

THE RIGHT2 COMMUNICATE



RIGHT2KNOW

**ACTIVISTS'
GUIDE**



THE RIGHT2 COMMUNICATE

If you are reliant on cellphones, telephones and the internet to communicate, but are forever out of airtime or can't be in touch because of network issues, and you want to do something about these problems, then this handbook is for you.

Our right to know will remain incomplete if our struggle is limited to securing access to information alone. We must struggle to ensure that information flows freely in society so that the basis of our social dialogue deepens democracy and advances social, economic, and environmental justice. Our right to communicate – to receive and impart information and opinions – is central to our right to know.

Noting the lack of media diversity – especially outside of our cities – we are encouraged by the estimation that 82.9% of people living in South Africa already have access to cell phones and that this number is growing. This high level of cell phone access represents a great opportunity for South Africa to advance the right to communicate. The cell phone potentially brings with it all the advantages of the democratising potential of the internet, including the ability to draw on vast amounts of knowledge as well as the ability to produce and upload content that can give a voice to those marginalized in society.



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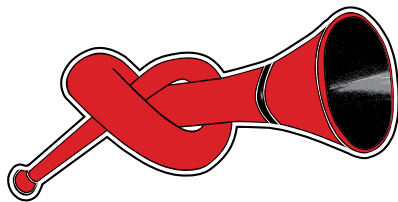
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Activists' Guide

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INTRODUCTION

Why the need for this guide?

How do you feel about the cellphone companies like Vodacom, MTN, Cell C and 8ta? Do you feel that they provide you with good service? Probably you've had the experience of trying to make a call, and the call has dropped, or you have been unable to get a signal at all.

But even if you can get a signal, can you afford the cost of airtime? How often have you found yourself having to decide to spend money on airtime to make a crucial call that may bring you a job or a study opportunity, instead of spending it on basic necessities like food? When you have bought a cellphone, how long does it last before it breaks? Can you afford to access the internet, to use Facebook for instance to communicate with your friends? If you are politically active, how easy or difficult is it for you to organise using cellphones? Do you have to rely on missed calls or 'please call me's' to do your activism because you cannot afford airtime? And if so, how effective is your organising?

If you have found that you are becoming increasingly reliant on cellphones, telephones and the internet to communicate, but are unable to connect because of the costs to communicate or network issues, and you want to do something about these problems, then this handbook is for you.

Our right to know will remain incomplete if our struggle is limited to securing access to information alone. We must struggle to ensure that information flows across society and that information forms the basis of a social dialogue that deepens our democracy and advances social, economic, and environmental justice. Our right to communicate – to receive and impart information and opinions – is central to our right to know.

Noting the lack of media diversity – especially outside of our cities – we are encouraged by the estimation that 82.9% of people living in South Africa already have access to cell phones and that this number is growing. This high level of cell phone access represents a great opportunity for South Africa to advance the right to communicate.

The cell phone potentially brings with it all the advantages of the democratizing potential of the internet, including the ability to draw on vast amounts of knowledge as well as the ability to produce and upload content that can give a voice to those marginalized in society.

This handbook will cover the following:

- The history of the right to communicate in South Africa: why does the communications landscape look the way it does?
- The current state of the right to communicate in South Africa: why are costs so high and why is the internet still so inaccessible?
- Campaigning ideas on the right to communicate..

Freedom of expression, access to information and the right to communicate

Communication is a basic part of being human, as we are by nature social beings. Technological developments have made it easier for us to communicate with one another. When the telephone was invented in the nineteenth century it meant that people could communicate with one another over long distances. More recently the invention of mobile cellphones and internet-based social media services such as Facebook and Twitter, make it theoretically possible for people to keep in touch anytime and from anywhere..

According to the South African Constitution, ‘...Everyone has the right to freedom of expression, which includes

- (a) freedom of the press and other media;
- (b) freedom to receive or impart information or ideas;
- (c) freedom of artistic creativity; and
- (d) academic freedom and freedom of scientific research.’

The Constitution also guarantees the right of access to information. According to the Constitution, everyone has the right of access to:

- (a) any information held by the state; and
- (b) any information that is held by another person and that is required for the exercise or protection of any rights.

The Constitution also states that national legislation must be enacted to give effect to this right, and may provide for reasonable measures to alleviate the administrative and financial burden on the state. The Act that has been passed which gives effect to this right is the Promotion of Access to Information Act.

Clearly it is not possible to receive or impart information or ideas if the costs to communicate are too high or communication networks inaccessible. So there is a strong argument to be made that freedom of expression and access to information include the right to access the means of communication. As a result, it is your constitutional right to demand communications services that are universal, which means that they are accessible, available and affordable.

While it is not explicitly recognised by the South African Constitution, communications activists often argue for a broader 'right to communicate'. This covers not only the right to freedom of expression, which guarantees your right to speak free from censorship, but also argues for the right to access the means of communications. In the absence of having access to the tools of communication, the rights to freedom of expression and access to information can quickly become rights that can only be practiced by the media owners or those with access to resources. The right to communicate addresses these problems.

LONG TALK TO FREEDOM

Right2Know, Cape Town
27 October 2010



SECTION ONE

History of the right to communicate in South Africa

The communications landscape under apartheid

Under apartheid, when cellphones and the internet did not exist, people relied on landline telephones to communicate. Telephones were provided by an integrated parastatal, the South African Posts and Telecommunications (SAPT). At that time, the communications landscape under apartheid was skewed towards white areas, which formed part of the regime's policy of providing services such as telephones, electricity and water universally to whites. Very few telephones were rolled out to the townships; in fact, by the 1980s, telephone access for black communities was less than a tenth of that for white communities. SAPT also provided sheltered employment for many whites, because of the regime's job reservation policy for whites.

But this setup started changing in the early 1990s, when the F.W. de Klerk regime unbanned political organisations and entered into negotiations with sections of the liberation movement. Realising that the country could no longer afford to be so internally focussed, the regime began to adopt neoliberal policies to make the economy globally competitive. This included commercialising key state institutions and preparing them for privatisation, so that they could compete globally. But they could not embrace neoliberalism fully under apartheid, as sanctions prevented apartheid South Africa from trading with other countries, although several countries ignored sanctions and traded anyway.

This was one of the key factors that drove de Klerk to the negotiating table; the 'reformists' in the regime recognised that they needed a negotiated settlement that would give the country political legitimacy through the dismantling of apartheid, while ensuring that the commanding heights of the economy remained largely in white hands.

The communications sector was also affected by the regime's introduction of neoliberalism. By that stage, the SAPT was in debt, having spent a great deal of money keeping up with technological advances while its customer base remained small. The government then decided to separate posts and telecommunications, remove them from direct government control and make them more market-orientated by commercialising them to prepare them for privatisation. As a result, the government established Telkom as a publicly owned but commercial company. At that stage, the quality of calls was quite high and the costs of local and business calls quite low by international comparison, while international call costs were high (Horwitz: undated).

While attempts to privatise Telkom were put on the backburner during negotiations, the regime did go ahead and licence two cellphone companies on the eve of the transition to democracy: Vodacom and MTN. Telkom received half of the Vodacom licence. While the African National Congress (ANC) objected initially, the apartheid government awarded and issued the licences.

The transition to democracy and communications transformation

The upshot of the transition was that the democratic South Africa inherited a debt-ridden, inefficient Telkom and a landline network skewed towards white areas, but that was attempting to address these problems by embracing neoliberal policies to make the sector market-driven. The risk that the telecommunications sector would simply pass from state control to market control – where money rather than skin colour became the determining factor in whether South Africans could access a telephone – was great.

However, the authors of the Reconstruction and Development Programme (RDP) attempted to reduce this risk by aiming to provide universal, affordable access to telecommunications, while modernising the network. The RDP also required Telkom to roll out landlines to all schools and clinics and gradually expand its network across the country (RDP 1994).

After the transition, a consultative process began about the future of the telecommunications sector, but the transformation of telecommunications quickly ran into trouble and the government soon started to impose decisions as it shifted from the developmental objectives of the RDP to the neoliberal Growth, Employment and Redistribution (GEAR) policy in 1996. Controversially, the government pushed for a partial privatisation of Telkom to finance its network expansion, and sold a 30% stake to Telekom Malaysia and the United States-based SBC Communications (Batidzirai 1999).

During this time, a new Telecommunications Act was also promulgated and new institutions were set up, including the telecommunications regulator, the South African Telecommunications Regulatory Association (SATRA) and the Universal Service Agency (USA), with a mandate to ensure universal access (or public access) and universal service (private access) to telecommunications. The USA administers a universal service fund – funded by the telecommunications operators – designed to fund projects to achieve universal service and ensure telecommunications reached what the Agency called ‘needy people’.

The USA was set up as a compromise with the union movement to get them to agree to Telkom’s partial privatisation. Initially the unions opposed the privatisation on the basis that it would lead to job losses and make telephones unaffordable to the poor if Telkom operated strictly on a commercial basis. The government argued that the USA would lessen these risks by ensuring that universal service and access were achieved in spite of privatisation. It also gave Telkom a five year period of exclusivity to protect it from any competition. In return the company was expected to expand its network to poor and underserved areas.

Telkom and privatisation

The privatisation of Telkom failed to achieve this objective of network expansion. The company’s foreign investors extracted a large amount of profit from the company. This was made possible by the fact that the company was commercialised even more after privatisation. The cost of local calls was gradually increased and the cost of international calls decreased to lower the costs of doing international business. Workers were also retrenched.

While the company did roll out many lines to underserved areas, many of these were disconnected as people could not afford the costs of the service as costs increased. From 1999 to 2002, the cost of local calls, which the poor used more, increased by 35% (Mostert 2002). Forty percent of the new phone lines that Telkom delivered from 1997 to 2001 were subsequently disconnected (COSATU 2002), largely because of the profit-taking of the foreign investors, who sold off their shares in the early 2000s after having extracted massive profits. The regulator, which by that stage had been merged with the broadcasting regulator to become the Independent Communications Authority of South Africa (ICASA) was also too weak, underfunded and incapacitated to respond, which allowed Telkom to get away with murder.

The Universal Service Agency (USA)

The USA was not required by law to achieve universal service in any particular way. However, the Agency was strongly encouraged by the government to set up telecentres as its main activity. Telecentres are public facilities that provide telephone, computer, copying and internet access to enable people to communicate. By 2000, 65 telecentres were established across South Africa, mainly in poor areas. Most were owned by community centres and small businesses and were meant to provide access to telephone services, computers and the internet and photocopiers.

However, also by 2000, about a third of these were not operating. Less than half the telecentres had computers and working internet access, and less than a third demonstrated that they had a reasonable chance of self sustainability, meaning that most would require external assistance in order to survive over the longer term (Benjamin 2003: 6-7).

One of the problems was that telecentres were expensive to run as they offered multiple services, yet many could not afford or did not know how to use the more sophisticated services like the computers and internet, which led to these services remaining underutilised. Many communities were so poor that they could not afford to sustain a telecentre without ongoing subsidy, and the USA model tended to assume that telecentres could become financially self-sustaining. This equipment was provided irrespective of local needs, which led to a top-down approach towards communications development (Benjamin 2003: 10-14).

The universal service fund was never put to proper use. One of the reasons was that the USA failed to come up a satisfactory definition making clear who would be considered 'needy people', and therefore beneficiaries of the fund, and who would not fall in this category. This is because poverty levels in South Africa are so high that many people can be considered needy and in need of subsidy. As a result, this aspect of the USA's mandate was never really operationalised.

The USA was re-named the Universal Service and Access Agency of South Africa (USAASA), but it remains largely ineffective. This has been blamed on the fact that it lacks independence from government, leading to political interference, and poor conceptualisation of its powers and functions.

Conclusion

After a reasonably promising start, South Africa's government-led telecommunications transformation turned largely into a disaster. Landlines became so expensive that most could not afford them, leading to the cellphone companies going for the gap and rolling out networks across the country. Now, the people who have access to a landline are in a minority. The commercialisation and privatisation of Telkom, which should have increased access to the network, did the opposite, and the state institutions tasked with regulating and subsidising universal telecommunications have failed to intervene effectively. The history of these weaknesses is important to understand because it helps us to understand why telecommunications looks the way it does today.

Activist discussion points

What lessons can be learned from this history of telecommunications transformation in South Africa? What was done well, what was done badly, and what should have been done differently?

Some critics have argued that the reason why Telkom was allowed to make massive profits at the expense of people was because competition to Telkom was not introduced at the time that it was commercialised and partly privatised. Do you think this would have helped to drive down prices, extending network access to poor areas and preventing Telkom from excessive profit-taking?

Solidarity with Egypt

An illustration of a woman wearing a pink hijab and a dark long-sleeved top. She is holding a black mobile phone in her right hand, which is raised towards the top left of the frame. The background consists of numerous red and white lines radiating from a central point, creating a sunburst or starburst effect. The overall style is graphic and bold.

SECTION TWO

The current state of the right to communicate in South Africa

This section gives an overview of the current state of the right to communicate in South Africa, including some of the barriers to using this right. This chapter will focus particularly on the right to communicate through telecommunications rather than through the traditional media: that is, through landline telephones, cellphones and the internet, rather than through radio, television and newspapers. Media rights are dealt with in a separate handbook. It will also focus mainly on the impact of affordability on the right to communicate.

As mentioned earlier, freedom of expression and access to information are constitutionally guaranteed rights and include the right to receive or impart information and ideas. This means having access to the means of communication. In South Africa, because of the failure of Telkom and various government agencies to achieve universality in communications, cellphone companies have stepped into the gap (Gillwald 2001: 175–176). Cellphone penetration grew massively when Vodacom pioneered a prepaid option in 1996, and in time cheaper airtime options were introduced where subscribers could buy airtime for R5 and even R2. By 2012, 82.9% of the population owned or used a cellphone (SAARF 2012), and the majority of these used their cellphones on a prepaid basis.

Vodacom is the largest cellphone company, followed by MTN, Cell C and 8ta. The last two have only 16% of total cellphone subscribers. In contrast, the number of fixed line phones has been declining, with fixed line penetration at a mere 7.5% of the population in 2012 (McLeod 2012). Nokia and Blackberry dominate the local market, the latter because it incorporates data into its pricing structure. 20% of all mobile phones in South Africa are smartphones, with the remainder of the population owning basic or intermediate phones (Tubbs 2012).

There is disagreement about the number of internet users in South Africa. According to World Wide Worx, South Africa's internet user base grew 25% from 6.8 million in 2010 to 8.5 million at the end of 2011, which means that penetration is approaching 20% of the population, but access is unevenly spread across the country. Yet according to a more recent study by Indra de Lanerolle, the number of internet users is higher, with

one in three people in South Africa, or 12.3 million people, accessing the internet, and more than half the population should be online by 2014 (de Lanerolle 2012: 6). Internet access can either be through the fixed line network (using a dial-up or a broadband connection), through wireless radio, or Wi-Fi, or through the cellphone network (using second generation, third generation or fourth generation networks, or 2G, 3G or 4G respectively).

Social media are becoming more widely used, including among poorer South Africans, with Facebook and instant messaging services like Mxit and WhatsApp gradually replacing SMS as methods of sending and receiving messages (Gillwald, Milek, and Stork 2012). Of the total user base, 7.9 million access the internet on their cellphones, with the majority accessing the internet both on their cellphones and through computers, laptops or tablets (SAPA 2012).

There are disparities between men and women in cellphone and internet usage. According to Research ICT Africa, by 2007/8, more women than men owned cellphones, although for every one woman that accessed the internet, two men accessed it. Women spend more of their disposable income than men. Women tend to use cellphones largely to receive calls or to send missed calls, as buying airtime impacted on household budgets (Gillwald, Milek, and Stork 2012). Drawing on MyBroadband statistics, the Internet Society of South Africa has stated that 69% of internet users are male, and 31% are female. Most users access the internet at work, and the country's economic hub, Gauteng, boasts the largest proportion of internet connections of any of the provinces.

The problem of affordability

The fact that cellphones are available to most people living in South Africa does not mean that they are affordable to their users. The ability to connect to both voice services and the internet has been marred by high user costs, and the lack of transparency about pricing has allowed operators to continue these practices relatively unchallenged.

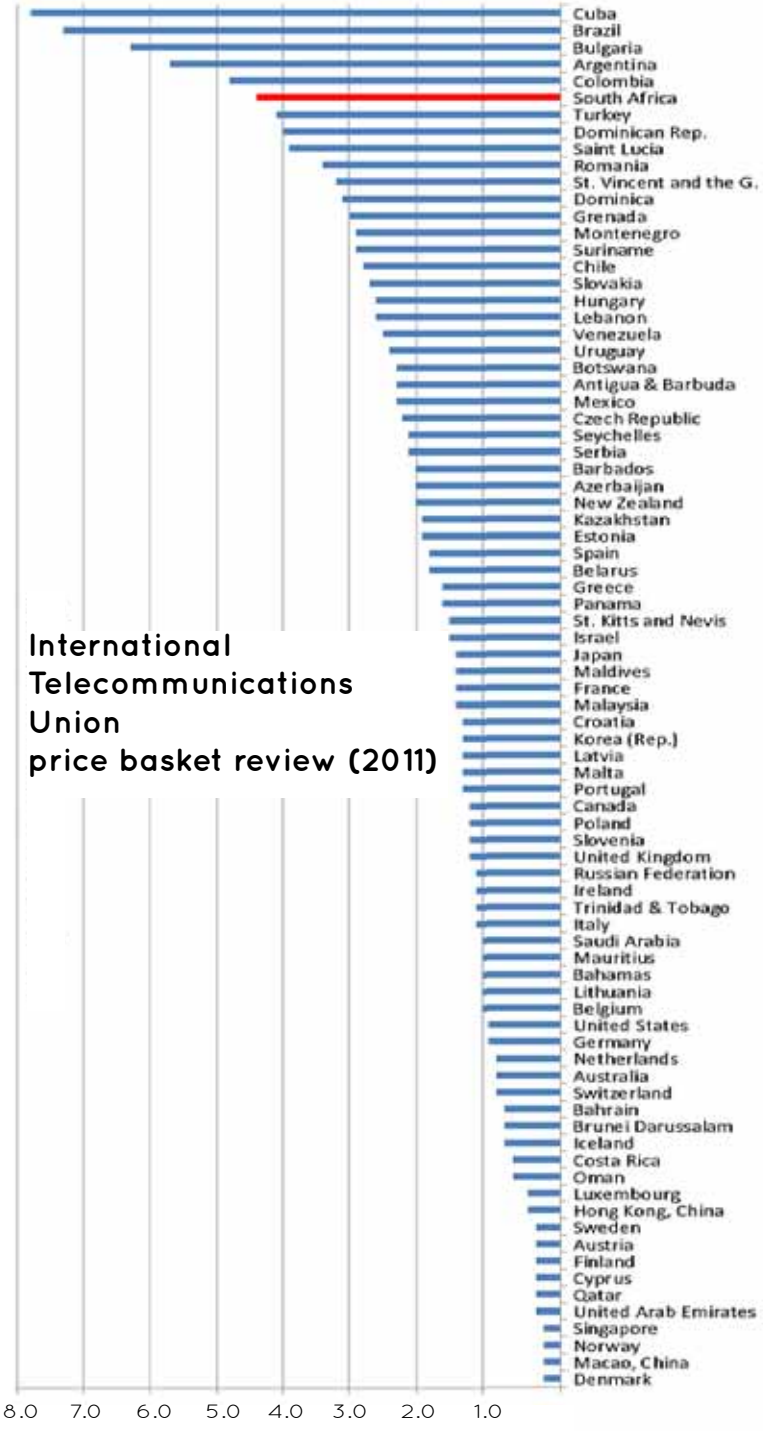
According to a Department of Communications study of five peer countries (Chile, Korea, India, Brazil and Malaysia) in 2009, the costs to communicate in South Africa on a fixed line are among the highest, while South Africa has the second highest SMS prices and mobile tariffs, leading to the country having the lowest mobile usage in spite of high mobile penetration (Department of Communications 2009). According to ICASA, South Africa has the third highest mobile phone charges in

the world after Mexico and Turkey (Ndlovu 2009). More recent statistics from the International Telecommunications Union continue to paint a bleak picture of South Africa's lack of affordability, placing the country 77th out of 82 countries in a price basket review (see the ITU country rankings on the next page).

In Grahamstown East, the poorest section of Grahamstown, where unemployment is estimated to be in the region of 70% (according to the expanded definition), respondents to a 2009 survey estimated that they used between 10% and 37.5% of their after tax income on cellphones, and on average, they spent 26% of their income on cellphones (handsets and airtime). Many respondents claimed that they had to forego basic necessities like food and transport money, to buy airtime (Duncan 2012).

Earlier this year, Research ICT Africa ranked South Africa a dismal 30th out of 46 African countries for prepaid mobile telephone affordability: a ranking that has improved somewhat since the price reductions of the relatively new entrants 8ta and Cell C. These companies have generally offered cheaper products for internet access, but they have failed to pressurise the two dominant operators, MTN and Vodacom, to reduce their prices, and MTN has remained the most expensive for poorer users (Calandro, Gillwald and Stork 2012). According to the Department of Communications, the highest package prices of between R2.50 and R2.85 per minute were charged by Vodacom and MTN, which have an 85% market share between them (Department of Communications 2012: 21).

When users access the internet over their cellphones, they can do so using ordinary airtime or data bundles, but using ordinary airtime is much more expensive than using a data bundle. Data bundle prices have also been the source of considerable controversy in South Africa, although Blackberry has been particularly successful as it offers data on a relatively affordable flat rate, leading to the brand dominating the country's smartphone market. Prices have come down in some segments of the market, though. While 8ta and Cell C have offered the most affordable data bundle packages, these have been available mainly to those who qualify for contracts or who can afford to buy large data bundles on a pre-paid basis. Vodacom offers the most expensive data bundles, followed by MTN. Most cost effective bundles remain largely unaffordable for the poor (Research ICT Africa 2012a: 6). Poor subscribers are the worst affected by the excessively high prices of prepaid or pay-as-you-go rates, including out-of-bundle costs, as the poor are more likely to access the internet on an out-of bundle basis.



Source: ITU 2012 – Measuring the Information Society (South Africa 7th out of 82)

Super profit-taking: The case of SMS's

The cellphone sector is one of the most profitable in the country, and the top companies have offered high profit margins for investors. By 2010, MTN and Vodacom were ranked in the top ten of the top 500 companies in Africa, with MTN at number 5 and the Vodacom group at number 9 (Pau 2010). In 2011, MTN retained the fifth spot, after the mining companies BHP Billiton and Anglo American, brewery SAB Miller and synthetic fuels producer Sasol (Moneyweb 2012).

The extent of profitability can be seen in the mark-ups on SMS's. There is disagreement about what the actual cost of an SMS is (that is, what it costs a cellphone company to transmit an SMS, as opposed to what they actually charge their users). However, the cost of SMS is estimated to be at about 2.6 cents per SMS, and is definitely below 5 cents per SMS (Muller 2012a). Yet the costs of a pre-paid, out-of-bundle SMS are as follows:

	MTN ¹	Vodacom ²	Cell C ³	Virgin Mobile ⁴	8ta ⁵
Peak	80c	80c	50c flat rate	60c	50c per minute post-paid, 60c per second post-paid
Off-peak	35c	35c	50c	60c	50c

¹ MTN PayasYouGo prepaid offering

² Out of bundle SMS charges

³ 99c for Real tariff package

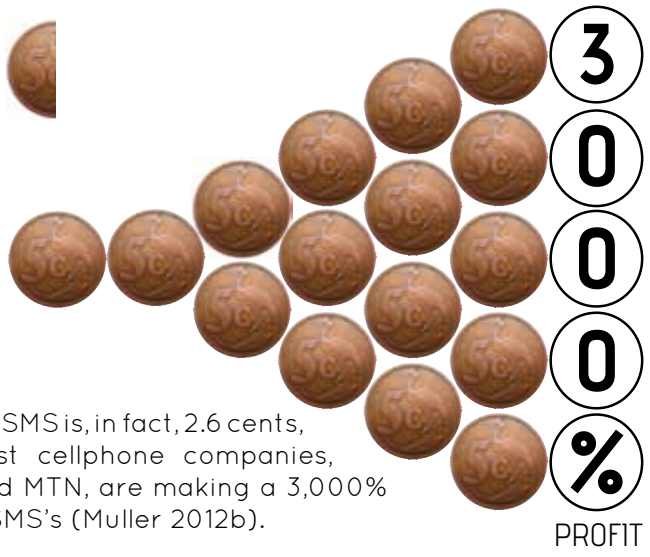
⁴ Prepaid brochure

⁵ Once-off messaging bundles, out-of-bundle rate, SMS and mms

Information provided by MTN, Vodacom, Cell C, Virgin Mobile, 8ta, November 2012

Actual cost of an sms to cellphone operators: 2.6c

What Vodacom and MTN charge at peak times: 80c



If the actual cost of an SMS is, in fact, 2.6 cents, then the two largest cellphone companies, namely Vodacom and MTN, are making a 3,000% profit on peak hour SMS's (Muller 2012b).

Quality of service issues

According to ICASA in 2011, three of the cellphone companies (Vodacom, MTN and Cell C) did not meet quality of service targets set by the regulator. This was shown in the number of times callers could not make a call successfully, or where a call was dropped. While Vodacom and Cell C met the requirement in terms of their customers being able to make calls without problems, all three companies did not meet the targets for dropped calls, which meant that they allowed too many calls to be dropped. Vodacom and MTN have also suffered massive network failures at times (Mail and Guardian 2011).

Profit-taking exposed: the case against Telkom

For years, Telkom was accused of abusing its dominant position in the market to frustrate other service providers between 1999 and 2004, the period when the parastatal was aggressively commercialised to maximise value for its foreign investors. This it did, they claimed, by charging excessive prices, refusing access to an essential facility and engaging in price discrimination. These practices made it difficult to impossible for its competitors to compete against Telkom. The Competition Tribunal, a statutory body tasked with adjudicating complaints of anti-competitive conduct, found Telkom guilty of anti-competitive conduct in August 2012 and fined the parastatal R449 million.

Analysing the problem

Duopoly power

In spite of the fact that South Africa has five cellphone companies and two fixed line companies, the market is dominated by two players (Vodacom and MTN). They exercise market power over the rest of the market, and as a result can set the terms of trade for the rest of the industry.

Lack of a strong consumer /user movement

South Africa lacks a strong user or consumer movement generally, and specifically in relation to the right to communicate. This allows the cellphone companies to remain largely unaccountable, which in turn allows them space to continue super-exploitative practices.

Discrimination against prepaid users

The cellphone companies invariably charge prepaid users more than postpaid (or contract) users in real terms, making the argument that contract users are committing themselves to a 24-month investment (the standard length of a cellphone contract), while prepaid users are committing themselves to a one month investment. Hence contract customers are more attractive because they represent guaranteed 'money in the bank' for the companies. However, it could be argued that prepaid users are a lower financial risk for the companies because they have made upfront payments and have no contract to default on. In spite of this, the cellphone companies continue to discriminate against prepaid users – who are overwhelmingly poor and working class – by charging them higher rates than postpaid users.

Interconnection rates

There can be no doubt that the main reason why the costs to communicate are so high are because of excessive profit-taking by the cellphone companies and Telkom, reflected in the case of cellphone companies' excessively high mobile termination (or interconnection) rates. These are the rates that a cellphone network charges another network, whether mobile or fixed line, to terminate a call on that network.

There has been disagreement about what it actually costs for one network to terminate a call on another network. According to ICASA, the cost is unlikely to be more than 40 cents (Parliamentary Monitoring Group 2009). Research ICT Africa has argued that the rate is unlikely to be higher than 25 cents (Research ICT Africa 2009: 40), and has argued for cost-based interconnection pricing, where cellphone companies charge other network what it actually costs to terminate a call on another network, and no more. They have pointed out that in other countries where such rates have been introduced, prices have been lowered.

Yet the costs charged by the cellphone companies have been far higher than this rate. In the initial interconnection agreement between Vodacom and MTN, the interconnection rate was set at 20 cents per minute. When the third cellular network Cell C was introduced in 2001, both cellphone companies increased the interconnection rate by 500% to R1.23 (a 515% increase since 1994), which effectively secured Vodacom and MTN's dominance as a duopoly and made it practically impossible for competitors like Cell C to grow (Naidoo 2009).

Interconnection rates have also been asymmetric; that is different companies are charged different amounts. Asymmetric interconnection rates are important in cases where new entrants are attempting to establish themselves, as they can be charged less to terminate their calls on other networks than the dominant players, which effectively amounts to a subsidy. In South Africa's case, asymmetric rates have been to the benefit of Vodacom and MTN and to the detriment of Telkom, which has also been a contributing factor in the decline of the fixed line company.

Vodacom has argued that the reduction in interconnection rates was not meant to be automatically passed onto consumers as there were high fixed costs the mobile networks needed to offset given the large number of subscribers dependent on them for online access (Gedye 2012). ICASA has also argued that while the country's rates are high, consumers need to pay for the cost of universal coverage of the country. Research ICT Africa has countered these arguments by pointing out that other countries with fewer users have managed to achieve high coverage while drastically reducing their mobile termination rates, and some are even poised to introduce faster data networks (known as Long Term Evolution or 4G networks) (Gillwald 2012).

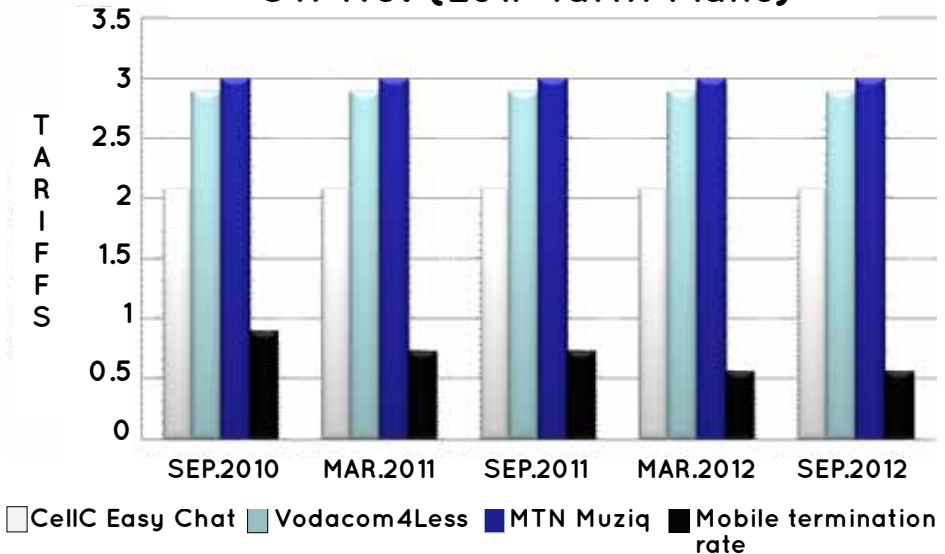
In 2009 there was a public outcry about the high cellphone costs, and the Parliamentary Portfolio Committee and Department of

Communications intervened, and made the companies comply with a regulation setting a gradual reduction in the mobile termination rate to 40 cents to a mobile and 12 cents to a fixed line by 2013. As a result, there has been a 52.2% reduction in the rate.

The reduction had no effect on retail prices in 2011, but the effect began to be felt in 2012. In July 2012, Cell C started charging callers 99 cents per minute, with Cell C's pricing being cheaper because they offered per second billing (Rondanger 2012). 8ta also began to offer free airtime with each recharge, which has made it the cheapest company of all. However, Vodacom and MTN have the largest coverage in the country, which means that they can dictate prices, and they have largely maintained their high prices. Vodacom did reduce its charges to 99 cents, but only for a brief period and then hiked their charges up again (Research ICT Africa 2012b). This means that the mobile termination rate reduction over the past few years has not been sufficient to force down prices significantly, and the rates need to be reduced further.

The graph below shows how the mobile termination rate has declined between September 2010 and September 2012, but the costs of the low tariff plans of Vodacom and MTN have remained unchanged, which means that only Cell C passed the reduction onto its users.

Off-Net (Low Tariff Plans)



Source: Department of Communications, presentation to Parliamentary Portfolio Committee on Communications, 29 November 2012.

The table on the next page gives price comparisons of the different cellphone companies as of November 2012. It shows that the lowest prices are offered by the smallest companies: 8ta and Cell C. This does not help many consumers who lie outside these companies' existing coverage areas. MTN and Vodacom have been able to withstand competition from them because they offer as close to national coverage as is possible at the moment. As a result, many of their customers are captives of these two companies and their higher prices, especially those outside the major urban areas.

The companies have, however, argued that the effective rate of making calls had come down at least 40% since the reduction of the interconnection rate. But according to First Avenue Investment Management, Vodacom has proved only slightly more amenable to passing on the interconnection cuts to consumers than MTN and tariffs still remain among the most expensive in the world. Data costs have come down more than voice costs.

The profit margins of the cellphone sector remain high, in spite of the drop in the interconnection rate. In the six months of 2012 ending in September, Vodacom's earnings before interest, tax, depreciation and amortization (known as the EBITDA margin) rose to 37% (McLeod 2012). This was made possible by the fact that its revenue on data increased significantly. The company's international operations also performed strongly over this period. This allowed the company to increase its dividend to shareholders by 36.% (I-net Bridge). While MTN lost some income from the drop in the interconnection rate, its EBITDA margin in 2011 rose slightly from 2010 to 35% (Research ICT Africa 2012(b)) and as a result it increased its dividend payout to shareholders for the year. MTN also reported a 14% increase in profits for the first half of 2012, and the increase in data revenues has also been a contributing factor (Reuters 2012)

No transparency

Network operators are not prepared to explain their cost structures in detail, even to Parliament or ICASA. This makes it very difficult to work out what the actual cost of the service being offered is compared to the profit being made. The cellphone companies have argued that they need to charge high tariff to expand their networks, and if interconnection rates were reduced, they would be forced to increase retail prices (the price of the service to the end user), but because of the lack of transparency, it is difficult to assess this argument properly. It could well be that, far from forcing cellphone companies to reduce infrastructure development and push up prices, the company would

Prices charged per minute	Product	On-net mobile	Off-net mobile
Operator	Vodacom		
Lowest	Vodacom All Day	R1.40	R1.40
Highest	Vodacom 4u	R2.58	R2.78
SMS		R0.50	R0.50
Operator	MTN		
Lowest	MTNOneRate	R1.75	R1.75
Highest	MTNMusiq	R2.50	R3.00
SMS	MTNOneRate	R0.50	R0.50
Operator	CELL C		
Lowest	99c for Real	R0.99	R0.99
Highest	RedBull Mobile per sec	R2.85	R2.85
SMS		R0.50	R0.50
Operator	VIRGIN MOBILE		
Lowest	True Per Second Billing	R0.99	R2.60
Highest			
SMS		R0.60	R0.60
Operator	8ta		
Lowest	Per Second	R1.50	R1.50
Highest	Per Minute	R2.75	R2.75
SMS		R0.50	R0.50

Source: Department of Communications, presentation to Parliamentary Portfolio Committee on Communications, 29 November 2012.

gain more users as prices decline. When the industry came under fire, the companies had a tendency of attempting to resolve conflict through behind closed doors meetings with one another, which implied collusion: this is an anti-competitive practice (Parliamentary Monitoring Group 2009).

Another problem is that the packages offered to users are extremely difficult to understand. ICASA needs to introduce a costs calculator to help users understand the cost structures of different packages.

Weak regulation

Another aggravating factor has been weak regulation by ICASA. In 2009, the Parliamentary Portfolio Committee on Communications criticised ICASA for dragging its feet on bringing down the cost of communications, and in September 2009 intervened to address the problem by inviting public submissions on a proposal to reduce interconnection charges. This led to the interconnection reduction regulations. Since then, ICASA has taken the problem more seriously, but lacks the finances to perform many regulatory functions. An added problem is that some of the companies that it regulates have deep pockets, and are willing to litigate to get their way, while ICASA lacks the funds to defend its actions. ICASA also suffers from information asymmetries between it and the companies, and at times has to threaten litigation to acquire the information it needs.

Market driven policy

None of the above problems would be possible if the government had a strong pro-poor policy for the communications sector. As was seen in the previous section, the market-driven nature of telecommunications policy in the late 1990s led to a fixed line company (Telkom) that was geared toward profit-making at the expense of fulfilling universal service obligations. This has meant that largely private sector companies have had to step into the connectivity gap, but they have been weakly regulated, which has allowed them to charge exploitative prices, which discriminate especially against poor users and women. While government may argue that its policies for the sector are pro-poor, in reality it has allowed a largely private sector led development of the industry that ultimately discriminates against the poor. State interventions – either in the form of regulation or in the form of setting up state-owned communications companies – have not altered this warped development path fundamentally.

Conclusion

The combined effect of many factors has led to the South African communications sector being dominated by two companies in the mobile industry and one company in the fixed line industry (although its influence is diminishing), and these companies hold the sector in an iron grip. All attempts so far, with the possible exception of a Competition Tribunal intervention, have largely failed to change the pattern of super-exploitation in the sector. But communications users

have also been their own worst enemies as they have failed to organise to defend their right to communicate against rampant profiteering. The Right2Know Campaign has an important role to play to take up these issues on behalf of communications users, to organise users to defend their right to communicate, to put pressure on the companies that continue to practice super-exploitation, and to re-think how the communications system is structured to ensure that the right to communicate is realised.



What lessons can be learned from the development of the cellphone industry in South Africa? What was done well, what was done badly, and what should have been done differently?

Some critics have argued that the development of these companies has shown that the state has no role to play in providing communications. Telkom, a (partly) state owned company has failed to provide universal service and access, and private sector companies have been much more successful. They argue that this shows the superiority of private sector-led, capitalist forms of development.

Others would argue that while the private sector has a role to play in providing communications, it must be made more competitive to drive down prices. The problem, they argue, is that the industry is weakly regulated and the solution to the problem is to strengthen the regulatory bodies like ICASA and the Competition Commission.

What would your responses be to these arguments?

SECTION THREE

Campaigning for the right to communicate

This section sets out some campaigning ideas around the right to communicate in South Africa. It starts with identifying the main problem that many citizens face in exercising their right to communicate, suggests some basic principles the campaign could consider and finally looks at possible campaign focus areas and strategies.

What is the problem?

South Africa has landed up with a communications landscape that is dominated by profit-making privately and publicly owned companies that charge exploitatively high charges for their services. They also often provide poor quality services that are inaccessible in some parts of the country. Upper income users based in urban areas have access to cheaper and better services while the poor pay more. The service providers get away with these exploitative practices because the regulators are weak and users are unorganised.

Defining basic principles

What basic principles should guide a communication rights campaign? Right2Know Campaign has a media freedom and diversity sub-committee. In February 2011 the R2K Campaign National Summit resolved to broaden its focus from the Protection of State Information Bill, or the Secrecy Bill, to campaign for the free flow of information, including a free and diverse media that can serve the information needs of all living in South Africa. This sub-committee has proposed that the following principles should guide a communication rights campaign:

- Communications must be universal. Everyone has a right to communications that are available, affordable and accessible. While great strides have been made in ensuring the availability of communications, especially mobile communications, many users cannot afford to access the network to the extent that they need to, leading to an illusion of universality being created. Universality will be realized only once people can access the network whenever they want to.

- Communication must be ubiquitous: that is, users should be able to access information anytime, anywhere, anyhow, depending on the choice of the user. Currently, users are restricted in their choice of how to access information they need, either at home or on the move.
- Communications must also be dialogic: that is, users should have the ability both to receive and impart information. They should not simply reproduce old methods of communication where a few talk, and the majority listen.
- Everyone has the right to privacy and anonymous communications, which includes the right to encrypt their communications

This would involve designing a communications system that looks very different to the one that we have today, where service providers extract as much profit as possible for shareholders, rather than delivering communications as basic human right. As we have seen in relation to Telkom, even companies that have some level of public ownership can land up acting just like private ones if they are commercialised and run like private companies.



Case study

Re-thinking how communication systems are structured in Venezuela



www.cantv.net/ / ...muralismo...latinoamericano

CANTV is the Venezuelan state telecommunications provider which was privatised initially in 1991 – the year its mobile phone component was established – and then renationalised in 2007 as part of the Venezuelan government’s efforts to recover public ownership of strategic companies under Hugo Chavez. Telecommunications was declared a human right as the government felt the company was not meeting its social obligations, leading to the neglect of poorer, indigenous and geographically isolated communities.

According to Transnational Institute researcher, Daniel Chavez, who advised the government on restructuring the communications sector, since re-nationalisation the company has expanded its service, but has also ensured greater community participation in the running of the company through grassroots working groups on telecommunications and workers’ co-operatives, leading to job creation. This element of control from below has prevented public ownership from lapsing into a form of statism, where ‘all activism and protagonism in social life must be in the hands of the state’. This refocusing on community participation has encouraged effective management coupled with the introduction of appropriate innovations, as the company is guided by ‘good, socially-driven ideas’ (Buxton 2010).

Since renationalisation it has expanded the fixed line network, achieving higher than average levels of teledensity (the number of telephone lines in a particular area) in the region, as well as 100% mobile penetration. CANTV also began to provide discounted rates to low-income users and reinvests its profits into social projects.

Activist discussion points

What should the communications system look like to ensure that the principles suggested by the R2K campaign become a reality? Should communication be treated as a commodity? Should the sector be privately or publicly owned? If it is publicly owned, how do you prevent it from becoming a profit machine for state capitalists? If it is privately owned, how do you prevent the sorts of exploitative practices that we’ve seen from the cellphone companies?

Defining basic demands

In order to make these principles a reality, a campaign would need to develop a basic set of demands. Some demands that could be considered are as follows:

- Network operators should cross-subsidise a free basic service for communications for poor users.
- Pre-paid communications users, who are overwhelmingly from the poor and working class, should not cross subsidise post-paid users.
- SMSs should be free, as they cost the operators next to nothing to transmit.
- SMS and data bundles should not expire if they are unused; there is no technical reason why this should happen, which seems to be a measure designed simply to force people to buy more airtime.
- There should be no peak and off-peak tariffs. People should be able to phone who they want, when they want.
- There should be universal coverage of mobile voice and data services.
- The cellphone networks must ensure minimum quality of service targets, which includes minimising network outages, dropped calls and calls that fail to connect.
- Billing and package options must be simplified.
- There should be further reductions in the interconnection rates and the regulation of retail rates to ensure that interconnection reductions are not simply passed down to the user further down the line.
- Access to land lines and to the fixed line broadband (ADSL) network must be improved.
- Cellphone companies must meet their quality of service targets.
- The range of numbers that are free to call should be increased and should include numbers like our children's schools.
- The Universal Services Fund should be used to subsidise needy people, as it was meant to.
- Parliament must ensure a proper and well-funded regulator.
- South Africa deserves a government department that places the public interest above the interests of its portfolio organisations and their share prices.

Case study

Struggles for decommodification of water and electricity in South Africa

In the late 1990s, under the influence of neoliberal policies, the government commercialised and privatised water and electricity provision, leading to the cost of these services rising massively for the poor, while the rich and corporate users paid on average much less. This led to massive disconnections as many could not afford the cost of the services and fell into arrears. Local government also introduced prepaid meters into poor communities, and while a free basic service was made available (in the case of water this was 6000 free litres per household per month), it was not enough to make a meaningful difference to peoples' lives. In response, social movements like the Anti-Privatisation Forum and the Soweto Electricity Crisis Committee were formed, and they waged struggles against disconnections, prepaid meters, and unaffordable costs. They developed a set of demands that included demanding a lifeline service that was far larger than the free basic service offered by the government, of at least 50 litres per person per day. They also demanded a tariff structure that penalised the heaviest users, which were generally corporate and wealthier users.



Activist discussion point

What basic short-, medium- and long-term demands should the campaign make in order to ensure that the principles of the campaign are taken forward?

Soweto Concerned Residents serve summons on the mayor and return prepaid water meters with it, Johannesburg, 21 September 2010.

Strengthening communications regulation – the role of ICASA

According to ICASA, its role is as follows:

‘The Authority is responsible for regulating the telecommunications, broadcasting and postal industries in the public interest and ensuring affordable services of a high quality for all South Africans. The Authority also issues licenses to telecommunications and broadcasting service providers, enforces compliance with rules and regulations, protects consumers from unfair business practices and poor quality services, hears and decides on disputes and complaints brought against licensees and controls and manages the effective use of radio frequency spectrum’.

It should be clear from the previous chapter that ICASA is not fulfilling its mandate to ensure high quality, affordable services. It is widely acknowledged that this is because ICASA is weak, lacks independence from the government, and is underfunded and susceptible to industry capture. Any communication rights campaign must focus on strengthening ICASA.

Other key institutions in the communications space

The **Department of Communications (DoC)** is the government department responsible for policy making in the communications sector and has the power to make policy that ensures universal service and access to communications. They can be lobbied to take this role more seriously.

The **Parliamentary Portfolio Committee on Communications** makes laws in the communications sector and has oversight over key institutions such as ICASA and the DoC. In 2009, the Committee accused the cellphone companies of excessive profit-taking and held public hearings into measures to reduce the interconnection rates, which led to a gradual reduction. They can be lobbied to call the cellphone companies to another round of public hearings, and also to hold ICASA and the DoC to account for failing to stop profiteering and other anti-poor practices in the communications sector.

The **Competition Commission** is empowered to investigate, control and evaluate restrictive business practices, abuse of dominant positions and mergers and other anti-competitive practices in the South African economy. If it finds evidence of anti-competitive practices, then it approaches a separate tribunal, the **Competition Tribunal**, to hear the matter. Recently, the Tribunal found Telkom guilty of anti-competitive practices, and fined it R449 million for 'bullying its competitors' during its period of exclusivity in 1999 to 2004. The Commission can be approached to investigate alleged anti-competitive practices in the communications sector.

The **National Consumer Commissioner** is established in terms of the Consumer Protection Act to promote fair consumer practices and consumer protection against unethical business practices, and provide for improved standards for consumer information. The Commissioner could be approached to investigate any practices by communications service providers that violate consumer rights.

A photograph of a man at a protest. He is wearing a red baseball cap with a logo, sunglasses, and a red t-shirt. He is holding a blue cup with both hands. The background shows other people and a clear blue sky.

On the Cape Town march
to support Cosatu's general
strike, 7 March 2012.

**EACH ONE
REACH ONE.
MAHALA**

How to use these institutions as part of a broader campaign strategy

Lay a complaint with your network operator about any aspect of their service you find unacceptable and encourage others to do the same and publicise the complaints.

If your complaint is not taken seriously, then lay a consumer complaint with ICASA. The complaints procedure is available on the ICASA website at <https://www.icasa.org.za/ConsumerProtection/Complaints/>. You could insist on a hearing on the matter through ICASA's Complaints and Compliance Committee.

Also consider using the other institutions mentioned above. If you want to change policy, then target the DoC. If you want to change laws or ensure that institutions like ICASA or the DoC fulfil their mandates, then target the Portfolio Committee. If you want to stop anti-competitive practices or if you feel that you have been treated unfairly as a consumer, then consider approaching the Competition Commission or Consumer Commissioner.

Join the media freedom and diversity sub-committee of the Right2Know Campaign and/or the SoS – Support Public Broadcasting Coalition. According to Right2Know's position paper, 'The independence of the broadcast regulator (ICASA) from the executive arm of government and private sector interests must be defended and strengthened' (R2K 2012).

SoS is a civil society coalition engaged in a single-issue campaign. The Coalition is committed to, and campaigns for, public broadcasting in the public interest. The Coalition is made up of: a broad range of NGOs, CBOs, trade unions, trade union federations, and individuals. SoS has ICASA's independence and capacity as a key focus area and has made numerous submissions about ICASA to Parliament and other forums (SoS 2012).

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