WIRELESS BUSINESS SOLUTIONS [WBS] (PTY) LTD SUBMISSION:

REVISED CALL TERMINATION REGULATIONS

November 13, 2013

Wireless Business Solutions (Pty) Ltd

INTRODUCTION

Wireless Business Solutions [WBS] (Pty) Ltd welcomes the publication of the draft Call Termination Regulations ("the Regulations"). We further wish to thanks and recognize the path which the Authority has walked in reaching this pointsince the previous Regulations of 2010.

2. PURPOSE OF REGULATIONS

The purpose of these Regulations is to: -

(a) Define and identify the wholesale call termination markets that exist within the Republic of South Africa based on trends post 2010;

(b) Set out the methodology used in the review of the effectiveness of competition in such markets post 2010;

(c) Declare licensees that have SMP in terms of paragraphs (a) and (b) above;

(d) Set out the pro-competitive measures to be imposed 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; and

(f) Provide for the enforcement of these Regulations.

3. MARKET DEFINITION

The markets are categorised according to the type of service provided to the end-user and are defined as follows:

Market 1:

The market for wholesale voice call termination services to a mobile location on the network of each ECS/ECNS licensee who offers such a service within the Republic.

Market 2:

The market for wholesale voice call termination services to a fixed location on the network of each ECS/ECNS 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 area code; and

ii. ii. The market segment for wholesale voice call termination to a fixed location between ON area codes.

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.

[WBS Supports the Methodology applied by the Independent Communications Authority of South Africa "ICASA". We further wish to indicate that ICASA should also reference International Benchmarks in support of the adopted and used Methodology]

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 owing to inefficient pricing.

Wireless Business Solutions (Pty) Ltd Reg No. 1996/013739/07 VAT Reg No. 4600171906

Director: Sasan Parvin

Johannesburg: 3012A William Nicol Drive, Bryanston, 2021; PO Box 651921, Benmore, 2010

www.iburst.co.za Tel: 087 720 7200 Fax: 086 503 9111

6. SMP DETERMINATION

The Authority determines that each ECNS and ECS 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) inefficient pricing

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

(a) Charge fair and reasonable prices for wholesale voice call termination consistent with Appendix A

(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 reciprocal treatment by the Authority in the allocation of 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 20 per cent as of December 2012.

(4) The Authority determines that the following licensees have the characteristics listed in sub regulation (3):

Market 1:

i. MTN Pty Ltd (MTN)

ii. ii. Vodacom Pty Ltd (Vodacom)

[WBS notes and agrees with the declaration in regulation 7(1) and identified that there are market failures in the respective wholesale voice call termination markets and that the Authority is as a result entitled to impose further pro-competitive remedies.

WBS applauds and is in support of the Authority on this determination. We however are of the view that the above determination must be clearly separated between Voice and Data Services. Furthermore, the Authority must extend Regulation (3)(a) and (b) to Short Message Services (SMS) with a Regulation Making and due processes should be followed for the latter.

In a study carried out by the Independent Regulators Group (IRG) "IRG CN (03)-52 A study on value added SMS" in the European Union (EU) on the SMS market, greater transparency on the part of mobile operators is recommended regarding terms and agreements for content provider access, service interoperability and end-user practices.

Furthermore, the ECC REPORT 52 reveals that "Traditionally, interconnection agreements in GSM networks have been established for voice services only". Thus for SMS Services ICASA must embark on a Regulation making process culminating with SMS Interconnection Guidelines.]

Market 2:

i. Telkom SA SOC Limited (Telkom)

(5) Additional pro-competitive terms and conditions (a) Price Control: Cost oriented pricing

i. This obligation is imposed on those licensees listed in sub regulation (4).

ii. ii. For the period 01 March 2014 to 01 March 2016, the licensees identified in sub regulation(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)

Period	Rate
1 March 2014	R 0.20
1 March 2015	R 0.15
1 March 2016	R 0.10

iii. For the period 01 March 2014 to 01 March 2016, the licensees identified in subregulation(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)

Period	Within ON area code	Between ON area code
1 March 2014 to 1 March2016	R0.12	R0.19

(b) Bottom-up LRIC Cost Model

i. This obligation is imposed on those licensees listed in subregulation (4).

ii. Such licensees are obliged to provide any information the Authority deems necessary to develop such a Cost Model

iii. Information requests are to be complied with within 30 days of receiving the request.

iv. The Authority may amend existing rates based on the outcomes of this model.

Wireless Business Solutions (Pty) Ltd Reg No. 1996/013739/07 VAT Reg No. 4600171906

Director: Sasan Parvin

Johannesburg: 3012A William Nicol Drive, Bryanston, 2021; PO Box 651921, Benmore, 2010

www.iburst.co.za Tel: 087 720 7200 Fax: 086 503 9111

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, as and when necessary, based on observable trends in the defined markets.

9. CONTRAVENTIONS AND PENALTIES

(1) A licensee which fails to comply with regulation 7(2) is liable to a fine of Five Hundred Thousand Rand (R 500 000.00). (2) A licensee which fails to comply with regulation 7(5)(a), (b) is liable to a fine not exceeding One Million Rand (R 1 000 000.00).

10. SHORT TITLE AND COMMENCEMENT

These Regulations are called the Draft Call Termination Regulations and will become effective upon date of publication. All Stakeholders have 30 days to submit written comments on the draft regulations.

Wireless Business Solutions (Pty) Ltd Reg No. 1996/013739/07 VAT Reg No. 4600171906

Director: Sasan Parvin

Johannesburg: 3012A William Nicol Drive, Bryanston, 2021; PO Box 651921, Benmore, 2010

www.iburst.co.za Tel: 087 720 7200 Fax: 086 503 9111

Appendix A:

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)(a), "fair and reasonable" prices are rates that are equivalent to the cost-oriented rates imposed on the licensees identified in Regulation 7(4).

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.

2. Licensees not listed in Regulation 7(4)(a) may charge higher termination rates based on the following factors:

2.1. Spectrum allocation. A licensee must justify why it is adversely affected by current spectrum allocation.

2.2. Economies of scale and scope based on the share of total minutes terminated in the relevant market. A licensee qualifies, for a period of 5 years from the 1st March 2014, for an asymmetric rate if it has less than 20 per cent of total terminated minutes in the relevant market as of December 2012.

2.3. Thereafter, a licensee qualifies for an ongoing asymmetric rate of 40% if it has a market share of less than or equal to 10 per cent of total terminated minutes in the relevant market.

2.4. Licensees with a market share of greater than 10% after five years have passed are obliged to charge symmetrical rates.

2.5. A licensee may only qualify for an asymmetric rate if both factors are applicable.

2.6. A licensee who qualifies for an asymmetric rate in Market 1 may charge a maximum rate) according to the following table:

Table A1: Maximum Asymmetry Rate

	Maximum rate that may be charged
Current	R 0.44
01-Mar-14	R 0.39
01-Mar-15	R 0.33
01-Mar-16	R 0.26
01-Mar-17	R 0.20
01-Mar-18	R 0.14
01-Mar-19	R 0.10

3. Licensees not listed in Regulation 7(4)(b) may charge higher termination rates based on the following factor:

3.1. Economies of scale and scope based on the share of total minutes terminated in the relevant market. A licensee qualifies, for a period of 5 years from the 1st March 2014, for an asymmetric rate of 10% above the rates specified in Table 2 of these Regulations if it has less than 20 per cent of total terminated minutes in the relevant market as of December 2012.

3.2. Thereafter, a licensee qualifies for an ongoing asymmetric rate of 10% if it has a market share of less than or equal to 10 per cent of total terminated minutes in the relevant market.

3.3. Licensees with a market share of greater than 10% after five years have passed are obliged to charge symmetrical rates.

[WBS strongly supports the introduction of Asymmetrical Call Termination Rates, however the Authority **MUST** ensure that this is applicable to Individual Electronic Communications Network Service (IECNS) Operators that have deployed **Mobile Networks** in the Country, thus excluding Application Based Operators that **DO NOT** invest in any associated Infrastructure yet may benefit from this determination. This will ensure and encourage further investment in Electronic Communications Infrastructure specifically in our Un-served and Underserviced Areas of our Country.

The Draft Regulation Appendix A 2.2 and 2.3 respectively states that;

"2.2 A licensee qualifies, for a period of 5 years from the 1st March 2014, for an asymmetric rate if it has less than 20 per cent of total terminated minutes in the relevant market as of December 2012, and

2.3 Thereafter, a licensee qualifies for an ongoing asymmetric rate of 40% if it has a market share of less than or equal to 10 per cent of total terminated minutes in the relevant market."

WBS views this as a positive move by the Authority and furthermore we are of a view that for avoidance of uncertainty, the Asymmetrical measurement or qualification thereof should not be premised on "total terminated minutes in the relevant market" as these may be influenced by different factors per Licensee e.g. "Free Minutes offered and Terminated, different Offers and Packages offered by a Licensee. WBS is strongly of a view that ICASA MUST base the above measure on revenue generated by a Licensee based on total terminated minutes.

Wireless Business Solutions (Pty) Ltd

Furthermore, this measure must be fixed for a period of five years then reviewed for avoidance of yearly reviews by the Authority.

The Telkom Asymmetrical still exists and has been over 15 years, thus WBS is of a view that the above proposed approach is fair and reasonable to all. This will also encourage further investment onto the Electronic Communications Infrastructure by WBS and others yet stimulating industry competitiveness.]

Conclusion:

In conclusion, WBS is of the view that key and critical areas of concernt that needs to be addressed by the Authority in publishing a final Regulation;

1. Generally has the Authority followed due process in its Regulation making? and
2. In crafting these Regulations does the Authority create an environment of certainty to the Market?

WBS strongly believe and only the market definition requires review and this has not changed, thus the Authority must expand on its processes in accordance with Section 67(6)(b)(ii) and 67(8) of the Act in addressing this possible challenge. Furthermore the Authority should conclude that all the indicators for ineffective competition are still the same as they were in 2010, and it is therefore appropriate to retain and amend the pro-competitive remedies.

In addressing the second possible challenge of “Creating an environment of certainty” to the market, WBS is of the view that the Authority must clearly state that the next market review should be anticipated after year 5 from the date of March 2014 for certainty

Wireless Business Solutions (Pty) Ltd Reg No. 1996/013739/07 VAT Reg No. 4600171906

Director: Sasan Parvin

Johannesburg: 3012A William Nicol Drive, Bryanston, 2021; PO Box 651921, Benmore, 2010

www.iburst.co.za Tel: 087 720 7200 Fax: 086 503 9111

Wireless Business Solutions (Pty) Ltd