



BOTSWANA TELECOMMUNICATIONS AUTHORITY (BTA)

BTA Ruling No. 1 of 1999

[Pursuant to section 19 as read with section 17 (4) of the Botswana
Telecommunications Act, 1996 (15 of 1996)]

RULING ON INTERCONNECTION DISPUTE INVOLVING BOTSWANA
TELECOMMUNICATIONS CORPORATION MASCOM WIRELESS (PTY) AND
VISTA CELLULAR (PTY) LTD

PER C. M. LEKAUKAU, EXECUTIVE CHAIRMAN OF BOTSWANA
TELECOMMUNICATIONS AUTHORITY

This matter involves three parties being Botswana Telecommunications Corporation (BTC), Mascom Wireless (PTY) Ltd (Mascom) and Vista Cellular (PTY) Ltd (Vista). All the parties herein have asked the Botswana Telecommunications Authority (BTA) to determine the appropriate interconnection and leased line charges.

Background information

2. This dispute is a direct result of the change of policy and regulatory framework for the telecommunications sector by the Botswana government. In 1995, following a nation-wide consultative process, the government adopted a new policy on telecommunications called "Telecommunications Policy for Botswana" (The Policy). . The Policy advocated a major shift in the manner in which telecommunications services were provided in the country. It, inter alia, called for the introduction of competition in the provision of telecommunications services and the establishment of an independent regulator to ensure a level playing field in the provision of telecommunication services in a competitive environment.

3. The Policy was followed by the enactment of two important pieces of legislation. These were the Telecommunications Act, 1996 (No- 15 of 1996), (hereinafter the 'Act*') and Botswana Telecommunications Corporation (Amendment) Act, 1996 (No. 16 of 1996). The Act among other things provides for the regulation of the provision of telecommunications services in Botswana and the licensing of providers of telecommunications services in the country. Most importantly, it established BTA as an independent regulator to implement both the Act and the Policy. The amendment to the BTC Act abolished the monopoly that BTC had been enjoying in the provision of telecommunications services. It also abolished BTC's regulatory and licensing powers. These powers were transferred to BTA by the Act.

4. Subsequent to its establishment in December 1996, BTA moved fast to liberalise the telecommunications sector. It issued an Invitation to Tender for the provision of mobile cellular telecommunications (mobile) services in May 1997. Following the evaluation of the bids that were submitted, Mascom and Vista were issued with mobile licences on February 17 and 27 1997, respectively. As one of their licence conditions both cellular operators were required to enter into an interconnection agreement (hereinafter 'the Agreement') with each

other and with BTC before their respective commencement dates. All along BTA was given the impression that negotiations on the conclusion of the Agreement among the three parties were advancing smoothly. For instance, on 16 June 1998 Mascom wrote BTA a letter (copied to BTC) indicating that negotiations with BTC and Vista on the issue were at a terminal stage and requested that all parties be given up to 30 June 1998 for the formalisation of the Agreement. BTA acceded to this request. I must add that up to and even after the official declaration of the dispute, BTA continued to encourage the parties to reach a voluntary agreement rather than to have terms and conditions of such Agreement imposed on them.

5. I should indicate from the onset that it was BTA's expectation that the three operators would be able to conclude the Agreement without its involvement. This explains the patience and restraint BTA has exercised in this matter.

6. The parties failed to conclude the agreement on their own. Mascom and Vista subsequently informed BTA that they were declaring an interconnect dispute with BTC. Mascom's declaration of dispute was contained in a letter of 29 June 1998 and Vista did so in its letter of 14 July 1998. BTC in turn confirmed the existence of the dispute on 21 September 1998. Although the parties do not say so, they could only have referred the dispute to BTA in terms of sections 19 and 47 of the Act. I quote the provisions of section 47(7) in full because it is of great significance in the current dispute. It provides that:

"(7) If a dispute arises relating to -

- (a) the technical conditions, if any, stipulated by the operator of the designated network, system or equipment; or

(b) The reasonableness of the interconnection charge, the parties shall refer the dispute to the Authority, which shall have the power to decide on the matter and set down such terms, and conditions for the interconnection as seem fair and reasonable to the Authority. "

7. Section 47 places an obligation on the parties to attempt to voluntarily conclude interconnection agreements amongst and/or between themselves before referring the matter to BTA. It is my conclusion, based on the number of meetings that the parties had with each other and with BTA and the numerous correspondences between them, that in the present case the parties tried but failed to reach an agreement.

The Issues

8. The issues that fall for determination as they appear in the letters from the three parties concern two areas; Viz. interconnection and leased line charges.

9. As regards interconnection charges, the disagreement is centred on the

following areas:

9.1 The interconnection charge payable to BTC in terminating a mobile to f

call originating within Botswana;

9.2 The retained fee by BTC in delivering land call originating from its network

to the mobile operators;

9.3 The charges by BTC for international outgoing calls;

9.4 The charges paid by BTC to mobile operators for international incoming calls which terminate on their network; and

9.5 Emergency service charges.

10. I now turn to address the interconnection charges dispute as itemised in paragraph 9 above.

The interconnection charge for terminating national calls

11. The current position of the parties with respect to delivery of calls from mobile to fixed can be summarised as follows; BTC proposes to charge 24 thebe per minute during peak and 19.1 thebe per minute during off peak period. Mascom proposes that BTC should charge 11.1 thebe per minute during peak and 8.8 thebe per minute off peak and Vista proposes that BTC should charge 12 thebe per minute during peak and 9.5 thebe per minute during off peak period.

12. It is important to keep the provisions of section 47 of the Act in mind when dealing with interconnection disputes. This section has consequently not escaped my mind in the consideration of the current matter. In terms of section 47 (7) quoted in full in paragraph 6 above, BTA has the power, where parties have failed to agree, as is the case in this matter, to make a termination on the interconnect charges and other terms and conditions for interconnection. In doing so BTA is required to ensure that the terms and conditions (and charges) that it imposes are those which "seem fair and reasonable" to it. The Act does not define the phrase fair and reasonable. Be that as it may, it goes without saying that BTA has to make the termination of what it considers fair and reasonable charge in each case.

13. What then would be a fair and reasonable charge that BTC should require mobile operators to pay for terminating a mobile to fixed call within Botswana? In my view the starting point in this matter should be what BTC offered the mobile operators at the time of bidding. This is critical because the mobile operators prepared their business plans on the basis of what they knew to be or expected would be the likely interconnection charges from BTC. These business plans have also influenced BTA to set the maximum tariffs, which may be charged by the respective operators to still enable them to run viable operations.

14. At the bidding stage BTC gave all bidders a document entitled "Interconnection Agreement between BTC and...." dated 14 June 1997 ("the document"). BTC has confirmed in their letter of the 5 October 1998 that indeed this is the document, which they handed to the bidders, a copy which was attached to their letter under reference. The dotted lines were presumably intended for whoever would win the tender and therefore interested in

interconnection. In that document BTC indicated that it would charge a peak rate of 24 thebe per minute and an off peak rate of 19.1 thebe per minute with volume discounts as indicated in Table 1, below. For the purposes of this determination, peak period refers to 07.00 - 20.00 hours Monday to Friday and 07.00 -13.00 hours on Saturday. Off peak period refers to all other times plus Botswana Public Holidays.

TABLE 1: Volume Discounts on Traffic

Min /Month	Discount
440 000	10%
880 000	15%
1 320 000	20%

15. BTC made its intentions clear at the time that the document did not constitute or imply an offer by specifying as such at the top of every page of the document. While the BTC states that the document did not amount to an offer it, nevertheless, gave the bidders the likely costs that they would incur and would reasonably take into account in coming up with their business plans. It should be noted that in its submission of 21 September 1998 in a letter with the heading "Notification of the Dispute" BTC agreed to abide by the figures it gave at the time of bidding. On this submission they said:

"BTC has proposed that a retail tariff for termination be set at 46 Thebe but it is prepared to accept a charge of 24 Thebe during the peak time and 19.1 Thebe during the off peak."

It is indeed absurd that BTC should have taken an about turn position by almost doubling the rates they had offered to the operators during the bidding.

16. On the 17 November, 1998 I addressed a letter ref. BTA/9/5/1 I (31), to BTC inquiring on the reason for withdrawing the volume discounts in their entirety and their response was that "the BTC position is that after further consideration and in view of substantial discounts offered on the retail prices no volume discounts will be offered."

17. What BTC refers to as substantial discounts may apparently be what is contained in its submission of the 16 September 1998 wherein it is stated that:

"The BTC network used in delivering or terminating a call from the mobile network is at least 50% of a fixed to fixed national call (92 thebe per minute). Therefore this "half circuit tariff retail charge could be argued to be at least 46 thebe per minute. Thus the BTC proposed interconnection charge, of 24 thebe per minute, for carrying the calls between a fixed telephone and the Pol, represents a 48% discount on the 46 thebe. BTC does not see that any further discount (other than the 48% retail discounts set out above) is justifiable on our retail tariffs ..."

18 In my view, what BTC refers to as substantial discounts on retail riffs does not hold water as BTC's original interconnect rate offered at bidding was 24 thebe per minute and they offered this figure with the eyes wide open. Therefore any volume discounts must be in relation to this rate.

19. I have not received any convincing evidence indicating that figures [quoted at bidding would be unfair and unreasonable and I accordingly hold hat the interconnection rates indicated at the time of bidding including the appropriate volume discount shall apply as any change would either make he cellular operations unviable or force them to apply to BTA for a substantial increase of their tariffs with a snowballing effect on the consumers.

20. In the Invitation to Tender (ITT) for mobile services, BTA indicated that "Interconnection should be reasonably symmetric between wired and mobile operators as well as between mobiles. Symmetric interconnection means that interconnected operators receive approximately the same share of call revenues independent of direction (outgoing or incoming)" (clause 12.2 of the ITT). This is in line with the general industry norm. I accordingly hold that the same principle is applicable here. Consequently the fee for delivering a fixed to mobile call should be the same as that of delivering a mobile to fixed call.

International outgoing charge

21. Mascom and BTC propose that BTC should charge mobile operators BTC's published international tariffs less 10% and Vista proposes a discount of 15%.

22. At bidding BTC put an indicative discount of 7.5% of its published international tariffs for outgoing international calls from the mobile operators. Following extensive discussions with the mobile operators BTC increased the discount offer to 10%. As I find this to be a reasonable compromise I accordingly hold that BTC should charge the mobile operators, for outgoing international calls, its published international tariff less 10%.

International Incoming Charge payable to cellular operators

23. BTC proposes that the percentage used for calculating the amount paid to the mobile operators should be the same for both international incoming and outgoing calls. However, in respect of international incoming calls being passed to the mobile networks, the amount paid would be a percentage of the settlement fee that BTC receives from the originating administration. BTC states that for technical reasons it is unable to implement

this method until 1 April 1999. -BTC proposes to pay 25 thebe per minute for each international call delivered to the mobile operators even in case of calls from Southern Africa Development Community (SADC) countries in respect of which it does not get paid by the originating operators.

24. Vista proposes that BTC should pay 30 thebe per minute. Mascom differs from the other two in principle. It proposes that BTC should pay the mobile operators on the basis of a percentage at the rate applicable for international outgoing calls. BTC did not give any indicative rate for this item at the time of bidding.

25. After a thorough consideration of the positions of the three parties it is my view that the principle of symmetric interconnection should also apply in this case. I, therefore, direct that BTC shall as from 17 February 1998 to 31 May 1999 pay the mobile operators 28 thebe per minute for every international incoming call which terminates on the mobile operator's networks. Thereafter, BTC shall pay the mobile operators 10% of the revenue it gets from the settlement with respect to all incoming calls which terminate in their respective networks.

Emergency Service

26. BTA requires all telecommunications operators in Botswana to provide emergency telecommunications services to the Public Free of Charge. Operators are, accordingly, expected to co-operate and provide a co-ordinated National Emergency Service Programme in the country. Telecommunications operators should not charge each other for the use of emergency services by consumers of the service. For instance, if operator A routes an emergency call through operator B's network, operator B shall not charge operator A for conveying the emergency call. Accordingly BTC should not charge the mobile operators for emergency calls from their networks and vice versa.

Leased Lines

27. BTC did not offer installation and rental charges for leased lines at tendering. The positions of the disputing parties regarding leased lines are as follows:

BTC's Position

28. In situations where there are no existing infrastructures, BTC proposes to quote a cost plus price on a case by case basis.

29. BTC substantially used Telkom South Africa's ("Telkom") retail rates for leased lines for benchmarking to arrive at the proposed retail rates shown in Annexure A, Table 2. BTC proposes to charge wholesale rates to operators as shown Annexure A, Table 3. These are derived from Table 2 by applying a 10% discount.

Mobile Operators Position

30. Table 5a indicates Mascom and Vista's submissions on leased line rentals and Table 5b shows Mascom's submission on volume discounts. I do, however, note that Vista did not make any submissions on volume discounts.

BTA's Directive Regarding Benchmarking

31. BTA supports the use of benchmarking in the absence of actual cost data provided the differences in the economic, policy and social considerations in the respective countries are taken into account. That is, while in principle BTA accepts BTC's use of benchmarking with respect to leased line rentals, these should be adjusted to take account of the differences as highlighted.

BTA's Directive Regarding Rentals

32. The rental charges should be the same irrespective of whether there is existing infrastructure or not. Taking into account the issues raised in paragraph 27 above BTA directs that the rental charges in Annexure A, Table 6a shall apply.

BTA's Directive Regarding Volume Discounts

33. It is normal business practice to offer discounts which are dependent on volume. BTA directs that volume discounts shall be offered as shown in Annexure A, table 6b.

BTA's Directive Regarding Installation Charges and Installation Discounts

34. The parties have agreed to the installation charges and discounts shown in Annexure A, Tables 7 and 8. BTA directs that these charges and discounts shall apply.

Other Unresolved Matters and Terms and Conditions of the Agreements

35. I am aware that the parties have referred other matters to BTA which I have not addressed in this ruling. These include issues such as freephone, directory enquiries, operator assistance services and questions relating to penalties for failure to provide leased lines on agreed times, grade and quality of links, discounts in case of failure to meet the grade, and quality of links and the specific terms and conditions that should govern the relationship of the parties. I have no doubt that these matters have not been given sufficient consideration. I accordingly direct all the parties to carry on further negotiations on the issues mentioned in this sub paragraph and conclude their negotiations by 30 April 1999.

Infrastructure Sharing

36. I note that the matter pertaining to infrastructure sharing is not subject to dispute and I am not going to make a ruling on it. However I encourage all parties concerned to come to an agreement on the issue by 30 April 1999.

Validity of the determination

37. I have duly considered the issue of the validity of this determination. This ruling should be valid for a specific period because of the nature of issues raised herein. Given the ever changing telecommunication environment and issues related to traffic flows, price, grade and quality of service and the need to build a strong foundation for a sustainable interconnection regime I have come to the conclusion that this determination shall remain valid for a period of 24 months effective from 17 February 1998. However BTA will be amenable to review this determination at any time subject to all the three parties agreeing to a compromise position on interconnection rates and leased line prices.

ORDERS AND DIRECTIVES

38. Having duly considered all the factors relevant to this dispute including submissions by the concerned parties, I hereby order and direct that-

38.1 BTC shall charge Mascom and Vista 24 thebe per minute during peak period and 19.1 thebe per minute during off peak period for terminating a mobile to fixed call within Botswana with volume discounts as shown in Table 1 which appears at page 7 of this ruling. For the purposes of this directive "peak period" refers to 07.00 - 20.00 hours Monday to Friday and 07.00 — 13.00 hours on Saturday and "off peak period" refers to all other times plus Botswana Public Holidays;

38.2 in respect of fixed to mobile calls BTC shall retain 24 thebe per minute during peak period and 19.1 thebe per minute (off peak) for delivering a fixed call to mobile operators within Botswana;

38.3 for international outgoing calls, BTC shall charge Mascom and Vista its published international tariffs less 10%;

38.4 For international incoming calls, BTC shall pay Mascom and Vista 28 thebe per minute as from 17 February 1998 to 31 May 1999 and thereafter 10% of the revenue it gets from settlement with respect to all international incoming calls which terminate in their respective networks

38.5 all the three parties herein i.e. BTC, Mascom and Vista shall not charge each other for use of their networks for emergency services by consumers of such services;

38.6 rental charges in respect of leased lines shall be as shown in Table 6a of Annexure A hereof with volume discounts as shown in table 6b in the same Annexure;

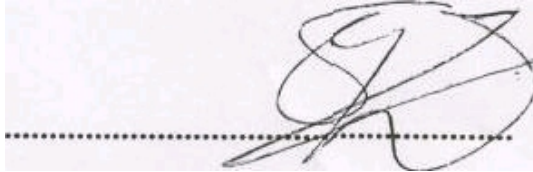
38.7 installation charges shall be as shown in Table 7 of Annexure A hereof with volume discounts as indicated in the same Annexure at Table 8;

38.8 the parties shall reach agreement on all outstanding issues in relation to interconnection and leased line charges under paragraph 34 above by 30 April 1999 failing which BTA may impose a settlement on them; and

38.9 this determination shall remain valid and binding on all the parties for a period of 24 months effective from 17 February 1998 provided that BTA may on a joint application by all the parties indicating that they have agreed to a compromise position on interconnection and leased lines rates review such rates.

39. Any party aggrieved by this ruling may appeal to the High Court pursuant to section 56 of the Act.

DELIVERED IN GABORONE THIS FOURTH DAY OF FEBRUARY
1999

A handwritten signature in black ink, appearing to be 'C. M. Lekaukau', is written over a horizontal dotted line. The signature is stylized and somewhat abstract.

C. M. LEKAUKAU
EXECUTIVE CHAIRMAN

ANNEXURE A

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Table 2: BTC's Monthly Proposed Retail Rates

Distance (Km)	Fixed Amount (Pula)	Charge Per Km
0-50	1000	180
51 - 200	6100	80
201 - 400	15000	40
>400	21800	20

The monthly charge is made up of a fixed charge and a variable cost (Charge per Km)

Table 3 BTC's Monthly Proposed Wholesale Rates

Distance (Km)	Fixed Amount (Pula)	Charge Per Km
0-50	900	162
51 -200	5490	72
201 - 400	13500	36
>400	19620	18

The proposed wholesale rates which will be charged to operators are shown in table 2: These are derived from table 1 by applying a 10% discount

ANNEXURE A (Continued...)

Table 4 *position of Mascom and Vista

DISTANCE (Km)	Fixed Amount (Pula)	Additional Per Km
0- 50	400	72
51-200	2800	24
200 -400	5200	12
400 - 600	7600	6
>600	10000	3

Table5 Volume Discounts as Proposed by Mascom

Numberof2Mbit/s links	Monthly Rental Discounts
1	0%
2-5	25%
6-10	30%
>10	35%

ANNEXURE A (Continued....)

Table 6a Monthly Leased line Rental Charges to be Applied

Distance	Fixed Amount (Pula)	Charge Per Km
0-50	600	108
51 - 200	3660	48
201-400	9000	24
>400	13080	12

Table 6 b Volume Discounts

Number of 2Mbit/s LINKS	Monthly Rental Discounts only Per KM
1	0%
2-5	25%
6-10	30%
>10	35%

Table 7 Installation Charges (Once off)

BTC 2 Mbit/s installation fee per link	1 to 50km	51k to 200 Km	>201
Pula	3400	4100	7000

Table 8
Installation Volume Discounts

Number of 2 Mbits/s links	Installation Discount
1	0%
2-5	25%
6-10	30%
>10	35%

