



# Government Gazette

**REPUBLIC OF SOUTH AFRICA**

**Vol. 473    Pretoria    9    November    2004    No. 26979**



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## GENERAL NOTICE

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### NOTICE 2491 OF 2004



#### INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA

NOTICE OF INTENTION TO MAKE THE FOLLOWING REGULATIONS IN TERMS OF SECTION 96(1), 96(6) READ WITH SECTIONS 96(4) AND 45 OF THE TELECOMMUNICATIONS ACT, 1996 (ACT NO. 103 OF 1996), AS AMENDED.

The Independent Communications Authority of South Africa ("the Authority"), hereby gives notice that it intends making the following regulations in terms of section 96(1), 96(6) read with sections 96(4) and 45 of the Telecommunications Act, 1996 (Act No. 103 of 1996), as amended. This should be read with the consultation document published 8 November 2004 entitled "Discussion Document – 2004 Price Control Review".

Interested persons are hereby invited to submit written representations, including an electronic version of representation in Microsoft Word, of their views on the Review of Price Control in Public Switched Telecommunications Services by Wednesday, 8 December 2004. Please forward your written comments to: Rossana Achterberg Manager: Policy Analysis & Development ICASA, Private Bag X1, Marlboro, 2063; or ICASA, Block B, Pill Mill Farm, 164 Katherine Street, Sandton, Gauteng. Where possible, written representations should also be emailed to [RAachterberg@icasa.org.za](mailto:RAachterberg@icasa.org.za) and copied to [LKunene@icasa.org.za](mailto:LKunene@icasa.org.za)

## SCHEDULE

### 1. Definitions

In these regulations a word or expression shall have the meaning assigned to it in terms of the Telecommunications Act, 1996 (Act No. 103 of 1996) as amended, and, unless the context indicates otherwise -

**“ADSL”** means Asymmetric Digital Subscriber Line.

**“average residential bill”** is a measure of the average monthly bill for residential customers, where average is defined according to the median central tendency measure obtained through a statistical sampling approach developed by Telkom and assented to by the Authority.

**“average unit tariff”** is defined as the total revenue raised for a service divided by the units of service supplied over the Price Control Year.

**“basket services”** means the telecommunication services listed in Schedule A to which price regulation applies.

**“business day”** means any day other than a Saturday, Sunday or Public holiday.

**“customer premise equipment”** means an item of equipment approved under Chapter IV of the Act, which does not form part of the Public Switched Telecommunication Network, but is connected or intended to be connected, to Terminal Connection Equipment, whether fixed or portable, and by means of which signals are initially transmitted or ultimately received.



**“mobile termination”** means the revenue transferred by Telkom to mobile operators for calls made from Telkom’s fixed network to mobile networks.

**“n”** means the number of services in the overall basket or residential sub-basket.

**“price control period”** means the period commencing on the date on which the relevant tariff regime becomes effective and subsequent periods commencing on the anniversary of such date.

**“price control year”** means a calendar year period during which the approved tariffs shall be in force.

**“PSTS”** means Public Switched Telecommunications Services.

**“public pay telephone”** means apparatus (including any kiosk, booth, acoustic hood, shelter or other similar structure in which that apparatus may be installed) at which public pay telephone services are made available to the public or segments of the public, and which contains a device to accept payment for those services.

**“RC”** means Revenue Change.

**“residential sub-basket”** means telecommunication services made available to residential customers including line rental, local calls, national calls and international calls. Payphones will also form part of this sub-basket.

**“t”** means the current year in the Price control period.

**“terminal connection point”** means any point within an item of Terminal Connection Equipment at which signals are conveyed to or from one or more items of customer premises equipment.

## **2. Application of these regulations**

- (a) These regulations shall be applicable to fees and charges (together “prices”) payable, pursuant to the Telecommunications Act as amended, to Telkom for the telecommunications services listed in Schedule A (“the basket services”), as such may be modified from time to time in accordance with the provisions of these regulations.
- (b) These regulations shall be effective as from the effective date and shall remain in force until December 31 2008 or until such time that a new regulations regime is prescribed.

## **3. General Price Control Formula**

- (a) Telkom shall ensure that in each price control year the price charged for the basket services shall be set so as to satisfy the criteria in formulae (1) and (2) set forth below:

$$(RC_{(t)}/RR_{(t-1)}) \times 100 \leq \Delta CPI_{(-1)} - X_{(t)} + CO_{(t-1)} \quad (1)$$

$$X_{(t)} = 4.0\% \quad (2)$$

Subject to the following definitions:

(t): the current year in the price control period

(t-1): the preceding year

$X_{(t)}$ : the productivity factor

$\Delta CPI_{(t-1)}$ : the year-on-year change in the Consumer Price Index excluding interest payments on mortgage bonds, compiled and published by Statistics South Africa, which is defined as follows:

$$\Delta CPI_{(t-1)} = ((CPI_{(t-1)} - CPI_{(t-2)}) / (CPI_{(t-2)})) 100$$

Where:

$(t-2)$ : the year preceding  $(t-1)$

$CPI_{(t-2)}$ : the Consumer Price Index for the month of September the year  $(t-2)$ .

$CPI_{(t-1)}$ : the Consumer Price Index for the month of September of year  $(t-1)$

$CO_{(t-1)}$ : is the percentage of the unused part (if any) of the allowed revenue increase in year  $(t-1)$  carried over to year  $(t)$ , which is calculated as follows:

$$CO_{(t-1)} = [\Delta CPI_{(t-2)} - X_{(t)}] - [(RC_{(t-1)} / RR_{(t-2)}) 100]$$

$RC_{(t)}$ : the total Revenue Change, which is calculated as follows:

$$RC_{(t)} = \sum_{i=1 \text{ to } n} RC_{(i,t)}$$

Where:

$n$ : the number of services in the basket

**RC<sub>(i, t)</sub>:** the revenue change of the i-th service in year (t), which is calculated as follows:

$$RC_{(i,t)} = RR_{(i,t-1)} \Delta P_{(i,t)}$$



For a service listed in Schedule A which has both a fixed and variable component to price, the percentage change in the price for the  $i$ -th service in year  $(t)$  is defined as follows:

$$\Delta P_{(i, t)} = \left[ \frac{\text{(Average unit tariff of the } i\text{-th service at the end of year } (t))}{\text{(Average unit tariff of the } i\text{-th service at the end of year } (t-1))} - 1 \right] 100;$$

where the above is calculated to exclude the effect of discounts offered by Telkom.

$RR_{(t-1)}$ : the reported revenue of Telkom, in year  $(t-1)$ , of all the service in the basket, and is calculated as follows:

$$RR_{(t-1)} = \sum_{i=1 \text{ to } n} RR_{(i, t-1)}$$

#### 4. Residential sub-basket

(a) Telkom shall implement a residential sub-basket consisting of the following elements: Line rental, Local calls, National calls, International calls and "Home" branded ADSL services or their equivalent. Payphones will also be subject to this sub-cap.

(b) Telkom will determine an Average Residential Bill, which will be used in determining the level of increase applicable to residential customers.

(c) The weighted-average annual rate increase for the sub-basket of basic residential services shall be set to satisfy the criteria in the formula below:

$$\Delta CPI_{(t-1)} - X_{(t)}$$

where  $X_{(t)} = 4.0\%$

## 5. Carryover

Telkom shall be allowed to carry over to the next price control year any unused part of the allowed tariff increase. The unused part of the allowed tariff increase in both the general and the residential baskets will lapse if not used in the next price control year.

## 6. Tariff Filing

- (a) Telkom shall file the rates as well as the relevant terms and conditions with the Authority pursuant to which it proposes to offer Public Switched Telecommunication Services that are subject to these regulations.
- (b) Such tariffs shall be filed at least thirty (30) business days before the proposed date on which such rates are to become effective in a form specified by the Authority.
- (c) If the Authority does not deliver to Telkom a notice in writing of disapproval at least fifteen (15) business days before the proposed effective date of the rates, the rates shall be deemed approved.
- (d) Telkom must also file details, in accordance with a methodology agreed by ICASA and Telkom, about the effect the proposed rates would have on the average residential bill.
- (e) The Authority may disapprove the proposed tariffs only where;
  - i) The calculations contain mathematical errors; or

- ii) The terms and conditions violate applicable laws, including, without limitation, policy directions, regulations and the Rate Regime, in a material respect.

## **7. Changes to the Basket Services**

- (a) Subject to subsections (b) and (c) below, Telkom shall be entitled to add or replace telecommunication services in respect of the basket services only if such telecommunication services are either:
  - (i) Wholly or substantially in substitution of an existing telecommunication service; or
  - (ii) Wholly or substantially in substitution of an existing package offering of existing telecommunication services or of elements of existing telecommunication services. For the avoidance of doubt, a package offering of existing telecommunication services would include a scheme the effect of which would be to reduce the licensee's standard prices, as published in accordance with these regulations, including, without limitation, a residential low user scheme.
- (b) Telkom shall notify the Authority in writing of its intention to add or replace a telecommunication service in respect of the basket services pursuant to subsection (a) above at least thirty (30) Business Days before the proposed date on which such service will be implemented.
- (c) The Authority shall inform Telkom in writing of its approval or disapproval of changes to the basket services proposed by the licensee in terms of subsection (a) above at least fifteen (15) business days before the proposed date on which such service will be implemented.

## **8. Maximum Prices**

- (a) With effect from the effective date, prices may not exceed the limits set pursuant to these regulations.
- (b) Prices for any of the services in the residential sub-basket and for leased lines up to and including lines of capacity 2Mbps and for the rental and installation of business exchange lines may be adjusted by Telkom from time to time during the price control period in which it is to apply in accordance with these regulations and the provisions of its licence, but may not be increased in real terms by a margin of more than five percent (5%) based on the Consumer Price Index for September of year (t-1) except where specific approval has been received from the Authority for a higher margin of increase. Specific approval for increases of more than 5% in real terms will only be considered in exceptional instances where a clear case on cost grounds has been made by Telkom to the Regulator.

## **9. In year price changes**

- (a) For all services not listed in Section 8 above, Telkom will be permitted to file price changes at any time during a Price Control Year, subject to the provisions in section 6 above.
- (b) For the purpose of complying with paragraph 9(a), Telkom shall take all reasonable steps to secure that the revenue it accrues as a result of all relevant individual charge changes during any Price Control Year shall be no more than that which it would have accrued had all of those changes been made at 1st January in the Price Control Year. For the avoidance of doubt, this obligation shall be deemed to be satisfied where, in the case of a single change in charges during the Price Control Year, the following formula is satisfied:

$$RC_{(t,t)} (1-D) \leq TRC$$

Where D is the elapsed proportion of the Price Control Year, calculated as the date on which the change in charges takes effect, expressed as a numeric entity on a scale ranging from 1st January = 0 to 31st December = 364, divided by 365. In the case of a leap year it is calculated as the date on which the change in charges takes effect, expressed as a numeric entity on a scale ranging from 1st January = 0 to 31st December = 365, divided by 366; and

TRC is the target revenue change required in the Price Control Year to achieve compliance with Section 3, calculated by the Percentage Change required in the Price Control Year to achieve compliance with Section 3 multiplied by the revenue accrued during the Relevant Financial Year.

- (c) For the avoidance of doubt, for all other services not included in 9(a) above, Telkom will be permitted to make one filing for a price control year.

#### **10. Value Added Taxes**

Prices set pursuant to these regulations are exclusive of any value-added tax, which may be levied in addition to the Prices.

#### **11. Publication of Prices**

- (a) Publication of the details of tariffs shall be made by:

- i) Sending a copy of the relevant details to the Authority;

- ii) Placing the relevant details in every registered office of the licensee so that it is available for inspection, free of charge, by members of the public, as soon as practicable after sending a copy of them to the Authority;
- iii) Sending a copy of the relevant details (or extracts of them as may, in the circumstances, be appropriate) to any person in the Republic who requests a copy; and
- iv) including a pro forma statement indicating the effect of the proposed increases on the bills to customers with the statements to customers prior to the implementation of such tariffs, where possible;

**SCHEDULE A****Basket services**

The following services shall be comprised in the basket services:

**1. Installation Services**

1.1 The installation and bringing into service of exchange lines to residential customers.

1.2 The installation and bringing into service of exchange lines to business.

1.3 The installation and bringing into service of direct dialling inward/outward exchange lines to business customers:

1.3.1 analogue lines;

1.3.2 2 MBPS digital lines.

1.4 The installation and bringing into service of ADSL lines:

1.4.1 "Home" branded ADSL lines;

1.4.2 All other ADSL lines.

1.5 The installation and bringing into service of ISDN exchange lines:

1.5.1 basic rate access;

1.5.2 primary rate access.

1.6 The installation and bringing into service of exchange lines to switched telematic services:

- 1.6.1 telex services;
- 1.6.2 teletex services;
- 1.6.3 Saponet-P services.

## **2. Rental Services**

2.1 The provision and maintenance of exchange lines to residential customers.

2.2 The provision and maintenance of exchange lines to business customers.

2.3 The provision and maintenance of direct dialling inward/outward exchange lines to business customers:

- 2.3.1 analogue lines;
- 2.3.2 2 MBPS digital lines.

2.4 The provision and maintenance of ADSL lines to residential customers, branded as "Home".

2.5 The provision and maintenance of ADSL lines to business customers.

2.6 The provision and maintenance of ISDN exchange lines to business customers:

- 2.6.1 basic rate access;
- 2.6.2 primary rate access

2.5 The provision and maintenance of access lines to switched telematic services:



- 2.5.1 telex services;
- 2.5.2 teletex services;
- 2.5.3 Saponet-P services.

**2.6 The provision and maintenance of point-to-point telecommunication circuits leased to customers for the provision of private circuits or for use in Private Telecommunication Networks:**

- 2.6.1 fixed rental element, if any;
- 2.6.2 distance dependent rental element, if any;
- 2.6.3 capacity/bandwidth dependent rental element, if any;

but excluding any circuits made available to an operator in terms of any agreement for interconnection services.

**3. Call Services**

**3.1 Calls made to and from terminal connection points within the same local exchange area (local calls) served by an automatic or manual exchange:**

- 3.1.1 from an item of customer premises equipment;
- 3.1.2 from a public pay telephone

**3.2 Calls made from a terminal connection point in a local exchange area served by a manual or an automatic exchange to a network providing a mobile telecommunication service:**

- 3.2.1 from an item of customer premises equipment;
- 3.2.2 from a public pay telephone

3.3 Calls made from a terminal connection point in a local exchange area served by an automatic or manual exchange to a terminal connection point in another local exchange area via the national long-distance telecommunication network:

3.3.1 from an item of customer premises equipment, per each long distance metering band;

3.3.2 from a public pay telephone, per each long distance metering band.

3.4 International calls made from a terminal connection point in a local exchange via the international telecommunication network per country of destination.

3.5 Calls made by means of the networks providing switched telematic services:

3.5.1 Telex calls per each distance band;

3.5.2 Teletex calls per each distance band;

3.5.3 Saponet-P services.

3.6 Directory information services

3.7 Telephone operator services

#### **4. Excluded Services**

The following services are not included in the basket services:

4.1 Interconnection Services;

4.2 Value Added Network Services;

- 4.3 Mobile Cellular Telecommunication Services;
  - 4.4 emergency services;
  - 4.5 customer premises equipment; and
  - 4.6 services that are eliminated by the Authority from the basket services from time to time.
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