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**CONTENTS • INHOUD***No.**Page  
No.      Gazette  
         No.***GENERAL NOTICE****Independent Communications Authority of South Africa***General Notice*

59	Telecommunications Act (103/1996): Intention to make regulations in respect interconnection .....	3	27187
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## GENERAL NOTICE

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### NOTICE 59 OF 2005



#### **INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA**

#### **INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA NOTICE OF INTENTION TO MAKE REGULATIONS IN RESPECT INTERCONNECTION**

The Independent Communications Authority of South Africa ("the Authority") hereby gives notice that it intends making the following regulations in terms of section 43 (3) of the Telecommunications Act, (Act No 103 of 1996).

Interested persons are hereby invited to submit written comments or written representations with regard to the proposed regulations, to be received by **no later than 16h00 on 02 March 2005** by post, hand delivery or facsimile transmission for the attention of Ms Nomvuyiso Batyi, Independent Communications Authority of South Africa, Private Bag X10002, Marlboro, 2063; Block C, Pin Mill Farm, 164 Katherine Street, Sandton; telephone (011) 321 8415, Facsimile (011) 321 8536 or e-mail: [nbatyi@icasa.org.za](mailto:nbatyi@icasa.org.za) / [mnkopane@icasa.org.za](mailto:mnkopane@icasa.org.za)

**MANDLA LANGA  
CHAIRPERSON**

## 1. DEFINITIONS

- 1.1 In these Guidelines the following words will have the meaning given to them unless the context otherwise requires:

**"Affiliate"** means any Person that is legally or in fact controlled by, under common control or controls an Interconnection Provider whether directly or indirectly.

**"Calling Line Identification (CLI)"** means the information generated by a telecommunication system which identifies the calling number and forwards that information through that telecommunication system to another telecommunication system directly or indirectly.

**"COA/CAM"** means the Chart of Accounts/Cost Allocation Manual adopted pursuant to the Telecommunications Act.

**"Customer"** means a retail end user customer of the provider of a telecommunication service.

**"Customer Service"** means a telecommunication or related service which is facilitated in whole or in part by interconnection.

**"Economic Cost"** means, in respect of the provision of a service by a licensee, the sum of:

- (a) The incremental cost of that service;
- (b) The relevant common costs allocated to that service including a competitive return on the capital employed for the purpose of such provision.

**"Essential Service"** means an interconnection service that is part of a telecommunication system or service that:

- (c)
  - (i) is exclusively or predominantly provided by a single or limited number of suppliers; and
  - (ii) cannot feasibly, whether economically and / or technically be substituted in order to provide a service; or
- (d) is declared by the Authority acting in accordance with clause 21.7 of these Guidelines to be an Essential Service, where, in its opinion, this would promote the objects of the Telecommunications Act.

**"Interconnection Agreement"** means an agreement in relation to the interconnection of telecommunication systems.

**"Interconnection Capacity"** means dedicated unswitched transmission capacity and other facilities for connecting the telecommunication systems of two telecommunication service providers so that telecommunication services may be passed efficiently between those systems.

**"Interconnection Information"** means information relevant to interconnection which is in the possession or control of the Interconnection Provider and which may assist the Interconnection Seeker:

- (a) to better formulate its request for interconnection;
- (b) to plan, establish or maintain its telecommunication system or a telecommunication service for the purpose of interconnection including, but not limited to:
  - (i) technical, traffic and other relevant information;
  - (ii) system and facilities specifications; and
  - (iii) any material changes to that information or specifications which may impact on the Interconnection Seeker's interconnection arrangements or the services it intends to provide to customers by means of that interconnection.

**"Interconnection Provider"** means a provider of a telecommunication service who is required to provide interconnection under the Telecommunications Act.

**"Interconnection Seeker"** means a provider of a telecommunication service who has interconnected or has requested that it be able to interconnect its telecommunication system to the telecommunication system of an Interconnection Provider.

**"Major Operator"** is an operator which

- (a) has at least 35% of the Telecommunications Market in which it operates, unless it can show that it does not have market power,
- (b) which has the ability to materially affect the terms of participation (having regard to price and supply) in the relevant Telecommunications Market(s) as a result of:
  - (i) control over Essential Services; or
  - (ii) use of its position in the market
- (c) is declared by the Authority acting in accordance with clause 21.7 of these Guidelines to be a Major Operator where, in its opinion, this will promote the objects of the Telecommunications Act.

**"Message"** means any signal sent, or to be sent, for transmission by means of a telecommunications system.

**"Origination Interconnection Service"** means an interconnection service provided by a telecommunication service provider in respect of a Message from a Customer directly connected to that telecommunication service provider's system, resulting in transmission of the Message to the POI to be handed over to another telecommunication service provider.

**"Person"** shall include individuals, bodies corporate and unincorporated associations, partnerships, joint-stock companies, trusts and similar legal entities recognized under applicable law.

**"POI"** means a Point of Interconnection that is a location that constitutes a point of demarcation between the telecommunication systems of a telecommunications service provider and another telecommunications service provider at which messages are handed over and carried from one telecommunications service provider to the other.

**"Public Operator"** means a provider of a public switched telecommunication service or a mobile cellular telecommunication service; or any second national operator (SNO) licensed under the Telecommunications Act; or Sentech; or any provider of under-served area telecommunications service, national long-distance telecommunications service, local access telecommunications service or public pay-telephone service licensed under the Telecommunications Act.

**"Telecommunications Act"** means the Telecommunications Act 1996 (Act No 103 of 1996) as amended from time to time, or any successor legislation.

**"Telecommunication Market"** means any of the following markets:

- (a) Public switched telecommunication services;
- (b) National long distance telecommunication services;
- (c) Local access telecommunication services;
- (d) Public pay-telephone services;
- (e) International telecommunication services;
- (f) Mobile cellular telecommunication services; and
- (g) any other market(s) identified by the Authority acting in accordance with clause 21.7 of these Guidelines.

**"Termination Interconnection Service"** means an interconnection service provided by a telecommunication service provider in respect of a Message handed over at the POI from another telecommunication service provider, resulting in transmission of the Message to a Customer directly connected to that telecommunication service provider's system.



**"Transit Interconnection Service"** means an interconnection service provided by a telecommunication service provider in respect of a Message received from the originating telecommunications service provider at one POI, and handed over to another telecommunication service provider at another POI either for termination or further transit.

- 1.2 Words used in these Guidelines that are not defined by these Guidelines but are defined by the Telecommunications Act shall have the meaning given to them by the Telecommunications Act.

## **2. APPLICATION OF INTERCONNECTION GUIDELINES**

- 2.1 The Telecommunications Act requires the Authority to prescribe guidelines relating to the form and content of Interconnection Agreements including amongst other matters:

- (a) the time by or period within which interconnection pursuant to the Interconnection Agreement shall be carried out;
- (b) the quality or level of service to be provided by the means of one telecommunication system for the other telecommunication service; and
- (c) the fees and charges payable for such interconnection.

- 2.2 These Guidelines:

- (a) are issued by the Authority under the Telecommunications Act;
- (b) will be applied by the Authority in the manner contemplated by the Telecommunications Act;
- (c) apply to all Interconnection Providers and Interconnection Seekers although specific parts of these Guidelines apply only to certain Interconnection Providers or certain Essential Services;
- (d) do not restrict a Person's rights under the Telecommunications Act; and
- (e) may be varied by the Authority from time to time, acting in accordance with clause 21.7 or any other procedures provided for in the Telecommunications Act.

- 2.3 These Guidelines are not intended:

- (a) to limit the matters which may be dealt with in an Interconnection Agreement but to provide a minimum set of issues which should be addressed;
- (b) to prevent or delay parties from negotiating or entering into bilateral or multilateral agreements which deal with matters other than those addressed in these Guidelines.

2.4 For the purposes of these Guidelines, the Authority finds that the Telecommunication Markets with regard to interconnection are:

- (a) Public switched telecommunication services;
- (b) National long distance telecommunication services;
- (c) Local access telecommunication services;
- (d) Public pay-telephone services;
- (e) International telecommunication services; and
- (f) Mobile cellular telecommunication services.

2.4.1 The Authority has established that interconnection services in these Telecommunication Markets are supplied by a single or limited number of providers and cannot feasibly be substituted in order to provide service, and therefore are Essential Services.

2.4.2 The particular interconnection services that are declared to be Essential Services, include, but are not limited to:

- (a) Origination Interconnection Services
- (b) Transit Interconnection Services
- (c) Termination Interconnection Services
- (d) Other interconnection services that the Authority may identify in accordance with clause 21.7 of these Guidelines.

2.4.3 Telkom SA Limited being the holder of at least 35% of the Telecommunications Markets identified in clauses 2.4(a) to 2.4(e) above, the Authority declares that Telkom SA Limited is a Major Operator for the provision of interconnection services in these markets.

2.4.4 The Authority may: (i) identify additional Telecommunications Markets for interconnection; (ii) identify additional interconnection services declared to be Essential Services; and (iii) make determinations regarding Major Operators in relevant Telecommunications Markets, all in accordance with clause 21.7 of these Guidelines.

2.4.5 These Guidelines shall apply regardless of whether an Interconnection Provider or Interconnection Seeker has entered into any facilities, systems, network or other management agreement, including any outsourcing agreement. An Interconnection Provider that is a party to any such agreement shall ensure that the agreement does not interfere with the interconnection required by the



Telecommunications Act, these Guidelines and any relevant Interconnection Agreement.

2.5 At such time as a Major Operator can demonstrate that, because of:

- (a) A reduction in its share of the relevant Telecommunications Market; or
- (b) An industry change that requires reclassification of an Essential Service, such Major Operator should no longer be considered a Major Operator, then:

2.5.1 Such Major Operator shall file a written request with the Authority accompanied by all supporting documentation establishing a reasonable basis for such request.

2.5.2 If the Authority finds, upon consideration of the request and supporting documentation and any additional information or documentation that the Authority may request, that there is a reasonable basis for removing the Major Operator determination from one or more of the Telecommunication Markets, the Authority shall:

2.5.2.1 publish the request in the Gazette,

2.5.2.2 seek comments from the public, and

2.5.2.3 conduct any hearings that it may find necessary.

2.5.3 At the expiry of the time within which public comments may be filed and any hearings that it may have scheduled, if supported by the record before it, the Authority may declare by notice in the Gazette that such licensee is no longer a Major Operator in one or more of the Telecommunication Markets.

2.6 At such time that any party can demonstrate that:

- (a) A licensee's share of the relevant Telecommunication Market is at least 35%, or
- (b) An industry change that requires reclassification of an Essential Service has occurred, necessitating that such licensee should be re-classified as a Major Operator, then:

2.6.1 Such party shall file a written request with the Authority accompanied by all supporting documentation establishing a reasonable basis for such request.

2.6.2 If the Authority finds, upon consideration of the request and supporting documentation and any additional information or documentation that the Authority may request, that there is a reasonable basis for considering to declare such licensee to be a Major Operator, the Authority shall:

- 2.6.2.1 publish the request in the Gazette,
- 2.6.2.2 seek comments from the affected licensee and the public, and
- 2.6.2.3 conduct any hearings that it may find necessary.
- 2.6.3 In the alternative to the processes described in clause 2.6.1 and 2.6.2 above, the Authority may initiate consideration of whether a licensee should be classified as a Major Operator, or whether its status as a Major Operator has changed, on its own initiative by publishing a notice in the Gazette seeking comments from the affected licensee and the public, and conducting any hearings it may find necessary.
- 2.6.4 At the conclusion of the process outlined in clauses 2.6.2 or 2.6.3 above, the Authority may, based on its findings, declare such licensee to be a Major Operator in one or more Telecommunication Markets.

### **3. CONTENTS OF AGREEMENTS**

- 3.1 A written Interconnection Agreement must inter alia address each of the following matters unless it is not relevant to the form of interconnection that has been requested:
  - (a) the scope and specification of interconnection;
  - (b) access to all ancillary or supplementary services or access to and use of premises or land that may assist in the provision or support of interconnection or Customer Services;
  - (c) service levels and the maintenance of end-to-end quality of service;
  - (d) charges for interconnection;
  - (e) billing and settlement procedures;
  - (f) ordering, forecasting, provisioning and testing procedures;
  - (g) the provision of POI and Interconnection Capacity;
  - (h) the transmission of CLI and the provision of information necessary to facilitate CLI;
  - (i) the provision of information regarding system modernisation or rationalisation;
  - (j) technical specifications, standards and interoperability tests, including procedures sufficient to ensure the function and effective use of numbers allocated to any interconnecting licensee;
  - (k) traffic and system management, maintenance and measurement;

- (l) information handling and confidentiality;
- (m) duration, renegotiation and review procedures;
- (n) dispute resolution procedures.

3.2 The Interconnection Agreement shall contain all the terms and conditions of the agreement between the parties related to interconnection matters, and no amendments, alterations, additions, variations or consensual cancellations will be of any force or effect unless they are reduced to writing, signed by both parties and approved by the Authority.

#### **4. PROMOTION OF USE OF SERVICES AND FACILITIES**

4.1 The terms and conditions of an Interconnection Agreement must in the opinion of the Authority promote the increased public use of telecommunication services or more efficient use of telecommunication facilities.

#### **5. INTERCONNECTION AGREEMENTS NOT TO PRECLUDE RIGHTS**

5.1 An Interconnection Agreement must not:

- (a) seek to preclude or frustrate the exercise of any statutory powers or prevent any Person from seeking the exercise of statutory powers;
- (b) impose any penalty, obligation or disadvantage on a Person for seeking the exercise of any statutory powers;
- (c) prohibit a Person from providing a interconnection service which that Person is lawfully able to provide;
- (d) frustrate the provision of a telecommunication service by a Person which that Person is lawfully able to provide.

5.2 A service acquired as part of interconnection may not be used for any unlawful purpose.

5.3 An Interconnection Seeker may at any time request that an Interconnection Provider vary any term or condition of an Interconnection Agreement. An Interconnect Provider may refuse that request but if it does so this will be a dispute for the purposes of clause 21 of these Guidelines.

#### **6. REQUESTS FOR FURTHER INTERCONNECTION AND GOOD FAITH NEGOTIATIONS**

6.1 An Interconnection Provider must provide Interconnection Information to an Interconnection Seeker that requests reasonable Interconnection Information. An Interconnection Provider need not provide Interconnection Information if the Authority determines that it is not to be provided.

- 6.2 The parties to an Interconnection Agreement must negotiate in good faith and use their reasonable endeavours to resolve all disputes relating to the form of interconnection the subject of that agreement or any other form of interconnection.

## 7. MAINTENANCE OF ANY TO ANY CONNECTIVITY

- 7.1 The terms of each Interconnection Agreement must facilitate interconnection in a manner which promotes any to any connectivity, including by ensuring that:

- (a) a Customer of an Interconnection Seeker and/or Interconnection Provider is able to call, from any terminal device, a Customer of any other Interconnection Seeker and/or Interconnection Provider on a non-discriminatory basis;
- (b) the transmission of calls across and within telecommunication systems should be seamless to both the calling and called parties; and
- (c) Transit Interconnection Services and Termination Interconnection Services, required to permit the Interconnection Seeker to pass its traffic to the Interconnection Provider for termination using any other interconnection maintained by the Interconnection Provider with other licensees, are made available to the Interconnection Seeker. For the avoidance of doubt, the transit and termination interconnection services required under this clause 7.1(c) are intended to permit the Interconnection Seeker to terminate traffic on the network of any other Public Operator where the Interconnection Seeker is unable to interconnect directly with that Public Operator.

- 7.2 An Interconnection Provider may not terminate an Interconnection Agreement unless:

- (a) the termination is for:
  - (i) fundamental breach of the Interconnection Agreement;
  - (ii) vis major;
  - (iii) liquidation, deregistration or insolvency of one of the parties to the Interconnection Agreement;
- (b) the Interconnection Provider gives reasonable written notice of its intention to terminate specifying the grounds of termination and, in the case of breach, requiring that the breach be remedied within three (3) months; and
- (c) the Interconnection Seeker has been given the opportunity to remedy the breach and has failed to do so.

- 7.3 An Interconnection Provider of an Essential Service may not terminate an Interconnection Agreement without the Authority's consent.
- 7.4 An Interconnection Agreement must not allow the suspension of interconnection except where this is necessary to address material degradation of telecommunication systems or services or other material threat to the maintenance of the interconnection.
- 7.5 An Interconnection Agreement must establish termination and suspension procedures that minimise any adverse affect of that termination or suspension on Customers.

## **8. NON-DISCRIMINATION PRINCIPLES**

- 8.1 An Interconnection Provider must treat each:
  - (a) Interconnection Seeker on a basis that is non-discriminatory in its provision of interconnection and no less favourable than the treatment which the Interconnection Provider affords to its subsidiaries, its Affiliates, or other similarly situated telecommunication service providers seeking interconnection;
  - (b) telecommunication service of an Interconnection Seeker on a basis that is non discriminatory and no less favourable than the treatment which the Interconnection Provider affords to telecommunication services of itself, its Affiliates, or other similarly situated telecommunication service providers;
  - (c) Customer of an Interconnection Seeker on a basis that is non discriminatory and no less favourable than the treatment which the Interconnection Provider affords to its own Customers or the Customers of its subsidiaries, its Affiliates, or other similarly situated telecommunication service providers.

## **9. QUALITY OF SERVICE**

- 9.1 An Interconnection Agreement will contain service levels that reflect good interconnection practice and provide reasonable remedies for any failure to meet those service levels.
- 9.2 The parties to an Interconnection Agreement will comply with all relevant standards of the International Telecommunications Union, and such other technical standards as the Authority may prescribe from time to time.
- 9.3 In the event of the parties failing to reach an agreement with regard to the quality or level of service, the quality or level of service will be determined by the Authority.

## **10. INTERCONNECTION CHARGING STRUCTURE**

- 10.1 Charges for interconnection must be structured to match the pattern of underlying costs incurred and to distinguish and separately price the following aspects of interconnection:
- (a) fixed once off charges for the establishment and implementation of physical interconnection;
  - (b) periodic rental charges for use of facilities, equipment and resources including Interconnection Capacity; and
  - (c) variable charges for telecommunication services and supplementary services.
- 10.2 All charges for interconnection shall be transparent and sufficiently unbundled so that a Interconnection Seeker does not have to pay for any thing that it does not require for the service to be provided by the Interconnection Seeker.
- 10.3 Charges for interconnection must not exceed retail charges for the provision of services or facilities equivalent to those provided by that interconnection.
- 10.4 An Interconnection Seeker is free to acquire services from an Interconnection Provider at any retail price offered by the Interconnection Provider without prejudice to any rights to acquire the same or similar services under an Interconnection Agreement.
- 10.5 Clauses 10.1 to 10.4 shall apply to the charges for all interconnection services that have not been declared by the Authority to be an Essential Service provided by a Major Operator. Clause 11 shall apply to the charges for all interconnection services that have been declared by the Authority to be an Essential Service provided by a Major Operator.

## **11. INTERCONNECTION CHARGE OBLIGATIONS FOR MAJOR OPERATORS**

- 11.1 Major Operators shall provide Essential Services for interconnection to any requesting Interconnection Seeker at the long run incremental cost (LRIC) of those Essential Services.
- 11.2 LRIC for Essential Facilities of a Major Operator shall be calculated in accordance with this clause 11.2, and any other determinations or directions published by ICASA.
- 11.2.1 Unless otherwise directed by ICASA, LRIC shall be calculated on the basis of relevant forward looking economic costs calculated for an efficient telecommunication service provider including a reasonable cost of capital.
  - 11.2.2 LRIC shall be calculated by the Major Operator on the basis of the LRIC Statements pursuant to the Procedures Manual for Accounting Separation Methodology of the Major Operator as approved by the Authority, pursuant to the respective COA/CAM Regulations.



- 11.2.3 Major Operators shall submit LRIC calculations and the resulting charges, including for the Essential Facilities identified in clauses 2.4.2 (a) to 2.4.2 (d) prepared in accordance with clauses 11.2.1 and 11.2.2, for approval by the Authority at the times stipulated by the Authority.
- 11.2.4 Failing submission of LRIC calculations and resulting interconnection charges by a Major Operator in accordance with clause 11.2.3, the Authority shall prepare the LRIC calculation and resulting charges, taking into account, where available, the Regulatory Financial Statements pursuant to the Procedures Manual for Accounting Separation Methodology of the Major Operator as approved by the Authority, pursuant to the applicable COA/CAM Regulations, or such other information as is available to the Authority.. The Major Operator shall provide any information or other assistance requested by the Authority in connection with the preparation of LRIC calculations, within seven (7) days of the request or such other time as is stipulated by the Authority, in accordance with these Guidelines and the Telecommunications Act.
- 11.3 The Authority may determine, on an interim basis and until LRIC calculations have been prepared for one or more Major Operators, other methodologies to ensure that the interconnection rates for Essential Services are cost-oriented. Such methodologies may include:
  - 11.3.1 The calculation of Fully Allocated Costs (FAC) of providing the Essential Services; or
  - 11.3.2 Costs and charges calculated on the basis of benchmark formulas or benchmark values, as determined by the Authority with reference to international measures of costs or charges for an efficient operator.
- 11.4 In calculating FAC for Essential Facilities of a Major Operator in accordance with clause 11.3.1:
  - 11.4.1 Where FAC is to be calculated by a Major Operator, the Major Operator shall prepare the calculation in accordance with the Regulatory Financial Statements pursuant to the Procedures Manual for Accounting Separation Methodology of the Major Operator as approved by the Authority, pursuant to the respective COA/CAM Regulations.
  - 11.4.2 Major Operators shall submit FAC calculations and the resulting charges, including for the Essential Services identified in clauses 2.4.2 (a) to 2.4.2 (d) prepared in accordance with clause 11.4.1 for approval by the Authority at the times stipulated by the Authority.
  - 11.4.3 Failing submission of FAC calculations and resulting interconnection charges by a Major Operator in accordance with clause 11.4.2, the Authority shall prepare the FAC calculation and resulting charges, taking into account, where available, the Regulatory Financial Statements pursuant to the Procedures Manual for Accounting Separation Methodology of the Major Operator as approved by the Authority,

pursuant to the respective COA/CAM Regulations, or such other information as is available to the Authority. The Major Operator shall provide any information or other assistance requested by the Authority in connection with the preparation of FAC calculations, within seven (7) days of the request or such other time as is stipulated by the Authority, in accordance with these Guidelines and the Telecommunications Act.

## **12. TRANSITIONAL OBLIGATIONS**

- 12.1 Interconnection Seekers and Interconnection Providers, that are subject to Interconnection Agreements entered into prior to the implementation of these Guidelines, shall re-negotiate the charges and related terms set out in their Interconnection Agreements within six (6) months of the determination of interconnection charges in accordance with clause 11 above, in order to give effect to those interconnection charges.
- 12.2 In the event that parties to existing Interconnection Agreements do not re-negotiate the charges and related terms of those agreements in accordance with clause 12.1 above, the Authority shall initiate a review of those agreements in order to ensure that their terms reflect the determination of interconnection charges in accordance with clause 11 above, and are otherwise consistent with these Guidelines. The Authority shall initiate its review within twelve (12) months of the determination in accordance with clause 11 above of the applicable interconnection charges.

## **13. EFFICIENT PROVISIONING**

- 13.1 The forecasting, ordering and provisioning of interconnection must be efficient and occur within reasonable time frames and must not include any unnecessary or inefficient steps.
- 13.2 The facilities or systems required for interconnection shall be provided in sufficient capacity to enable the efficient transfer of signals between interconnected telecommunication systems.
- 13.3 An Interconnection Seeker's request for interconnection should be given reasonable priority over the Customer orders of the Interconnection Provider.

## **14. REQUESTS FOR INTERCONNECTION**

- 14.1 An Interconnection Agreement must be entered into as soon as practicable but in any event not later than three (3) months after the Interconnection Provider has received a request for interconnection. This period may however be extended by such time as allowed by the Authority in any particular case.

## **15. REQUESTS FOR NEW SERVICES AND SYSTEM CHANGE**

- 15.1 Where an Interconnection Seeker requests a new form of or additional interconnection it must request that new form of or additional interconnection in writing and provide the Interconnection Provider with information in relation to the following matters:

- (a) the form of interconnection;
  - (b) the approximate date the interconnection is required; and
  - (c) an estimate of the capacity required.
- 15.2 All requests for new interconnection shall be filed with the Authority.
- 15.3 The Interconnection Provider must inform the Interconnection Seeker in writing within 15 calendar days of the provision of the information:
  - (a) whether it is able to supply the form of interconnection; and
  - (b) whether it will be able to do so within the time frames required by the Interconnection Seeker.
- 15.4 In the event that the Interconnection Provider is unable to meet the time frames required, the Interconnection Provider must specify, for the Interconnection Seeker's consideration, the date by which interconnection can be established.
- 15.5 Where the Interconnection Provider has informed the Interconnection Seeker that it is able to provide the interconnection it must ensure that the system conditioning and provisioning procedures required to provide that interconnection are undertaken within the time required by the Interconnection Seeker.
- 15.6 A Major Operator that is an Interconnection Provider must provide six (6) months notice to Interconnection Seekers of planned changes to its telecommunication system that may materially impact the telecommunication services on the telecommunication systems of the Interconnection Seeker.
- 16. ESTABLISHMENT AND LOCATION OF POIS**
- 16.1 Interconnection with a Major Operator shall be provided at any technically feasible point in the Major Operator's network.
- 16.2 The Interconnection Seeker must provide sufficient details to the Interconnection Provider in relation to a POI to enable the Interconnection Provider to assess what system conditioning may be required and to estimate the costs of establishing the POI.
- 16.3 POIs shall be established as soon as practicable following a request or conclusion of an Interconnection Agreement and in any case not later than forty five (45) calendar days from conclusion of an Interconnection Agreement.
- 16.4 POIs shall be established as soon as practicable following a request for additional POIs and in any case not later than forty five (45) calendar days from the date of the request.
- 16.5 If an Interconnection Seeker requests interconnection from a Major Operator at points in addition to the POIs offered by the Major Operator to other Interconnection Seekers, the

Interconnection Provider may require the Interconnection Seeker to pay the cost of construction of necessary additional facilities. Major Operators may charge Interconnection Seekers no more than the Fully Allocated Costs of the Major Operator for establishing a new POI. Once an additional POI is established, costs of the POI shall be shared in accordance with clause 16.6.

- 16.6 Each party shall bear its own port, network management system and switch costs to support the ongoing operation of a POI, and the parties shall each pay one-half (1/2) of the cost of the Interconnection Capacity.
- 16.7 Where a party seeking interconnection from a Major Operator requests that facilities be co-located with the facilities of the Major Operator, such co-location shall be provided unless it is not technically feasible. In those instances in which a Major Operator demonstrates that it is unable to establish the interconnection at the location requested, an alternative location proximate to the requested site must be identified by the Major Operator.
- 16.8 Each Major Operator shall maintain a current list of POIs and co-location sites, and shall either publish the list on its website or provide the list at no charge to any Interconnection Seeker on request.

## **17. CLI**

- 17.1 CLI and all necessary signalling data shall be passed between interconnecting parties in accordance with accepted international standards and all requirements issued by the Authority.

## **18. INTER-OPERATOR WORKING GROUP**

- 18.1 The parties to an Interconnection Agreement will form appropriate working groups to discuss matters relating to interconnection and to endeavour to amicably resolve any disputes that may arise.

## **19. CONFIDENTIALITY**

- 19.1 All confidential information provided by a party to another party in relation to interconnection must:
- (a) be kept confidential and only used in relation to the provision of interconnection except where the disclosure is authorised in writing by the other party or authorised or required by law ; and
  - (b) only be disclosed to employees, agents or advisers who need to know that information for the purpose of the provision of interconnection or advising thereon.
- 19.2 Confidential information of a party received by the other party in relation to interconnection or information generated by the telecommunication system of a party as a result of providing interconnection must not be disclosed to any Person involved in the

development or provision of retail services of the other party or its subsidiaries or Affiliates.

- 19.3 Confidentiality provisions of an Interconnection Agreement must not prevent or frustrate the public disclosure of any Interconnection Agreement including its publication in accordance with clause 20.

## **20. TRANSPARENCY OF AGREEMENTS**

- 20.1 Each Interconnection Provider shall make any Interconnection Agreement it has entered into publicly available, including disclosure of all interconnection rates and charges, by filing a copy of the agreement with the Authority and either publishing the agreement on its website or providing copies on request by any Interconnection Seeker. Interconnection Providers shall be entitled to charge their reasonable costs of preparing copies of Interconnection Agreements.
- 20.2 If required by the Authority, acting in accordance with clause 21.7, a Major Operator shall also publish a standard form of Interconnection Agreement (a "Reference Interconnection Offer" or "RIO") setting out the terms and conditions under which it will provide interconnection to one or more types of licensees. Each RIO shall be prepared in accordance with the timing and other requirements identified by the Authority, shall include the terms and conditions described in and otherwise be consistent with, these Guidelines and shall be submitted to the Authority for its approval. Once approved, each RIO shall be made publicly available by the Major Operator by either publishing the RIO on its website or providing copies on request by any Interconnection Seeker. The Major Operator shall be entitled to charge its reasonable costs of preparing copies of its RIO.

## **21. DISPUTES, ENFORCEMENT AND OTHER PROCEDURES**

- 21.1 The requesting party shall advise the Authority of any new request for interconnection, or any request for amendment of an existing Interconnection Agreement.
- 21.2 Prior to an Interconnection Seeker or Interconnection Provider referring a dispute as to reasonableness or inability to negotiate to the Authority for a formal determination, either party may request the Authority's assistance in resolving the dispute through mediation.
- 21.3 Disputes between Interconnection Seekers and Interconnection Providers as to the reasonableness of a request for interconnection, or any request for amendment of an existing Interconnection Agreement, are to be referred by one or both of the parties to the Authority for a decision as to the reasonableness of the request.
- 21.4 Where an Interconnection Seeker or Interconnection Provider alleges that another Interconnection Seeker or Interconnection Provider is unwilling to negotiate or agree on any term or condition on which interconnection is to be provided, the issue shall be submitted to the Authority for consideration.
- 21.5 An Interconnection Agreement must make provision for the Authority's determinations to be applied retrospectively to the date on which a dispute is notified to the Authority.



21.6 Where an Interconnection Seeker or Interconnection Provider, or any other Person, alleges that there has been a contravention or failure to comply with:

- (a) the provisions of the Telecommunications Act;
- (b) the appropriate guidelines; or
- (c) an Interconnection Agreement,

then the Authority shall investigate and make a decision in response to the allegation.

21.7 The Authority may issue decisions, determinations or additional guidelines regarding interconnection from time to time, including the requirements of interconnection among particular categories of licensees or in particular Telecommunications Markets, or the calculation of charges for Essential Services. The Authority shall publish any additional or revised guidelines in the *Gazette*, and shall provide a period of at least thirty (30) days for public comment or consultation prior to adopting same. The Authority shall provide reasons for any decisions or determinations relevant to interconnection, and shall otherwise comply with the procedures and other requirements of the Telecommunications Act.

21.8 Failure to comply with the requirements of these and any additional interconnection guidelines or determinations shall be subject to the enforcement provisions of the Telecommunications Act. The Authority, acting in accordance with clause 21.7 and the Telecommunications Act, shall be entitled to prescribe specific penalties for failure to comply with these Guidelines, any related decisions or determinations of the Authority or any Interconnection Agreement.

21.9 Subject to the transition period and process for cost based interconnection charges described in clause 12 above, or any other transition period or process approved by the Authority, any term or condition of any Interconnection Agreement that does not comply with the Telecommunications Act or these Guidelines shall be unenforceable between the parties and shall have no legal effect to the extent of its non-compliance.

## **22. REPEAL**

22.1 The Interconnection Guidelines published in Notice 1259 of 2000, as supplemented by the Supplementary Interconnection Guidelines published in Notice 3457 of 2002, are hereby repealed.

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