

7 September 2018

Independent Communications Authority of South Africa

Per email: CTRreview@icasa.org.za

DRAFT CALL TERMINATION AMENDMENT REGULATIONS, 2018

1. ISPA refers to the draft “Call Termination Amendment Regulations, 2018” published as General Notice 489 in Government Gazette 41845 of 16 August 2018 (“**the Draft Regulations**”) and to the Authority’s invitation to comment thereon.

Procedural submission

2. ISPA submits that the urgency with which the public participation process is being conducted is prejudicial to stakeholders and entirely of the Authority’s own making.
 - 2.1. The Authority in the Call Termination Amendment Regulations 2017 and accompanying Findings Document published on 22 September 2017 noted that it was extending the then current glide path for a further period of 12 months and elected not to impose a new glide path.
 - 2.2. The Authority has had almost a year to engage with stakeholders prior to publication of the Draft Regulations but has chosen to set deadlines that do not afford industry a proper opportunity to respond. It is not clear why the Authority has chosen 1 October 2018 as the date on which the finalised Amendment Regulations are to come into force.
 - 2.3. In its media release regarding the public hearings scheduled for 10 September 2018, the Authority indicates that it is of the “considered view that further delay in finalising this process will not be in the public interest because there has been constant and effective consultation with all interested stakeholders since the extension of the previous glide path last year”.
 - 2.4. ISPA acknowledges the consultations undertaken but the above statement misses the point that it is publication of the actual rates and levels of asymmetry proposed which is crucial and which requires a reasonable period of time to process and respond to.
 - 2.5. It further neglects to take into account consumer bodies and other interested parties who have not been part of the consultation process and are now being afforded a negligible opportunity to participate. The Authority should be cognisant of the technical complexity of the modelling and other

processes undertaken and that this excludes participation in those processes by smaller licensees and consumers.

- 2.6. The decision to schedule public hearings on 10 September 2018, zero working days after the deadline for submission of written submissions is unprecedented, unjustifiable and prejudicial to stakeholders and to the integrity and quality of the process.
3. The failure of the Authority to publish any form of explanatory note setting out the reasons for the decisions taken is prejudicial to stakeholders and aggravates the prejudice occasioned by the rushed procedure adopted.
 - 3.1. In the process culminating in the first set of Call Termination Regulations 2014¹, a detailed explanatory memorandum was published contemporaneously with the draft of such Regulations².
 - 3.2. In the process culminating in the second set of Call Termination Regulations 2014 a detailed explanatory memorandum was published contemporaneously with the draft of such Regulations³.
4. There is now no opportunity to obtain the clarifications required in order to respond to the proposals in the Draft Regulations prior to making written submissions or participating in the scheduled public hearings. Public hearings are not – in ISPA’s experience - a vehicle for obtaining answers from the Authority as to its motivations.
5. The Authority has had a year – closer to 4 years considering the last glide path review was in 2014 – to complete its internal processes and publish proposed new rates for comment by stakeholders. This does not reflect an urgency to achieve consumer benefits. On completion of the required internal processes, however, the Authority is seized by such urgency and affords stakeholders a period of little more than a month from draft to implementation of final regulations.

Market definitions

6. ISPA records its continued objection to the Authority’s decision to redefine the fixed and mobile voice call termination markets to exclude internationally-originated voice calls.
7. Predictably this has resulted in:
 - 7.1. A rapid escalation in the fixed termination rates charged for internationally-originated voice traffic to the extent that rates above R3.00 per minute ex VAT are now applied for terminating such traffic.

¹ GG 37295, 4 February 2014

² <https://www.ellipsis.co.za/wp-content/uploads/2013/10/Explanatory-Note-to-the-Draft-Call-Termination-Regulations-2013.pdf>

³ <https://www.ellipsis.co.za/wp-content/uploads/2014/08/DraftCallTerminationRegulations2014ExplanatoryNote.pdf>

7.2. Grey routes and arbitrage.

7.3. A large number of billing disputes as incumbent operators apply unregulated termination rates to traffic which they regard as not being locally originated.

7.4. The suspension of voice interconnection by an incumbent based on back-billing for voice calls which such incumbent has unilaterally declared to be internationally-originated.

8. It appears further that there is a lack of clarity on how to define international origination: is this to be done based on source CLI or by source IP or through some other mechanism? There is no uniformity in approach adopted between incumbent providers, with at least one changing its internal view on this issue since the relevant amendments came into force.

9. ISPA appreciates that the Authority has made its decision in this regard and set out its reasons therefore but wishes to bring the above consequences to smaller licensees and consumers to the Authority's attention.

Why are fixed and mobile termination rates diverging?

10. The Draft Regulations propose to increase the differential between fixed and mobile termination rates over the glide path.

	2014	2018 (proposed)	2019 (proposed)	2020 (proposed)
Differential between fixed and mobile rates (symmetric)	R0.01	R0.04	R0.04	R0.06
Differential between fixed and mobile rates (asymmetric)	R0.06	R0.08	R0.09	R0.10

11. Under the proposed glide path fixed termination rates will fall by 70% over the term of the glide path as against a 31% reduction in mobile termination rates.

12. ISPA does not understand the Authority's motivation for this proposal.

13. It seems apparent that:

- 13.1. The Authority has elected to reverse its position that fixed and mobile rates are converging over time.
- 13.2. It is not clear on what basis the Authority is of the view that licensees in the fixed termination markets should effectively subsidise licensees in the mobile termination markets.
- 13.3. In ISPA's view increasing rather than decreasing this differential ignores current market realities and the dominance of the mobile networks in the provision of voice services.
- 13.4. Given the reliance of South African consumers on mobile voice services and the Authority's assertion that lowering wholesale termination rates leads to lower retail pricing, why is a gentler glide path being applied to mobile services as opposed to fixed services?

Asymmetry in fixed termination markets

14. The Draft Regulations propose to reduce allowed asymmetry in fixed termination markets by 50% in year 1 and 2 of the glide path and thereafter to reduce it to zero.
15. ISPA does not understand the Authority's motivation for this proposal.
16. It seems apparent that:
 - 16.1. This will have a disproportionate affect on smaller licensees in this market.
 - 16.2. Interventions in this market by the Authority to date have – by the Authority's own admission - not had the intended effect of remedying the overwhelming dominance of Telkom in terminating calls to fixed destinations.
 - 16.3. Asymmetry has very little commercial impact on Telkom as only a small percentage of its fixed voice traffic is subject to the application of an asymmetric rate. As such it is not clear what harm the Authority seeks to avoid with its current proposal.
17. ISPA does not understand the logic which holds that Cell C and Telkom Mobile should benefit from higher levels of asymmetry whereas fixed market operators that have less than 5% of the market each should not.
18. ISPA does not understand how the proposed rates promote competition through addressing market failure.
19. ISPA submits that the case for increasing – as opposed to substantially decreasing - asymmetry in the fixed termination markets is compelling.

20. ISPA submits that the same levels of asymmetry should be applied (at least) in the fixed voice call termination market to facilitate greater competition to the ongoing dominance of Telkom in this market.

The bigger picture

21. The concerns raised above must be considered within the greater context of the Authority's failure to use other tools at its disposal in promoting competition in the provision of voice services. ISPA acknowledges reforms achieved through revisions to the Numbering Plan Regulations but is mindful of:
- 21.1. The lack of a comparable process for determining pro-competitive conditions application to the call origination markets.
 - 21.2. The resulting failed implementation of carrier preselect which the Authority is mandated to implement under section 42 of the ECA.
 - 21.3. The length of time taken to address porting of non-geographic numbers.
 - 21.4. The ineffectiveness of the Authority in enforcing the Interconnection Regulations 2010 and resolving disputes.
22. The provision of fixed voice services remains massively dominated by Telkom. Asymmetry as employed in a call termination rate regime is effectively the only regulatory remedy utilised to promote greater competition and realise consumer benefit.
23. Within this context the proposal in the Draft Regulations to reduce and then eliminate asymmetry in the fixed call termination market gives the impression that the Authority has washed its hands of promoting competition in the provision of fixed voice call services.

Conclusion

24. ISPA extends its appreciation to the Authority for its consideration of these comments, and trusts that they will be of assistance to the Authority in finalising this process.

Regards,
ISPA Regulatory Advisors