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GENERAL NOTICE

NOTICE 114 OF 2014

INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA

"CALL TERMINATION AMENDMENT REGULATIONS, 2014"

PURSUANT TO SECTION 4 OF THE ELECTRONIC COMMUNICATIONS ACT NO. 36 OF 2005

I, Dr Stephen Sipho Mncube, Chairperson of the Independent Communications Authority of South Africa, hereby publish the regulations set out in the Schedule under the Authority's power, in terms of section 4(1) read with sections 4(7)(b) and 67(8) of the Electronic Communications Act No. 36 of 2005, to make regulations without prior notice if the public interest requires that they should be made without delay.



Dr Stephen Sipho Mncube
Chairperson

17 February 2014

SCHEDULE**"CALL TERMINATION AMENDMENT REGULATIONS, 2014"****PURSUANT TO SECTION 4 OF THE ELECTRONIC
COMMUNICATIONS ACT NO. 36 OF 2005****GENERAL EXPLANATORY NOTE:**

Words in [**bold type and brackets**] indicate omissions from existing regulations.

Words that are underlined indicate insertions in existing regulations.

1. Definitions

In these regulations —

- (1) **"the 2010 Regulations"** means the Call Termination Regulations, 2010/11, published in General Notice 1015 in *Government Gazette* 33698 of 29 October 2010; and
- (2) **"the 2014 Regulations"** means the Call Termination Regulations, 2014, published in General Notice 65 in *Government Gazette* 37295 of 4 February 2014.

2. Amendment of regulation 7 of the 2010 Regulations

Regulation 7 of the 2010 Regulations is hereby amended through the substitution of sub-regulations 7(5)(b)(i) and (ii) by the following sub-regulations, respectively:

- "i. For the period 01 March 2011 to 31 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:"
- "ii. For the period 01 March 2011 to 31 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:"

3. Amendment of regulation 7 of the 2014 Regulations

Regulation 7 of the 2014 Regulations is hereby amended through the substitution of sub-regulations 7(4)(a)(i) and (ii) by the following sub-regulations, respectively:

- "(i) For the period 01 **[March]** April 2014 to 01 **[March]** April 2016, the licensees identified in sub-regulation (3)(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)

Period	Rate
1 [March] <u>April</u> 2014	R 0.20
1 [March] <u>April</u> 2015	R 0.15
1 [March] <u>April</u> 2016	R 0.10

- (ii) For the period 01 **[March]** April 2014 to 01 **[March]** April 2016, the licensees identified in sub-regulation 3(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)

Period	WON	BON
1 [March] <u>April</u> 2014	R 0.12	16
1 [March] <u>April</u> 2015	R 0.12	12
1 [March] <u>April</u> 2016	R 0.10	10

4. Amendment of regulation 8 of the 2014 Regulations

Regulation 8 of the 2014 Regulations is hereby amended through its substitution by the following regulation:

"8. SCHEDULE FOR REVIEW OR REVISION 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 two (2) years from the 1st **[March]** April 2014.”

5. Amendment of regulation 10 of the 2014 Regulations

Regulation 10 of the 2014 Regulations is hereby amended through its substitution by the following regulation:

“10. SHORT TITLE AND COMMENCEMENT

These regulations are called the "Call Termination Regulations, 2014" and will become effective as of 1st **[March]** April 2014.”

6. Amendment of clause 2.1 of Appendix A to the 2014 Regulations

Clause 2.1 of Appendix A to the 2014 Regulations is hereby amended through its substitution by the following clause:

“2.1. Economies of scale and scope based on the share of total retail revenue generated in the relevant market. A licensee qualifies, for a period of three (3) years from the 1st **[March]** April 2014, for an asymmetric rate if it has less than 20% of total retail revenue in the relevant market as of December 2012.

7. Amendment of Table A1 of Appendix A to the 2014 Regulations

Table A1 of Appendix A to the 2014 Regulations is hereby amended through its substitution by the following table:

Table A1: Maximum Asymmetry Rate for Market 1 (Mobile)

	Maximum rate that may be charged
Current	R 0.44
01- [Mar] <u>April</u> - 2014	R 0.44
01- [Mar] <u>April</u> - 2015	R 0.42
01- [Mar] <u>April</u> - 2016	R 0.40
01- [Mar] <u>April</u> - 2017 ¹	R 0.20

8. Amendment of clause 3.1 of Appendix A to the 2014 Regulations

Clause 3.1 of Appendix A to the 2014 Regulations is hereby amended through its substitution by the following clause:

"3.1. Economies of scale and scope based on the share of total retail revenue in the relevant market. A licensee qualifies, for a period of three (3) years from the 1st **[March]** April 2014, for an asymmetric rate if it has less than 20% of total retail revenue in the relevant market as of December 2012."

9. Amendment of Table A2 of Appendix A to the 2014 Regulations

Table A2 of Appendix A to the 2014 Regulations is hereby amended through its substitution by the following table:

Table A2: Maximum Asymmetry Rate for Market 2 (Fixed)

	WON RATE	BON RATE
Current	R 0.13	R 0.21
01- [Mar] <u>April</u> - 2014	R 0.13	R 0.21
01- [Mar] <u>April</u> - 2015	R 0.13	R 0.13
01- [Mar] <u>April</u> - 2016	R 0.13	R 0.13
01- [Mar] <u>April</u> - 2017 ²	R 0.13	R 0.13

10. Short title and commencement

These regulations are called the "Call Termination Amendment Regulations, 2014" and shall become effective upon the date of publication.

EXPLANATORY MEMORANDUM

CALL TERMINATION AMENDMENT REGULATIONS, 2014

1. Introduction

- 1.1 The Independent Communications Authority of South Africa (the **Authority**) has published the Call Termination Amendment Regulations, 2014 (the **Amendment Regulations**) in terms of sections 4(1) and 67(8) read with section 4(7)(b) of the Electronic Communications Act, 2005 (Act No. 36 of 2005) (the **ECA**) which provisions confer on the Authority the power to make regulations without following the processes described in section 4(4) of the ECA where the public interest requires that a regulation should be made without delay.
- 1.2 The Amendment Regulations have been published to amend the Call Termination Regulations, 2014 (the **2014 Regulations**) (published under GN 65 in *Government Gazette* 37295 of 4 February 2014) to change the date on which the 2014 Regulations will come into effect from 1 March 2014 to 1 April 2014.

2. Background

- 2.1 The Authority published the Call Termination Regulations, 2010/11 (the **2010 Regulations**) (published under GN 1015 in *Government Gazette* 33698 of 29 October 2010) on 29 October 2010. The 2010 Regulations imposed certain pro-competitive conditions on certain licensees licensed in terms of the ECA to provide telecommunications services and networks.
- 2.2 Section 67(8) of the ECA permits the Authority to review previously-imposed pro-competitive conditions and requires the Authority to modify or revoke those conditions in response to changed market conditions. Pursuant to such a review, the Authority published the 2014 Regulations on 4 February 2014, which modified the pro-competitive conditions imposed by the 2010 Regulations.
- 2.3 The 2014 Regulations, as initially published, were, in terms of regulation 10, to come into effect on 1 March 2014.
- 2.4 On 12 February 2014 Mobile Telephone Networks (Pty) Ltd (**MTN**) served on the Authority an urgent application to the High Court for an interim order suspending the bulk of the provisions of the 2014 Regulations, pending the outcome of final review proceedings in which MTN seeks to review and have set aside those same provisions. There are 31 respondents to the application, including the Authority.

The application is complex, comprising some 399 pages. Affected parties are afforded very little time to respond, in that answering affidavits were required to be filed by 18 February 2014. The urgent application was enrolled for hearing on 25 February 2014.

- 2.5 The Authority has decided to make the Amendment Regulations in response to the urgent application and in the public interest. The effect of the Amendment Regulations is to delay the commencement of the 2014 Regulations by one month and to extend the operation of the 2010 Regulations by one month to fill the lacuna.

3. **Basis of the decision to make the Amendment Regulations**

- 3.1 Section 4(1) of the ECA permits the Authority to make regulations "with regard to any matter which in terms of [the ECA] or the related legislation must or may be prescribed, governed or determined by regulation." Section 4(4) of the ECA requires that, as a general rule, the Authority must give notice of its intention to make any regulation and invite written representations at least 30 days before the regulation is made. Section 4(7)(b) contains an exception to this rule: if the public interest requires that a regulation be made without delay, prior public notice does not have to be given.

- 3.2 Given that section 67 of the ECA allows the Authority to make the 2014 Regulations, and given that the Amendment Regulations are related to its power under section 67, section 4(1) allows the Authority to make the Amendment Regulations.

- 3.3 Further, the public interest requires that the Amendment Regulations be made without delay. A decision by the High Court on the interim interdict sought by MTN will have wide-ranging effects on the parties and on the public at large, including subscribers for telecommunications services. This is particularly because, if the interim interdict were granted, the operation of the 2014 Regulations, which provide for lower call-termination charges (being the charges that telecommunications operators charge each other for the carriage of calls on their respective networks), would be suspended for a lengthy period pending the outcome of the broader review application, including any subsequent appeals. It is therefore in the public interest that the Authority and other affected parties have sufficient time to properly prepare their answering papers in response to the application for interim relief, particularly given the complexity of the matter. This will ensure that the court hearing the application will be fully informed of all the relevant issues before making a decision of such importance. The Authority is of the view that delaying the implementation of the 2014 Regulations by one

month and extending the operation of the 2010 Regulations by one month is a means to allow for proper preparation by the parties. The urgency of the application and the imminence of the commencement of the 2014 Regulations require that the Amendment Regulations be made without delay.

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