



Government Gazette

REPUBLIC OF SOUTH AFRICA

Vol. 476 Pretoria 18 February 2005 **No. 27284**



AIDS HELPLINE: 0800-0123-22 Prevention is the cure

GENERAL NOTICES

This Gazette replaces Government Gazette No. 27277 published on 9 February 2005

NOTICE 246 OF 2005



INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA

NOTICE IN TERMS OF SECTION 96 (4) OF THE TELECOMMUNICATIONS ACT, NO. 103 OF 1996 ("THE ACT") READ WITH SECTION 45 OF THE ACT INVITING REPRESENTATIONS WITH REGARD TO THE REVIEW OF TELKOM'S PRICE CONTROL.

The Independent Communications Authority of South Africa ("the Authority") hereby provides notice and invites comment on the draft regulations for review of Telkom's Price Control under section 96 (4), read with section 45, of the Telecommunications Act No. 103 of 1996, as amended.

Interested persons are hereby invited to submit written representations, including an electronic version of the representation in Microsoft Word, of their views on the Review of Price Control in Public Switched Telecommunications Services by Tuesday, 22 March 2005. The Authority will not conduct public hearings, however, written representations will be considered in finalising the final regulations.

All written representations submitted to the Authority pursuant to this notice shall be made available for inspection by interested persons from Wednesday 23 March 2005 from the ICASA Library and copies of such representations and documents will be obtainable upon payment of a fee.

At the request of any person who submits a written representation or document pursuant to this notice, the Authority may determine whether **such** representation or document, or portion thereof, relates to the financial capacity or business **plan** of any person, or to any other matter reasonably justifying confidentiality, in which event such representation or document shall not be made available for inspection by members of the public. If the request for non-disclosure to public is refused, the person making the request will be allowed to withdraw the representation or document in question.

The Authority has limited the scope of comments to be made only to the draft regulations and the notes on the model are published for information purpose as how an "X" factor of 3.5% was calculated.

ICASA has taken all reasonable steps to ensure that the information contained herein has been obtained *from* reliable sources and that these draft regulations are accurate in all respects.

Please forward your written comments to:

Khulile Boqwana and Mankopane Nkopane

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 Kboqwana@icasa.org.za and MNkopane@icasa.org.za

SCHEDULE

I - 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 Asynchronous 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 Period.

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

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

“**customer premise equipment**” means an item of approved equipment which does not form part of the PSTN but is connected to Terminal Connection Equipment, whether fixed or portable, and by means of which signals are initially transmitted or ultimately received,

“**effective date**” means the 1 August 2005.

“**emergency**” means an emergency of any kind, including without limitation, any circumstance whatsoever resulting from major accidents and natural disasters.

“**exchange line**” means a local line provided to connect a Terminal connection point to the Local Exchange.

“**fixed to mobile call**” means a call originating on an exchange line that terminates on a mobile network.

“**home branded ADSL services**” means Asymmetric Digital Subscriber line service providing high-speed access to Internet Service Providers which Telkom’s offers to its residential subscribers.

“**ISDN**” means Integrated Services Digital Network, which is defined as Switched Services Digital Network providing end-to-end digital connection for simultaneous transmission of voice and/or data over multiple multiplexed communication channels and employing transmission that conforms to internationally defined standards.

“**local exchange area**” means a geographically defined and limited area, as defined by the exchange area code allocated by the Authority for that area, to which all exchange lines are connected and which are served by the same local exchange.

“**local exchange**” means a facility in the public switched telecommunications network to which user lines are connected within a local exchange.

“**mobile retention**” means the revenue retained from the revenue collected for fixed to mobile calls.

“**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 1 August 2005 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 an un-manned device made available to the general public for use, and which contains a means of accepting any form of payment for these services.

“**public payphone telephone service**” means the provision of telecommunication service by means of Public Pay telephone service and includes the installation, maintenance and bringing into operation of one or more Public Pay Telephones, which are connected to the exchanges or local network of a public switched telecommunication service licensee in any area of the Republic.

“**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 (“pries”) payable, pursuant to the Telecommunications Act as amended, to Telkom for the telecommunications services listed in Schedule A (“the basket services”) and 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 1 August 2005 and shall remain in force until 31 July 2008.

(c) The Authority shall review the price cap regulations two years from the commencement date to assess whether there is insufficient competition in the market and thus the continued need for price controls.

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:

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

$$X_{(t)} = 3.5 \% \quad (2)$$

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, 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 May the year (t-2).

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

$RC_{(t)}$: 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

$RC_{(i,t)}$: the revenue change of the *i*th service in year (t), which is calculated as follows:

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

Where:

$RR_{(i,t-1)}$: the Reported Revenue of Telkom for the i-th service in the basket from the relevant financial year ended 31 March commencing with 31 March, **2004** for the first year and each subsequent financial year ended 31 March for the duration of the Price control period.

$\Delta P_{(i,t)}$: the percentage change in the price for the i-th service in year (t) listed in Schedule A.

For a service **i** with only a variable component to price, this is defined as follows:

$$\Delta P_{(i,t)} = ((p_{(i,t)} - p_{(i,t-1)}) / p_{(i,t-1)}) 100$$

$p_{(i,t-1)}$ is the published charge made by Telkom for a specific product or service **i** at the beginning of the Price Control Year excluding any discounts offered by Telkom; and

$p_{(i,t)}$ is the published charge made by Telkom for the specific product or service **i** at time **t** during the Price Control Year excluding any discounts offered by Telkom.

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:

$$AP_{(i,t)} = [(Average\ unit\ tariff\ of\ the\ i-th\ service\ at\ the\ end\ of\ year\ (t)) / (Average\ unit\ tariff\ of\ the\ i-th\ service\ at\ the\ end\ of\ year\ (t-1)) - 1] \cdot 100;$$

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:

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

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 expression below:

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

where $X_{(t)} = 3.5\%$

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 at services only if such telecommunication services are:
 - (i) Wholly or substantially in substitution of an existing telecommunication service.
- (b) Telkom shall notify the Authority in writing of its intention to add or replace a telecommunication service in respect of the basket at 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 May 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 the price control period, subject to the provisions of 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 1 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 August = 0 to 31st July = 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 August = 0 to 31st July = 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 is 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;

12. Repeal of the Existing Regulations

These regulations repeal and replace the regulations published in Government Notice No.R1333 of Government Gazette No. 23986 of 24 October 2002.

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

- 2.7.1 telex services;
- 2.7.2 Saponet-P services.

2.8 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:

- 2.8.1 fixed rental element, if any;
- 2.8.2 distance dependent rental element, if any;
- 2.8.3 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 longdistance 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 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 any other services that may be eliminated by the Authority from the basket services from time to time.