



18 March 2015

Independent Communications Authority of South Africa

Per email: marketreview2014@icasa.org.za

To whom it may concern,

ISPA SUBMISSIONS ON REFERENCE INTERCONNECT OFFER SUBMITTED TO THE AUTHORITY
BY MTN IN TERMS OF THE CALL TERMINATION REGULATIONS 2014

Introduction

1. ISPA refers to the Authority's invitation to comment on the Reference Interconnect Offer ("RIO") submitted by Mobile Telephone Networks (Pty) Limited ("MTN") in terms of the Call Termination Regulations, 2014 ("2014 CTRs").

ISPA's submissions on the draft Call Termination Regulations, 2014

2. ISPA made comprehensive submissions regarding the behavioural remedies proposed in the draft Call Termination Regulations, 2014 ("the draft 2014 CTRs") and requests that this document be read within the context of such submissions.

Licensing required to enter into an interconnection agreement under Chapter 7 of the ECA

3. MTN explicitly requires that an applicant hold an Electronic Communications Network Service ("ECNS") licence before it can enter into an interconnection agreement and relationship with MTN¹. This thinking permeates the proposed RIO.
4. The Authority has already made a determination in this regard:

"In this context, the word 'network' does not refer to a physical communication facility or to a system that can only be provided by an ECNS provider. Rather it refers to the logical 'network layer', which may be built on top of the physical communication facilities offered by ECNS and ECS licensees. The

¹ Clause 2.1.: "2.1 Pursuant to regulation 5 of the Call Termination Regulations, MTN publishes this Reference Interconnection Offer (RIO) which provides a set of standard technical and commercial terms and conditions for interconnection and forms the basis for entering into an interconnection Agreement between MTN and any requesting ECNS / I-ECNS license holder."

ISPA Management Committee:

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ECNS or ECS provider uses this network layer to provide electronic communications to its customers. In particular, the provider issues numbers to each of its individual customers, which are dialled when calling those customers”.²

5. ISPA cannot understand why there remains uncertainty in this regard.
 - 5.1. An individual electronic communications service (IECS) licensee is entitled to obtain an allocation of numbers from the National Numbering Plan and to utilise these in the provision of a voice service to its subscribers.
 - 5.2. The fundamental purpose of regulating interconnection is to ensure that the subscribers of one licensee are able to communicate with the subscribers of another licensee.
 - 5.3. Section 37(1) of the ECA is clear³:

Obligation to interconnect

37. (1) Subject to section 38, any person licensed in terms of Chapter 3 must, on request, interconnect to any other person licensed in terms of this Act and persons providing service pursuant to a licence exemption in accordance with the terms and conditions of an interconnection agreement entered into between the parties, unless such request is unreasonable.

- 5.4. The fact that an IECS licensee operates a virtual network only is:
 - 5.4.1. Of little consequence when implementing an IP interconnect; and
 - 5.4.2. Offset by the right of such licensee to procure connectivity services (ECNS) from a third party licensee for the purpose of implementing a physical interconnect.
6. ISPA submits that – to the extent that the MTN RIO conflicts with the Authority’s position and the ECA – this must be addressed throughout the MTN RIO.
7. A related matter is MTN’s insistence on “physical interconnection”⁴ which appears to ignore “logical interconnection” as set out in the definition of “interconnection in the ECA”⁵.

Other Calls

8. ISPA seeks clarity on the intended meaning of clause 5.3 of the proposed RIO.

² Explanatory Note to the draft Call Termination Regulations April 2010 GG 33121 para 1.15.2

³ As is the definition of “interconnection” in the ECA as set out below in fn 5.

⁴ 1.1.1 “**Point of Interconnect Link/ POIL**” a physical link of a pre-defined minimum capacity over which the conveyance of Calls shall be provided and which connects the ECNs of the Parties.

See also:

3.4 The agreed Point of Interconnect (POI) shall be located at the place where the MTN SA Network connects with the OLO Network and shall be a physical point where the connection can be established in order to conduct testing.

⁵ “**interconnection**” means the physical or logical linking of two or more electronic communications networks, electronic communications services, broadcasting services, services provided pursuant to a licence exemption or any combination thereof;

5.3.1. If, after the Effective Date, either Party wishes for Calls (“Other Calls”) originating on the other Party’s ECN to be charged for at rates other than the interconnect rates contemplated in Appendix 5, then such Party will give notice in writing to the other Party of its intentions in this regard and the Parties will promptly thereafter meet and endeavour to reach agreement in writing on the terms and conditions upon which such services may be accessed.

8.1. What are the “Other Calls” referred to? ISPA submits that if this clause refers to value-added services then it should stipulate this and not leave room for uncertainty regarding the application of the clause.

Onward routing vs. transit calls

9. ISPA notes the distinction in the proposed tariffs for onward routing and transit calls respectively.
10. ISPA submits that it is an artificial and unjustifiable distinction to apply different rates in respect of "Onward Routed" calls versus "Transit Calls". Onward routing is nothing more than transit in respect of a number ported away from the Number Block Operator. In either case, the routing process and costs are identical and the only distinction is whether the number forms part of the interconnecting party's ICASA-allocated numbering or not.

Termination for convenience

11. Clause 17.1⁶ of the proposed RIO provides either party to terminate the concluded interconnection agreement for convenience on 90 days written notice given after an initial period of 12 months.
12. ISPA submits that this is in direct contravention of sub-regulation 21(3) of the Interconnection Regulations 2010:

21(3) Neither party to an interconnection agreement may terminate an interconnection agreement unless the termination is as a result of:

- (a) Material breach of the interconnection agreement;*
- (b) Vis major; or*
- (c) The liquidation, deregistration or insolvency of one of the parties to the interconnection agreement; or*
- (d) The parties have mutually agreed to terminate the agreement.*

Appendix 3 – Points of Interconnection

13. ISPA notes from Appendix 1 to the proposed RIO that MTN offers IP interconnect only at Doornfontein in Johannesburg and Tygerberg in Cape Town⁷.

⁶ 17 TERMINATION, DURATION AND BREACH

17.1 This Agreement shall commence on the Effective Date and shall, subject to the remaining provisions of this clause 17, be terminated by either party on 90 days period written notice, such notice to be given at any time after the initial 12 month period.

14. This is notwithstanding the fact that MTN has established points of presence at a number of other data centres and exchange points.

14.1. MTN Business is a part of MTN. To the extent that MTN's MTN Business division is present at JINX, MTN is present at JINX. It therefore must comply with the obligation to interconnect at neutral INX's where it is present.

14.2. MTN has already interconnected with numerous existing parties at JINX. It cannot deny that this is a viable POI as it is currently a POI in use with multiple interconnection partners.

14.3. MTN has already interconnected with some existing parties at Teraco data centres. It cannot deny that these are viable POIs as these are currently a POIs in use with multiple interconnection partners.

15. Further clause 5.6.4 of the proposed RIO recognises the establishment of interconnection at peering points:

5.6.4 For IP peering ,as per Appendix 3 , each Party shall be responsible for obtaining the necessary links and equipment to such POI. In the event that POILs are realized by means of an agreed and prior-established peering point, each Party shall each be responsible for their own costs associated with the provision, implementation and maintenance of all telecommunication facilities that may be required to connect to such peering point.

16. ISPA submits that MTN's position is in contravention of clause 1.5 of Annexure B to the 2014 CTRs, which states that points of interconnection include "public internet exchange points at which the licensee has a presence".

17. ISPA notes that clause 3.1 of the proposed RIO refers to interconnection between "Service Nodes"⁸, although this term is not defined.

18. The diagram in Appendix 3 section 2.2 refers to interconnection at an MTN Business "Access Facility" between Randburg and JINX. This conflicts with the POI listings which only show Randburg as an IP POI. It also implies that the other party must access the Randburg POI via JINX and potentially have to pay MTN Business an unspecified amount for that access facility. ISPA submits that this needs to be clarified.

Appendix 5 – Tariff Structure

19. ISPA notes that MTN has elected to include in this appendix, at the foot of the various tables indicating its tariffs, a minimum monthly volume commitment:

⁷ The latter is incorrectly marked on the map set out in Appendix 1.

⁸ 3.1 Interconnection between the MTN ECN and the OLO ECN, at each Point of Interconnection, shall be achieved through one or more Point of Interconnect Links ("POIL"). Each POIL shall create a connection between one of the MTN Service Nodes and one of the OLO's Service Nodes.

Minimum Monthly Interconnection Charge (“Minimum Charge”)

R100 000.00 (one hundred thousand Rand) per month, excluding VAT.

20. ISPA regards it as highly unfortunate that this obligation is not brought to the attention of a potential interconnect partner in the main body of the proposed RIO – it is not mentioned at all – or elsewhere. This is an onerous provision which should be highlighted upfront: it does not naturally fit within an appendix entitled “Tariff Structure”.
21. Further and to the best of ISPA’s knowledge, this is a new requirement from MTN which previously did not require a minimum monthly interconnection charge but now appears intent on following Vodacom in attempting to levy such a charge.
22. As set out in its submissions on the draft Call Termination Regulations 2014, ISPA has not and will not support an obligation in an interconnection agreement committing an interconnection seeker to a minimum monthly guarantee based on a Rand amount and asserts that to insist on such an obligation as a pre-condition for interconnection is an unjustifiable barrier to interconnection.
23. That this is the case in an environment characterised by falling wholesale call termination rates should be beyond debate.
24. ISPA submits that:
 - 24.1. The floor volume required by MTN is arbitrary, bears no relationship to the service provided and has not been justified. That MTN maintains that this is the cost to them of interconnecting irrespective of whether the interconnection is to be implemented via SS7 or IP is indefensible. What are the costs or risks which MTN is attempting to secure?
 - 24.2. The R100 000 floor volume commitment required by MTN would have related to 112 359 minutes per month when the mobile termination rate was R0.89. Under the current regulated rates it relates to 500 000 minutes per month.
 - 24.3. The floor volume is in direct breach of the 2014 CTRs in that it increases the cost of terminating a call on the MTN network to levels substantially above the maxima set out in the Call Termination Regulations. A new interconnect partner who terminates 100 000 minutes in a month onto the MTN network in respect of mobile calls is paying an effective termination rate of R1.00 per minute.
 - 24.4. The floor volume makes no allowance for a new entrant to ramp up traffic volumes. Rather it requires that a new licensee will – in order to receive the regulated rate for the service being provided – immediately be able to terminate 500 000 minutes of traffic per month. This is not realistic.

- 24.5. The floor volume does not take into account the bidirectional nature of traffic over a point of interconnect. Revenue due to the interconnect partner should be offset against that due to MTN in assessing economic feasibility.
25. Why is MTN seeking to impose such an obligation now when it has previously not seen the need to do so?
26. In the circumstances ISPA regards this requirement as being anti-competitive, an opaque barrier to interconnection with MTN and non-compliant with the Interconnection Regulations 2010 insofar as the amount set is arbitrary and not unbundled.
27. ISPA submits that this requirement should be deleted from the proposed RIO.

Conclusion

28. ISPA requests that the Authority provide it with reasons for any decisions it takes in respect of the RIO as submitted by MTN.
29. In the event that the Authority engages in any further processes regarding these or other RIOs, ISPA records its wish to be involved.

Regards

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