

GOVERNMENT NOTICE**DEPARTMENT OF COMMUNICATIONS****No. R. 654****30 June 2005****TELECOMMUNICATIONS ACT, 1996**

I, Dr Ivy Matsepe-Casaburri, Minister of Communications have under section 96(6) of the Telecommunications Act, 1996 (Act No. 103 of 1996), approved the regulations in the Schedule, made by the Independent Communications Authority of South Africa under section 96 of the said Act.

SCHEDULE**Definitions**

1. In these regulations any word or expression to which a meaning has been assigned in the Telecommunications Act, 1996 (Act No. 103 of 1996), shall have the meaning so assigned 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 period;

"**basket services**" means the telecommunication services listed in the Annexure [to which price control regulation applies];[See comment]

"**business day**" means any day other than a Saturday, Sunday or public holiday;

"**carry over**" means the percentage of the unused part of allowed revenue increase that accrues at the beginning of the price control year, [that will be carried over to year t]; [This expression does not make any sense since "t" is defined as "the current year"]

"**customer premises 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; [The bracketed acronym appears to be a typographical error. If not, it should be spelled out.]

"**effective date**" means 1 August 2005;

"**exchange line**" means a local line provided to connect a terminal connection point to a 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 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 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 and ending on 31 July 2008 or as determined by the Authority;

"price control year" means a 12 month period during which the approved tariffs shall be in force and which shall commence on 1 August every year for the duration of the price control period;

"PSTS" means Public Switched Telecommunications Services;

"public pay telephone" means an unmanned 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 a public pay telephone and includes the installation, maintenance and bringing into operation of a public pay telephone, which is connected to an exchange or local network of a public switched telecommunication service licensee in any area in the Republic;

"RC" means Revenue Change;

"residential sub-basket" means telecommunication services made available to residential customers including line rental, local calls, national calls, international calls and a public pay telephone;

"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;

"terminal connection equipment" means, in relation to any telecommunication system, an item of telecommunications apparatus comprised in that telecommunication system which is situated in a fixed position in a customers premises and which enables –

- (a) customer premises equipment to be connected to that telecommunication system;
- (b) signals to be conveyed in either direction between the customer premises equipment and that telecommunications system; and

- (c) the proper functioning and operation of the customer premise s equipment and telecommunications system to be tested.

Application of these regulations

2(1) These regulations shall apply to fees and charges ("prices") payable, to Telkom for the telecommunications services listed in the Annexure ("the basket services"), which may be modified from time to time in accordance with these regulations. [See comment on regulation 7(1).]

(2) These regulations shall come into operation onl August 2005 and shall remain in force until 31 July 2008 or until such time as they are replaced by other regulations.

(3) The Authority shall review these regulations two years from the effective date or as and when the need arises to asses whether sufficient competition in the market exists and whether the need remains for price control.

General price control formula

3, 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:

Formula (1) $(RC_{(t)}/RR_{(t-1)}) \times 100 < \Delta CPI_{(t-1)} - X_{(t)} + CO$

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

Where-

(t) is the current year in the price control period;

(t-1): is the preceding year;

X (t): is the productivity factor;

$\Delta \text{CPI}_{(t-1)}$; is the year-on-year change in the Consumer Price Index; compiled and published by Statistics South Africa, which is defined as follows:

$$\Delta \text{CPI}_{(t-1)} = ((\text{CPI}_{(t-1)} - \text{CPI}_{(t-2)}) / (\text{CPI}_{(t-2)})) 100$$

Where–

(t-2) is the year preceding (t-1);

$\text{CPI}_{(t-2)}$ is the Consumer Price Index for the month of April the year;

$\text{CPI}_{(t-1)}$: is the Consumer Price Index for the month of April of year (t-1)

$\text{RC}_{(t)}$: is the total Revenue Change, which is calculated as follows:

$$\text{RC}_{(t)} = \sum_{i=1}^n \text{RC}_{(i,t)}$$

Where–

n is the number of services in the basket

$\text{RC}_{(i,t)}$: is the revenue change of the i-th service in year (t), which is calculated as follows:

$$\text{RC}_{(i,t)} = \text{RR}_{(i,t-1)} \Delta P_{(i,t)}$$

Where–

$\text{RR}_{(i,t-1)}$: is 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, 2005 for the first year and each subsequent financial year ended 31 March for the duration of the price control period.

$\Delta P_{(i, t)}$: is 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 any time 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:

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

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:

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

Residential sub-basket

4,(1) Telkom shall implement a residential sub-basket consisting of the following elements: line rental, local calls, national calls, international calls, "Home" branded ADSL services or their equivalent and public pay telephones

(2) Telkom shall determine an average residential bill, which shall be used in determining the level of increase applicable to residential customers.

(3) 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 $x_{(t)} = 3.5\%$

Carry over

5. Telkom may carry over to the next price control year any unused part of the allowed tariff increase, subject to the rules to be determined by the Authority prior to the beginning of the control period: Provided that the unused part of the allowed tariff increase in both the general and the residential sub-baskets shall lapse if not used in the next price control year.

Tariff [rates/prices? See comment] filing

6.(1) Telkom shall file the rates as well as the relevant terms and conditions with the Authority in which it proposes to offer PSTS that are subject to these regulations.

(2) The rates contemplated in subregulation (1) shall be filed at least 30 business days before the proposed date on which such rates are to become effective in a form specified by the Authority. [See comment]

(3) If the Authority does not deliver to Telkom a notice in writing of disapproval at least 15 business days before the proposed effective date of the rates, the rates shall be deemed to have been approved.

(4) Telkom shall file details, in accordance with a method agreed between ICASA and Telkom, regarding the effect the proposed rates would have on the average residential bill.

(5) The Authority may disapprove the proposed rates only if-

- (a) the calculations contain mathematical errors; or
- (b) the terms and conditions contained therein are in conflict with applicable laws, policy directions, and the Rate Regime, in a material respect [What is a "Rate Regime", a "policy direction" and an "applicable law"?)]

Changes to basket services

7.(1) Subject to subregulations (2) and (3), [Telkom may add or replace a telecommunication service in respect of a basket service] [If the effect is that Telkom may amend the Annexure, this subregulation is ultra vires.]

(2) Telkom shall notify the Authority in writing of its intention to add or replace a telecommunication service in respect of a basket service at least 30 business days before the proposed date on which such service will be implemented.

(3) The Authority shall inform Telkom in writing of its approval or disapproval of an addition or replacement of a telecommunication service contemplated in subregulation (2) at least 15 business days before the proposed date on which such service will be implemented.

Maximum prices

8.(1) With effect from the effective date, any price already determined in the repealed regulations may not exceed the prices determined in terms of these regulations.

(2) Prices for any of the services in a residential sub-basket and for a leased line 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.

(3) A price adjustment contemplated in subregulation (2) must be applied for in accordance with these regulations and the provisions of [its] [To whom does "its" refer?] licence, but may not be increased in real terms by a margin of more than five percent based on the Consumer Price Index for April of year (t-1) except where specific approval has been received from the Authority for a higher margin of increase. Specific approval for an increase of more than five percent in real terms will be considered only in exceptional instances where a clear case on cost grounds supported by satisfactory evidence has been made by Telkom to the Authority.

In year price changes

(9)(1) For all services not contemplated in regulation 8(2) Telkom may [fuel price changes at any time during the price control period, [subject to the provisions of regulation 6][Regulation 6 does not provide for "**price**" changes.]

(2) For the purpose of subregulation (1), Telkom shall take all reasonable steps to ensure that the revenue that accrues to it as a result of all relevant individual price changes during any price control year shall not exceed that which would have accrued to it had all such changes been made at 1 August in the price control year.

(3) The obligation contemplated in subregulation (2) shall be deemed to be satisfied where, in the case of a single change in price during the price control year, the following formula is complied with:

$$RC_{(i, t)} (1-D) < TRC$$

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 D is calculated as the date on which the change in price 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 comply with regulation 3, calculated by the percentage change required in the price control year to comply with regulation 3, multiplied by the revenue accrued during the relevant financial year.

(4) Telkom may make only one filing in respect of the services contemplated in subregulation (1) for a price control [year]. [Subregulation (1) provides for a "price control period". There appears to be a conflict.]

Value-added tax

10. Prices set in terms of these regulations are exclusive of any value-added tax. [The Department must ensure that this regulation does not conflict with the Value-Added Tax Act.]

Publication of prices

11. Details of prices shall be published by-

- (a) furnishing the Authority with the details of the prices;
- (b) simultaneously furnishing every registered office of a licensee with such details in order for it to be available for inspection, free of charge, by members of the public;
- (c) furnishing a copy or extract of such details to any person in the Republic on request; and
- (d) 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.[See comment]

Repeal

12. The regulations published under Government Notice No. R.1333 of 24 October 2002 are hereby repealed,

Short title

13. These Regulations shall be called the Telkom Price Control Regulations,2005.

ANNEXURE

Basket services

Basket services consists of the following 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 customers.
- 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 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 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

services that are eliminated by the Authority from the basket services from time to time.] [If something is not included, it logically follows that it is excluded.]