Subject: Portfolio Committee on Communications (PCC) - submission on interconnection rates [resent, reformatted]
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Portfolio Committee on Communications (PCC)
Parliament of the Republic of South Africa
FAO: Committee Secretary, Ms Noluthando Skaka

Submitted by e-mail to nskaka@parliament.gov.za on 2009-09-22

Honourable Members,

I am writing this brief submission by e-mail, in response to a call for comment on the regulation of interconnection rates for mobile telephony in South Africa, entirely in my personal capacity and the views contained therein do not in any way represent those of my employer(s).

Academics in South Africa and abroad, including myself, have written and discussed the issue of South Africa's unseemly interconnection rates (at length) for several years now. Collusion among operators has indeed almost certainly, as pointed out in the PCC hearings, been a major factor in keeping retail prices for mobile and fixed telephony at unacceptably high levels. However, I cannot agree with the Committee in casting blame on operators who are said to have "placed profits and greed above people."

Operators have a primary responsibility to their shareholders and if the legal and regulatory framework allows collusion that increases profits to these shareholders, then the operators would have been derelict in their duty had they not engaged in such collusion. The failure to create a more competitive environment, compliant with the Constitution, should be laid at the door of the /authorities/ responsible for (not) ensuring a well-functioning regulated market. Indeed, in 2005, Alison Gillwald (then Professor at Wits) warned the PCC that under the new Act

> "with the retention of certain regulatory and licensing powers by the Ministry, together with some of the necessary provisions of the ICASA Amendment Bill not being in place, the constitutionally required independence required for the broadcasting regulator in Section 192 of the Constitution of the Republic of South Africa is probably not met."

Nevertheless, I welcome the fact that the PCC – presumably in response to growing public awareness of the issue and Namibia's action in this regard – has decided to re-examine the regulation of interconnection rates. Although it is unusual for a parliamentary committee to involve itself in such minutiae of sectoral regulation, it is clear that institutional failure has occurred on a serious scale.

I briefly comment, then, on the three specific proposals emanating from the Committee.

1. The almost immediate reduction of interconnection rates to R0,60 per minute by 1 November: The proposed interconnection rate would not be regarded as excessive by many and although such a degree of price control is quite drastic and abrupt, it would send a good signal. The Committee should however keep in mind that several small businesses have been established to provide services based on the existing high termination rates, e.g. free forwarding of calls to landlines abroad from a cellphone number, a service provided by Vox Telecom under the Vox Vaya brand and by several other smaller operators. A drastic reduction of the interconnection rate would destroy the business model for these services. The Committee should also keep in mind that any reduction in the mobile termination rate should not be done in a way that is skewed to the advantage of one or two large operators, specifically Telkom, whose dominance of the sector has always

been excessive and problematic.

2. A further staggered reduction in the interconnection rates to R0,15 in 2012: This proposal strikes one as rather too specific and prescriptive. It would completely preclude, for example, the *elimination* of interconnection rates, as in Hong Kong. Should the PCC wish to prescribe a specific remedy, it could probably have more effect by restricting its recommendation to (1) and revisiting the issues in 2010. Determining a more comprehensive and far-reaching framework for interconnection pricing should be left to ICASA and/or the Competition Commission, with due attention to the urgency of the situation.

3. Competition would ensure that a reduction in the interconnection rate will feed through to retail tariffs and it is unlikely that any specific recommendation in this regard is required. Virgin Mobile (VM) already offers on-network calls for R0,99 (all day), which demonstrates what the market mechanism can achieve if simply given the opportunity. Unfortunately the prevailing interconnection rate prevents VM (and others?) from offering similarly low rates for cross-network mobile-to-mobile calls, which make up bulk of calls for a majority of the population. In an extensive comment, in response to a notice from ICASA in the Government Gazette 27854 of 28 July 2005, the Competition Commission has also held that in SA the telecommunications retail prices do not necessitate regulation.

In summary, I suggest the PCC *not* consider going any further than the recommendation (1). I would rather urge the Committee to consider competition issues in the sector in general, e.g. the impediments to access and choice created by the Regulation of Interception of Communications and Provision of Communication-Related Information Act (RICA) which has made it considerably more difficult for consumers to acquire additional SIM cards and is reported to have become an impediment to mobile number portability. The Committee might also want to consider barriers to entry to possible new mobile operators in geographic areas where spectrum is available. It might, indeed, want to look at the advantages of fully liberalizing the use and management of spectrum in South Africa.

I am grateful to the Committee for considering this submission.

Yours, faithfully.

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