ICASA PROPOSES SUBSTANTIALLY REDUCING CALL TERMINATION RATES IN SOUTH AFRICA

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written by Lucien Pierce | March 23, 2024



The Independent Communications Authority of South Africa ("ICASA") has published draft amendments ("the 2024 Draft Regulations") to its Call Termination Regulations, 2014 ("the 2014 Regulations"). The amendments propose reductions of over 50% to call termination rates between July 2024 and July 2025.

What's changing?

The 2024 Draft Regulations propose significant reductions to Fixed Wholesale Voice Termination and Mobile Wholesale Voice Termination fees. There are also significant changes such as the reduction of fines from five million Rand or 10% of annual turnover, to fines of between five hundred thousand and one million Rand.

What are call termination rates?

The 2014 Regulations regulate the fees that electronic communications network service ("ECNS") or electronic communications service ("ECS") licensees charge each other. For example, MTN, Telkom, Vodacom or Cell C, can charge another ECNS or ECS licence to allow a customer to receive a call (terminate) on its network. So, if I'm an MTN customer and I call you on your Vodacom number, Vodacom will charge MTN a fee.

The history of the call termination regulations

ICASA first regulated and imposed a reduction on call termination rates in South Africa in 2010 when it published regulations ("the 2010 Regulations"). These regulations related to promoting competition in the relevant telecommunications markets and imposing measures on licensees in those markets, that would promote competition.
When ICASA published the 2010 Regulations, it did so after having identified four problems (failures) in the relevant telecommunications markets. These were: lack of access; the potential for discrimination between licensees offering similar services; a lack of transparency; and inefficient pricing. When considering inefficient pricing, in 2010, ICASA defined it as meaning pricing "at excessive levels above cost" or "significantly above cost". ICASA then set maximum levels that ECNS and ECS licensees could charge between 2010 and 2013. It was envisaged that when the termination rates would be revised from 2014 onwards, ICASA would compute the revised termination rates using a cost modelling exercise. Essentially, the rate at which ICASA would set the termination rates, would be determined by the licensees' actual costs of terminating a call.
When the ICASA published the initial 2014 regulations, MTN and Vodacom launched an urgent court application challenging the proposed call termination rates. In an interesting judgment, the court ruled that ICASA's basis for the termination rates in the initial 2014 regulations was irrational and unreasonable and therefore unlawful. It took this view because ICASA could not demonstrate that it was able to compute what the licensees' true cost of termination was to terminate calls.
In making its ruling, the court decided that, even though ICASA's initial 2014 regulations were unlawful, it would declare them invalid and unlawful, but that their invalidity would be suspended for six months to avoid a situation where there would be no call termination regulations. ICASA was therefore given an opportunity to publish lawful call termination regulations.

What next?

It seems that ICASA has ironed out the problems encountered in the initial 2014 regulations and has ensured that the issues identified in the 2014 court ruling have been addressed. This means that there is a low likelihood of the licensees challenging the reduction in call termination rates proposed in the 2024 Draft Regulations…we hope.
You can find a copy of ICASA's media statement here, the 2024 Draft Regulations here and the 2014 court judgment here.
Interested parties have until 16H00 on 10 May 2024 to comment on the 2024 Draft Regulations.

With decades of experience in telecommunications regulatory law, contact us if you have any questions or need guidance on any aspect arising from this article.