

Court ruling exposes ICASA's weaknesses

The recent ruling handed down by Judge Mayat in the South Gauteng High Court on MTN and Vodacom's bid to stop ICASA's new Mobile Termination Rates (MTR) is a only a partial victory for the right to communicate and exposes serious weaknesses in the regulator, the Independent Communications Authority of South Africa (ICASA).

These weaknesses threaten the right to communicate in the longer term, as they allow a practically unregulated communications environment to continue.



While the Right2Know is acutely aware that MTN and Vodacom's litigation is opportunistic, in that it exploited serious weaknesses in ICASA's regulations, the court recognised that the reduced termination rates are necessary for the public good.

Ordinary South Africans are paying some of the highest rates the world as our cellphone companies make profit margins well above global norms.

The court acknowledged the high airtime charges and recognised the need for ICASA to regulate to bring down the cost of communication. The reduced MTR rates will come into effect yesterday, 1 April 2014, but only for a six-month period.

The court found that ICASA's specific proposed new rates were invalid because they had not followed the proper process. The court has ordered that the new rates must be reviewed and replaced within the next six months. In other words, the court has recognised the problem, but ruled that ICASA's solution needed to be arrived at more carefully.

Stranglehold continues

Two things have become clear. The first is MTN and Vodacom's willingness to exploit ICASA's obvious weaknesses to protect their stranglehold on the mobile-communication market and continue profiteering at the expense of the public's right to communicate.

It is also clear that ICASA needs to get its act together to ensure that this temporary victory is not overturned. The court's ruling that ICASA's regulations were invalid and must be replaced are a warning to the regulator that haphazard efforts will do more to harm than help when it comes to protecting the public's right to affordable and quality communications.

ICASA's poor efforts at regulation have forced Judge Mayat to substitute herself for the regulator - recognising that the remedy was in the public interest but ICASA's efforts were too weak to withstand challenge on the grounds of just administrative action.

Keep fighting for lower communication costs

We call on ICASA not to back down in the fight to regulate the cost of communication. High MTR are only one of the ways that the big telecoms maintain unreasonable profit margins.

We call on the mobile operators to ensure that reduced MTR lead to reductions in the cost of airtime for the public. Furthermore, we call on the ICT Policy Review, currently being undertaken by the Department of Communications, to ensure that proposals are made to strengthen ICASA.

The Right2Know Campaign, through its Vula 'ma Connexion programme to bring down communication costs, will keep fighting for South Africa's right to communicate by opposing future attempts at excessive profit-taking by mobile operators. We remain committed to mobilising for a more democratic communications landscape.



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