Ruling on the appeal by KenCell Communications Limited (now Celtel Kenya) over interconnection rates for payphones in the matter between KenCell and Telkom Kenya Limited - 31st October 2001

On 6th August, 2001, M/s. KenCell Communications Limited (hereinafter referred to as KenCell) wrote to the Communications Commission of Kenya (hereinafter referred to as the Commission) informing it that the protracted discussion between themselves and M/s. Telkom Kenya Limited (hereinafter referred to as TKL) had broken down and that they were unable to reach any agreement on an appropriate local call interconnection rate for payphones.

The Commission on February 2000 granted KenCell a licence for the provision of Mobile Cellular services throughout the Republic of Kenya for a period of fifteen (15) years renewable for a further period of ten (10) years. As a condition of the grant of the licence for operation of the said services, the Commission enjoined KenCell to install Payphones as part of its Universal Service Obligation of ensuring that telecommunication services were availed to all Kenyans at reasonable rates. This licence was granted pursuant to section 25 of the Kenya Communications Act, 1998 (KCA).

Consequent upon the grant of the licence KenCell commenced mobile services in September, 2000 and were expected to commence payphone services in November, 2000 and roll-out a total of 300 payphones by 31st December, 2001.

On 12th March, 2001, KenCell informed the Commission that they were unable to start providing services on their already installed payphones in Nairobi due to inability of TKL to accept a negotiated interconnection rate of Kshs. 0.86 cents per minute as discussed and agreed at between the two companies' technical working teams during the meeting of 14th September, 2000 that was attended by Miss Claire Ruto of Kencell and Mr. S. Abdalla, and M. J. A. Bett of TKL. The minutes were signed by both parties.

The two parties held a series of other meetings culminating in the meeting of 16th July, 2001 chaired by the Commission to seek an amicable agreement to the stalemate on interconnection rates for payphones. At this meeting the parties agreed to hold a further meeting to seek for a common and mutually agreeable interconnect rate.

In their letter of 16th August, 2001, Kencell have appealed to the Commission to arbitrate on the issue of local call Interconnect rates for payphones as they were unable to reach an amicable agreement with TKL.

The Commission wrote to TKL on 18th August, 2001 informing them of the grievances of KenCell and requesting them to make submissions to the Commission. TKL wrote to the Commission on 22nd August, 2001 disputing the contention of Kencell that, there had arisen a disagreement and informing the Commission that the tariff for interconnection for payphones proposed by KenCell of Kshs. 1.67 was not agreeable to them as accepting the said tariff would amount to TKL subsidizing the customers of Kencell which would not make business sense.

It was a further contention of TKL that the interconnection rates ought to be cost- based and commercially feasible. TKL also pointed out that a different tariff regime for payphones would require the parties to update each other's records any time a new payphone number is added to the network.

In the same letter TKL sought to know whether a formal dispute had been registered by Kencell and that they ought to be given thirty (30) days as required by the Kenya Communications Regulations, 2001 (KCR). The Commission wrote on 3rd September, 2001 granting TKL the time required and also wrote to KenCell on 10th September, 2001 requesting them to confirm that they had registered a dispute with the Commission.

The Commission has not received any response from TKL within the stipulated time period of thirty (30) days and M/s. Kencell have written to confirm that they are unable to put to service the installed payphones which, they further claim were now being vandalized for want of service by the public.

After having received no formal response from TKL and in the interest of bringing this matter to finality the Commission would like to make the following observation arising from the above observations:

1. The provision of payphone services is based on the principle of Universal Service Obligation, which is a social need whose cost must, of necessity, be borne by all licensed Telecommunications Operators.
2. The ability to prescribe appropriate prices for each service stream must be backed by requisite costing data which the Commission had, requested both parties to submit as a basis for working out an interim payphone interconnect charge. In the absence of the requisite cost structures, interconnect charges should be based on retail price which should also consider unbundling and apportioning charges according to the leg of the network used to transport payphone traffic to the other network.
3. The Commission acknowledges that the current retail price of Kshs. 5.00 per unit on TKL's network is subsidized. It is also equally correct to state that TKL's tariff on long distance and international do not reflect cost of the service. The contention of TKL that it will be subsidizing another network fails to take cognizance of the fact that they will equally be charging rates in the long distance and international service stream on the customers of KenCell that do not reflect cost of providing that service.
4. It is recognized in the Regulations and in particularly section 38 (1) a, d that the rates charged for interconnection should not vary on the basis of the class of customers to be served and that there shall not be no less favourable treatment of customers of an interconnect provider and those of the requesting party.
5. Further, the Commission notes that the contentious price of Kshs. 1.67 is for a complete end to end call and the element of subsidization may not apply in the case of provision of interconnect capacity as the interconnect seeker will only use a portion of TKL's network to relay its traffic.

In the interest of the provision of Telecommunications services from the already installed payphones and in pursuance to section 25 (2) b of KCA (1998) and section 47 of the Kenya Communication Regulations, the Commission directs as follows:

1. That the proposed interconnect rate of Kshs. 1.67 for local payphone calls be applied for KenCell local payphone calls terminating on the TKL network as an interim interconnect rate with effect from 1st November, 2001 to facilitate commencement of the payphone services by KenCell.
2. That TKL and KenCell endeavour to continue to negotiate as KenCell proceeds to provide payphone services on the already installed payphones and that an interconnect agreement to be filed with the Commission for approval within three (3) months from the date hereof.
3. That KenCell supply to TKL all the payphone numbers on their network and to continually update TKL's records on installation and activation of such numbers.