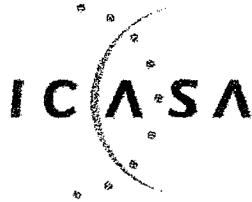

GOVERNMENT NOTICE

INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA

No. R. 282

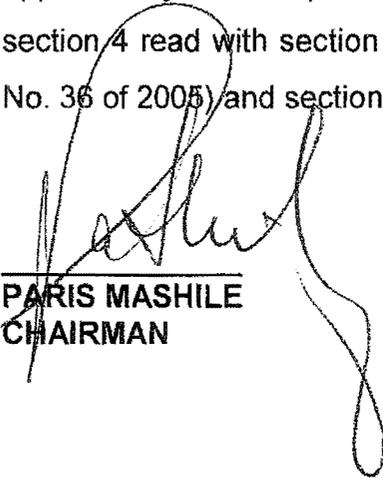
9 April 2010



INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA

REGULATIONS IN TERMS OF SECTIONS 4 AND 38 OF THE ELECTRONIC COMMUNICATIONS ACT OF 2005 (Act No 36 of 2005) READ WITH SECTION 4 (3) (j) OF THE ICASA ACT OF 2000 (Act No 13 of 2000) WITH RESPECT TO INTERCONNECTION REGULATIONS

I, Paris Mashile, Chairperson of the Independent Communications Authority of South Africa ("ICASA") hereby confirms that the above regulations were approved by the Independent Communications Authority of South Africa under section 4 read with section 38 of the Electronic Communications Act, 2005 (Act No. 36 of 2005) and section 4 (3) (j) of the ICASA Act, 2000 (Act No. 13 of 2000).



PARIS MASHILE
CHAIRMAN

Schedule

INTERCONNECTION REGULATIONS

PART I

Preliminaries

1. Definitions

(1) In these regulations, any word or expression to which a meaning is assigned in the Act or the ICASA Act shall have the same meaning and unless the context indicates otherwise -

“**Act**” means the Electronic Communications Act, 2005 (Act 36 of 2005);

“**ICASA Act**” means the Independent Communications Authority Act, 2000 (Act 13 of 2000);

“**Interconnection provider**” means any person who is requested to provide interconnection in terms of section 37(1) of the Act;

“**Interconnection seeker**” means any person licensed in terms of the Act and persons providing services pursuant to a licence exemption that is requesting interconnection, including an applicant for an individual licence.

2. Purpose of regulations

The purpose of these regulations is to:

- (a) facilitate the conclusion of interconnection agreements by stipulating:
 - (i) agreement principles;
 - (ii) timeframes and process to be followed by parties; and
 - (iii) the procedures for the submission, review and filing of agreements;
- (b) provide for and require the provision of interconnection services to enable licensees to interconnect with each other; and
- (c) encourage interoperability.

PART II

Interconnection

3. Requests for interconnection

- (1) A request for interconnection must be in writing and must, amongst others, include:
 - (a) the date of the request;
 - (b) the interconnection seeker's technical requirements, based on the technical standards of the interconnection provider; and
 - (c) the type of the interconnection that is required.
- (2) An interconnection provider must respond to a request for interconnection within seven (7) days of receipt of the request stating its minimum requirements for entering into the interconnection agreement.
- (3) The parties must finalise an interconnection agreement within forty five (45) days from the date of request provided that the parties may agree on a longer period, which longer period must not exceed sixty (60) days.

4. Financial feasibility

- (1) For purposes of section 37(3) of the Act, a request is financially feasible where there are no material adverse financial consequences.
- (2) Any dispute on financial feasibility will be determined on a case by case basis by the Authority.

5. Technical feasibility

- (1) For the purposes of section 37(3) of the Act, a request is technically feasible where it meets the following minimum requirements:
 - (a) the service requested meets the technical parameters for interconnection on the requesting party's network at the time that the request is made; and
 - (b) allows for interconnection to the interconnection seeker on terms that will not have a materially negative effect on the interconnection provider.

- (2) Any dispute on technical feasibility will be determined on a case by case basis by the Authority.

6. Maintenance of any to any connectivity

- (1) The terms and conditions of each interconnection agreement must:
- (a) aim at facilitating interoperability and promote interconnection in a manner which promotes any to any connectivity so that an end-user of an interconnection seeker is able to communicate electronically with an end-user of another interconnection provider and vice versa; and
 - (b) not preclude an interconnection provider or seeker from entering into different types of interconnection agreements with different interconnection seekers or providers.

PART III

Principles for interconnection agreements

7. Quality of service and standards

- (1) The parties to an interconnection agreement must ensure that their agreement:
- (a) contains the technical standards of both parties; and
 - (b) complied with all relevant international standards and recommendation of the International Telecommunications Union as agreed to by the Republic of South Africa and any other standard as prescribed by the Authority.

8. Service level parameters

An interconnection agreement must contain service levels and provide reasonable remedies and penalties for any failure to meet such service levels.

9. Confidentiality

Subject to the provisions of section 4D of the ICASA Act read with section 39 of the Act, an interconnection agreement may not contain a provision that prevents the public disclosure of the agreement by the Authority or by either of the parties.

10. Non discrimination

- (1) The parties to an interconnection agreement must not unfairly discriminate in the negotiation, conclusion and implementation of such agreement, unless otherwise requested by the interconnecting party.
- (2) Requests from an interconnection seeker, including requests for additional interconnection in terms of an already concluded interconnection agreement, must be dealt with in the order in which they are received; and
- (3) An interconnection provider must apply similar terms and conditions, including those relating to rates and charges, in similar circumstances to itself, affiliates and other interconnection seekers, providing similar services, unless otherwise requested by the interconnecting party.

11. Transparency

- (1) Billing and settlement procedures must be transparent.
- (2) Where the provision of one service or facility is dependent in practice on the provision of another service or facility, such a relationship must be clearly identified.
- (3) Charges for interconnection must be sufficiently unbundled so that an interconnection seeker does not have to pay for anything it does not require for the requested interconnection.

12. Interconnection information

- (1) A party to an interconnection agreement may publish on its website and must provide the other party, on request and within ten (10) days, information that is in the party's possession or control relating to:
 - a) A list of interconnection products or services offered by the interconnection provider;

b) Process and commercial information that may assist the interconnection seeker to formulate a request for interconnection, including but not limited to:

- (i) any material changes to interconnection arrangements that may affect the interconnection arrangements;
- (ii) plans of an interconnection seeker or services and/or products offered by the interconnection provider.

(2) A party to an interconnection agreement may publish on its website and must provide the other party, on request and within ten (10) days, technical information that is in a party's possession or control that will assist the interconnection parties to plan, establish or maintain its electronic communications network or service includes, but is not limited to:

- (a) the technical specifications of the electronic communications network or service;
- (b) switching, routing and transmission equipment used in the network or service;
- (c) signaling protocols used;
- (d) traffic volumes; and
- (e) any material changes to interconnection arrangements that may affect the interconnection arrangements or plans of an interconnection seeker or the interconnection services such party provides or intends to provide.

13. Point of interconnection

(1) An interconnection agreement must provide for a location that constitutes a point of demarcation between the interconnection provider and the interconnection seeker. These locations may include but are not be limited to:

- (a) mobile switching centres ;
- (b) media gateways;
- (c) local exchanges;
- (d) tandem exchanges; and
- (e) digital switching centres.

- (f) Internet exchange points
- (2) The interconnection provider must offer interconnection services at any financially and technically feasible point upon request by an interconnection seeker.
 - (3) The interconnecting parties must agree on operations and maintenance expenses of the facilities necessary to reach the point or points of interconnection.
 - (4) Where the interconnection provider has informed the interconnection seeker that the requested point of interconnection has insufficient capacity, it must provide to the interconnection seeker details of the nearest point of interconnection.
 - (5) The interconnection seeker must be afforded an opportunity to make representation to the interconnection provider regarding the nearest suitable point of interconnection.

14. Exemption

Licenses who are found not to have significant market power in terms of section 67 of the Act shall not be required to comply with regulations 10(3) and 11(3).

PART IV

Framework, model terms and conditions of agreements

15. Terms and conditions of interconnection agreements

The interconnection agreement must, except where a matter is not relevant to the interconnection service in question, address the following-

- (a) definition of terms and abbreviations;
- (b) technical scope of the interconnection which includes:
 - (i) a description of the purpose of the interconnection;
 - (ii) a description of the connection services sought;
 - (iii) a description of the technical scope and specifications of the interconnection;

- (iv) mechanisms for changes to the purpose, scope and specifications for interconnection;
 - (v) details regarding access to numbers by the parties; and
 - (vi) data interchange format;
- (c) point of interconnection, which includes:
 - (i) location of point of interconnection and related facilities' specifications;
 - (ii) mechanisms for changes to the location of point of interconnection or related facilities;
 - (iii) signaling interconnection description; and
 - (iv) charges for each point of interconnection.
- (d) billing and settlement which includes:
 - (i) billing procedures;
 - (ii) payment terms and conditions; and
 - (iii) billing and settlement disputes procedures.
- (e) charges, setting out:
 - (i) detailed charges per service provided; and
 - (ii) mechanisms for review of charges.
- (f) quality of service and service levels, covering:
 - (i) service levels and quality of service obligations;
 - (ii) penalties;
 - (iii) testing and maintenance;
 - (iv) fault reporting;
 - (v) service level disputes; and
 - (vi) system protection and safety measures.

- (g) termination of agreement covering:
 - (i) grounds for termination; and
 - (ii) termination procedures;
- (h) contractual dispute resolution and arbitration procedures.

PART V

16. Dispute resolution

- (1) Where:
 - (a) the reasonableness of any request is disputed, the party requesting interconnection may notify the Authority in accordance with regulation 16 of these regulations;
 - (b) an interconnection provider has not responded to the request for interconnection within the time set out in regulation 3(2) of these regulations, the interconnection seeker may notify the dispute to the Authority;
 - (c) parties have not reached agreement on the terms and conditions of an interconnection agreement within the time prescribed in regulation 3(3) of these regulations, any party may notify a dispute to the Authority;
- (2) A dispute notified to the Authority in terms of regulation 16(1) of these regulations, must be in writing and must set out the details of the alleged dispute;
- (3) The party lodging the dispute must provide the Authority with sufficient information to allow it to make its decision.
- (4) Where the Authority, after considering all relevant information, determines that the dispute warrants further investigation then the Authority shall:
 - (a) provide the other party to the dispute with a copy of the complaint setting out the nature of the alleged unreasonableness or details of the unwillingness to negotiate or agree within fourteen (14) days of the notification of the dispute;

- (b) afford the other party to the dispute with a reasonable opportunity to respond to the allegations in writing within fourteen (14) days of receipt of the copies of the complaint referred to in regulation 16(4)(a) of these regulations; and
 - (c) afford the party which notified the dispute a reasonable opportunity to reply to the response in writing within fourteen (14) days of receipt thereof.
- (5) The Authority may call for oral representations after the submissions made by the parties referred to in regulation 16 (4) of these regulations;
 - (6) Notwithstanding the provisions of regulation 16(5) of these regulations, the Authority may determine the matter on the basis of the papers submitted to it by the parties.
 - (7) The Authority will within fourteen (14) days as provided for in regulation 4(b), or 4(c) of these regulations or such longer period as is reasonably necessary, furnish the parties to the dispute with its final decision; and
 - (8) Regulation 16 of these regulations does not, in any manner, limit the power of the Authority to refer a matter to the Complaints and Compliance Committee in terms section 37 (4) (c) of the Act.

PART VI

Submission, filing, review and timeframes of agreements

17. Submission and review of interconnection agreements

An interconnection agreement and interconnection amendment agreements must be submitted to the Authority in terms of section 39 of the Act within 5 (five) days of the date of signature of the agreement.

18. Consideration by the Authority for compliance

- (1) The Authority will notify the parties in writing within thirty (30) days of submission whether the agreement is consistent with the Act and these regulations.
- (2) If the Authority delays in notifying the parties of compliance beyond the stipulated thirty (30) day period in regulation 18(1), the Authority will provide written reasons for the delay to the parties to the agreement.

- (3) If the parties to the agreement do not receive any written notification from the Authority within the thirty (30) day period, the agreement is deemed to be compliant
- (4) Where the Authority determines that the interconnection agreement is consistent with the Act and these regulations, the Authority will notify the parties.
- (5) Where the Authority determines that the agreement is not consistent with the Act and these regulations, the Authority must direct the parties to agree on new terms and conditions that are consistent with the Act and these regulations within a period determined by the Authority which period must not exceed thirty (30) days.
- (6) Where the parties submit an amended agreement in terms of section 39(6) of the Act, the Authority must notify the parties in writing within thirty (30) days whether or not the amended agreement is consistent with the Act and these regulations.

19. Filing of interconnection agreement

An interconnection agreement is considered to be filed with the Authority in terms of section 39(2) of the Act after the Authority has reviewed the agreement and notified the parties of compliance.

PART VII

General

20. Commencement date

- (1) Parties may agree on a date to commence interconnecting. Notwithstanding that date, the Authority may direct the parties to amend certain terms and condition of the agreement based on the outcome of the review of the agreement.
- (2) In the event that the parties have not agreed on the date of commencement, such date shall be the date of notification of compliance.

21. Suspension and termination of agreement

- (1) An interconnection agreement must provide for suspension and termination procedures that minimize any adverse effect of the suspension or termination of services on end users.

- (2) An interconnection agreement must not allow for the suspension of interconnection except where this is necessary to address quality of service degradation of electronic communication networks or services or other material threat to the maintenance of the interconnection.
- (3) Neither party to an interconnection agreement may terminate an interconnection agreement unless the termination is as a result of:
 - (a) material breach of the interconnection agreement;
 - (b) *vis major*, or
 - (c) the liquidation, deregistration or insolvency of one of the parties to the interconnection agreement; or
 - (d) the parties have mutually agreed to terminate the agreement;
- (4) Either party to an interconnection agreement must give prior written notice of its intention to terminate the agreement to the Authority and the other party, specifying in such notice the grounds for termination and, in the case of material breach, requiring that the breach be remedied within a period not less than thirty (30) days.

22. Contraventions and Penalties

- (1) Upon a determination of non-compliance by the Complaint and Compliance Committee in terms of the ICASA Act, the Authority may impose a fine not exceeding:
 - (a) Five Hundred Thousand Rand (R 500 000.00) for contravention of regulations 10; 11(3) and 21;
 - (b) Fifty Thousand Rand (R50 000.00) for contravention of all regulations not specified in regulations 22 (1) (a) of these regulations;

23. Short title and commencement

These regulations are called the Interconnection Regulations, 2010 and commence on 30 June 2010.

24. Transitional provisions

- (1) Any interconnection agreement concluded prior to the commencement of these regulations must be submitted to the Authority in terms of section 39(1) of the Act in accordance with the time periods set out in the following table:

Year interconnection agreement entered into	Date to be submitted to Authority
On or before 01 January 2007	On or before 31 January 2011
On or after 01 January 2007	On or before 30 June 2011

- (2) Before submitting an interconnection agreement to the Authority in terms of this section, the parties must review the interconnection agreement and amend the agreement where necessary to ensure that the agreement complies with the requirements of these regulations and the Act.
- (3) The process set out in the Act and these regulations applies with the necessary changes to the review by the Authority of interconnection agreements submitted in terms of this regulation 24.

25. Repeals

The Interconnection guidelines published in Notice 1259 of 2000 Government Gazette Number 20993, the Supplementary Interconnection Guidelines published in Notice 3457 of 2002, Government Gazette 24203; the Interconnection and facilities leasing guidelines and supplements published in Notice 1301 of 2004, Government Gazette 26539 are hereby repealed.
