SHORT MESSAGE SERVICES (SMS) INTERCONNECTION TERMINATION RATES: "*ADDENDUM TO INTERCONNECTION DETERMINATION NO. 2 OF 2010*".

1. INTRODUCTION

The Commission issued the Determination No. 2 of 2010 on pure LRIC based Interconnection Rates for Fixed and Mobile Telecommunication Networks in the Republic of Kenya on 16th August 2010. The Determination was made under the Kenya Information and Communications Act, 1998 and as amended by the Kenya Communications (Amendment Act, 2008 (hereinafter referred to as "the Act") and the Kenya Information and Communications Regulations, 2010 (hereinafter referred to as "the Regulations").

The Determination No. 2 of 2010 noted that the negotiated wholesale termination rates for mobile Short Message Service (SMS) were way above the incremental costs of providing these services across networks as established through the network cost study which limited the scope for passing cost benefits to consumers through lower retail SMS prices.

The network cost study objectively established the incremental cost of offering mobile SMS termination services for an efficient operator in Kenya at Ksh.0.015 per SMS while the prevailing negotiated termination rate among operators was Ksh.2.00 per SMS. Due to this large discrepancy between what it costs operators in offering SMS termination services and what they are actually charging for these services, the Network Cost Study recommended negotiation of lower mobile SMS termination rates by the operators guided by the incremental costs of offering the services. Consequently, the Determination No. 2 of 2010 directed all operators to re-negotiate and file with the Commission lower mobile SMS termination rates within a period of three (3) months to reflect the incremental costs of offering SMS termination services.

2. RE-NEGOTIATION OF NEW SMS TERMINATION RATES

Following the issuance of the Determination No. 2 of 2010, all operators ought to have reached an agreement and submitted new mobile SMS termination rates on or before 16th November 2010. While the operators commenced negotiations with a view to reaching consensus and agreement on new SMS termination rates, no consensus and agreement had been reached by all the parties at the end of the negotiation period.

The Commission received communication from Zain Kenya Limited (now Airtel Networks Kenya Limited) dated 30th September 2010 expressing reservations about the possible outcome of the negotiations between operators with respect to new mobile SMS interconnection rates and called on the Commission to review its stand on the matter and guide the industry on the appropriate interconnection rate for SMS. In particular, the operator averred that the lowest SMS retail tariffs were Ksh.0.20 per SMS and indications were that operators would settle on a higher interconnection rate than the lowest SMS retail tariff.

The Commission received further communication from Airtel Networks Kenya Limited (Airtel) dated 12th November, 2010 to the effect that the industry was now unable to agree on new mobile SMS termination rates as guided by the Determination No. 2 of 2010 and sought the Commission's overt intervention in that regard. In their letter, Airtel brought to the attention of the Commission that an SMS termination rate of Ksh.0.60 per SMS had been suggested by some of the other operators and discussed during the negotiations but Airtel considered this rate too high relative to the pure Long Run Incremental Cost (Pure LRIC) of about Ksh.0.015 per SMS. In addition, Airtel noted that since SMS and Voice services are in the same market and therefore constrain one another, keeping wholesale SMS costs high in an environment where voice charges have significantly reduced will reduce SMS traffic as consumers move to the voice market with costly redundancies in SMS equipment installed by the industry. Moreover, the operator indicated that a wholesale SMS tariff of Ksh.0.60 per SMS was no longer tenable in a commercial environment where some operators were already retailing SMS at as low as Ksh.0.20 per SMS.

On 18th November 2010, the Commission received a duly executed deed of variation between Safaricom Limited and Telkom Kenya Limited dated 18th November 2010 with a new wholesale SMS termination rate of Ksh.0.60 per SMS.

On 19th November 2010, the Commission wrote to the operators reminding them of the lapse of the time period within which they were expected to file new SMS termination rates and also acknowledged correspondences by Airtel and Safaricom on this matter.

The Commission received communication from Essar Telecom Kenya Limited (Essar Telecom) dated 23rd November 2010 acknowledging the Commission's letter of 19th November 2010 and informing the Commission that Essar Telecom, Safaricom and Telkom Kenya had reached an informal agreement on a new SMS termination rate of Ksh.0.60 per SMS to be reviewed every July. However, the letter indicated that no agreement had been reached with Airtel and Essar Telecom was therefore unable to execute the Deed of Variations in the absence of consensus since the SMS market must have one termination rate.

Moreover, the Commission received communication from Safaricom dated 23rd November 2010, notifying the Commission that Safaricom and Telkom Kenya had already filed a Deed of Variation as required with new SMS termination rate. In the same letter, Safaricom informed the Commission that the SMS terminate rate of Ksh.0.60 per SMS contained in their Deed of Variation with Telkom Kenya had been arrived at through consensus by all operators but Essar Telecom and Airtel, for reasons best known to them, had reneged on the agreed position and refused to execute the Deed of Variation.

In an attempts to ascertain whether there had been an agreement by operators on new SMS termination rate of Ksh.0.60 per SMS and that Essar Telecom and Airtel had reneged on an agreed position as alleged by Safaricom, the Commission, vide a letter dated 29th November 2010 to Safaricom and copied to Telkom Kenya, Essar Telecom and Airtel, amongst other issues requested Safaricom to furnish the Commission with collaborative information to confirm that indeed there had been an agreement with respect to an SMS termination rate of Ksh.0.60 per SMS.

The Commission received communication from Telkom Kenya dated 7th December 2010, making reference to the Commission's letter of 29th November 2010 to Safaricom and copied to themselves, forwarding a series of correspondences and copies of emails between representatives of the operators that were involved in the negotiations as evidence of agreement between the operators on the new SMS termination rate of Ksh.0.60 per SMS and requesting the Commission to direct all operators to comply with this agreement.

In addition, the Commission received communication from Airtel dated 20th December 2010, acknowledging the Commission's letter of 29th November 2010 and confirming that indeed two meetings had been held on 12th October 2010 and 3rd November 2010 at Safaricom House and Orange Telkom offices respectively with the objective of reviewing the SMS termination rates. In the letter, Airtel indicates that various proposals were deliberated on both the SMS termination rate and the effective dates but there was no agreement on both of them necessitating the operator to request the Commission to intervene.

3. NEW SMS TERMINATION RATES

The Commission in its ruling on the new SMS termination rates is guided by the results of the Review of the Network Cost Study conducted by the Communications Commission of Kenya through an independent consultant (Messrs. Analysys Mason) between the months of March and July 2010 and the recent developments in the market following the issuance of the Determination No. 2 of 2010.

The findings of the Review of the Network Cost Study arrived at a conclusion that the market for mobile SMS termination is characterized by a series of monopolies such as SMS termination market. The pure LRIC model applied in the study calculated the SMS termination costs for an efficient operator in Kenya to be Ksh.0.015 per SMS relative to the prevailing SMS termination rate of Ksh.2.00 per SMS. The study therefore recommended commercial re-negotiation of lower SMS termination rate to reflect the efficient cost of providing the service.

The Determination No. 2 of 2010 issued by the Commission on 16th August 2010 upheld this spirit and requested the operators to re-negotiate new SMS termination rates primarily guided by the pure LRIC termination costs established through the Network Cost Study.

4. COMPLIANCE WITH THE LAW

This Addendum to the Determination No. 2 of 2010 is made in conformity with the Act. The Commission has taken into consideration all the factors stipulated under sections 23 (2) (a), (b) & (c) and 25 (3) (b) of the Act; and the Kenya Information and Communications (Interconnection and Provision of Fixed Links, Access and Facilities) Regulations, 2010, the Kenya Information and Communications (Tariff) Regulations, 2010 and the Kenya Information and Communications (Competition and Equality of Treatment) Regulations, 2010.

5. THE DETERMINATION

Having considered all the above factors and taking due regard to the mandate of the Commission to, among others, promote the development of a competitive market in the telecommunications sector in Kenya:

5.1 the Commission Notes that:

a) Despite the efforts by mobile telecommunication operators in the Republic of Kenya to reach consensus and agreement with respect to new SMS termination rate in line with the Determination No. 2 of 2010 issued on 16th August 2010, the operators were unable to agree on the new SMS termination rate;

b) While Essar Telecom, Safaricom and Telkom Kenya indicate that they reached agreement on the new SMS termination rate of Ksh.0.60 per SMS and Safaricom Limited and Telkom Kenya Limited filed a duly executed Deed of Variation with the Commission, Airtel Networks Kenya Limited

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has denied that there was consensus and agreement on the SMS termination rate of Ksh.0.60 per SMS and requested the Commission to provide direction in this respect. This position is collaborated by the letter from Essar Telecom Kenya Limited to the Commission that indeed there was no agreement with Airtel Networks Kenya Limited;

c) Submission of correspondences and e-mails between and amongst the negotiating officials by Telkom Kenya Limited are not by themselves an affirmation of consensus and agreement on the SMS termination rate of Ksh.0.60 per SMS in the absence of official seal or endorsement by all the interested parties;

d) For orderly and efficient operation, the wholesale SMS market must have a single SMS termination rate and it is improbable that the market can have an SMS termination rate of Ksh.0.60 per SMS for a section of operators and another rate for another operator;

e) While some SMS bundles are currently retailing at Ksh. 0.20 per SMS on-net, on-net tariffs do not recover wholesale termination charges and cannot therefore be used as a basis for setting termination charges in the spirit of Regulation 12 of the Kenya Information and Communications (Interconnection and Provision of Fixed Links, Access and Facilities) Regulations, 2010; and

f) The overriding motivation for the Commission in this regard is to promote efficient service delivery and competitive pricing of SMS services by ensuring that operators recover prudently incurred costs in the monopolistic wholesale market as guided by the Network Cost Study.

5.2 the Commission Determines that:

a) All mobile telecommunication operators in the Republic of Kenya shall immediately implement the SMS Termination Rates stipulated in **Table 1** below on the effective dates indicated therein;

Table 1: SMS TERMINATION RATES FOR MOBILE OPERATORS

SMS Termination rates				
	Effective 1st January 2011	**Effective 1st July 2011**	**Effective 1st July 2012**	**Effective 1st July 2013**
Nominal Ksh. per SMS.	0.60	0.20	0.10	0.05

b) In arriving at these SMS termination rates and the attendant glide path, the Commission has been guided by the regulatory objective of attaining efficient SMS termination costs within a short time while allowing operators time to adjust their business plans;

c) All operators are at liberty to negotiate lower SMS termination rates subject to the capped rates provided in Table 1 above; and

d) All operators are required to enter into new SMS Interconnection Agreements and submit the same to the Commission by 31st January 2011.

Dated this 30th day of December, 2010

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Charles J.K. Njoroge

DIRECTOR-GENERAL

COMMUNICATIONS COMMISSION OF KENYA