



**MTN'S RESPONSE TO THE NOTICE OF ICASA'S  
INTENTION TO AMEND THE REGULATIONS IN RELATION  
TO THE END-USER AND SUBSCRIBER SERVICE  
CHARTER AS PUBLISHED IN GOVERNMENT GAZETTE NO  
37251 DATED 22 JANUARY 2014**

**14 March 2014**

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## 1. EXECUTIVE SUMMARY

Mobile Telephone Networks (Pty) Limited (“MTN”) would like to thank the Independent Communications Authority of South Africa (“ICASA”) (“the Authority”) for the opportunity to respond to the proposed End-User and Subscriber Service Charter (“the Charter”) as published in Government Gazette No 37251 Dated 22 January 2014. MTN wishes to record that it welcomes the publication of the Charter and generally appreciates and supports the objectives thereto. MTN believes the Charter could be clarified and strengthened in a number of respects, in particular:

- The technical definitions in the Charter should be aligned with the technical definitions of the ITU and the ETSI so as to align with best practise and international standards.
- The measurement parameters and test methodologies should conform to the current TC74 technical committee, which is focussed on how to measure Quality of Service, which is being developed jointly between ICASA, the SABS and the operators, specifically as it relates to drive tests.
- The measurement parameters can further be clarified by a clear test methodology that is in line with international standards and best practise. These measurement parameters are currently unclear, in particular the methodology of measurement is vague and ambiguous and not in line with international standards and best practise.
- MTN believes that some of the measurement parameters are not applicable to End-User’s and Subscribers, while some measurements are not possible to report on in a compliance report and can only be measured through drive testing, such as speech quality, for example.
- MTN propose that further robust discussion and debate is required in order to ensure the best possible quality of service for our End-users and Subscribers, more so in circumstances where it is the intention of ICASA to enforce same as a regulatory obligation.

## 2. INTRODUCTION

MTN would like to thank the Authority for the opportunity to respond to the proposed Charter as published in Government Gazette No 37251 Dated 22 January 2014. The Charter consists of a review and amendment of the regulations in terms of section 4 read with section 69 (3) of the Electronic Communications Act, 2005 (Act no. 36 of 2005) ("ECA"), setting out the Minimum Standards for End-User and Subscriber Service Charters published in Government Gazette No 32431 on 24 July 2009.

The purpose of the regulations is to:

- Prescribe the minimum standards of service quality offered to end-users by licensees;
- Make available information that will help end-users make informed choices on services offered by licensees and through the publication of service performance;
- Inform end-users of their rights and obligations to enable them to exercise such;
- Clarify processes that are intended to improve turnaround times for the resolution of end-user complaints and provide timeous redress;
- Provide for monitoring and enforcement of these regulations;
- Provide for rebates to subscribers who did not receive services due to unavailability; and
- Provide for the publication of statistical complaints and network performance measurement reports received from licensees on the Authorities website so as to allow end-users to make informed choices.

MTN's submission is structured as follows:

- Section 1: An executive summary;
- Section 2: Introduction;
- Section 3 General commentary; and
- Section 4: Specific comments

### 3. GENERAL COMMENTS

Generally, in respect of all the measurement parameters contained in the proposed Charter, MTN notes the lack of a detailed methodology to define how the measurements will be conducted. MTN submits that a detailed methodology is critical to ensure the objective measurement of parameters. The request for the development of a detailed methodology is so that there can be certainty in how ICASA and the operators will implement the QoS requirements. It also enables the avoidance of disputes between the parties in the future.

These methodologies should be in line with the set of SABS standards applicable to measurement of Quality of Service, which are currently being developed by the SABS TC74 technical committee together with the operators. Specifically the methodologies listed in schedule 1 pertaining to drive tests should be removed from the document and instead the drive test methodology standard being developed through TC74 should be referenced. If it is not removed, there will soon be two sets of drive test methodologies that will create confusion.

MTN requests clarity as to how these targets are to be measured. Currently it appears as if the targets are measured on a snapshot basis, i.e. there should be 99% availability at all times. This is not feasible; therefore MTN proposes that the targets to be achieved should be the average measures over a six month period for the whole network reported on a bi-annual basis.

MTN is of the opinion that the term “service” is too loosely referred to in the document and that for each prescribed requirement a set of services to which it applies as well as a specific methodology standard to be used for measurement, should be listed. For example, there are different technologies such as 2G and LTE and then on a second level each technology can accommodate different services such as packet switched data and streaming services.

MTN note that the definitions for the measurement parameters are not in line with the technical definitions defined by the ITU and ETSI specifications. MTN submits that the Authority should align itself with best practise and international standards.

MTN are concerned with the increase in the reporting period from a bi-annual to a quarterly basis and question whether the Authority will be able to cope with the additional administrative burden of analysing the reporting on a quarterly basis. MTN submits that reporting on a bi-annual basis is sufficient to measure and track quality of service especially in circumstances where the parameters are based on averages over a particular time period.

It is noted that some new measurement parameters have been introduced, whilst some existing measurement parameters have increased significantly. Whilst MTN is committed to providing quality services to its customers, we caution against introducing these measurements as it is submitted that such are not achievable. MTN has given detailed comments further below as to why MTN submits the measurements are not achievable.

MTN welcomes the Authorities initiative to clarify the processes that are intended to improve the turnaround times for the resolution of en-user complaints. It is MTN's view that positive measures have been introduced, such as to ensure that the Authority conducts a thorough investigation of the complaint and identifies the alleged contravention prior to referring the complaint to the licensee. This will relieve the Authority of the cumbersome administrative burden of administering complaints that are spurious.

#### **4. SPECIFIC COMMENTS TO THE PROPOSED AMENDMENTS**

##### **4.1. Definitions**

MTN notes that the definitions proposed in the definitions section do not correspond with the technical definitions as per the International Telecoms Union ("ITU") and the European Standard and Technology Institute ("ETSI"). MTN proposes that the Authority considers utilising the definitions and standards provided by the ITU and ETSI as these capture the measurement parameters accurately. In particular from a technical perspective, it is important that these definitions are captured correctly and conform to international standards and best practise. It is not clear to MTN why ICASA has chosen to deviate from international standards.

##### **Ad Definitions ("Call Setup Success Rate")**

The draft regulation contains the following definition for Call Setup Success Rate:

*"The percentage of calls that are successfully set up and terminated as a percentage of the total call attempts"*

MTN submits that this definition is incorrect and that call setup success rate only measures whether calls are set up correctly and is independent of whether they terminated successfully. This definition should instead read as follows:

*"The percentage of calls that are successfully set up ~~and terminated~~ as a percentage of the total call attempts."*

### **Ad Definitions (“Compliant”)**

The draft regulation contains the following definition for a complaint. “*Complaint means any grievance alleging non-compliance by a licensee with the terms and conditions of its licence, ICASA Act and the underlying statutes.*”

MTN supports the proposed definition. However, MTN submits that the Authority must review the complaint which it receives from a subscriber to establish which specific provision in the licence, the standard terms and conditions, the ICASA Act and any other statutes or regulations have been transgressed. The Authority must therefore establish this as part of its complaint assessment process referred to in regulation 8.2.2 (i). MTN can only address complaints received by the Authority if the Authority has clearly indicated which provision has been transgressed.

### **Ad Definitions (“Complainant”)**

The draft regulation contains the following definition for complainant. “*Complainant means any person who has escalated the complaint to the Authority alleging non-compliance by telephone, email, fax or walk-in.*”

MTN submits that the complainant will not know the applicable regulations and or legislation in order to allege any non-compliance. The Authority will need to review the complaint in order to specifically identify the relevant provision that has been contravened by a licensee.

As a result, MTN proposes that the definition of complainant is reworded as follows: “*Complainant means any person who has escalated a complaint by telephone, email, fax or walk-in to the Authority alleging possible non-compliance by a licensee*”

### **Ad Definitions (“End-user”)**

The draft regulation contains the following definition for end-user. “*End-user means a subscriber and persons who use the services of a licensed service*”.

MTN submits that the definition is not in line with the Electronic Communications Act (“ECA”) as there is no definition of licensed services. However, there is a definition of electronic communications service, which should have the same meaning as licensed service. MTN therefore proposes that the definition is reworded as follows:

*“End-user means a subscriber and persons who utilises an electronic communications service.”*

### **Ad Definitions (“Fault”)**

The draft regulation contains the following definition for fault. “Fault *means failure of a network which results in disruptions or degradation of services.*”

MTN submits that the definition of fault is too wide and that the definition should clarify the extent to which the service is disrupted or degraded and if the subscriber is still able to access the electronic communications service and to what extent the subscriber may still be able to use the services.

MTN therefore proposes that the definition of fault should be amended as follows:

*“Fault means a network fault which results in disruptions or degradation of services to the extent that the subscriber cannot access the electronic communications service concerned, which he/she used to be able to access the service at generally acceptable levels and excludes faults which are beyond the licensees control.”*

### **Ad Definitions (“Service Activation”)**

The draft regulation contains the following definition for Service Activation. “Service Activation *means initiating the service requested for the end-user*”.

MTN submits that this definition may not have the correct meaning in respect of the activation of the service. The Authority must be aware that initiating the service does not mean the service is activated. In addition, the definition needs to include the network on which the service is activated.

MTN submits that the definition should be corrected and reworded as follows: “Service Activation *means activating the service requested by the end-user on an electronic communications network*”.

### **Ad Definitions (“SMS”)**

MTN submits that this definition is incorrect as it includes the transmission of a multimedia message service (“MMS”). Reference to an MMS should be deleted and included in its own separate definition.

MTN submits that the definition should be corrected and reworded as follows:

*“SMS means a message which is sent through short message service and includes a multimedia message sent through multimedia messaging services.”*

#### **4.2. Ad Regulation 2 and 3 “Scope and application of the regulations”**

MTN support the scope and application of the regulations.

#### **4.3. Ad Regulation 4 “Electronic Communications Network Service (ECNS) and Electronic Communications Service (ECN) Service Availability”**

##### **General**

The draft regulations state that the reporting period for each of the parameters is on a quarterly basis. MTN submits that it does not support the quarterly reporting period as it increases the administrative burden on licensees to submit such reports to the Authority. MTN respectfully requests that the Authority clarify the added benefit of changing the reporting period from a bi-annual basis to a quarterly basis. In addition, MTN submits that this will increase the administrative burden on the Authority, as it is submitted that the Authority does not have the necessary resources to evaluate all these reports on a quarterly basis. MTN submits that the bi-annual reporting period should remain and this should be reflected in all the reporting requirements contained in the draft regulation.

##### **Ad 4.1 Availability of Electronic Communications Network Services (ECNS)**

The draft regulation prescribes a 99% target for Mobile Services. MTN submits that it will not be able to comply with this requirement due to the fact that the target achieved by MTN previously, and in most cases, is 98% on average. MTN's calculation of this percentage would comprise of both the core and access networks. The internal components of the calculation would be made up of voice, SMS and data services only and the output of the calculation would be made up of the weighted average of the system architecture uptime. MTN further requests clarity from the Authority as to what period does the 99% target relate to for mobile and fixed wireless/fixed wire line services? For example, does the 99% target relate to a particular month within the year? What the Authority is therefore proposing is that on a snapshot basis there should be 99% availability at all times. If that is the case the Authority may inadvertently have increase the investment profile needed by the operators to achieve the result without necessarily having looked at the incremental benefit to the subscriber that an extra 1% (over the previous targets) may have brought. A cost benefit exercise is needed in this respect.

MTN proposes that the targets to be achieved should be the average over a six month period for the whole network.

Despite the technical calculation used by MTN to measure availability in terms of the current Charter, the Authority should note that these measurements, even if below the target, may not be perceived as such by the End-user. This is due to the fact that there is a degree of redundancy inherent in a mobile network (when 1 tower is down a user will in most cases just be served by another tower), therefore the end-user is not affected by the reduced availability. MTN submits that when taking this into consideration the target should be reduced to 98%.

#### **Ad 4.2 Availability of Electronic Communications Services (ECS)**

MTN submits that this measurement should be deleted as the availability of Electronic Communications Services is dependent on the availability of Electronic Communications Network Services.

#### **Ad 4.3 Average time to install and activate Services**

The draft regulation states that the 99% of Mobile Services will need to be installed within a 24 hour period. MTN submits that the installation of the mobile service might not occur within a 24 hour period as it is up to the subscriber to insert the SIM card into the device. The subscriber may choose not to insert the SIM card into a device such as handset or dongle immediately from the time the subscriber received the device and their SIM card. This installation requirement is therefore dependant on the subscriber and MTN submits that it will not be able to comply with this requirement as the subscriber's actions are beyond MTN's control.

Secondly, the draft regulation states that 99% of Mobile Services will need to be activated within a 24 hour period. Although this is feasible from a pre-paid perspective because the pre-paid subscriber is activated immediately when their SIM card is RICA'd, inserted into their handset and dynamic number allocation having taken place, MTN will not be able to comply from a post-paid perspective for the same reasons stated above. According to the previous compliance reports submitted to the Authority on the activation of Mobile Services, on average, MTN post-paid subscribers are activated between 1.5 and 2 days. That seems to be a very reasonable activation time period. MTN would like to understand from its perspective why it believes a 24 hour period is the appropriate target. If there is any empirical evidence or customer research that ICASA has at its disposal, we request that it be made available to us.

In respect of Fixed wireless / Fixed wire line services, MTN considers the installation and activation as one process as opposed to two separate processes. MTN proposes that the measurement parameter be collapsed into one single measurement and be amended as follows:

Installation and Activation	
Fixed wireless / Fixed Wire line	90% Within 30 Days Remaining 10% within 40 Days

#### **Ad 4.4 Average time to clear faults**

The Draft Regulation states that 95% of faults relating to the Mobile Services will need to be cleared with 24 hours. MTN submits that this requirement is not feasible and MTN will not be able to comply with this requirement based on the previous compliance reports submitted to the Authority. The proposed target inevitably does not take into consideration that there are daily circumstances that occur that by its very nature will not be cleared within a 24 hour period.

MTN can confirm that the majority of faults are cleared within 3 days, however a percentage of faults are only cleared within 6 days. The additional time is required in the event of complex technical faults. MTN submits that current period to resolve all faults within 6 days should remain. It must also be noted that on MTN's access network alone, MTN has in excess of ten thousand base stations, many of which are situated in rural and inaccessible areas which are subject to continuous vandalism.

#### **Ad 4.5 Connectivity failure rate for fixed, wireless, fixed wireline, mobile Internet and broadband services**

***Intra and Inter network call connection loss*** - MTN is not familiar with the methodologies required to measure "Intra network call connection loss" and "Inter network call connection loss" and would not be able to report on this measurement at the moment. MTN request the Authority to clarify the proposed methodologies so that MTN can determine if it is feasible to measure and report on these parameters.

***Speech Quality*** – This cannot be measured on the network as it needs to be measured by conducting a comprehensive set of drive test campaigns in specific areas. The results then also merely resembles a snapshot of performance at a specific location and a specific point in time for only the areas drive tested and can thus not be publicised as the speech quality for the entire MTN network. The results run a big risk of being misinterpreted by the public. MTN suggests that speech quality

as a metric be removed from this document and rather be measured for the licensees by the drive tests that ICASA conducts and publicise from time to time for specific areas.

**Call Handover Success Rate** –During a call the end-user will be unaware of the handover from one BTS to another, the only time the end-user will become aware of the handover is if the handover fails, which then results in a dropped call. The average drop call rate is measured, therefore MTN submits that the call handover success rate be deleted as this is a duplication of average dropped call rate.

**Service Coverage** – The service coverage parameters indicated are not possible to achieve in the current regulatory environment for the following reasons:

1. MTN's ECNS and ECS licenses are national; however the license does not oblige MTN to cover specific or all geographic areas within South Africa, nor does it prescribe any measurement parameters. The license merely gives MTN the right to roll out nationally. Although MTN continues to grow its coverage for 2G, 3G and LTE through continued investment, there is no obligation in our license agreement which supports this requirement. If ICASA wishes to continue what is effectively a roll-out obligation, it should do so within the context of a licence amendment procedure. MTN therefore questions the inclusion of this parameter on the basis as suggested by ICASA.
2. In order for MTN to deliver such levels of service MTN would require the following:
  - a. Sufficient radio frequency spectrum for use of Microwave Links;
  - b. Access and authority to rollout by expropriation, especially for fibre, microwave and in building solution; and
  - c. National, provisional and regionally coordinated Rapid Deployment Guidelines to assist operators to roll out more infrastructures at a faster pace.

It must also be noted that the service coverage metrics will differ from one technology to another; therefore the same measurement parameters will not apply to 2G, 3G and LTE, as an example.

MTN, as an ECNS and ECS license holder, endeavours to address subscriber requirements as much as possible; however, this requirement has to be balanced with the practicalities of market potential and financial return on investment.

Therefore, when assessing coverage through drive or walk testing, the samples gathered should be statistically representative of where the general populace makes their calls. Car parks and basements are not where people generally live and work, therefore the requirement to cover them is not financially sound, or realistically

possible. Furthermore, the coverage levels specified in the document are unnecessarily high. With improving technology, the sensitivity of equipment is such that the network is useable at far lower signal levels.

MTN submits that that the Service Coverage parameters should be deleted in its entirety due to the fact that the parameters are unfeasible and can never be achieved in the current regulatory environment.

**Packet Loss Ratio** - MTN does not measure the packet loss ratio at present and requests the Authority to provide clarity as to the methodology and reason for this measurement parameter. We are unsure as to how this parameter will enhance good customer experience within a radio network scenario.

**Delay Ratio** – It is not clear if the delay ratio refers to voice calls or other protocols, MTN requests clarification on this measurement parameter. MTN does not measure the delay ratio at present and requests the Authority to provide clarity as to the methodology for this measurement parameter. It is not clear to MTN what the Authority wishes to achieve through this measurement parameter as a result it would be proper if MTN could engage with ICASA as to the overarching reason for this inclusion. It may be that another measurement that is achievable could satisfy the Authorities objective.

**Latency** - MTN cannot report latency on Edge technology. It is not clear if the latency is based on round trip time, MTN requests clarification from the Authority. MTN does not currently measure and report on latency, although this measurement parameter is feasible within the 3G environment, circuit switched data provided on our 2G network is significantly more due to the nature of the technology. MTN submits that this measurement parameter is dependent on the technology deployed and as such is too generic in its current form.

**Broadband Speed** - MTN acknowledges the National Broadband Policy and assumes that the determination of Broadband speed by the Minister from time to time will be in line with the National Broadband Policy. The National Broadband Policy (“NBP”) gives expression to South Africa’s policy vision for the country to develop a seamless information infrastructure by 2030 and reflects South Africa’s commitment to creating an enabling environment for the rollout of broadband. As such it is an expression of the objectives that government wishes to achieve in the future and the principles upon which this future state will be built. MTN submits that it is not feasible to incorporate by reference a policy objective with regard to what should be achieved in the future as a policy is not intended to be a regulatory obligation. This will have

serious cost implications for MTN and other operators which will by necessity be passed on to the end-users.

It also appears as if a single broadband speed will be determined by the Minister. In a utopian environment, a single broadband speed could be proposed; however, current technology deployed by ECNS licensees will result in very different results. Most notable is that between the fixed environment and the wireless environment, the former provides for dedicated connectivity to the end user whereas the wireless environment makes use of a scarce resource, namely radio frequency spectrum.

The benefit of utilising wireless telecommunication is not without limitations; the most prominent is that as a shared resource between users, unrealistic broadband speeds will become unattainable. This results in speeds generally slower than fixed line broadband. To overcome this limitation operators are left with two alternatives, either to deploy large amounts of additional base stations at huge cost or to acquire additional spectrum to meet capacity demands. MTN have highlighted our need for high demand spectrum to the Authority for a number of years.

Whatever determination of broadband speed is made it should have relevance to what is required, by way of example 1Mbps is appropriate for website viewing, streaming and online gaming. It takes 0.8 seconds to load a webpage and approximately 40 seconds to download a 5 minute music file at maximum speed.

Going forward MTN proposes that any determination of a broadband speed should be sub-divided into two categories: fixed-line broadband speed and wireless (utilising radio frequency spectrum), this is in line with international regulators determinations such as OfCom who differentiates between the two, and for example, Ofcom reported the following in their analysis of the broadband market:

*“Mobile broadband performance is likely to remain significantly below fixed broadband performance until the rollout of additional spectrum for mobile services in the UK, which is expected to begin in 2013. The new spectrum will provide much needed capacity for the fourth generation (4G) of mobile technology, set to deliver significantly faster mobile broadband services.”*

#### **Ad 4.6 Operator assisted call response time**

**Call Centre Answer Success Ratio** – it is not clear if this measurement includes automated services such as IVR. MTN submits that the measurement parameter is high and should be lowered in order to make it more achievable. If the Authority persists with the very high measure it would mean that MTN would most probably have to employ more people that will have a detrimental impact on its cost base. This

increased regulatory burden is at a time when MTN is pressurised to decrease its cost base to become more efficient.

#### **4.4. Ad Regulation 5 “Provision of critical information to End-Users”**

Regulation 5 requires licensees to provide certain critical information to subscribers and end users. The draft regulation states:

*“...Products on offer, tariffs applicable, terms and conditions relating to the service, applicable hardware cost, connection fee payable, deposits, applicable credit limits, bills, retail outlets, packaging and complaints handling procedures on points of sale or on its website.”*

The information listed above is not exhaustive; therefore it is not clear if there is an obligation on the licensee to provide specific information on each and every aspect listed above, or if the list is merely an example of the kind of information which a licensee must provide. MTN submits that these provisions are vague and may lead to uncertainty in terms of what other information the licensee is obliged to provide. MTN submits that ICASA must prescribe an exhaustive list of information to be provided by licensees to end-users and subscribers in order to remove any uncertainty as to what information should be provided. MTN proposes that licensees be obliged to provide the following information:

*“5 Licensees must provide End-Users and Subscribers with the following information regarding *inter alia*:*

*5.1 All products and services on offer including all tariffs applicable, terms and conditions relating to the products and services, any applicable hardware cost, connection fee payable, deposits (if applicable), applicable credit limits (if applicable), billing methods and procedures, retail outlets where products and services are available for purchase, packaging and the licensee’s complaints handling procedures. Such information may be provided by a licensee ~~on~~ at points of sale or on its website.”*

MTN propose the deletion of “packaging” as it is not clear what information pertaining to packaging should be provided and also in instances where a device is sold, the packaging is supplied by the manufacturer therefore the licensee has no control over the packaging. Manufacturers are not subject to the jurisdiction of the Authority therefore it will not be possible to place requirements regarding packaging of devices on the manufacturers.

MTN are in agreement with the contents of regulation 5 (a) and (b) i and ii. In terms of regulation 5 (b) iii MTN submits that operators be given sufficient time to implement an opt-in SMS service as this is something that if not implemented already by a licensee could take at least three months to implement.

#### **4.5. Ad Regulation 6 “Protection of End-User and Subscriber information”**

Regulation 6 within the draft regulation specifies how licensees should protect the confidentiality of the end-users personal information. MTN submits that the inclusion of these information protection requirements is not necessary following the promulgation of the Protection of Personal Information Act, no 4 of 2013 (“POPI”). The POPI legislation will provide the subscriber with a greater degree of protection from a privacy and information security perspective in law. The POPI legislation will in any event trump the requirements specified in regulation 6. MTN submits that Regulation 6 should be removed from draft regulation.

#### **4.6. Ad Regulation 7 “Charging, billing, collection and credit practices”**

##### **Ad 7.1 Charging**

MTN supports the provisions of regulation 7.1.

##### **Ad 7.2 Billing**

Regulation 7.2 states that “ *Licensees must: b) Provide subscribers with itemised billing statement showing detailed records of SMS, voice and websites visited, where data was used.*”

MTN submits that this requirement is not in line with The Standard Terms and Conditions Regulation for ECS and ECNS licensees (gazette no: 33294) (“The Standard Terms and Conditions Regulation”), which states that:

*“Upon request by an end-user, the Licensee must provide an itemised bill, which contains a sufficient level of detail to allow verification of charges incurred in using the services provided by the licensee.*

*(a) Each detailed itemised bill shall contain at least the following information in relation to each individual transaction (voice or data call) charge incurred by the subscriber during the relevant billing period:*

- (1) destination,*
- (2) dialled number,*

- (3) date,
- (4) time,
- (5) duration, and
- (6) charge for each individual transaction.

(b) *The detailed itemised bill must be provided:*

- (i) *via post or in an electronic format;*
- (ii) *at such a price that takes into account the difference in the mode of delivery.”*

The Standard Terms and Conditions Regulations state that the itemised billing can be provided to the end-user upon request as there is a cost incurred by the licensee to generate the itemised billing information. MTN submits that itemised billing information can only be provided to a subscriber upon request due to the charge involved.

Secondly, MTN will not be able to provide the information relating to the websites visited for technical reasons. If a subscriber accesses the internet through an APN, which is not controlled or managed by MTN, then MTN will not be able to access the website information. For example, MTN cannot access the URL information for Blackberry subscribers because they access the internet through the Blackberry APN, which MTN has no control over and does not manage.

MTN therefore submits that Regulation 7.2(b) should be removed in its entirety because it will contradict the billing requirements in the Standard Terms and Conditions Regulation and MTN will not be able to provide the website URL information as explained above.

Thirdly, MTN is of the opinion that the Authority, through this amendment is also trying to amend the standard terms and conditions applicable to licensees. As a result, MTN submit that the Authority is in effect attempting to change the licensing conditions of licensees and as a result should go through the process contained in the ECA that determines how licences should and can be amended.

Regulation 7.2 (e) appears to contain a mistake; MTN proposes that it should read as follows:

*“Explain how the credit referencing system in respect of end-users and subscribers is applied.”*

The draft regulation states that “90% of billing complaints must be resolved within fourteen (14) calendar days.” MTN submits that it is unreasonable to expect a licensee to resolve complaints during non-working days (i.e. Saturday and Sunday) and during public holidays. MTN further submits that the calendar days should revert back to working days as prescribed in the current End-user and Subscriber Service Charter Regulation.

The draft regulation states that: “Not more than 1% of bills issued should be disputed over a billing cycle.”

MTN submits that this requirement is unreasonable as there will be certain cases where subscribers will dispute their bills even if the bill is correct. MTN therefore has no control over the number of subscribers disputing their bills in this instance. Furthermore, the billing cycle is not defined. MTN further submits that this measurement parameter should be removed from the draft regulation.

### **Ad 7.3 Applicable rules in defining a suitable degree of End-User protection regarding billing complaints**

MTN is in agreement with the proposed 7.3 (a) (i).

In terms of 7.3 (a) (ii), MTN proposes that ICASA revert to the 14 **working** day turnaround time for billing complaints as set out in the minimum standards for end-user and subscriber service charter as published in Government Gazette no 32431 published on 24 June 2009. MTN submits that the proposed 14 calendar day turnaround time is an unrealistic timeframe for the resolution of billing complaints, in particular data billing complaints which requires extensive data extraction and analysis, in addition if the query is data related, it is often necessary to extract additional reports in order to access information that is not usually provided to consumers in the itemised billing, this data requires detailed analysis and verification in order to ensure that every aspect of the query is resolved.

MTN support the proposals in 7.3 (a) (iii) to (v).

## **4.7. Ad Regulation 8 “Complaints procedures”**

### **Ad 8.1 Complaints reported to the Licensee**

Regulation 8.1(b) states that “A licensee must display complaint handling procedures on their websites, invoices, display board at service outlets including a summarised version on the device and SIM card packaging. “

MTN submits that it does not have control over the display of this type of information in respect of the device packaging. In addition, it might not be feasible to publish the complaint handling procedures for all licensees on the packaging for a particular device. If the complaint handling procedure changes for a particular licensee (such as the contact information) the device packaging may then need to be recalled and new packing produced, this cannot be enforced on the device manufacturers as they are not subject to the jurisdiction of the Authority. MTN further submits that this requirement should be removed from the draft regulation.

Regulation 8.1 e) states “*The conclusion of a complaint must be an official written response from the licensee*”.

MTN agrees that a complaint must be responded to via an official written response from the licensee, either in the form of an email or on an official company letterhead.

This, however, is not in line with ICASA’s current process which involves the use of the “ICASA CRM System” whereby licensees are expected to respond directly via a web interface which can then be accessed by the Authority and the complainant. ICASA has just spent time effort and money to implement this process and it seems strange that this process will now become obsolete as a result of an amendment to a regulation.

MTN is concerned that the ICASA CRM system may not store this information for the required retention period, or if this information will be easily accessible to the licensee at a later date, therefore MTN would prefer to not respond via this channel.

Regulation 8.1(f) states that “*A licensee must resolve all complaints lodged by end-users and subscribers within fourteen (14) calendar days of receipt.*”

MTN submits that ICASA should maintain the original 14 **working day** turnaround time for resolution of complaints as set out in the current minimum standards for end-user and subscriber service charter. MTN have processes and procedures in place based on 14 working days and submit that in some instances 14 calendar days would be unworkable in the event of complex matters such as data billing queries and coverage queries. MTN is committed to resolving complaints as soon as reasonably possible but in some instances a longer period of time is required and MTN would not like to be prejudiced in these instances.

Coverage complaints cannot be resolved within 14 calendar days; in fact it is currently a challenge for operators to resolve coverage complaints in 14 business days due to the nature of the complaints. Once a complaint is received a technician

is sent out to the site to take measurements whereafter MTN evaluates what could be done to improve the coverage. Once a solution is agreed it may take a number of weeks before the solution can be implemented. If there is no coverage and MTN does not have plans to cover the specific area soon, MTN cannot resolve the coverage complaint, bearing in mind that MTN is not obliged to provide coverage in specific areas.

Regulation 8.1(g) states that *“In the event that a licensee fails to resolve a complaint within 14 calendar days, the complainant may escalate the matter to the Authority.”*

MTN submits that the manner in which a licensee resolves a complaint should be defined following from the definition of a complaint, a licensee can only resolve a complaint if it has implemented measures to rectify the alleged non-compliance in respect of a particular provision evident in the relevant regulations/legislation. Once the licensee has captured these measures in a notification to the end-user/subscriber, then the complaint can be viewed as resolved.

#### **Ad 8.2.1 Steps to be followed by End-Users and Subscribers**

MTN are in agreement with the proposed section 8.2.1 (a) save for reference to 14 calendar days. MTN submit that ICASA maintain the original 14 **working day** turnaround time for resolution of complaints.

#### **Ad 8.2.2 Steps to be followed by the Authority**

MTN welcomes and supports the proposed 8.2.2 and would like to commend ICASA for introducing an assessment process to assess the validity of the complaint. It is MTN's experience that complainants often abuse the process and place the Authority under undue pressure to pursue a complaint against a licensee despite clear evidence that the complaint is either vexatious or does not amount to a contravention.

Regulation 8.2.2(i) states:” *The Authority will follow the following steps when dealing with an escalated complaint from end-users: i) Assess nature and validity of the complaint;*”

MTN submits that this regulation should be in line with the definition of a complaint in the following manner. The Authority should perform an assessment to confirm whether there is non-compliance or not. As such the 8.2.2(i) should be amended as follows:

*“The Authority will follow the following steps when dealing with escalated complaints from end-users:*

*i) Assess the nature and validity of the complaint by establishing the relevant provision within the terms and conditions of the licensee’s licence, the ICASA Act and the underlying statutes that has been contravened.”*

Ad regulation 8.2.2 (iii) MTN proposes the following amendments to further strengthen and clarify the conditions upon which a complaint must be closed:

*“Close the complaint if it does not allege a contravention of the standard terms and conditions of its license, the ICASA Act and the underlying statutes by means of a written response to the complainant.”*

In order to further strengthen 8.2.2 and to eliminate the submission of such complaints by end users and subscribers, which increase the administrative burden on the Authority and the licensee MTN suggest the following amendments to subsection (v):

*“If the complaint falls within the Authority’s jurisdiction, escalate it to the licensee within 48 hours for investigation and response. The escalation to the license must comply the definition of a “Complaint” as defined in these regulations, and include an allegation that the licensee has breached a particular regulation contained in the End-User and Subscriber Service Charter and explain the basis of the allegation.”*

MTN submits that by requiring the Authority to cite the relevant regulation the licensee is alleged to have contravened, the Authority would have applied its mind as to the validity of the complaint, and at the same time ensure that the complaint falls within the definition of a Complaint.

### **Ad 8.3 How licensees respond to the Authority**

MTN is in agreement with regulation 8.3 (a) and (c).

In respect of regulation 8.3 (b), MTN would like to emphasise that the timeframe for response should be 14 **working** days and not calendar days.

Regulation 8.3 (d) states: *“A licensee must... d) Provide proof of the complainant’s agreement with the resolution of the complaint”*

MTN is very concerned with the proposed regulation 8.3 (d) for the following reasons:

1. Not all complainants have access to email therefor in certain circumstances it will not be possible to provide evidence of the complainants agreement with the resolution; and
2. The complainants do not always agree with the licensee's resolution of the complaint; however this does not mean that the licensee did not resolve the complaint within the confines of the terms and conditions of its license, the ICASA Act and the underlying statute. A licensee would be prejudiced if the licensee is obliged to provide such proof to the Authority, as in many cases it will not be forthcoming. MTN submits that a complaint should be closed in the event that the licensee has successfully addressed the complainant in relation to the alleged contravention of the regulations by rectifying the alleged non-compliance or by demonstrating that the complaint does not amount to the contravention of the regulations.

MTN proposes that 8.3 (d) be deleted in its entirety.

#### **Ad 8.4 Remedies applicable to the Authority to address End-User and Subscriber complaints**

MTN support the process of Alternate Dispute Resolution, however we caution against referring a matter to ADR merely on the basis that the matter remains disputed. It is MTN's experience that complainants who do not agree with the resolution of a complaint continuously put pressure on the Authority and the licensee for a resolution of their choosing placing an unnecessary administrative burden on both the Authority and the licensee. The licensee is thus placed under pressure to enter into negotiations with a complainant to secure the resolution of the complaint to the satisfaction of the complainant which is prejudicial to the licensee. In order to address this problem, MTN would like to propose that regulation 8.4 be amended as follows:

*"Where a licensee responds, but the complaint remains disputed, and the Authority, after applying its mind the facts of the complaint, is of the view that the licensee failed to remedy non-compliance of the terms and conditions of its license, the ICASA Act and the underlying statutes, committed a further contravention of its license, the ICASA Act and the underlying statutes or has failed to prove that there is no contravention, the Authority will apply the following remedies to resolve the dispute:"*

In addition, in order to further strengthen and add credibility to the ADR process, MTN propose the following addition to regulation 8.4:

Ad new subsection 8.4 vi *“The Authority shall be responsible to record the proceedings at the ADR process and produce minutes of the proceedings to be sent out by the Chairperson of the ADR to all parties within seven (7) days of such ADR proceedings. The minutes should record all actions and points of agreement between the parties including the agreed timeframes for any actions items.”*

#### **4.8. Ad Regulation 9 “Reporting on escalated complaints”**

Ad regulation 9, MTN is in agreement with the concept of regular reporting on complaints forwarded to it by the Authority.

#### **4.9. Ad Regulation 10 “Rebate”**

**Dropped Call Rebate** - Regulation 10 states that the rebate for dropped calls is as follows: *“Reconnection at no charge. A licensee must not charge end-users any fee for the first minute after reconnection. If end-users continue experiencing dropped calls and service interruption which severely impedes the end-users quality of experience, the licensee must cancel the contract upon request with no early cancellation penalty to the end-user. The end-user would need to maintain a history of poor quality of service reported to the service provider.”*

In relation to call charges, the end-user does not suffer any financial loss due to the fact that MTN bills on a per second basis. Therefore the requirement to zero rate the first minute of a call after reconnection is unjust, as no financial loss was suffered by the end-user. Furthermore, MTN submits that the development of the algorithms, systems and technologies required to implement a function like this would require a significant investment and would not be feasible. In addition many factors need to be considered for example, if the fault actually occurred on the B-party network it would not be reasonable to oblige the A-party network to provide a rebate. The process of determining which network was at fault would be a time consuming process. It is therefore submitted that the introduction of a rebate is unreasonable and should be removed from the regulation. It is MTN’s submission that if a licensee has met the targets provided for in regulation 4.5, then the rebate cannot be justified and becomes superfluous.

#### **4.10. Ad Regulation 11 “Vis majore”**

Regulation 11 (a) states: *“In the event that a licensee fails to comply with the targets set out under technical parameters, a licensee must issue a public notice to its subscribers informing them of the reasons the service is not available within twenty-four (24) hours.”*

MTN requests clarity as to what is meant by a public notice and when the publications should take place. For example should such publication take place at the end of every quarter in the event that the targets are not met?

#### **4.11. Ad Regulation 12 “Electronic communications network monitoring”**

MTN notes the content of regulation 12.

#### **4.12. Ad Regulation 13 “Service Upgrades”**

MTN notes the content of regulation 13.

#### **4.13. Ad Regulation 14 “Reporting and publication”**

Regulation 14 b) states that: *“Licensees must publish a list of non-cleared faults on their websites, print and broadcast media.”*

MTN submits that this requirement is not feasible because the identification and resolution of faults is dynamic in nature and changes on a per-minute or on a daily basis. Therefore to publish these faults utilising print and broadcast media, which are static platforms is not practical. It is furthermore an imposition of a cost that the operators do not have at the current time. This at a time when operators are under significant pressure by ICASA to change their cost base, it seems problematic that ICASA itself is introducing further costs into the operators business.

MTN further submits that licensees only be required to publish non-cleared service affecting faults if ICASA deems that this additional cost is justified. .

#### **4.14. Ad Regulation 15 “Audit and verification”**

MTN submits that regulation 15 (b) refers to schedule 2 in error and it should refer to schedule 1 instead.

#### **4.15. Ad Regulation 16 “Compliance reports”**

As submitted previously herein, it is not clear why the Authority intends to change the reporting period from bi-annually to quarterly. MTN submits that the Authority should revert to bi-annual reporting.

#### **4.16. Ad Regulation 17 “Contraventions”**

MTN notes the content of regulation 17.

#### **4.17. Ad Regulation 18 “Penalties”**

MTN notes the content of regulation 18.

#### **4.18. Ad Regulation 19 “Repeal of regulations”**

MTN submits that General Notice- End-user Subscriber Service Charter Reporting Format, gazette no: 34978, should also be repealed as the reporting format for technical parameters evident in Regulation 4 will change as a result of the Draft Regulation.

#### **4.19. Ad Schedule 1**

Schedule 1 does not consider the TC74 process to determine technical standards for measuring quality of service. The TC74 technical standards committee is currently in development between ICASA, the SABS and operators; therefore it is not clear why the Authority would ignore this process. MTN submits that the TC74 process should be concluded prior to the implementation of new quality of service parameters.

#### **4.20. Ad Schedule 2**

Schedule 2 refers to measurement parameters reported on a monthly basis while the measurement parameters in the main document are to be measured on a quarterly basis. MTN requests clarity as to which measurement period applies. In addition MTN has submitted herein above that measurements should be reported on a bi-annual basis.

In Schedule 2 Handover Success rate must be less than 20 seconds for the mean reported monthly, however in regulation 4.5 contains a measurement for Call Handover Success Rate greater than 95% for the mean reported quarterly. MTN request clarity as to whether the two measurements referred to above are the same measurement or different measurements. Handover Success of less than 20 seconds does not make sense to MTN from a technical perspective.

**-END-**