

ITEM NUMBER: C 03/04/16

*RECOMMENDATION FROM THE EXECUTIVE MAYOR: 05 APRIL 2016*

MC 08/04/16    **AUTHORISATION OF THE PAYMENT OF INTEREST TO TELKOM (PTY) LTD FOR CRITICAL TELECOMMUNICATION SERVICES RENDERED**

It is **RECOMMENDED** that:

- (a) the payment of interest charge raised by Telkom for the late payment of critical legacy data and voice services rendered during July 2015, be authorised
- (b) the matter be referred to MPAC for investigation.



REPORT TO COUNCIL

DATE 2016 -04- 0 5

1. ITEM NUMBER : MC 08/04/16
2. SUBJECT

**AUTHORISATION OF THE PAYMENT OF INTEREST TO TELKOM PTY LTD FOR CRITICAL TELECOMMUNICATION SERVICES RENDERED.**

**ONDERWERP**

G4256

**MAGTIGING VIR DIE BETALING VAN RENDE AAN TELKOM (EDMS.) BPK. VIR UITERS BELANGRIKE TELEKOMMUNIKASIEDIENSTE GELEWER**

**ISIHLOKO**

**UKUGUNYAZISWA KWENTLAWULO YENZALA KWABAKWA-TELKOM PTY LTD NGOKUMALUNGA NEENKONZO ABAZINIKEZELEYO EZIBALULEKILEYO EZINGONXIBELELWANO NGOCINGO**

3. STRATEGIC INTENT

This report aligns respectively with the strategic focus area of a Well-run City, and Strategic Objective 5.1 which aims to ensure a transparent government.

4. PURPOSE

The purpose of this report is as follow:

- To authorise the payment of interest incurred for the late payment of Telkom accounts.
- To recommend that the matter be referred to the Municipal Public Accounts Committee for investigation.

5. FOR DECISION BY

This report is for consideration/decision by Council.

6. EXECUTIVE SUMMARY

Until 2002 Telkom was the *de jure* monopolistic provider of the Public Switched Telephone Network (PSTS) and associated telecommunication facilities and services, and until 2005 it was also the *de facto* monopolistic provider of many telecoms facilities and offerings in South Africa. To this day it remains the sole

provider of several telecommunication services in specific geographies within the city. This fact underpins the events which give rise to the need to seek authority to pay interest charged by Telkom for legacy voice / data services.

As will be shown, the services resulting in these expenses all relate to critical underlying City services, which demanded the continuance of this service even in the a vacuum of a valid tender in order to ensure continuity of City services. When the decision was taken to suspend to use of the sundry payment method due to the lack of a suitable procurement vehicle for these corporate expenses, it resulted in late payments and subsequent interest being charged.

The delay in payment of an Telkom invoice for City wide data and voice lines services commissioned prior to telecommunication tenders being required and the inability to pay for these services via a sundry payment route has led to an interest charges of R94,519.20 being raised (value as at Jan 2016). This amount increases monthly and any further deferment of the matter will result in addition cost being incurred.

## 7. RECOMMENDATIONS

For decision by Council:

It is recommended that:

- a) The payment of interest charge raised by Telkom for the late payment of critical legacy data and voice services rendered during July 2015, be authorised.
- b) The matter be referred to MPAC for investigation.

### AANBEVELING

G4256

vir besluitneming deur die Raad:

Daar word aanbeveel dat:

- a) Magtiging verleen word vir die betaling van rente wat Telkom gehef het vir die laat betaling van uiters belangrike historiese data ('legacy data') en stemdienste wat gedurende Julie 2015 verskaf is.
- b) Die saak na MPAC vir ondersoek verwys word.

### IZINDULULO

Isigqibo seseBhunga:

Kundululwe ukuba:

- a) Makugunyaziswe intlawulo yenzala enyuswe ngabakwa-Telkom ngokumalunga nentlawulo eyenziwe emva kwexesha ngokujoliswe kwiinkonzo ezingedatha ebalulekileyo yokulilifa lemveli nezelizwi ezithe zanikezelwa kwisithuba sangoJulayi 2015.
- b) Umbandela lo mawudluliselwe kwiKomiti kaMasipala engee-Akhawunti zoLuntu (MPAC) ukuze uphandwe.

## 8. DISCUSSION/CONTENTS

### 8.1. Background

In order to contextualize the procurement transactions described in this report a description of the evolving telecommunications services industry is needed.

The city's telecommunication network carries data, voice and video communication across a Wide-Area Network (WAN), connecting approximately 400 sites, with various Local-Area Networks (LAN) found at most of them. The technologies connecting these sites originally comprised exclusively of analogue copper lines owned by Telkom, and have gradually been replaced, and expanded, with digital fibre-optic networks and wireless technologies since 2011 when other Electronic Network Service Providers were licensed to provide telecommunication services in RSA. In addition to extending existing networks, new technologies have been introduced and the routes they cover now belong to various licensed service providers in the telecommunications sector. The City via its own Broadband fibre-optic network is such a licensed service provider.

Having being the monopolistic telecommunications service provider until deregulation of this sector, Telkom never needed to compete for the City's telecommunication business. Some of these services were contracted by the previous municipalities which then after 2000 became the City of Cape Town Municipality. These sites enable the business of many different City Departments and are fundamental to service delivery.

Historically the City has used its sundry payment method to pay for these legacy services.

It is indeed the transformation of networks exclusively owned and operated by Telkom to those owned and operated by a bouquet of service providers and the changes this necessitated in procurement processes which has given rise for the need for this report.

As the only service provider until 2011, Telkom at the time was listed under Schedule 2: Major Public Entities of the Public Finance Management Act 1 of 1999. According to Section 9.2 of the CoCT Accounts Payable policy the sundry payment process makes provision for disbursements that cannot be processed using formal procurement procedures. It is typically reserved for vendors not receiving orders, allowing for payments to be done solely on receipt of an invoice (eg. Eskom bulk electricity purchase), as well as a sundry payment request form duly authorized by a City of Cape Town official. It remains the exception rather than the rule for sundry payment to be used and each request has to be accompanied by an official Payment Request form and supporting documentation, to be authorized by the Director: Supply Chain Management (SCM) as delegated by the City Manager.

With the introduction of competition in the telecommunication services industry attempts have been made to introduce tenders which reduce the need to pay invoices via the sundry mechanism. However,

- a) the historic procurement transactions and associated contractual obligations,
- b) diversity of technologies deployed (many of which still in use today, have been made redundant by new technologies and therefore are no longer available on any pricelist, but yet are critical to ongoing City operations), and
- c) the negative business impact of suspending any telecommunication service without a replacement being in place;

all add to the complexity of the matter. This has meant that it has not been possible to put an itemised procurement tender, needed to pay for such invoices via a contract payment method as the preferred method of payment in terms of the City SCM policies, in place.

## **8.2 Telkom interest charges for legacy services**

In 2011, two major changes took place within the City administration insofar it concerns telecommunication services. Firstly, in consultation with the office of the Chief Finance Officer: Budgets, the general ledger account for contracted telecommunication services was centralized and all budgets were consolidated within the IS&T Department. This step followed upon the:

- a) observation that departments were each following their own telephony strategies, with no overall co-ordination and with significant duplication, wastage and excesses, and
- b) the convergence of telephony with data technologies, which made possible the transfer of data, voice and video over the same data line.

In support of this centralisation telecommunication approach is, the IS&T Department during 2011 issued, and in October 2011 awarded Tender 476S/2010/2011 ("Provision of Fixed Voice and Data Telecommunications Services"), to multiple service providers (including Telkom) for various voice and data services that had become available competitively. Services for the 150 sites, served by outdated technologies, relevant for purposes of this report were not included in this tender. This was deemed appropriate as Telkom was the incumbent telecommunication service provider to these sites, and the City had no intention to deploy the same outdated technology through a different service provider to any of these sites. Hence, the designation of these lines as so-called "Telkom legacy services".

Tender 476S/2010/2011 was to have been replaced by a new tender to be awarded in October 2014. At the insistence of SCM the specifications for the new tender included services associated with all legacy sites in order to minimize the need for sundry payments. Timely provision for the follow-up tender, the Telecoms branch of the IS&T Department submitted the required tender specifications to SCM during December 2013, but as yet this tender is not awarded as it is proving to be very difficult to evaluate the diverse

services provided by the various service providers against a uniform set of line items.

In the absence of this replacement tender, neither current nor legacy services could be paid against an active tender. To facilitate payment authority to deviate was obtained via report (CM 16/6/14 – CM 31713). This report sought condonation of payment of Telkom Legacy Services provided during the period from Oct 2011 to June 2013 (original tender period) and 01 July 2013 to 31 May 2014, and secondly authorised payment for these services until 30 September 2014. The procurement authority requested for the period ending on 30 September 2014 was deemed by all stakeholders to be sufficient time to get the replacement tender which had already been issued, awarded.

In order to ensure the continuity of legacy services the Director: SCM authorised payments to Telkom using the sundry payment method for the period 1 October 2014 to 30 June 2015. However, when this authority expired a further deviation/condonation report (CM 02/09/15 – CM37133) submitted to the Executive Director: Corporate Services and Compliance (ED: CORC), in route to the SCMBAC, had not been approved. At the same time the Director: SCM rejected a request by the Telecoms branch to continue using the sundry payment method for Telkom's legacy services on the grounds that an appropriate procurement mechanism needed to be found. Rejection of this particular request by the Director: SCM followed in spite of the appeal directed at him by the Director: IS&T and in spite of the concern expressed about an interest charge that may follow in absence of a timeous payment of the outstanding account.

The deviation report was approved in September 2015, by which time Telkom had decided to raise interest on the legacy services associated with their July 2015 invoice. This interest charge was R94 519.20 by January 2016 and Telkom continues to raise interest on the outstanding interest invoice thereby escalating the outstanding amount.

Authority is being sought to pay the outstanding interest being raised by Telkom and to avoid any further escalation of interest on the outstanding amount.

The IS&T Department views in a very serious light the chain of events that led to this contingency, and it has already taken mitigation steps to avoid recurrence of these circumstances. It is however evident that the nature of the telecommunication services and need deploy a valid tender to procure legacy services contracted under a previous procurement vehicle is proving to be impossible. The expectation that a fixed term tender addressing all legacy, current and future telecommunication services as envisaged through the replacement tender prepared in December 2013 has not been realised. With no solution in sight and the 2011 tender having only been extended until 31 December 2015, and a further extension is necessary until an appropriate procurement vehicle for telecommunication services can be brought to bear.

### **8.3. Conclusion**

The Telkom interest charge for legacy services is of an immediate material nature, because the interest so charged is based on bona fide grounds and cannot under any circumstances be avoided. It should be appraised in context of the fact that all reasonable steps are being taken towards the stated objective of stepwise liberalizing the City's telecommunication networks from a Telkom monopoly with among others a Broadband strategy, and to engage with the telecommunications industry in a fair and transparent manner for supply of services which cannot be self-provided. That this is a difficult and technically challenging process is admitted, and an intervention is currently being conceived for the replacement tender (Tender 1S/2014/2015). It is, furthermore, contended that all reasonable care was taken by the IS&T Department to avoid the interest charge, and this contention is borne out by the facts of this matter.

Concluding, a case is indeed to be made for the seriousness of the contingencies described here, but their materiality should be judged in light of the wider set of circumstances faced by the City administration, and by the specific departments and the total budget involved.

#### 8.4. Constitutional and policy implications

The recommendations contained in this report must be adjudicated in light of Council's constitutional duty to provide a democratic and accountable government for local communities (Constitution of the Republic of South Africa, Act 108 of 1996, s. 152 (a)); and its obligation to create committees reporting directly to Council for oversight of the executive (Municipal Structures Act No. 117 of 1998, s. 79).

#### 8.5. Sustainability Implications

Does the activity in this report have any sustainability implications for the City? No x

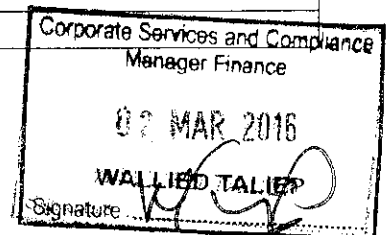
#### 8.6. Financial Implications

ZUKISWA NQANQALI  
MANAGER: OPERATING  
BUDGET 400 1878

This interest charge was R94 519.20 by January 2016 and Telkom continues to raise interest on the outstanding interest invoice thereby escalating the outstanding amount. This expenditure will be funded as follows:

Profit/Cost Centre Number	13030104
Profit/Cost Centre Description	Telecoms Voice
Cost Element	412600
Cost Element Description	Interest
Budget Provision 2015/16	R 110 000
Spent to Date/Committed	R 0
Balance Available	R 110 000

#### 8.7. Legal Implications



In terms of Section 32(2) of the Municipal Finance Management Act 56 of 2003 a municipality must recover unauthorised, irregular or fruitless and wasteful expenditure from the person liable for that expenditure unless the expenditure (a) in the case of unauthorised expenditure, is (i) authorised in an adjustments budget; or (ii) certified by the municipal council, after investigation by a council committee, as irrecoverable and written off by the council; and (b) in the case of irregular or fruitless and wasteful expenditure, is, after investigation by a council committee, certified by the council as irrecoverable and written off by the council.

**8.8. Staff Implications**

Does your report impact on staff resources, budget, grading, remuneration, allowances, designation, job description, location or your organisational structure?

No

Yes

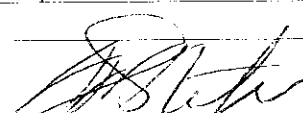
**Other Services Consulted**

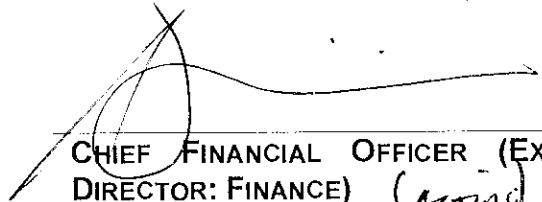
Office of the City Manager: Mr A. Vorster  
Internal Audit: Ms A. Moolman

SMM



FOR FURTHER DETAILS CONTACT:

NAME	Andre Stelzner
CONTACT NUMBERS	021 400 1250
E-MAIL ADDRESS	andre.stelzner@capetown.gov.za
DIRECTORATE	Corporate Services and Compliance
FILE REF NO	
SIGNATURE : DIRECTOR (Delete if not necessary)	

  
 CHIEF FINANCIAL OFFICER (EXECUTIVE DIRECTOR: FINANCE) (Acting)

COMMENT:

THE GL ACCOUNT INTEREST OTHER

NAME KEVIN JACOBY *DAVAUMITHA* MUST BE USED TO EFFECT PAYMENT 412600  
 DATE 29.02.2016.

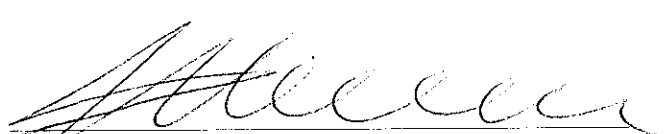
LEGAL COMPLIANCE

NON-COMPLIANT

NAME Jocaris - Mari Holt  
 TEL 021 400 2753  
 DATE 04/03/2016

Comment:

Certified as legally compliant: *SMIT*  
 Based on the contents of the report

  
**Mr G-Ras** L. MBANDAZAYO  
 ACTING EXECUTIVE DIRECTOR: CORPORATE SERVICES AND COMPLIANCE (ED: CORC)

SUPPORTED FOR ONWARD SUBMISSION TO MAYOR  MAYCO  COUNCIL

NOT SUPPORTED

REFERRED BACK

DATE 2016 -03- 10

COMMENT:

MAYORAL COMMITTEE MEMBER

COMMENT:

NAME ID NELSON

DATE 1A/3/2016

EXECUTIVE MAYOR

- SUPPORTED FOR ONWARD SUBMISSION TO MAYCO  / COUNCIL :
- PC RECOMMENDATION
- RECOMMENDATION AS CONTAINED IN ORIGINAL REPORT
- ALTERNATIVE RECOMMENDATION TO BE REFLECTED BELOW

APPROVED I.T.O. DELEGATED AUTHORITY

NOTED

REFUSED

REFERRED BACK

DATE 17-03-2016

COMMENT: