets and their definition according to the principles of the Hypothetical Monopolist Test, taking into account the non-transitory (structural, legal, or regulatory) entry barriers to the relevant markets and the dynamic character and functioning of the relevant markets;
- (b) the assessment of licensees' market shares in the relevant markets; and
- (c) the assessment on a forward-looking basis of the level of competition and market power in the relevant markets.

5. EFFECTIVENESS OF COMPETITION

Pursuant to regulation 4, the Authority has determined that competition in the wholesale voice call termination markets, as defined in regulation 3, is ineffective.

6. SMP DETERMINATION

The Authority determines that every licensee that offers wholesale voice call termination services has SMP in its own market.

7. PRO-COMPETITIVE TERMS AND CONDITIONS

(1) The Authority has identified the following market failures in the respective wholesale voice call termination markets:

- (a) a lack of the provision of access
- (b) the potential for discrimination between licensees offering similar services
- (c) a lack of transparency
- (d) inefficient pricing

(2) All licensees must comply with the following pro-competitive terms and conditions to overcome the market failures identified in regulation 7(1):

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- (a) Compliance with the provisions of the Interconnection Regulations (Government Gazette No. 33101 of 2010)
 - (b) Compliance with the Compliance Manual Regulations to be prescribed by the Authority.
 - (c) Charge fair and reasonable prices for wholesale voice call termination consistent with Appendix B
- (3) The Authority has determined that additional pro-competitive terms and conditions are necessary to correct the market failures identified in regulation 7(1), which are to be imposed on the following licensees:
 - (a) Licensees that have historically benefitted from the allocation of more efficient lower band spectrum.;
 - (b) Licensees that benefit from economies of scale and scope in maintaining a share of total minutes terminated in the respective markets of greater than 25 per cent as of June 2009.
- (4) The Authority determines that the following licensees have these characteristics:
 - (a) Market 1:
 - i. MTN
 - ii. Vodacom
 - (b) Market 2:
 - i. Telkom
- (5) All licensees referred in regulation 7(4) of these regulations must comply with the following additional pro-competitive terms and conditions
 - (a) Publication of a Reference Interconnection Offer (RIO)
 - i. Licensees identified in regulation 7(4) must submit a RIO to the Authority for approval within forty five (45) days of promulgation of these Regulations.
 - ii. The RIO must comply with the requirements set out in Appendix A.
 - iii. The Authority will assess a RIO submitted by a licensee within thirty (30) days of its submission.
 - iv. Where the Authority determines that a RIO submitted by a licensee is not consistent with these regulations, the Authority will direct the licensee to amend the relevant terms

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- and conditions of the RIO within a period determined by the Authority which period must not exceed thirty (30) days.
- v. If a licensee receives no written communication from the Authority regarding the assessment of its RIO within the thirty (30) day period stipulated in regulation 7(5)(a)(v), the RIO is deemed to be approved.
 - vi. The RIO will become effective upon approval by the Authority.
 - vii. Provided that all requirements in the RIO are met by both an interconnection seeker and provider, a request for interconnection based on the RIO must be concluded within fifteen (15) days of such a request for interconnection unless otherwise agreed between the licensees.
 - viii. A licensee identified in Regulation 7(4) must publish the approved version of its RIO on its website within five (5) days of receiving notice of approval from the Authority.

(b) Price Control: Cost oriented pricing

- i. For the period 01 March 2011 to 01 March 2014, any licensee identified in Regulation 7(4)(a) must charge the wholesale voice call termination rates to a mobile location as specified in Table 1:

Table 1: Wholesale voice call termination rates to a mobile location (Market 1)

	Peak	Off-peak
01-Mar-11	R 0.73	R 0.65
01-Mar-12	R 0.56	R 0.52
01-Mar-13	R 0.40	R 0.40

- ii. For the period 01 March 2011 to 01 March 2014, any licensee identified in Regulation 7(4)(b) must charge the wholesale voice call termination rates to a fixed location as specified in Table 2:

Table 2: Wholesale voice call termination rates to a fixed location (Market 2)

	Within ON area code		Between ON area code	
	Peak	Off-peak	Peak	Off-peak
01-Mar-11	R 0.20	R 0.12	R 0.28	R 0.19
01-Mar-12	R 0.15	R 0.12	R 0.25	R 0.19
01-Mar-13	R 0.12	R 0.12	R 0.19	R 0.19

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(c) Accounting Separation and Cost Accounting

- i. Licensees identified in regulation 7(4) must submit regulatory financial reports in line with the format prescribed in the Accounting Separation and Cost Accounting regulations to be prescribed by the Authority.

8. SCHEDULE FOR REVIEW OF MARKETS

The Authority will review the wholesale voice call termination markets to which these regulations apply, as well as the effectiveness of competition and the application of pro-competitive measures in those markets, after a minimum period of three (3) years from the publication of these regulations.

9. CONTRAVENTIONS AND PENALTIES

- (1) A licensee which fails to comply with regulation 7(2)(c) is liable to a fine of Two Hundred Thousand Rand (R 200 000.00);
- (2) A licensee which fails to comply with regulation 7(5)(a) is liable to a fine of up to Five Hundred Thousand Rand (R 500 000.000);
- (3) A licensee which fails to comply with regulation 7(5)(b) is liable to a fine of up to Five Hundred Thousand Rand (R 500 000.00);
- (4) A licensee which contravenes all regulations not specified in regulations 9(1) and (2) is liable to a fine of not more than Two Hundred Thousand Rand (R 200 000.00).

10. SHORT TITLE AND COMMENCEMENT

These regulations are called the "Call Termination Regulations, 2010/11" and will become effective upon the date of publication.

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Appendix A: Minimum content of a Reference Interconnection Offer

The RIO that must be submitted to the Authority by the licensees listed in Regulation 7(4) must, among other things, include the following:

1.1. General Legal Principles

- Definitions of terms and abbreviations
- Requirements concerning the exchange and use of information for the purpose of interconnection; and
- Data exchange formats.

1.2. Initiating Negotiations and Proposing Amendments

- Procedure for initiating negotiations as well as that for amending interconnection agreements, including:
 - how a request for interconnection is to be made;
 - to whom a request for interconnection is to be sent; and
 - the information that needs to be included in the application.

1.3. Description of Interconnection Services to be provided

- List of interconnection services offered;
- Full description of each interconnection service; and
- Conditions governing access to services.

1.4. Schedule of Charges for Interconnection Services

- Commercial and financial matters, including billing and collection procedures, and payment terms and conditions;
- The full charge for each interconnection service. Where relevant charges should:
 - be broken down into or built up from the charges for the network components;
 - include an indication of any surcharges;
 - include an indication of charging unit/s (e.g. per second);
- Mechanisms for the review of charges; and
- Billing services for third parties, where relevant (e.g. if operator is billing on behalf of resellers, other ECS or other ECNS).

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1.5. Technical Characteristics

- Comprehensive technical description of the interconnect interface(s), including the signalling protocol(s) used;
- Full details of the availability and location of points of interconnection;
- Description of the physical arrangements for interconnection;
- Description of traffic routing arrangements;
- Details regarding access to numbers by the parties
- Requirements to ensure network security or integrity;
- The quality availability, security, efficiency, and synchronization of the services provided.

1.6. Arrangements for the Establishment of Interconnection

- Conditions governing service provision;
- Traffic forecasting requirements and arrangements;
- Arrangements for testing the operation of interfaces and the interoperability of services;
- Fault management procedures (recording and clearing); and
- Conditions governing bank guarantees.

1.7. Other Legal and Procedural Issues

- Provisions on procedures for review, termination, and amendment of interconnection agreements;
- Limitation of liability and indemnity between licensees;
- Penalty clauses; and
- Dispute resolution arrangements and procedures, including the right of either party to request the Authority to intervene to resolve a dispute.

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Appendix B: APPLICATION OF THE FAIR AND REASONABLE OBLIGATION

1. PRINCIPLES OF IMPLEMENTATION OF FAIR AND REASONABLE OBLIGATION

- 1.1. For the purposes of regulation 7(2)(c), "fair and reasonable" prices are rates that are equivalent to the cost-oriented rates imposed on the licensees identified in Regulation 7(5)(b).
- 1.2. Licensees must charge the following rates:
 - 1.2.1. Reciprocal rates with the rate set for MTN and Vodacom if these licensees are in Market 1;
 - 1.2.2. Reciprocal rates with the rate set for Telkom if these licensees are in Market 2.
- 1.3. Licensees not listed in Regulation 7(4) may charge higher termination rates based on the following factors:
 - 1.3.1. Spectrum allocation. A licensee must justify why it is adversely affected by current spectrum allocation.
 - 1.3.2. Economies of scale and scope based on the share of total minutes terminated in the relevant market. A licensee qualifies for an asymmetric rate if it has less than 25 per cent of total terminated minutes in the relevant market as of June 2009.
- 1.4. A licensee may qualify for an asymmetric rate if either or both factors are applicable.

2. LIMITATIONS TO ASYMMETRIC RATE A LICENSEE MAY CHARGE

A licensee who qualifies for an asymmetric rate under paragraph 1.3 of this Annexure may charge a maximum percentage above the cost-oriented rate set in regulation 7(5)(b) according to the following table:

	Maximum percentage above rate set for identified licensees
Current	-
01-Mar-11	20%
01-Mar-12	15%
01-Mar-13	10%

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ICASA Wholesale Call Termination Market Review for the period 2010-2013

ICASA Wholesale Call Termination Market Review for the period 2010-2013

Explanatory Note for the draft Call Termination Regulations

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ICASA Wholesale Call Termination Market Review for the period 2010-2013

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List of Abbreviations

Authority	The Independent Communications Authority of South Africa
ECA	Electronic Communications Act No. 36 of 2005
ECNS	Electronic Communications Network Service
ECS	Electronic Communications Service
RIO	Reference Interconnection Offer
VOIP	Voice Over Internet Protocol
SS7	Signalling Protocol 7 as defined by ITU Recommendations
SIP	Session Initiation Protocol as defined by the ITU or any other recognised standards body where no ITU standard is in place.
TDM	Time Division Multiplex as defined by ITU Recommendations or any other recognised standards body where no ITU standard is in place
ON	Geographic area code as specified in Regulation 8 of the Numbering Plan Regulations in terms of the Telecommunications Act, 1996 (GG No. 28839, 15 May 2006: page: 9)
ONN	The three-digit geographic area code that imposes specific locational significance to a number.

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1. Executive Summary

1.1 Definition of the relevant market

1. The Authority determines that wholesale voice call termination services may be defined as existing within two markets:
 - a. **Market 1:** The market for wholesale voice call termination services to a mobile location on the network of each licensee who offers such a service within the Republic of South Africa.
 - b. **Market 2:** The market for wholesale voice call termination services to a fixed location on the network of each licensee who offers such a service within the Republic of South Africa, consisting of:
 - i. The market segment for wholesale voice call termination to a fixed location within an ON geographic area code; and
 - ii. The market segment for wholesale voice call termination to a fixed location between ON geographic area codes.

1.2 Effectiveness of competition in the relevant markets

1. The Authority put forward its provisional conclusion regarding the evaluation of the effectiveness of competition in the relevant markets in Section 2.4 of the Explanatory Note to the draft Call Termination Regulations (GG 33121, page 67).¹
2. No evidence has been submitted to persuade the Authority that competition in either market for the provision of wholesale voice call termination services is effective.

1.3 Pro-competitive terms and conditions

1. The Authority identified the following market failures within the wholesale call termination markets:
 - a. a lack of the provision of access
 - b. the potential for discrimination between licensees offering similar services
 - c. a lack of transparency
 - d. inefficient pricing
2. The Authority has identified the following pro-competitive terms and conditions to be imposed on all licensees to rectify the above market failures:
 - a. Compliance with the provisions of the Interconnection Regulations (Government Gazette No. 33101 of 2010) (Regulation 7(2))
 - b. Compliance with the Compliance Manual Regulations to be prescribed by the Authority (Regulation 7(2)),
 - c. Charge fair and reasonable prices for wholesale voice call termination consistent with Appendix B ((Regulation 7(2)).
3. Additional pro-competitive terms and conditions to rectify the above market failures are imposed on those licensees with the following characteristics:
 - a. Licensees that have historically benefitted from the allocation of more efficient lower band spectrum by the Authority;
 - b. Licensees that benefit from economies of scale and scope in maintaining a share of total minutes terminated in the respective markets of greater than 25 per cent as of June 2009.

¹ The draft Call Termination Regulations and the Explanatory Note thereto, as released in GG 33121 on 16 April 2010, are referred to as "GG33121" throughout the remainder of this document.

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4. The Authority determines that the following licensees are to comply with the additional pro-competitive terms and conditions:
 - a. Market 1 (Regulation 7(4)(a)):
 - i. Vodacom
 - ii. MTN
 - b. Market 2 (Regulation 7(4)(b)):
 - i. Telkom
5. The additional pro-competitive terms and conditions to rectify the identified market failures are:
 - a. Obligation to develop a reference interconnection offer to facilitate enhanced access and transparency and therefore support Object 2(b) of the ECA which is to facilitate interoperable networks (Regulation 7(5)(a)).
 - b. Obligation to charge cost-oriented prices to overcome the market failure of inefficient pricing (Regulation 7(5)(b)):
 - i. Market 1:

Table 1: Wholesale voice call termination rates to a mobile location (Market 1)

	Peak	% adjustment	Off-peak	% adjustment
Current rates	R 0.89		R 0.77	
01-Mar-11	R 0.73	-18%	R 0.65	-16%
01-Mar-12	R 0.56	-23%	R 0.52	-20%
01-Mar-13	R 0.40	-29%	R 0.40	-23%

ii. Market 2:**Table 2: Wholesale voice call termination rates to a fixed location (Market 2)**

	Within ON geographic area code				Between ON geographic area code			
	Peak	% adj	Off-peak	% adj	Peak	% adj	Off-peak	% adj
Current	R 0.23		R 0.12		R 0.33		R 0.19	
01-Mar-11	R 0.20	-13%	R 0.12	0%	R 0.28	-15%	R 0.19	0%
01-Mar-12	R 0.15	-25%	R 0.12	0%	R 0.25	-11%	R 0.19	0%
01-Mar-13	R 0.12	-20%	R 0.12	0%	R 0.19	-24%	R 0.19	0%

- c. Obligation to comply with Accounting separation and Cost Accounting regulations to be prescribed by the Authority (Regulation 7(5)(c)).
6. All other licensees may charge an asymmetric (higher) termination rate subject to certain conditions. Licensees that do satisfy the set criteria cumulatively may charge an asymmetric rate subject to the table below (see Appendix B):

Table 3: Maximum asymmetric (higher) termination rate a qualifying licensee may charge

	Maximum percentage above rate set for licensees specified in Regulation 7(4)
Current	-
01-Mar-11	20%
01-Mar-12	15%
01-Mar-13	10%

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1.4 Conclusions

The Authority expects the imposition of pro-competitive terms and conditions on Markets 1 and 2 to achieve the following:

- a. A more efficient and effective access regime;
- b. A more dynamic retail pricing environment;
- c. Continued access and investment in electronic communications networks in South Africa.

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2. Amendments to the draft Call Termination Regulations as released in GG 33121

2.1 Introduction

1. On review of the written, oral and further submissions in respect of GG 33121, the Authority identified the following concerns that required attention:
 - The definition of "fixed call termination"
 - The definition of the relevant market for wholesale call termination
 - Within and Between ON points of interconnection and retail tariffs
 - Evaluation of the effectiveness of competition
 - Identification of proportionate pro-competitive terms and conditions
 - Design of the proposed price control
 - Reference Interconnect Offer
 - Convergence
2. This section provides the Authority's rationale for any amendments made to the draft Call Termination Regulations as released in GG 33121.

2.2 Definition of the market for wholesale voice call termination in South Africa

This section reviews the following:

- The definition of fixed call termination
- The definition of the market for termination:
 - to a mobile location
 - to a fixed location

2.2.1 The definition of fixed call termination service

1. The Authority put forward the following definition for fixed call termination:

"Fixed call termination" means a wholesale call termination service provided by an electronic communications network services or electronic communications services licensee to a fixed location, and includes licensees providing call termination using VoIP to a fixed location and fixed wireless services (Page 5, GG 33121)
2. A number of licensees raised concerns regarding the inclusion of VoIP services in the definition for "fixed call termination," including Smile Telecoms, Telkom, ISPA and Vox Telecoms.
3. The queries revolved around the inclusion of a specific technology (VoIP) in the definition of a service when that technology could be used to provide both fixed location and mobile location services.
4. The concern regarding reference to a specific technology is noted.
5. The Authority also notes Telkom's query regarding the possible differentiation between fixed (wireline) location services and fixed (wireless/nomadic) services.
6. In practice, the Authority determines that the differentiating feature is whether it is possible for the end-user to maintain an active session, i.e. a voice call during a change in location.
7. Taking the above into account, the Authority amends the definition of fixed call termination service to the following:

"Fixed voice call termination" means a wholesale voice call termination service provided by an electronic communications network services or electronic communications services licensee to a fixed location, and includes licensees providing termination using fixed wireless services.

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2.2.2 Definition of the market for wholesale voice call termination

1. Regulation 3 of the draft Call Termination regulations defined the market as follows:

"separate wholesale call termination markets on each electronic communications network and electronic communications service licensee in South Africa" (Regulation 3, page 6, GG 33121).

2. The Authority gave more detail on the interpretation of this definition in the explanatory note accompanying the regulations:

"For the avoidance of doubt, the Authority notes that all licensees that provide wholesale call termination services are included in this market definition. This includes licensees that provide Voice over Internet Protocol (VoIP) services as well as Class ECNS/ECS licensees" (page 48, GG 33121).

3. Stakeholders raised a number of queries regarding the accuracy of the definition given the manner in which call termination services are provided.
4. These queries included concerns as to whether:
 - a. termination to a fixed location is in the same market as termination to a mobile location (Telkom);
 - b. other termination services, such as SMS and MMS services are, included in the definition of the market (MTN);
 - c. the market for termination to a fixed location is too broad, owing to the potential for four wholesale markets existing within the proposed market definition (see pages 5-24 of Neotel's written submission);
 - d. the possible existence of different termination rates to different services, particularly Value Added Services (point 46 of ISPA's written submission).
5. The Authority responds to these queries below.


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2.2.3 The definition of the market for wholesale voice termination to a fixed location

1. The Authority notes that, in practice, interconnection between two licensees providing termination to a fixed location is characterised by the opportunity for both near-end and far-end handover, whilst interconnection between any licensee and a licensee providing wholesale voice call termination to a mobile location is characterised by near-end handover.
2. The ability to choose between near-end and far-end handover in the provision of wholesale voice call termination services to a fixed location and the importance of this differentiation in fostering infrastructure competition therefore leads to the need for a review of the initial definition as proposed in GG 33121.
3. The product nature of each market segment is the same in that a termination service to a fixed location is provided.
4. However, the geographic boundaries of each segment are different. The geographic boundary for the market for Between Billing Zone (BBZ) wholesale voice call termination to a fixed location is that geographic area outside the geographic area/province code from which a voice call is originated but within the boundaries of the Republic of South Africa, i.e. between the ON geographic area/province codes of the numbering plan.
5. The geographic boundary for the market for Within Billing Zone (WBZ) wholesale voice call termination to a fixed location is that of the defined boundary within the ON geographic area/province codes of the numbering plan.
6. The Authority determines that the definition of the market for wholesale voice call termination to a fixed location consists of two market segments as defined below:
 - a. The market segment for wholesale voice call termination to a fixed location within the ON geographic area code of the numbering plan; and
 - b. The market segment for wholesale voice call termination to a fixed location between ON geographic area codes of the numbering plan.

2.2.4 Conclusion on the definition of the market

1. The Authority determines that the product and geographic definition of the market for wholesale voice call termination services is dependent on the characteristics of the service as well as the manner in which the service may be provided.
2. The geographic boundary of the market differs based on cost causation and the ability and choice to apply either near-end and/or far-end handover.
3. Therefore, the Authority determines the following definitions of the market and market segments for the provision of wholesale voice call termination services in South Africa:
 - a. Market 1: The market for wholesale voice call termination services to a mobile location on the network of each licensee which offers such a service within the Republic of South Africa.
 - b. Market 2: The market for wholesale voice call termination services to a fixed location on the network of each licensee which offers such a service within the Republic of South Africa, consisting of:
 - i. The market segment for wholesale voice call termination to a fixed location within the ON geographic area code; and
 - ii. The market segment for wholesale voice call termination to a fixed location between ON geographic area codes.

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2.3 Evaluation of the effectiveness of competition

1. The Authority put forward its provisional conclusion regarding the evaluation of the effectiveness of competition in the relevant markets in Section 2.4 of GG 33121 (page 67).
2. No evidence has been submitted to persuade the Authority that the market for the provision of wholesale voice call termination services in either market is competitive.

2.4 Imposition of pro-competitive terms and conditions

This section outlines the Authority's response to the following matters:

- Imposition of pro-competitive terms and conditions in a proportionate manner
- The design of the price control
- The construction and contents of a Reference Interconnection Offer
- Monitoring reports.

2.4.1 Imposition of pro-competitive terms and conditions in a proportionate manner

1. The Authority outlined its approach to the imposition of pro-competitive terms and conditions to remove any existing market failures, stating that "specific obligations imposed must be based on the nature of the problem identified, and must be proportionate and justified" (page 73 of GG 33121).
2. The Authority stated that the following pro-competitive terms and conditions might to be imposed:
 - a. Pro-competitive terms and conditions to be imposed on all licensees in the wholesale call termination market:
 - i. Access, transparency and non-discrimination obligations: These obligations already form part of the regulatory regime for all licensees under Section 37 of the ECA (Regulation 7 and Section 3.4.3.2 of GG 33121)
 - ii. Obligation to maintain and submit reports to the Authority (Regulation 11 and Section 3.5.2 of GG 33121)
 - iii. An obligation to charge fair and reasonable prices (Regulation 8(2) and page 79 of GG 33121).
 - b. Pro-competitive terms and conditions to be imposed on those licensees with "Established Significant Market Power" (Regulation 6(2) of GG 33121)
 - i. Obligation to publish a reference interconnection offer (Regulation 8 and page 77 of GG 33121)
 - ii. A specific price control obligation (Regulation 9(1) and page 78 of GG 33121),
 - iii. Accounting separation and cost accounting obligation (Regulation 10 and page 83 of GG 33121).
3. The Authority proposed these pro-competitive terms and conditions based on the need to correct the following identified market failures:
 - a. a lack of the provision of access
 - b. the potential for discrimination between licensees offering similar services
 - c. a lack of transparency
 - d. inefficient pricing

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4. The Authority notes the concerns raised regarding the use of the terminology "Established Significant Market Power" as well as the request for greater clarity on how compliance with specific remedies is to be linked with overcoming the identified market failures.
5. The Authority has amended its criteria for the classification of licensees for the imposition of pro-competitive terms and conditions according to specific behavioural and structural characteristics of licensees.
6. The Authority determines that additional pro-competitive terms and conditions are to be imposed on those licensees that, from an ex ante approach, have countervailing bargaining power², and therefore maintain the greatest potential to leverage off the identified market failures. The Authority has determined that licensees with the following characteristics are likely to be able to act in such a way:
 - a. Licensees that have historically benefitted from the allocation of more efficient lower band spectrum by the Authority;
 - b. Licensees that benefit from economies of scale and scope in maintaining a share of total minutes terminated in the respective market of greater than 25 per cent as of June 2009 (see Tables 2.3 and 2.4 of GG 33121 on pages 55 and 56 respectively).
7. Vertical integration is not deemed to be a category for qualification for asymmetric regulation because of the non-discrimination requirements of sections 37(6) and 43(7) of the ECA, which refer to interconnection and facilities leasing services.
8. Only those licensees declared to benefit from the above characteristics are to face additional pro-competitive terms and conditions that are necessary to correct the identified market failure.
9. The following licensees are to comply with additional pro-competitive terms and conditions in relation to Market 1:
 - a. **Vodacom:** Vodacom has historically benefitted from the allocation of more efficient lower band spectrum and has maintained a share of total minutes terminated in Market 1 of greater than 25 per cent as of June 2009. These characteristics afford Vodacom sufficient countervailing bargaining power to influence termination rates in other markets.
 - b. **MTN:** MTN has historically benefitted from the allocation of more efficient lower band spectrum and has maintained a share of total minutes terminated in Market 1 of greater than 25 per cent as of June 2009. These characteristics afford MTN sufficient countervailing bargaining power to influence termination rates in other markets.
10. The following licensee is to comply with additional pro-competitive terms and conditions in relation to Market 2:
 - a. **Telkom:** Telkom has benefitted from preferential access to spectrum owing to its historical ownership structure and has maintained a share of total minutes terminated in Market 2 of greater than 25 per cent as of June 2009. These characteristics afford Telkom sufficient countervailing bargaining power to influence termination rates in other markets.

2.4.2 The design of a price control

1. The Authority re-iterates its position that the provision of wholesale voice call termination services, irrespective of location, is a bottleneck service, allowing a licensee

² Countervailing bargaining power exists when a particular purchaser (or purchaser group) of a product is sufficiently important to its supplier to influence the price charged for that product.

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*"to set the price for call termination above competitive levels"*³.

2. The objective of the imposition of a price control for the provision of wholesale voice call termination services remains as stated in GG 33121:

*"The Authority seeks to ensure that prices and margins are reduced to a level that covers the cost of efficiently incurred capital, as would be the case in a competitive market."*⁴

3. The following factors affect the design of a price control to compensate for the lack of effective competition:

- a. Non-discrimination: In upholding the non-discrimination principle of section 37(6) of the ECA as well as Regulation 10 of the Interconnection Regulations (GG 33101),⁵ a licensee is to charge wholesale voice call termination rates based on the cost incurred to terminate a voice call on its network irrespective of whether the source of the traffic stems from a mobile or fixed location.
- b. A flat versus peak/off-peak differential for termination rates:
 - i. The Authority put forward its view that wholesale voice call termination should be charged at one rate, irrespective of time (Page 92 of GG 33121).
 - ii. Cell C supported this approach, whilst MTN, Telkom and Vodacom disputed the imposition of a single rate for wholesale voice call termination.
 - iii. The Authority's view is that an efficient network should be dimensioned based on the maximum traffic expected at any given time. Furthermore, in one-on-one meetings with licensees it was acknowledged that the peak/off-peak termination rate structure has little impact on the nature of calling patterns of end-users. End-user calling patterns are dictated by socio-economic and cultural factors. The retail pricing strategies of licensees seek to exploit these characteristics by introducing packages to stimulate increased traffic, for example, over weekends.
 - iv. The Authority maintains its view that wholesale voice call termination services are to be charged at one rate and that flexibility in the management of traffic may be achieved through the pricing of services in the retail market.
 - v. For purposes of call termination, peak calling hours are defined as calling hours from Monday to Friday 07H00 to 20H00.
 - vi. Off peak call hours are defined as all hours other than the peak rate group hours.

2.4.3 The design of a glide-path towards the efficient level for Market 1

1. MTN, Vodacom and Cell C all voiced the following concerns:

- a. Interconnection must be financially and economically feasible as per section 37(3)(a) of the ECA;
- b. The implementation of the rate cut should be deferred to 1 March 2011;
- c. The degree of change per year should be smoothed out to reduce substantial shocks to the industry;
- d. Inflation should be considered when implementing a price control.

³ Page 57 of the Explanatory Note to the Draft Call Termination Regulations, GG 33121

⁴ Page 51 of the Explanatory Note to the Draft Call Termination Regulations, GG 33121

⁵ GG 33252, 31 May 2010

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2. Furthermore, MTN and Vodacom requested that if the Authority is to maintain its position on a single rate, that the rate be introduced over time to minimise any shocks to existing business models (page 22 and 7 of written submissions respectively).
3. The Authority acknowledges that a change in the wholesale pricing regime from a two-tier to a single-tier termination rate regime may have an impact on the business structure of all licensees, including those involved in independent downstream retail services.
4. Regarding inflation, the Authority expects licensees to compensate for reasonable inflationary pressures through internal efficiency gains. The Authority determines that reasonable inflationary pressures are inflationary pressures within the inflation target band of 3-6 per cent as set by the South African Reserve Bank.
5. The Authority will consider amending the termination rate to be charged in March 2014, should the Consumer Price Index reflect an increase in inflation above the inflation target band.
6. The Authority has determined that it is necessary to minimise the shock of a reduction in termination rates to provide adequate time for licensees and their re-sellers to review their distribution agreements.
7. Therefore the Authority determines the following termination rate glide path applicable to those licensees identified in Regulation 7(5)(b)(i):

Table 4: Wholesale voice call termination rates to a mobile location (Market 1)

	Peak	% adjustment	Off-peak	% adjustment
Current rates	R 0.89		R 0.77	
01-Mar-11	R 0.73	-18%	R 0.65	-16%
01-Mar-12	R 0.56	-23%	R 0.52	-20%
01-Mar-13	R 0.40	-29%	R 0.40	-23%

8. The intention is for the Authority to review the above rates for amendment after 01 March 2014.

2.4.4 The design of a glide-path towards the efficient level for Market 2

1. The Authority proposed that the cost of termination on Telkom's network should be R 0.10 (Regulation 9(1)(b) of GG 33121).
2. Telkom disputed the proposed R 0.10 rate in its written submission, stating the following: "FTR should be set at ZAR 0.37 and adjusted over time in line with changes to the costs of the access deficit" (page 64 of the Telkom submission to the draft regulations).
3. Telkom proposed this figure based largely on the existence of an access line deficit, in part created by universal service obligations (listed on page 60 of the Telkom submission).
4. The ITU and the European Commission have stated the following regarding the inclusion of access line costs in the derivation of a cost-oriented rate for interconnection:

"[Access] lines are considered as customer dedicated, therefore, all related expenses should be recovered either by rental, one-off purchase, or other arrangements that would not impact the cost of interconnection on the core network" (ITU, 2003, page 2)⁶

and

⁶ ITU document reference: GR TAL – C 3 – E, www.itu.int/itudoc/itu-t/tal/cost-od/84386_wv9.doc

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"since the provision of interconnection does not lead to any increase of costs in the dedicated components of the local loop of the terminating network, the calculation of interconnection charges should not include any component relating to the direct cost of the subscriber-dedicated components of the local loop" (Commission recommendation 98/195/EC, page 73/46).

5. The World Bank⁷ has stated the following regarding the provision of interconnection services:

"Considering the example of interconnection services, it is important to underscore the following three conclusions:

- *The provision of interconnection services does not modify the retail sales service, as the latter only concerns sales to final subscribers.*
- *The provision of interconnection services does not modify the access service, as the capacity implemented and its maintenance do not have to be adjusted to bear the flow of this additional traffic.*
- *In contrast, transport services are affected by the traffic resulting from interconnection services.*

As a result, the cost of access services must be covered by retail service revenues. Unless these services rates are rebalanced, there are risks for anticompetitive practices and cream skimming. In other words, market deregulation imposes a certain cost orientation for dominant operators' tariffs, and, consequently, implies a price restructuring that eliminates the largest existing pricing averaging."

6. This is consistent with the allocation of costs as specified in volume 3 of the Chart of Accounts and Cost Allocation Manual (GG 23632).

7. The Authority therefore determines the following:

- a. Universal service obligations⁸ are not to form part of a determination on termination rates for commercial services. These matters are dealt with through separate regulatory processes.
- b. Access costs are to be borne by the consumer.
- c. Licensees have the freedom to adjust any retail tariffs.

8. Taking into account the revised definition of the market for termination to a fixed location, whilst including an incentive for investment in fixed location infrastructure, the Authority imposes the following termination rates to a fixed location to be levied by those licensees listed in Regulation 7(5)(b)(ii):

Table 5: Wholesale voice call termination rates to a fixed location (Market 2)

	Within ON geographic area code				Between ON geographic area code			
	Peak	% adj	Off-peak	% adj	Peak	% adj	Off-peak	% adj
Current	R 0.23		R 0.12		R 0.33		R 0.19	
01-Mar-11	R 0.20	-13%	R 0.12	0%	R 0.28	-15%	R 0.19	0%
01-Mar-12	R 0.15	-25%	R 0.12	0%	R 0.25	-11%	R 0.19	0%
01-Mar-13	R 0.12	-20%	R 0.12	0%	R 0.19	-24%	R 0.19	0%

⁷ See page 24 of "A Model for calculating Interconnection Costs in Telecommunications" 2004. Available at: http://www-wds.worldbank.org/external/default/WDSPContentServer/WDSP/IB/2004/03/04/000090341_20040304155451/Rendered/PDF/280390.PAPER0Model0for0calculating0costs.pdf

⁸ Including termination rates to community service telephones

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9. The Authority is of the view that the above rates provide for an investment incentive to support further network investment by new entrants as well as provide adequate revenue generation for existing licensees to retain and maintain investments.

10. The intention is for the Authority to review the above rates for amendment after 01 March 2014.

2.4.5 Fair and reasonable rates, symmetry and the case for asymmetry

1. The objective of regulating specific voice call termination rates is to ensure that these rates are set at an "efficient level" (GG 33121: 69).
2. The Authority indicated its preference for symmetrical prices for similar services in GG 33121 and reiterates its position here.
3. However, the Authority notes international arguments both for and against asymmetry as well as those points raised during the public consultation process.
4. The Authority determines that the application of asymmetric rates for a transitory period will benefit total social welfare by stimulating increased competition in the respective markets, thereby benefiting end-users.
5. However, asymmetric (higher) termination rates may only be justified on certain criteria to ensure that only those licensees that are dedicated to the goal of reducing retail prices through competitive forces qualify for such asymmetry.
6. Therefore the Authority has determined that the following criteria apply when a licensee considers whether it may qualify for an asymmetric rate:
 - a. Spectrum allocation: The allocation of spectrum is a factor controlled by the Regulator, not the licensee. The Authority determines that licensees who are able to quantitatively show a prejudiced impact on cost based on the allocation of spectrum may qualify for an asymmetric (higher) termination rate.
 - b. Economies of scale and scope: The Authority determines that a licensee may choose to apply an asymmetric rate under the following conditions:
 - i. The licensee is an I-ECS licence holder with a share of total minutes terminated in the respective market of less than 25 per cent as of June 2009 (see Tables 2.3 and 2.4 of GG 33121 on pages 55 and 56 respectively);
 - ii. All I-ECS licensees who lease electronic communications facilities are bound by the principle of non-discrimination in Regulation 10(3) of the Interconnection Regulations and Regulation 9(3) of the Electronic Communications Facilities Leasing Regulations.
7. A licensee may qualify for an asymmetric rate if either or both factors are applicable..
8. The Authority determines that it is necessary to limit and reduce the amount of asymmetry a qualifying licensee may charge, to ensure that investment by new entrants is efficient.

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9. The Authority therefore imposes the following limits which a qualifying licensee may charge:

Table 6: Maximum asymmetric (higher) termination rate a qualifying licensee may charge

	Maximum percentage above rate set for licensees specified in Regulation 7(2)
Current	-
01-Mar-11	20%
01-Mar-12	15%
01-Mar-13	10%

2.4.6 Requirement to develop a reference interconnection offer

1. The Authority stated that those licensees listed in Regulation 6(2) of GG 33121 must develop a reference interconnection offer ("RIO").
2. Vodacom proposed that all licensees be required to develop a RIO (page 22 of Vodacom's written submission).
3. The Authority determines that it is not necessary for all licensees to develop a RIO and only those licensees identified in Regulation 7(5)(a) are required to comply with the submission of a RIO to the Authority for review.
4. Licensees also raised concerns about the maximum time period of 15 days required to complete an interconnection agreement (Regulation 8(7) of GG 33121).
5. The Authority accepts that certain interconnection agreements may require "non-standard" features.
6. However, given a typical circumstance where standard procedures are to be followed, using the same points of interconnect already in use by other licensees, or through a hosting centre, the Authority sees no reason why an interconnection agreement cannot be concluded within 15 days from a technical perspective.
7. Regarding commercial concerns, the Authority expects interconnection providers to be able to conduct any credit vetting procedures within the 15 days.
8. Therefore, the Authority is of the view that the only reasons why an interconnection agreement cannot be concluded within 15 days are the following:
 - a. The interconnection seeker fails to provide relevant information regarding technical requirements;
 - b. The interconnection seeker fails to provide relevant information regarding commercial requirements for surety regarding bank guarantees.
9. Therefore, a delay in completing an interconnection agreement within 15 days may only be a result of delays caused by the interconnection seeker.
10. The Authority will review RIOs submitted to it under Regulation 7(5)(a).
11. The Authority will particularly focus on the following components of a RIO:
 - a. The terms and conditions regarding bank guarantees:
 - i. The role of a bank guarantee is to ensure that an interconnection provider is not prejudiced if an interconnection seeker is unable to pay the due termination revenue at the end of each billing period.
 - ii. Excessively high bank guarantees may represent an implicit refusal to deal in which event an interconnection provider may foreclose entry to a new entrant or interconnection seeker.

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- iii. The Authority has concerns regarding the high level of bank guarantees charged historically as well as the terms included in existing interconnection agreements, such as the "unconditional right to increase a bank guarantee".
- iv. An interconnection agreement is an agreement between two parties that is required to include terms and conditions that not only comply with the obligation to interconnect (section 37(1) of the ECA), but also foster a fair and non-discriminatory access regime.
- v. The Authority has on several occasions informed licensees of its concerns regarding the inclusion of an "unconditional right to increase a bank guarantee".
- vi. The Authority determines that bank guarantees, if necessary, must be based on objective and transparent criteria.
- vii. Furthermore, where a bank guarantee is agreed-upon, each party to an interconnection agreement is to be afforded the right to request and review the level of any guarantee conditions based on good cause shown.
- viii. The Authority determines that the upper limit to the value of any bank guarantee in a RIO is the value of three months forecast terminating traffic.
- ix. The Authority determines that the above position ensures that no party to any interconnection agreement with any licensee experiences any discrimination.
- b. The terms and conditions regarding minimum traffic/revenue requirements:
 - i. The objective role of a minimum traffic guarantee is to ensure that the interconnection provider does not suffer any prejudicial investment cost in terms of the creation of a "stranded asset", i.e. the expenditure incurred in establishing the point of interconnection is not recovered from revenue received from the interconnection seeker.
 - ii. However, excessively high minimum traffic/revenue requirements may also represent implicit market foreclosure as discussed regarding excessively high bank guarantees.
 - iii. If a minimum traffic/revenue requirement is to be included in a RIO, justification for such must be provided.
- c. Signalling protocols:
 - i. Traditionally, South African licensees have provided interconnection exclusively on a TDM-basis, requiring any interconnection seeker to convert traffic to and from their network into the requisite standard as set by the interconnection provider, and cover the costs thereof (e.g. conversion to SS7).
 - ii. This practice is fair and reasonable and justified if the interconnection provider uses the same protocols for transport within its network.
 - iii. However, if the interconnection provider manages its internal network traffic through another protocol, such as SIP, then it would be discriminatory for the interconnection provider not to provide the opportunity for an interconnection seeker to interconnect using such a signalling protocol.
- d. Points of interconnection:
 - i. It may not be necessary for interconnecting parties to have a direct interconnection link.
 - ii. Licensees should consider the approach of an open connection point where all licensees who seek to interconnect may do so, e.g. through the use of a hosting centre or "interconnection hotel."

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- iii. In this scenario, the Authority expects each licensee to provide/pay for its own point of interconnection link, removing the "stranded asset concern", thereby removing the need for any minimum traffic guarantee.

2.4.7 Monitoring Reports

The Authority has reviewed the concerns raised by licensees and has determined that such information is to be included in the Compliance Procedures Manual.

2.5 Within and Between ON geographic area codes, points of interconnection and retail tariffs

1. The Authority is aware that certain licensees charge their customers a set off-net retail fee regardless of the geographic source and destination of an off-net call. This retail pricing practice ignores the cost causation principle in carrying traffic from one location to another.
2. Although the Authority has no intention of specifically regulating retail services at this juncture, the Authority requires all licensees to review the structure of their retail tariffs such that the retail fee charged for off-net calls reflects the characteristics of points of interconnection and the applicable charges for termination between licensees.
3. The Authority is also aware that it may be financially and technically feasible for points of interconnection to take place between Telkom and any other licensee at levels at the ONN level of Telkom's network. Such a point of interconnection was envisaged in the Telkom/Neotel interconnection agreement signed in 2007.
4. The Authority understands that this may not be possible at all geographic locations, but a request for such a point of interconnection may not be refused in those geographic areas where it is possible, as governed by section 37 of the ECA and the Interconnection Regulations (GG 33101).

2.6 Retention rates

1. The Authority is aware of concerns regarding retention rates, particularly ECN Telecommunication's complaint lodged against Telkom at the Competition Commission of South Africa on the 16th of October 2009.
2. The Authority will closely monitor any response by licensees to the introduction of asymmetric termination rates and whether any increase to the retail price of an off-net call occurs.
3. The Authority is also aware of the practice of having specific charges for "call set-up" costs, i.e. a retail fee that is charged independently of usage.
4. This feature of retail pricing has been regulated in other jurisdictions.⁹
5. The Authority will also monitor this feature of retail pricing diligently over the next three years.

⁹ <http://www.opta.nl/nl/actueel/alle-publicaties/publicatie/?id=3224>

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2.7 Convergence

1. The Authority notes the points raised by stakeholders as well as observable trends in certain jurisdictions tending towards lower and converging mobile and fixed termination rates and will monitor these trends during the review period.
2. However, for the period 2011 to 2014, the Authority does not consider that technological convergence equates to convergence of the cost to terminate a call to a mobile compared to a fixed location.

3. The Authority's expectations

The Authority expects the imposition of pro-competitive terms and conditions on Markets 1 and 2 to achieve the following:

- a. A more efficient and effective access regime;
- b. A more dynamic retail pricing environment; and
- c. Continued access and investment in electronic communications networks in South Africa.

3.1 A more efficient and effective access regime

1. The aim of the RIO is to remove any potential imbalance between licensees when commercially negotiating interconnection agreements. Furthermore, the Authority expects such interconnection agreements that are concluded to foster the efficient use of networks, i.e. stimulating the use of transit services or hosting arrangements where many licensees may interconnect with each other at a few distinct geographic locations.
2. The Authority expects the following to be visible outcomes of the imposition of the RIO obligation:
 - a. Reduced timeframes for concluding interconnection agreements;
 - b. Reduced and justifiable non-price obligations on both parties to an interconnection agreement;
 - c. More efficient use of networks through the use of transit services and specific hosting centres.
3. The Authority expects the impact of the above to lead to a reduction in the input costs for points of interconnection (both in time and infrastructure) thereby reducing the cost burden on existing and new entrants alike. The Authority expects the following feed-through impact to be:
 - a. A greater number of licensees considering entering the retail voice services market;
 - b. An increase in volumes of traffic between networks; and
 - c. More competitive retail price offerings, particularly in the offering of retail voice services to a fixed location.

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3.2 A more dynamic retail pricing environment through a reduction in wholesale voice call termination rates

1. The retail price environment is where licensees are able to leverage off their economies of scale and scope as well as the ability to set prices for other licensees in terms of the price offered to end-users for off-net calls.
2. A reduction in termination rates does not necessarily feed through directly to a reduction in retail rates.
3. The objective of reducing wholesale voice call termination rates is to reduce the barrier to entry in the provision of off-net calls thereby fostering competition and a dynamic reduction in retail prices over time.
4. The Authority expects the following to be visible outcomes of a reduction in wholesale voice call termination rates:
 - a. A reduction in the barriers to entry for competitors in competing for a broader spectrum of the retail market, i.e. smaller licensees are expected to move away from a pure niche retail market focus towards greater overall participation in the provision of services to all consumers;
 - b. A reduction in the price charged to an end-user for a voice call placed from a fixed location to a mobile location; and
 - c. An increase in dynamic pricing packages for voice calls between networks of licensees who offer termination to a mobile location.
5. The Authority expects the impact of the above to be the following:
 - a. An increase in the level of competition in the provision of retail services to end-users at a fixed location;
 - b. A reduction in the price of a call from a fixed to a mobile location; and
 - c. A reduction in the price of a call from a mobile location to both mobile and fixed locations over time as licensees adjust to greater competitive pressures.

3.3 Continued access and investment in electronic communications networks in South Africa

The Authority's determinations are considered to be suitable for fostering competition as well as ensuring the correct incentives for long-term sustainable investments in enhancing geographic coverage and penetration for all services.

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4. Conclusions

1. As stated by stakeholders¹⁰, the regulation of termination rates in South Africa has been benign. This benign environment allowed for both the diffusion and geographic availability of a multitude of services, notably mobile telephony services.
2. However, it is now time for all South Africans to benefit from the existence of the past benign environment. The Authority now believes it necessary for termination rates to be lowered to foster competition and allow the benefits of the past regime to flow through to end-users, ultimately in lower retail prices.
3. The Authority will vigilantly monitor all trends to ensure that the implementation of the pro-competitive terms and conditions imposed in these regulations takes place quickly and without any infraction.

¹⁰ See, for example, page 7 of the transcripts of the public hearings on the draft Call Termination Regulations held on the 28th of June 2010.

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GOVERNMENT NOTICES

INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA

NO. 370

24 MARCH 2016

NUMBERING PLAN REGULATIONS

IN TERMS OF SECTION 68 OF THE ELECTRONIC COMMUNICATIONS
ACT OF 2005 (ACT NO 36 OF 2005), AS AMENDED.

The Independent Communications Authority of South Africa ("ICASA"),
hereby publish the Numbering Plan Regulations, in terms of sections 68 of
the Electronic Communications Act, 2005 (Act 36 of 2005), as amended.



Rubben Mohlaloga
Acting Chairperson

1. DEFINITIONS

In these Regulations, unless the context otherwise indicates, a word or expression to which a meaning has been assigned in the Act shall have the meaning so assigned-

"Act" means the Electronic Communications Act, 2005 (Act No. 36 of 2005) as amended.

"access code" means a short non-geographic number that is used as a prefix to other numbers to access electronic communication services.

"allocated" means the status of a number as stipulated in regulations 14, 16 and 17 of these Regulations immediately after an allocation of the number.

"allocation" means the issuing of a number(s) or service code(s) by the Authority to a licensee whereby the latter is able to assign the number(s) or service code(s).

"assigned number" means a number that is issued to an end-user by a licensee.

"assignment" means the issuing of a number(s) or service code(s) under relevant terms and conditions by a licensee or

"bulk Short Message Service(SMS)/Multi Media Service(MMS)" means a subset service of Machine Related Services (MRS) which comprises of communication, sent in large volumes, that originates from a device or machine to other devices or machines and from a device or machine to persons".

"calling line Identification" means a facility that permits any person or licensees to transmit accurate originating caller identification information. Caller identification information being the calling party's assigned number.

"communication" means the use of electronic communications services that is originated through the input of a number.

"country code" means the combination of one, two or three digits identifying a specific country or countries in an integrated numbering plan, or a specific geographic area assigned by the ITU-T in accordance with Recommendation E.164, Telephone network and ISDN Operation, Numbering, Routing and Mobile service.

"geographic number" means a national number that is used to provide a geographic service, where the first three (3) digit of its structure contains geographic significance.

"geographic significance" means the geographically indicative numbers that indicate the geographic location.

"harmonised number" means a number used to provide a service meeting a common description, as authorized by the Authority.

"Inbound services" means a service used only to receive communication.

"international prefix" means a combination of digits to be dialled by a caller making a call to a recipient in another country.

"ITU TSB" means the Telecommunication Standardization Bureau of the International Telecommunication Union.

"length" means the quantity of digits that constitutes a number.

"machine related number" means a non-geographic number that is used to provide a machine related service.

"machine related service" means a service whereby:

- (a) the transmission of communication in wireless and/or wired systems is between devices or machines; and
- (b) communication originating from a device or machine to a person and vice versa.

"mandated number" means a receiving number to which communications must be routed irrespective of the electronic communication network used in originating the communications.

"mass calling service" means a service whereby instantaneous, high volume traffic that is routed to one or more destinations.

"mobile number" means a non-geographic number used to provide a mobile service.

"mobile service" means a service as defined by the National Radio Frequency Plan developed by the Authority in terms of section 34(2) of the ECA.

"national number" means a 10-digit number to be dialled including the national prefix.

"non-geographic number" " means a number that is used to identify a type of a service and has no geographic significance.

"number" means a sequence of digits.

"numbering plan" means a scheme of identification by numbers prescribed in these Regulations or other regulations made by the Authority for ensuring that electronic communications are correctly and efficiently routed to their intended destination.

"originating number" means a number that identifies to the recipient of communication the point at which the communication is originated.

"originator" means a person or device originating a communication through the input of a number.

"premium rate number" means a non-geographic number that is used to provide a premium rate service.

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"premium rate service" means a service provided by means of premium rated numbers or short codes in level 3 and 4, where the charge is higher than standard rate and in some instances, where a portion of the charge is passed to a premium rate service content licensee, irrespective of the originating electronic communications network used.

"licensee" means a person or entity that has an individual electronic communications services (I-ECS) using numbers from the numbering plan.

"protected" means the status of a number that has not been released for allocation by the Authority.

"receiving number" means a number that identifies where a communication, through the input of the number, the point at which the communication should be received.

"recipient" means a person or device that can receive a communication.

"release" means a process where the Authority publish a notice indicating numbers to be released.

"released" means the status of numbers which permits licensees to -.

(a) request the allocation or reservation of the number(s), if the number(s) are national number(s) or access code(s); or

(b) request the allocation of the number(s), if the number(s) are service code(s)

"reservation" means a temporary allocation of number(s) by the Authority to a licensee. Numbers allocated under this provision cannot be assigned by the licensee.

"reserved" means the status of a number(s) immediately after approval of a reservation.

"routing" means the conveyance of communications originated or received at points identified by numbers.

"service code" means a short code that may be a receiving number for a service.

"short code" means any non-geographic number less than 10 digits in length.

"status" means, 'protected', 'released', 'allocated' or 'reserved'.

"supplementary code" means a number that begins with '*' or '#'.

"toll free number" means a non-geographic number that is designated to provide a toll free service.

"toll free service" means a service such that for every communication made available, no charge is incurred by the callers, irrespective of the electronic communication network used in originating the communication.

"usage condition" means a restriction in these Regulations or other regulations made by the Authority on the ways in which numbers may be used.

"VoIP number" means a non-geographic number used to provide a VoIP service.

"VoIP service" means the provision of unmanaged voice communication services over the Internet Protocol (IP).

2. PURPOSE OF THESE REGULATIONS

The purpose of these Regulations are to:

- (a) provide for the efficient use and allocation of numbers;
- (b) provide a scheme of identification to ensure that electronic communications are correctly and efficiently directed to the point of reception for which they are intended;
- (c) accommodate the varied protocols used and services provided by licensees under the Act;
- (d) ensure that numbering allocations are fair and non-discriminatory;
- (e) provide a framework for toll-free services; and
- (f) provide a short code strategy.

3. RELEASING NUMBERS

- (1) Only numbers that have the status 'protected' in terms of regulation 15, 16 and 17 may be released.
- (2) When releasing numbers, the Authority shall have regard to:
 - (a) the need to satisfy constraints on network systems;
 - (b) avoidance of conflicts with past usage of numbers; and
 - (c) retention of the numbers for possible future uses.
- (3) The Authority will publish numbers intended for release in a notice.

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- (4) Numbers will have the status 'released' immediately after the Authority releases such numbers through a notice in the Government Gazette.

4. HARMONISING AND MANDATING NUMBERS

- (1) Only numbers that have the status 'protected' or 'released' may be harmonised or mandated;
- (2) When harmonising or mandating numbers, due regard must be given to the avoidance of discrimination in favour of or against a particular licensee; and
- (3) When harmonising or mandating numbers, the authority shall:
 - (a) notifying affected licensees of changes; and
 - (b) publish a notice specifying numbers that are harmonised or mandated and describing the services for which the numbers must be used to receive communication.

5. ALLOCATING AND RESERVING NUMBERS

- (1) A licensee must apply to the Authority for an allocation or reservation of numbers that have status 'released'.
- (2) The application set out in sub-regulation (1) must be furnished in the format as set out in **Schedule 3** of these Regulations.
- (3) Within twenty (20) days of receipt of an application by the Authority, an application may be:
 - (a) approved or it may be approved with such variations as the Authority deems necessary;

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- (b) declined and in such an instance, the Authority shall provide reasons in writing for declining the application; or
 - (c) consulted upon as set out in sub-regulation (5).
- (4) The Authority may consult with the relevant licensee on details of its application for numbers prior to deciding on the application.
- (5) Should the Authority consult with a relevant licensee in terms of sub-regulation (4), the 20 days contemplated in sub-regulation (3) shall be extended on condition that:
 - (a) additional information is required from the applicant; or
 - (b) there are significant issues relating to the application that the Authority cannot process and or obtain clarity within the 20 days processing period; or
 - (c) the Authority considers that the utilisation of the numbers already allocated to the licensee and subject to the same usage conditions as the numbers requested is less than 80% for mobile and machine related numbers and less than 60% for geographic and other non-geographic numbers, calculated as follows:


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- (i) For geographic and other non-geographic numbers, the degree of usage shall be calculated as follows:

$$\text{Degree of usage} = \frac{\text{total numbers assigned to customers within an NDC}}{100} \times$$

Total numbers allocated
Within an NDC

- (ii) For mobile and machine related numbers, the degree of usage shall be calculated as follows:

$$\text{Degree of usage} = \frac{\text{total numbers assigned to customers and used for internal network purposes.}}{\text{Total numbers allocated to a licensee}} \times 100$$

- (6) The following number ranges are subject to individual number allocation or reservation: 080; 086 0 and 086 1.
- (7) The Authority reserves the right to declare certain non-geographic number ranges or sub-ranges for individual number allocations. The Authority shall publish the relevant ranges in a notice.

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6. CONDITIONS OF USE OF AN ALLOCATION OF THE NUMBERING RESOURCE

- (1) Numbers are a national resource and are not owned by a licensee to whom they are allocated nor by the subscriber to whom they are assigned.
- (2) A subscriber to whom a number has been legitimately assigned may enjoy the beneficial use of the number, freely and without hindrance.
- (3) The following general conditions relating to the use and management of the assignment of numbers apply to all allocations made by the Authority:

 - (a) the allocation must be used for the purpose specified in the application and within the designated range for use;
 - (b) the allocation must be controlled by the licensee to whom the Authority has made the allocation to;
 - (c) the holder of the allocation shall maintain a record of the percentage of numbers in use and reserved;
 - (d) assigned numbers must not be traded;
 - (e) the allocation shall be used in accordance with any specific conditions made by the Authority;
 - (f) a licensee shall not make use of numbers that have not been allocated to them or which the Authority has not authorised them to use;
 - (g) a licensee shall ensure that all numbers allocated to them are used efficiently and effectively; and
 - (h) MSISDNless SIM starter packs shall apply to all allocated mobile numbers as well as recycled numbers;
- (4) Specific conditions may be imposed on the use of numbers, at the time of allocating the numbers or at any time thereafter, where the Authority considers that it is in the interest of the numbering plan to impose such conditions.

7. WITHDRAWING NUMBERS

- (1) Numbers that have status 'released', 'allocated' or 'reserved' may be withdrawn by the Authority only if –
 - (a) the numbers have been used in ways contrary to their usage conditions; or
 - (b) the numbers or part thereof have not been assigned one (1) year after being allocated; and
 - (c) the reservation period has expired and the licensee has not requested for an allocation of the same numbers.
- (2) When withdrawing numbers, the Authority shall give due regard to the following factors –
 - (a) the need to avoid inconvenience and disproportionate cost effects vis-à-vis the benefits of the withdrawal;
 - (b) the requirement to ensure non-discrimination between licensees; and
 - (c) maintenance of consumer protection in relation to a consumer' right to beneficial use of numbers.
- (3) Any withdrawal of numbers shall be subject to –
 - (a) notification and consultation with the affected licensee(s) about the intended withdrawal at least 6 months before the withdrawal; and
 - (b) publication of a notice in the Government Gazette about the withdrawal.
- (4) In the case where the Authority notifies a licensee in writing about the withdrawal of the numbers that are released or that are allocated to the licensee, the licensee must–
 - (a) refrain from assigning any of the numbers that are not already assigned;
 - (b) inform all persons to whom the numbers are already assigned about any replacements for the numbers–

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- (i) at least 6 months before the withdrawal if it affects numbers for business subscribers; and
 - (ii) at least 6 months before the withdrawal if it affects numbers for residential subscribers.
 - (c) introduce a period of 3 months parallel running, during which both those numbers and any migration to new numbers can be used; and
 - (d) supply audible or visible indications about any replacements for the numbers until the Authority withdraws the numbers.
- (5) Numbers have status 'protected' immediately after the Authority withdraws them.
- (6) The withdrawal of numbers does not necessarily require the withdrawal of all the numbers that were allocated or reserved at the same time.

8. AUDITING NUMBERING USAGE

- (1) Unless otherwise specified, every licensee must submit its number audit data to the Authority, annually, on a date which must not be later than 31 March.
- (2) The format in which the information set out in sub-regulation (1) must be supplied in conformance with the relevant 'Number Audit Format'.
- (3) A licensee may be required to submit further information needed by the Authority for the purposes of completing the number audit process.

9. BARRING NUMBERS

- (1) A licensee is prohibited from routing communications from or to numbers, if the Authority has consulted with the licensee (s) affected and determined that the numbers have been used in ways that could harm consumers or other licensees.

- (2) In order to stop routing of communications from or to barred numbers, the Authority shall-
 - (a) firstly notify a licensee to whom the numbers are allocated about its intentions; and
 - (b) then notify all other licensees that they must stop routing communications from or to the number(s).
- (3) Upon publication of the notice by the Authority to stop routing communications from or to barred numbers, all licensees must comply with the notice within seven (7) days from the date of publication.
- (4) Upon publication of a notice by the Authority to resume routing communications from or to barred numbers, all licensees must comply with the notice within 7 days from the date of publication.

10. RETURNING NUMBERS

- (1) A licensee must return numbers to the Authority only if the numbers are not assigned 1 year after the date of allocation.
- (2) If the licensee intends assigning the numbers, provide the Authority with reasons for not assigning the numbers and propose new timelines for assignment.
- (3) A licensee must return to the Authority numbers that have been reserved for it upon the expiry of the reservation period.
- (4) The return of numbers does not necessarily require the return of all the numbers that were previously allocated.

11. TRANSFERRING NUMBERS

- (1) A licensee that transfers its I-ECS license must:
 - (a) apply to the Authority for the transfer of numbers granted under the licence to the licensee acquiring the service licence if any part of the block(s) is assigned to end-users; or
 - (b) return the numbers granted under the licence to the Authority if any part of the block(s) of numbers is not assigned to end-users.
- (2) If the licensee intends transferring the numbers to another licensee other than the one acquiring the service license, the licensee must request the Authority's approval first.

12. SUPPLYING INFORMATION ABOUT NUMBERS

- (1) A licensee must:
 - (a) refrain from publishing directory information about a number assigned to a subscriber, if the licensee concerned has not obtained prior written permission in which a subscriber consents to the publication of their assigned number;
 - (b) change the directory information about the number assigned to a subscriber if the subscriber has so requested in writing;
 - (c) change the numbers assigned to a subscriber if the subscriber has so requested in writing after receiving incorrectly or mischievously dialled communications and;

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(d) Prohibit the transmission of an inaccurate Calling Line Identification (CLI) as the originator of communication.

(2) Numbers that are reported and found to be used in the manipulation of the CLI, shall be barred as per sub-regulation 9(2).

13. PREFIXES

(1) The first two digits or characters of a number signifies that the number is either an international number, a national number, a short code or a supplementary code, as set out in Table 1.

Table 1: First digits or characters of numbers

Character	Significance and/or status
0	International numbers (beginning with '00' and in most instances represented by the plus sign '+') and national numbers (beginning with '01', '02', '03', '04', '05', '06', '07', '08' and '09')
1	Short codes 'released'
2	'protected'
3	Premium rate services (Short codes) 'released'
4	
5	'Protected'
6	
7	
8	
9	
.	Supplementary codes 'released'
#	

(2) The international prefix is '00' and in most instances represented by the plus sign '+'. It must precede an international number that is dialled inside the Republic to originate a communication with a destination outside the Republic.

- (3) The national prefix is '0'. It must precede a national significant number that is dialled inside the Republic to originate a communication with a destination inside the Republic.
- (4) The country code for the Republic issued by the ITU TSB is '27'. It must precede a national significant number without the national prefix that is dialled outside the Republic to originate a communication with a destination inside the Republic.
- (5) An access code may be allocated by the Authority to a licensee subject to an application by the licensee. It may precede a number that is dialled inside the Republic to originate a communication that is first conveyed to the licensee and then treated as if it is originated using an electronic communications service of the licensee.

14. INTERNATIONAL AND NATIONAL NUMBERS

The first and second digits of a number beginning with '0' signify that the number is either an international number, a geographic number or a non-geographic number, as set out in table 2.

Table 2: First and second digits of numbers beginning with '0'

Digits	Significance
00	International prefix
01	Geographic numbers
02	
03	
04	
05	
06	Non-geographic numbers
07	
08	
09	

15. GEOGRAPHIC NUMBERS

- (1) The first three digits of a geographic number correspond with a geographic area.
- (2) A geographic number must be assigned to a subscriber if the subscriber provides a business or postal address in the geographic area corresponding with its first three digits.
- (3) A geographic number must have a length of ten (10) digits.

Table 3: Area codes of geographic numbers

Digits	Status	Area
010	Released	Johannesburg region
011	Released	
012	Released	Tshwane region (including Pretoria)
013	Released	Northern and western parts of Mpumalanga (including Middelburg, Witbank and Nelspruit)
014	Released	Northern part of North West and southern and western parts of Limpopo (including Rustenburg and Nylstroom)
015	Released	Northern and eastern parts of Limpopo (including Polokwane)
016	Released	Vaal Triangle (including Vereeniging, Vanderbijlpark and Sasolburg)
017	Released	Southern part of Mpumalanga (including Ermelo)
018	Released	Southern part of North West (including Potchefstroom and Klerksdorp)
019	Protected	'Protected'
020	Protected	'Protected'
021	Released	Cape Town region (including Stellenbosch, Somerset West and Gordons Bay)
022	Released	Western coast of Western Cape and Boland (including Malmesbury)
023	Released	Karoo (including Worcester and Beaufort West)
024	Protected	'Protected'
025	Protected	
026	Protected	
027	Released	Namaqualand (including Vredendal, Calvinia, Clanwilliam, Springbok, Alexander Bay and Port Nolloth)
028	Released	Southern coast of Western Cape (including Swellendam, Caledon and Hermanus)
029	Protected	'Protected'
030	Protected	
031	Released	Durban region
032	Released	KwaZulu Natal central coast (including Stanger)
033	Released	KwaZulu Natal Midlands (including Pietermaritzburg)

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Digits	Status	Area
034	Released	Northern KwaZulu Natal (including Vryheid and Newcastle)
035	Released	Zululand (including St. Lucia and Richards Bay)
036	Released	Drakensberg (including Ladysmith)
037	Protected	'Protected'
038	Protected	
039	Released	Eastern Pondoland and southern coast of KwaZulu Natal (including Port Shepstone)
040	Released	Bhisho region
041	Released	Port Elizabeth region (including Uitenhage)
042	Released	Southern and central parts of Eastern Cape (including Humansdorp)
043	Released	East London region
044	Released	Garden Route (including Oudtshoorn, Knysna, Plettenberg Bay, Mossel Bay and George)
045	Released	Northern and eastern parts of Eastern Cape (including Queenstown)
046	Released	Southern and eastern parts of Eastern Cape (including Grahamstown)
047	Released	Eastern part of Eastern Cape (including Mthatha)
048	Released	Northern part of Eastern Cape (including Steynsburg)
049	Released	Western part of Eastern Cape (including Graaff-Reinet)
050	Protected	Not assigned
051	Released	Southern and central parts of Free State (including Bloemfontein) and far eastern part of Eastern Cape (including Aliwal North)
052	Protected	'Protected'
053	Released	Eastern part of Northern Cape (including Kimberley) and far western part of North West
054	Released	Gordonia (including Upington)
055	Protected	'Protected'
056	Released	Northern part of Free State (including Kroonstad)
057	Released	Free State Goldfields (including Welkom)
058	Released	Eastern part of Free State (including Bethlehem)
059	Protected	'Protected'

- (4) The following geographic numbering ranges are reserved for testing purposes: OXX 114; OXX 115; OXX 116 and OXX 117. All licensees with network testing requirements may utilize these numbers and need not apply to the Authority.

16. NON-GEOGRAPHIC NUMBERS

- (1) The first three digits of a non-geographic number indicate the designated service as set out in Table 4.
- (2) A non-geographic number other than a short code and machine related number must have a length of ten (10) digits.
- (3) A machine related number must have a length of fourteen (14) digits.

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Table 4: First, second and third digits of non-geographic numbers

Digits	Status	Significance
060	Released	Mobile services
061	Released	
062	Released	
063	Released	
064	Released	
065	Released	
066	Released	
067	Released	
068	Released	
069	Released	
070	Released	
071	Released	
072	Released	
073	Released	
074	Released	
075	Protected	'Protected'
076	Released	Mobile services
077	Released	
078	Released	
079	Released	
080	Released	Toll free services
081	Released	Mobile services
082	Released	
083	Released	
084	Released	
085	Protected	'Protected'
086	Released	Inbound services
087	Released	Voice over the internet services (VoIP)
088	Released	Future non-geographic services

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089	Released	Mass calling services
090	Released	Premium rate services (090 2 reserved for adult content)
091	Released	Premium rate services
092	Released	Premium rate services
093	Protected	'Protected'
094	Protected	
095	Protected	
096	Released	Machine related services
097	Released	
098	Released	
099	Protected	'Protected'

17. SHORT CODES BEGINNING WITH '1'

- (1) The first three digits of a short code beginning with '1' signify that the short code is an access code or a service code, as set out in Table 5.
- (2) An access code beginning with '1' must have at least four (4) digits.
- (3) A service code beginning with '1' must have at least three (3) digits.
- (4) On the day these Regulations come into force-
 - (a) an access code beginning with '16' and '19' has status 'released';
 - (b) an access code beginning with '15', and '17' has status 'protected';
 - (c) a service code beginning with '10', '11', '12', '14', '17' and '18' has status 'released';
 - (d) a service code beginning with '13' or '15' has status 'protected';
 - (e) the service code '112' is a mandated number for all emergency call services;

- (f) the service code '1020' is a mandated number for a government information directory service;
- (g) the service code '10111' is a harmonised number for a police emergency call service;
- (h) the service code '10177' is a harmonised number for an ambulance emergency call service;
- (i) the service code '17737' is a mandated number for a presidential hot line service.

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Table 5: First and second digits of short codes beginning with '1':

Digits	Significance
10	Service codes
11	
12	
13	
14	
18	
15	Access codes (beginning with '152', '153', '154', '156', '157', '158' and '159') and service codes (beginning with '150', '151' and '155')
16	Access codes
17	Access codes (beginning with '170', '171', '172', '174', '175', '176', '178' and '179') and service codes (beginning with '173' and '177')
19	Access codes

- (5) The assignment of service codes beginning with "1" shall be made in conformance with **Schedule 1** of these Regulations.

18. SHORT CODES BEGINNING WITH '3' OR '4'

- (1) A short code beginning with '3' or '4' is a service code.
- (2) A service code beginning with '3' or '4' must have at least five (5) digits.
- (3) On the day these Regulations come into force, a service code beginning with '3' or '4' shall have the status 'released' as set out in Table 1.

19. SUPPLEMENTARY CODES

A supplementary code will have the status 'released'.

20. TOLL FREE SERVICE IMPLEMENTATION

- (1) Calls to toll free numbers must be such that no charge is incurred, irrespective of the electronic communication service used in originating the communication.
- (2) Toll-free framework should be implemented within a period not exceeding 6 months from the date of the Regulations coming into force.
- (3) Toll-free services shall be provided in conformance with **Schedule 2** of these Regulations.

21. PREMIUM RATE NUMBER CHANGES AND MIGRATION

- (1) Upon finalisation of the Premium Rated Service Code of Conduct, a number shall be a receiving number for a premium rate service if-
 - (a) the number is a premium rate number (10 digits) or a machine related number (14 digits); or

(b) a short code that begins with '3' or '4'.

(2) Premium rate services shall be provided in conformance with the premium rate service Code of Conduct.

22. MACHINE RELATED NUMBER CHANGES AND MIGRATION

(1) All machine related number changes must be migrated to the new number range within a period not exceeding 12 months from the date of the Regulations coming into force;

(2) Bulk SMS/MMS services, which are provided within the previously allocated numbers are exempt from the MRS migration; and

(3) Future assignments for bulk SMS/MMS services, that extend beyond the numbering capacities provisioned by licensees as submitted to the Authority, must be in the designated numbering range for MRS.

23. FEES

Fees payable by licensees for the allocation of numbers to recover the administration costs shall be prescribed.

24. COMPLAINTS

The process and procedures for resolving subscriber complaints are provided for in the regulations developed in terms of section 69 (3) of the ECA.

25. CONTRAVENTIONS AND PENALTIES

A licensee that contravenes these regulations is liable to a fine not less than R300 000 (three hundred thousand rands) but not exceeding R3 000 000 (three million rands) once off per infringement.

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26. SHORT TITLE AND COMMENCEMENT

These regulations are called the Numbering Plan Regulations, 2016, and will come into effect on the date of publication in the Government Gazette.

27. AMENDMENT OF OTHER REGULATIONS

The Numbering Plan Regulations, 2012, published in the Government Gazette number 35737 dated 02 October 2012, are hereby repealed.

SCHEDULE 1: SHORT CODE STRATEGY

1. BACKGROUND

The aim of this strategy is to:

- (a) cater for the demand of short codes; and
- (b) provide a guidance on the future assignment of short codes; and
- (c) provide support on the consistent foundation for the use of short codes.

2. USAGE OF SHORT CODES

- (1) Short Codes that have been assigned pre 31 March 2013 have been recorded and are not subject to the short code migration, with the exception of:
 - (a) codes that have been assigned within the levels that have the status protected;
 - (b) codes assigned to services that have been harmonized; and
 - (c) service codes that have been assigned within the levels classified as access codes.

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- (2) Short codes that begin with "1", "3" and "4" have the status released.
- (3) Short codes that begin with '1' shall be structured as either 3, 4, 5 or 6-digit codes.
- (4) Short codes that begin with "1" are classified as follows:

(a) Access Codes

- (i) These codes are used by the subscribers of one licensee to select the services of another licensee on a call by call basis by adding an access code before dialling the recipient number.
- (ii) Access codes designated for Carrier Pre-Selection (CPS):
 - ☐ 4-digit codes "16XX" and "19XX"

(b) Service Codes

- (i) These codes are used to access:
 - 1. on-net or off-net services; and
 - 2. harmonized services.
- (ii) Service codes designated for on-net services and internal routing purposes.
 - ☐ 109 xxx (total of 1000 codes)
 - ☐ 122 xxx (total of 1000 codes)
 - ☐ 143 xxx (total of 1000 codes)

- (iii) Service designated for harmonized services
Harmonized Codes

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Service	Code
Voicemail retrieval	132
Voicemail deposit	134
Customer care\service	135
Prepaid recharge and balance enquiry	136
Account Enquiries	137

- (iv) Service codes designated for Government services – Provincial offices. These short codes are accessible off-net and are reserved for the designated provincial offices as shown.

Government services – Provincial offices

Eastern Cape	1PR-EC	17732
Free State	1PR-FE	17733
Gauteng	1PR-GP	17747
Limpopo	1PR-LP	17757
Northern Cape	1PR-NC	17762
Mpumalanga	1PR-MP	17767
North West	1PR-NW	17769
Western Cape	1PR-WC	17792
KwaZulu Natal	1PR-ZN	17796

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SCHEDULE 2: TOLL-FREE FRAMEWORK

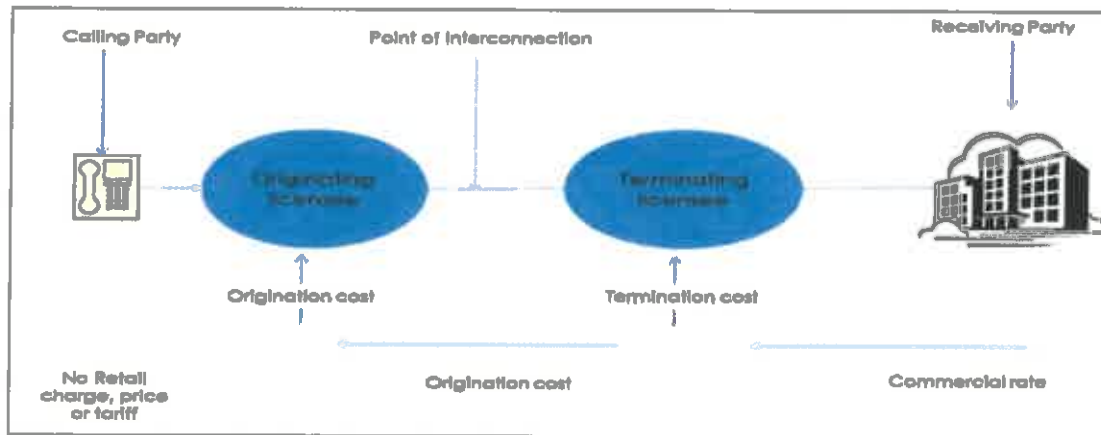
1. PURPOSE OF THE 080 TOLL-FREE IMPLEMENTATION FRAMEWORK

The purpose of this framework is to ensure that in every communication made available to a toll-free number, no charge is incurred by the caller irrespective of the electronic communication network used in originating the communication.

2. TOLL-FREE MODEL

- (1) The single direct connection model shall be used as the toll-free model to achieve the objectives of the Regulations.
- (2) The following principles shall apply to the single direct connection model:
 - (a) the receiver of toll-free communication will have commercial and technical relationship with a licensee of their choice;
 - (b) calls are free to all callers, irrespective of the electronic communication network used in originating the communication;
 - (c) the terminating licensee will in turn pay the originating licensee a commercially agreed upon charge towards the cost of originating the call;
 - (d) negotiations and payment of the agreed upon charge should be fair and non-discriminatory;
 - (e) any commercial negotiations disputes should be addressed within 30 days; and
 - (f) failure to resolve the dispute within 30 days, the dispute should be lodged with the Authority.

Figure 1 shows the schematic diagram of flow of funds:



3. INTERCONNECTION CONSIDERATIONS

- (1) Licensees must file amended interconnection agreements, including 080 toll free services, with the Authority within six (6) months of this framework coming into force;
- (2) Failure to file amended interconnection agreements as required should not affect the implementation of this framework;

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SCHEDULE 3: APPLICATION FORM FOR NUMBERING APPLICATION



APPLICATION FORM FOR NUMBERING APPLICATION

Office use only	
Application ref No	

Application for Allocation, Assignment & Reservation of Codes or Blocks of Numbers	Date

1. Application Type:

e.g 080, Geographic, 086, Mobile. Do not mix types on this application

Application for:	Allocation ☐	Assignment ☐	Reservation ☐
------------------	-------------------------------------	-------------------------------------	--------------------------------------

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2 Applicant's Information

Company Name	
Company Reg. No.	
License No.	
Tel	
Web Site	
Internal Numbering Representative	
Name and Surname	
Contact No	
Fax	
Email	
External Numbering Representative (In case of an applicant's using an external adviser e.g. consultant)	
Company Name	
Name and Surname	
Contact No	
Fax	
Email	

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Business Address	
Street Address	
Suburb	
Postal Code	
City	
Postal Address	
P.O. Box	
Suburb	
Postal code	

3 Technical Information

Numbering code, block, individual number requested	
(Where appropriate second and third preferences should be indicated. (NB: allocation of preferred requested numbering is not guaranteed)	
1	
2	
3	
4	
5	
6	
Description of service	
(For Individual number requests i.e 080 and 086 include the name of the person or entity requesting the number)	

4 Previous Allocations (Relevant to this application)

Data date: (if date differs from the date of application)			
	Service Description of Numbers	Quantity (Allocated)	Quantity (Active)
A	Allocated by The Authority		
B	Internal Network Services		
C	Contract Services		
D	Pre-Paid Services		
E	Total used for services/network (B+C+D)		
F	Degree of usage $((E/A)*100)$		
Numbers in Time Window Lock (i.e. numbers in recycling)			
Numbers Reserved			

4.1 Report on utilization for the past 6 months

	Month 1	Month 2	Month 3	Month 4	Month 5	Month 6
Actual numbers activated						
Actual numbers churned						

I declare that all the information in this Application Form and any the attachments provided are true and correct. I understand that the approval from ICASA for this Application is based on the information as declared in this Application Form. Should any of the information declared, found to be inaccurate or incorrect after approval has been granted to the Applicant, ICASA reserves the right to suspend or revoke such approval without compensation. I declare that the numbers will be used in accordance with the numbering conventions.

Name:

Date:

Signature:

Note:

Reservations will lapse after **six months** unless covered by an application for an allocation or a further period of reservation.

REASONS DOCUMENT FOR THE NUMBERING PLAN REGULATIONS, 2016

The Independent Communications Authority of South Africa (the Authority) has approved the Numbering Plan Regulations, 2016, in terms of sections 4(4) and 68 of the Electronic Communications Act, 2005 as amended.

In preparing the Numbering Plan Regulations the Authority has taken into consideration the views of all consultative forums and engagement with stakeholders since 2013. The attached reasons document is intended to highlight matters raised during the consultation process and to outline related reasons for decisions taken by the Authority.

1. BACKGROUND

- 1.1. The Independent Communications Authority of South Africa ("ICASA") published the Numbering Plan Regulations ("the Regulations"), GG 35737 of 2012, in terms of sections 4(4) and 68 of the Electronic Communications Act, 2005 (Act 36 of 2005), as amended.
- 1.2. The 2012 Regulations made provisions for the implementation of a Toll-Free Framework (TFF), Machine Related Services (MRS) and Premium Rated Services (PRS) migrations within 2 years after the Regulations came into force. Effectively 02 October 2014 was the implementation date of all 3 provisions.
- 1.3. In anticipation of the implementation date, the Authority published a notice, GG 36722 of 2013 on 1 August 2013 inviting written proposal towards the development of a supporting implementation framework for toll-free services (080 numbering range). The initial deadline for written submissions was on 09 September 2013 but due to requests for an extension, the deadline was extended to 18

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September 2013 as published in a notice, GG 36821 of 2013. The Authority received 8 submissions from the following stakeholders:

- 1.3.1. Cell C (Pty) Ltd 'Cell C';
- 1.3.2. Numbering Plan Implementation Stakeholders Forum 'Industry Forum';
- 1.3.3. Internet Solutions 'IS';
- 1.3.4. Neotel (Pty) Ltd 'Neotel';
- 1.3.5. Reunert Limited 'Reunert';
- 1.3.6. Switch Telecom (Pty) Ltd 'Switchtel';
- 1.3.7. Telkom SA SOC Limited 'Telkom'; and
- 1.3.8. Vodacom (Pty) Ltd 'Vodacom'.

- 1.4. In order to ensure a smooth MRS process and compliance, on 13 June 2014 the Authority requested licensees to submit their migration plans. The Authority received responses from the following licensees:

- 1.4.1. Cell C
- 1.4.2. Mobile Telephone Networks (Pty) Ltd 'MTN'
- 1.4.3. Neotel
- 1.4.4. Telkom
- 1.4.5. Vodacom

- 1.5. The Authority also attended Industry Forum meetings where the implementation of TFF, MRS and PRS frameworks was discussed. From these discussions, it became evident that the 02 October 2014 deadline would not be met and as a result the Industry Forum and some licensees requested an extension. The Authority considered the requests and extended the implementation deadline for TFF and PRS to 31 July 2015 and MRS to 31 December 2015 as published in a notice (GG 38065 of 2014).

1.6. In December 2014, the Authority held meetings with affected licensees and 3rd parties affected by MRS migration, this was in response to their requests for the exclusion of bulk SMS/MMS from the migration process. It became evident during these engagements that the 2012 Regulations will have to be amended to incorporate the TFF for enforceability.

1.7. On 26 June 2015, the Authority published amended draft Numbering Plan Regulations, GG 38908 ("draft Regulations") for public comments. The main objective for the amendment was the incorporation of the Toll-free framework to ensure enforceability and to release an additional 40 million numbers to cater for the growing demand of mobile services. The due date for written representations was 07 August 2015 and the Authority received 7 submissions from the following stakeholders:

- 1.7.1. Cell C;
- 1.7.2. Internet Service Licensees' Association 'ISPA';
- 1.7.3. Mobile Telephone Networks (Pty) Ltd 'MTN';
- 1.7.4. Neotel;
- 1.7.5. Switchtel;
- 1.7.6. Telkom; and
- 1.7.7. Vodacom.

1.8. On 21 August 2015, the Authority published a notice (GG 39125 of 2015) postponing the implementation timelines for the 3 frameworks until the finalisation of the draft Regulations of 2015. On the other hand the Authority was still considering the requests made by licensees affected by MRS migration for the exclusion of bulk SMS/MMS from the migration process.

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1.9. The Authority eventually acceded to the requests for the exclusion of bulk SMS/MMS from the migration process and on 13 November 2015 published an Erratum (GG 39404) to the draft Regulations for further public comments. The Erratum addressed the Authority's intention to exclude bulk SMS/MMS from the migration as well as supportive text for the implementation of short code strategy. The due date for written representations was 03 December 2015 and the Authority received 5 submissions from the following stakeholders:

- 1.9.1. Cell C;
- 1.9.2. Neotel;
- 1.9.3. Telkom;
- 1.9.4. Vodacom; and
- 1.9.5. Wireless Application Service Licensees' Association 'WASPA'.

1.10. In their written submissions on both the draft Regulations and the Erratum, all stakeholders indicated their willingness to engage further with the Authority before finalisation of the Regulations. To that extent, the Authority scheduled one on one meetings with stakeholders on 09 February 2016.

1.11. In the meetings, the Authority requested stakeholders to respond to the proposed timelines for implementation of TFF, Short code strategy, PRS and MRS migration. Furthermore stakeholders were requested to express their views on ISPA' submission to the TFF proposal. The responses were due on 16 February 2016 and the Authority received 3 submission from the following stakeholders:

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- 1.11.1. Cell C;
 - 1.11.2. ISPA; and
 - 1.11.3. Vodacom.
- 1.12. In finalising the Regulations, the Authority has taken into consideration inputs from all the above consultation processes.
- 1.13. The reasons document is intended to highlight matters raised during the consultation processes and to outline related decisions taken by the Authority, especially in instances where stakeholders sought clarity or raised objections.

2. DEFINITIONS

- 2.1. Several respondents requested the Authority to provide clarity by revising certain definitions. In consideration of the requests, the following definitions have been revised:
- 2.1.1. Assigned number;
 - 2.1.2. Assignment;
 - 2.1.3. Calling Line Identification (CLI);
 - 2.1.4. Geographic number;
 - 2.1.5. Machine Related Service (MRS);
 - 2.1.6. National number;
 - 2.1.7. Premium Rate Service (PRS);
 - 2.1.8. Provider;
 - 2.1.9. Release;
 - 2.1.10. Released;
 - 2.1.11. Reservation; and
 - 2.1.12. VoIP service.

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2.2. The following definitions have been restored as most respondents indicated that they provide context to CLI, MRS and PRS:

2.2.1. Originating number; and

2.2.2. Originator.

2.3. The following definition has been suppressed as it is not the intention of the Authority to encourage the practice, however licensees are not prohibited to do such:

2.3.1. Sub-allocation.

3. PURPOSE OF THE REGULATIONS

3.1. Several respondents indicated that the purpose of the Regulations did not include the Authority's intentions to provide a Toll-free framework and Short code strategy.

3.2. The Authority has considered the requests and expanded the purpose. This will ensure that the purpose is aligned with the contents and context of the Regulations.

4. ALLOCATING AND RESERVING NUMBERS

4.1. Several respondents raised objections to the revised utilisation percentage from 60% to 80% for both mobile and machine related numbers. The respondents did not provide reasons as to how they will be jeopardised by the revised percentage.

4.2. The Authority would like to reiterate that the revision was due to the following considerations:

- 4.2.1. Allocations for mobile and machine related numbers are made on a larger scale (i.e. they are made in million and/or hundreds of thousands).
- 4.2.2. The quantity of the allocations did not reflect the differentiation in respect of other numbers such as geographic and non-geographic individual numbers.
- 4.2.3. The processing of applications although regulated within 20 days, our experience is that approvals have been made far much earlier than that unless the application is incomplete or further information is requested from the applicant.

5. CONDITIONS OF USE OF AN ALLOCATION OF THE NUMBERING RESOURCE

- 5.1. One respondent sought clarity on the word "traded" under sub-regulation 6 (1) (d). The Authority's intentions are that assigned number(s) cannot be sold to end users or other licensees.
- 5.2. Numbers are used to provide access to services for end-users. End-users purchase services provided and then they are assigned numbers to access such services.

6. TRANSFERRING NUMBERS

- 6.1. One respondent mentioned that the transfer of numbers should not be linked to the transfer of a service license. Licensees are reminded that numbers are allocated under a particular service license and one of the attached conditions of allocation is that upon termination of a service by the licensee, the numbers must be returned to the Authority.

- 6.2. The Authority acknowledges that this might not be practically possible in most instances and as such, licensees are requested to seek the Authority's approval for any deviations from the conditions of allocations.

7. PREFIXES

- 7.1. One respondent requested the Authority to acknowledge that many networks and carriers have implemented or stored the international prefix '00' as the plus sign (+). The Authority has noted the request and now sub-regulation 14(1) and 14(2) acknowledges that the plus sign (+) in most instances is used to represent the international prefix '00'.

8. GEOGRAPHIC NUMBERS

- 8.1. Some respondents requested the Authority to provide detailed maps that accurately indicate exact boundaries specifying geographic areas. Throughout the consultation process, the Authority has indicated its intention to undertake a process to acquire these maps indicating geographic boundaries and make them available on request.
- 8.2. One respondent proposed that the Authority adopts 2 National Destination Codes (NDCs) for geographic numbers in the Gauteng region. It was argued that this will help reduce the cost to communicate for consumers in the region but provided no evidence of this benefit to support the argument. The Authority will therefore maintain the current NDCs in the Gauteng region but remains open for further engagements.

- 8.3. Another respondent indicated that there is an overlap of the '020' and '023' NDCs and urged the Authority to rectify the matter by changing the status of '020' to 'Protected'. This is because '023' is already implemented in the same area and the utilisation level is not high. The Authority has cleared the overlap and withdrawn '020' from the designated NDC in the area.

9. SHORT CODES BEGINNING WITH "1"

- 9.1. One respondents mentioned that lack of transitional arrangement for the allocation of short codes, especially the service codes for Provincial and Government services is adversely affecting its business growth.
- 9.2. To provide transitional arrangement will require an amendment to the Numbering Plan, followed by a consultation process. This is the same process we have followed but to provide a long term framework for the allocation and use of short codes. With the finalisation of the Regulations, any provider appointed as the electronic communications service provider by any provincial office (s) can apply for the allocation of the service codes as per Schedule 1.
- 9.3. Some respondents requested that the Authority withdraws access code '18' from the designated codes for Carrier Pre-Selection (CPS) as the code has been deployed in their internal networks for many years prior to the Regulations. They further remarked that provisioning 300 access codes for CPS is inefficient given that since the CPS Regulations came into force, there has been no request for CPS services.

- 9.4. The Authority has acceded to the request to withdraw access code '18' CPS Regulations were promulgated in 2010 and the CPS Phase 1 Code of Conduct in 2012 we have allocated 11 CPS access codes to interested licensees. The code has now been reclassified as a service code and is released.
- 9.5. Several respondents requested the Authority to adopt 3-digit short code for harmonisation instead of the proposed 4-digit. The request emanates from the current practice by licensees where the services to be harmonised use 3-digit short codes and that end-users are accustomed to such services using 3-digit codes.
- 9.6. It is the Authority's intention to avoid inconvenience when introducing changes. As a result, short codes for harmonisation have now been reduced to 3-digit short codes.
- 9.7. Some respondents expressed concerns on the adoption of short code '1023' for harmonised directory services. The concern was raised because the code '1023' is currently used for directory services by one provider.
- 9.8. Upon further consultations, it was found that many licensees were routing directory enquiries to the provider using '1023'. The adoption was meant to minimise disruptions to network changes. It has been established that the routing of '1023' is a commercial arrangement and therefore the adoption discriminates against other licensees.
- 9.9. The Authority has committed during the consultations that in the adoption of short codes for harmonisation, it will avoid discrimination in favour or against any provider. As a result, directory services have been withdrawn from the harmonised services as it did not meet a common description.

9.10. Service codes for on-net services and internal network routing have been reduced from a total capacity of 5 000 to 3 000. Service codes 101 xxx and 102 xxx have been withdrawn. The analysis of the Number Audit submissions has shown that the 3 000 capacity will be enough to cater for such services.

9.11. Service codes for off-net services have been withdrawn from the short code strategy. At the moment there are no clearly defined off-net services that specifically require the use of short codes. The Authority's intention is to promote the use of 10-digit numbers until there are clearly defined off-net services.

9.12. Service codes for emergency services and non-profit organisations have been withdrawn. The demand for such services cannot be sustained and as a result pose a risk to the scarce national numbering resources. Such services are and can be adequately catered for in the 10-digit numbers.

9.13. The implementation of the short code strategy should be completed within 24 months from the date including migration of services from old to new codes.

10. TOLL FREE NUMBER CHANGES

10.1. Several respondents expressed concerns that the toll-free framework proposes a commercial model. Their argument is that any commercial model imposing an origination charge without following a Chapter 10 process of the ECA will be without justification. They commented that if the Authority implements the toll-free model in its current format, origination cost should be commercially negotiated and not imposed.

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- 10.2. Some respondents submitted that a toll-free model that does not impose an origination charge is certainly doomed to failure. They proposed that the toll-free model adopted by the Authority should be implemented in parallel with the filing of amended interconnection agreements. In the case of a dispute, they recommend that this should not affect the provision of toll-free services.
- 10.3. All respondents to the proposal towards the development of a supporting implementation framework for Toll-Free services (080 numbering range) submitted that they have zero-rated wholesale termination fees for calls to 080 numbers. They further submitted that all calls to 080 numbers originating and terminating on the same network (on-net) are free to callers and that the receiving party pays.
- 10.4. 5 respondents submitted that they charge a standard retail rate for calls to 080 numbers terminating on other networks (off-net) despite the fact that wholesale termination fees have been zero-rated. Only 2 respondents submitted that all calls to 080 numbers are free to callers irrespective of the point of termination (on-net and off-net).
- 10.5. It is clear that the provision of toll-free services for on-net calls is line with the Authority's intention. The provision of off-net calls is not aligned with the Authority's intention and is for this fact that a framework was envisaged to guide the implementation for off-net calls.

10.6. The Authority's adopted model was chosen from the 4 models submitted by respondents. The adopted model was preferred because it maintains the zero-rated wholesale termination fees and proposes a billing mechanism of a commercially negotiated origination rate which is fair and non-discriminatory. The Authority has no intention to introduce any price control mechanisms within the Numbering Plan Regulations.

10.7. Licensees are therefore urged to commence with commercial negotiations for the provision of toll-free immediately after the publication of the Regulations to ensure compliance with the prescribed 6 months period.

10. PREMIUM RATED SERVICES

12.1. The implementation of premium rated services shall be determined upon finalisation of the Premium Rated Services Code of Conduct (CoC). The Authority has embarked on a consultation process to finalise the PRS CoC. Licensees will be afforded an opportunity to provide further inputs and suggestions during those consultations.

13. MACHINE RELATED NUMBER CHANGES AND MIGRATION

13.1. Several respondents have welcomed the implementation of machine related number changes and migration within a period not exceeding 12 months after the publication of the Regulations. Some respondents that did not support the 12 months implementation period mentioned that they found it difficult to attach an implementation timeline without clear definitions in the Regulations.

- 13.2. The Authority has maintained throughout the consultation process that the definitions were clear and address its intentions. Licensees recommended that revising the definitions will enhance the Authority's intentions further. Regulations have clearly defined what a machine related service is.
- 13.3. Some respondents commented that bulk SMS/MMS should not be defined as MRS. During the consultation process, the Authority requested licensees to submit services that fell within the scope of MRS. It was drawn from those submissions that bulk SMS/MMS is a subset of MRS.
- 13.4. This resulted in other licensees requesting the Authority to exclude bulk SMS/MMS from the MRS migration. Licensees motivated that due to efficient utilisation of numbers, complicated security detail and that the current numbers provisioned were enough to cater for medium to long term demands it will be uneconomical to migrate bulk SMS/MMS.
- 13.5. In consideration of the request, the Authority requested licensees to submit numbering ranges currently provisioned for bulk SMS/MMS provision. The submission supported the arguments presented and the Authority granted the exclusion of bulk SMS/MMS to currently provisioned numbers not entirely to bulk SMS/MMS as a subset of MRS. It is for this reason that if and when the demand for bulk SMS/MMS exhausts the current numbers provisioned, such demand should be catered for in the designated numbering range for MRS.

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Independent Communications Authority of South Africa

Pinmill Farm

164 Katherine Street

Sandton

For Attention: Councillor B. Mokhele

BY EMAIL: chairperson@icasa.org.za

BMokhele@icasa.org.za

Our reference: Ms H. Irvine

19 June 2018

End-user and Subscriber Service Charter Regulations dated 7 May 2018 published in Government Gazette No. 41613 ("Amended Regulations")

1. We note that our client, Cell C, has still not had any response at all to the letters addressed by our client to the Authority dated 4 May 2018 and 28 May 2018.
2. As set out in detail in our client's letter of 28 May 2018, it is absolutely impossible from a technical perspective for Cell C and its wholesale business partners (MVNO and MVNEs and Business Service Providers¹) to implement the multiple changes to their software, billing and other systems which appear to be required by the Amended Regulations within the period of one month from the date of publication of the Amended Regulations specified in section 8 of the Amended Regulations. Our client has explained the reasons for this to the Authority in some detail, during the consultations on the Amended Regulations, prior to their publication in the gazette, and subsequently.
3. However, we appreciate that it may be difficult for the Authority to properly assess the scope and magnitude of the multiple changes which will be required to Cell C's technical and business systems, as well as those of its wholesale partners, without having had sight of these systems and business

¹ As defined in our client's letter of 28 May 2018.



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processes itself. Accordingly, we record that Cell C is prepared to arrange such meetings and/or site visits as may be required to enable the Authority to properly apply its mind to our client's submissions and consider Cell C's request for an extension of at least 6 months in order to fully comply with the Amended Regulations.

4. Moreover, in the event that the Authority were to require any assistance from one or more external technical or business process experts in this evaluation, and were to appoint such experts, Cell C would similarly be willing to consult with them and to provide them with reasonable access to its internal technical facilities, and where possible, to arrange for access to those of relevant external standalone technical platforms.
5. Please let us know as soon as possible if you would like us to make the necessary arrangements with our client for these meetings.
6. Cell C's rights remain reserved.

Yours faithfully

Falcon and Hume Incorporated

Per: Heather Irvine



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