



FREE MARKET FOUNDATION

Johannesburg

PO Box 4056 | Cramerview 2060

Tel 011 884 0270 | **Fax** 011 884 5672

Email fmf@mweb.co.za

Representations to the
Independent Communications Authority

concerning the
proposed regulations
made known on 17 November 2017

to amend the
End-user and Subscriber Service Charter Regulations, 2016

Introduction

The Independent Communications Authority of South Africa (“the Authority”) gave notice on 17 November 2017 of its intention¹ to amend the End-user and Subscriber Service Charter Regulations, 2016.²

The notice invited interested persons to submit representations on the proposed regulations within 30 working days from date of publication of the notice.³ Thirty working days from 17 November will end on 3 January 2018.⁴

The Free Market Foundation⁵ makes the following representations about the amendments that the Authority proposes to make to the Regulations.

Summary

The draft Amendments propose a new Regulation that would oblige licensees to provide prepaid data bundles with a minimum expiry period of three years. But the Act envisages that a service charter should address customer-service matters only; the proposed Regulation goes beyond that and is hence *ultra vires*.

The same applies to the proposed Regulation to compel licensees to give a post-paid user an option to roll over to his next billing period any data unused from his monthly data allocation, or to transfer data from his monthly allocation to other end-users. This Regulation is also *ultra vires* for the same reasons.

The 2016 Service Charter Regulations themselves are *ultra vires*, because they prescribe compulsory obligations for licensees, rather than minimum standards for the service charters that licensees develop.

¹ Gen Notice 901 of 2017 (*Gazette* 41263 of 17 Nov 2017). Independent Communications Authority of South Africa. Intention to amend End-user and Subscriber Service Charter Regulations 2016.

² Electronic Communications Act 36 of 2005: End-user and Subscriber Service Charter Regulations 2016. Gen Notice 189 of 2016 (*Gazette* 39898 of 1 Apr 2016).

³ We assume that working days means weekdays which are not public holidays.

⁴ Thirty working days without public holidays would end six weeks after publication, i.e., on Friday 29 December. But three public holidays affect the calculation (Christmas Day, Boxing Day and New Year's Day).

⁵ The Free Market Foundation, founded in 1975, is an independent public benefit organisation that promotes and fosters an open society, the rule of law, personal liberty, and economic and press freedom, as fundamental components of its advocacy of human rights and democracy based on classical liberal principles.

Enabling provisions of Act

The proposed amending Regulations indicates that they are to be made in terms of two sections of the Electronic Communications Act, 2005:⁶

The one section⁷ states that the Authority may make regulations with regard to any matter which in terms of the Act⁸ must or may be prescribed⁹ by regulation;¹⁰ the other section¹¹ states that the Authority must prescribe regulations setting out “minimum standards” for end-user and subscriber service charters.¹²

Provision requiring prepaid bundles to have three-year minimum period is *ultra vires*

The draft Amendments propose¹³ inserting into the Regulations¹⁴ a new regulation about data services in general,¹⁵ which would include the following subregulation about expiry of data:¹⁶

Expiry of data practices:

(4) A licensee must provide prepaid data bundles with [a] minimum expiry period of three (3) years, save where such prepaid data bundles have been exhausted prior to the expiry of three (3) years, in line with section 63 of the Consumer Protection Act, 2008 (Act No. 68 of 2008).

This proposed subregulation would compel licensees to offer prepaid data bundles that do not expire in less than three years.

The subregulation is arguably ambiguous. It is not clear if it would require a licensee to offer prepaid data bundles that do not expire in less than three years—

In addition to any other prepaid data bundles provided by the licensee; or exclusively, and to discontinue providing prepaid data bundles with other expiry periods.

Doubt about the meaning of an onerous legislative provision is usually resolved by interpreting the provision strictly, and giving preference to its less onerous interpretation.¹⁷

The less onerous interpretation of the proposed subregulation is that it would require a licensee to offer prepaid data bundles that do not expire in less than three years, in addition to any other prepaid data bundles which the licensee might provide.

⁶ Electronic Communications Act 36 of 2005.

⁷ In its applicable subsection: Electronic Communications Act s 4(1).

⁸ Or related legislation not relevant for present purposes.

⁹ Or governed or determined.

¹⁰ Electronic Communications Act s 4(1).

¹¹ In its subsection referred to in the proposed amendment: Electronic Communications Act s 69(3).

¹² Electronic Communications Act s 69(3). The provision is discussed in more detail below.

¹³ Inter alia.

¹⁴ Gen Notice 189 of 2016, “End-user and Subscriber Service Charter Regulations, 2016” (*Gazette* 39898 of 1 Apr 2016).

¹⁵ Proposed reg 8 (“Data services”).

¹⁶ Proposed reg 8B(3) (“Expiry of data practices”).

¹⁷ *Fundstrust (Pty) Ltd (in liquidation) v Van Deventer* [1997] 1 All SA 644 (A) 656.

However, the proposed subregulation, in light of its¹⁸ reference to a provision of the Consumer Protection Act, 2008,¹⁹ is on balance probably intended to have the more onerous meaning, and would require a licensee to offer prepaid data bundles that do not expire in less than three years exclusively.²⁰

The clause would prescribe compulsory terms of contracts in terms of which licensees may supply data to users. The clause would intrude in the commercial activities of licensees.

The Act²¹ in its provisions which govern subscriber and end-user service charters²² does not authorise the Authority to prescribe compulsory terms of supply:

The Act—

Defines a “service charter” as a document developed by a licensee²³ which sets out the standards of service the licensee’s subscribers²⁴ and end-users²⁵ can expect, and is a performance-measurement²⁶ tool focusing on service outcomes;²⁷ and

stipulates that the matters which a service charter may address include,²⁸ but are not limited to, provision of information regarding services and rates etc, provisioning and repair services, protection of private information, billing and credit practices, complaint procedures and remedies, and any other matter of concern to end-users and subscribers.

Those provisions of the Act²⁹ describe matters that all fall in the category of customer service.

¹⁸ Albeit cumbersome.

¹⁹ Consumer Protection Act 68 of 2008 s 63.

This provision of that Act states that it applies to a transaction in which a supplier accepts consideration from a person in exchange for a prepaid credit, voucher or the like, and expressly or implicitly agrees to provide goods or services to a person who subsequently presents that credit, up to the value represented by it: s 63(1).

Such a prepaid credit, voucher or the like does not expire until the earlier of the date on which its full value is redeemed in exchange for goods or services, or three years after the date on which it was issued (or at the end of a longer period agreed by the supplier at any time): s 63(2).

²⁰ And to discontinue providing prepaid data bundles with other expiry periods.

²¹ Electronic Communications Act 36 of 2005.

²² Electronic Communications Act ss 69(3)–(5).

²³ After consultation with its staff, subscribers and end-users.

²⁴ Fee-paying recipients of a licensee’s service. Electronic Communications Act s 1 svv “retail,” “subscriber.”

²⁵ A subscriber and persons who use a licensed service. Electronic Communications Act s 1 sv “end-user.”

²⁶ And accountability.

²⁷ Electronic Communications Act s 1 svv “service charter.”

²⁸ Electronic Communications Act s 69(5). This subsection states, in full:

(5) The matters which an end-user and subscriber service charter may address include, but are not limited to—

(a) the provision of information to end-users and subscribers regarding services, rates, and performance procedures;

(b) provisioning and fault repair services;

(c) the protection of private end-user and subscriber information;

(d) end-user and subscriber charging, billing, collection and credit practices;

(e) complaint procedures and the remedies that are available to address the matters at issue; and

(f) any other matter of concern to end-users and subscribers.

²⁹ Electronic Communications Act s 1 svv “service charter” read with s 69(5)(a)–(f) aforesaid.

A service charter should be developed by a licensee and should merely set out the standards of service that its subscribers and end-users can expect.

These provisions of the Act do not authorise the Authority to prescribe compulsory contractual terms of supply that oblige licensees to provide prepaid data bundles with a minimum expiry period of three years.

This proposed subregulation, that would oblige licensees to provide prepaid data bundles with a three-year minimum expiry period, falls outside the category of customer-matters.

(It is conceded that, if any other provision of the Act gives the Authority power to make regulations obliging licensees to provide prepaid data bundles with a three-year minimum expiry period, then the fact that the Authority seeks in the proposed 2017 Amendments to make such a subregulation, but cites as the enabling provision the incorrect provision of the Act,³⁰ would not invalidate this subregulation of the Amendments.³¹

(However, although many provisions in the Act empower or require the Authority to prescribe particular matters by regulation,³² none of them enables the Authority to make regulations obliging licensees to provide prepaid data bundles with a three-year minimum expiry period.

³⁰ i.e., Electronic Communications Act s 69(3).

³¹ *Avenue Delicatessen and others v Natal Technikon* [1986] 2 All SA 1 (A) p 4.

³² The following provisions of the Act empower or require the Authority to make regulations which prescribe certain matters:

Chap 2 Policy And Regulations—s 4 Regulations by Authority;

Chap 3 Licensing Framework—s 5 Licensing, s 6 Licence exemption, s 8 Terms and conditions for licences, s 9 Application for and granting of individual licences, s 11 Renewal of individual licence, s 12 Surrender of individual licence, s 13 Transfer of individual licences or change of ownership, s 16 Class licence, s 17 Registration for Class Licence, s 18 Refusal of registration for class licence, s 19 Renewal of class licence;

Chap 4 Electronic Communications Networks And Electronic Communications Facilities—s 20 Application, s 21 Rapid deployment of electronic communications facilities, s 28 Height or depth of electronic communications network facilities;

Chap 5 Radio Frequency Spectrum—s 31 Radio frequency spectrum licence, s 33 Frequency co-ordination, s 34 Radio frequency plan;

Chap 6 Technical Equipment And Standards—s 35 Approval of type, s 36 Technical standards for equipment and electronic communications facilities;

Chap 7 Interconnection—s 38 Interconnection regulations, s 40 Notification of interconnection disputes,

s 41 Interconnection pricing principles, s 42 Carrier pre-selection;

Chap 8 Electronic Communications Facilities Leasing—s 43 Obligation to lease electronic communications facilities, s 44 Electronic communications facilities leasing regulations, s 45 Filing of electronic communications facilities leasing agreements, s 46 Notification of electronic communications facilities leasing agreement disputes, s 47 Facilities leasing pricing principles;

Chap 9 Broadcasting Services—s 50 Community broadcasting service licences, s 54 Code of conduct for broadcasting service licensees, s 55 Control over advertisements, s 60 Restriction on subscription broadcasting services, s 61 Preservation of South African programming;

Chap 10 Competition Matters—s 67 Competition matters;

Chap 11 Numbering—s 68 Numbering plans and number portability;

Chap 12 Consumer Issues—s 69 Code of conduct, end-user and subscriber service charter, s 70 Persons with disabilities, s 71 Consumer Advisory Panel;

Chap 13 General—s 73 E-rate, s 75 Directory services, s 76 Establishment of public emergency communications centres;

Chap 14 Universal Service and Access Agency of South Africa—s 88 Application of money in Universal Service and Access Fund, s 89 Contributions to Universal Service and Access Fund;

Chap 15 Transitional Provisions—s 92 Existing licences.

The Authority has stated³³ that the Act’s provision that sets out the matters which a service charter may address³⁴ give the Authority power to include in the charter minimum standards on “any other matter of concern to end-users and subscribers.”³⁵

But³⁶ the Act’s phrase “any other matter of concern to end-users and subscribers”³⁷ can mean only other “*customer service*” matters of concern to end-users and subscribers.³⁸ It does not bear a wider meaning, in the context of the narrow preceding customer-service matters.³⁹

The Act envisages that a service charter should address customer-service matters only. The proposed subregulation that would oblige licensees to provide prepaid data bundles with a three-year minimum expiry period goes beyond that, and is hence *ultra vires*.

Provision requiring licensees to offer data-rollover or transfer option *ultra vires*

The draft Amendments propose⁴⁰ inserting into the Regulations⁴¹ the following subregulation about rollover of unused data and transfer of data:⁴²

Roll over of unused⁴³ and transfer of data:

(4) A Licensee must provide an option to post-paid users to roll over unused data of the monthly data allocation to the next billing period or to transfer the monthly data allocation or a portion thereof to other end-users on the same network.

This subregulation would compel licensees to give a post-paid user the option either to roll over to his next billing period any data unused from his agreed monthly data allocation, or to transfer data from his monthly allocation to other end-users.

The subregulation would require licensees to offer a choice between unrelated issues:

³³ Independent Communications Authority of South Africa: draft End-user and Subscriber Service Charter Regulations 2017: Explanatory Note, para 2.2.5 (*Gazette* 41263 of 17 Nov 2017 p 33).

³⁴ i.e., matters addressing provisioning and repairs, protection of private information, charging and credit, and complaint procedures and remedies. Electronic Communications Act s 69(5)(a)–(f). See fn 49 above.

³⁵ Electronic Communications Act s 69(5)(f). See fn 49 above.

³⁶ With the greatest respect.

³⁷ Electronic Communications Act s 69(5)(f).

³⁸ In accordance with the *ejusdem generis* (“of the same kind”) canon of interpretation, which is an aspect of the *noscitur a sociis* (“It is known by its associates”) doctrine: A word may be judged by the type of company it keeps. *S v Wood* [1976] 2 All SA 280 (A) 284; *Joss v Secretary for Inland Revenue* [1980] 3 All SA 467 (T) 473–4; *Ovenstone v Secretary for Inland Revenue* [1980] 2 All SA 25 (A) 36–37; *Black’s Law Dictionary* 6 ed svv “*ejusdem generis*,” “*noscitur a sociis*.”

³⁹ i.e., provision of information regarding services and rates etc, provisioning and repair services, protection of private information, billing and credit practices, and complaint procedures and remedies. Electronic Communications Act s 69(5)(a)–(e).

These matters all fall in the same category (customer service), hence there is room for the application of the *eiusdem generis* doctrine. *Skotnes v South African Library* [1997] 2 All SA 379 (A) 383.

⁴⁰ Inter alia.

⁴¹ Gen Notice 189 of 2016, “End-user and Subscriber Service Charter Regulations, 2016” (*Gazette* 39898 of 1 Apr 2016).

⁴² Proposed reg 8B(4) (“Roll over of unused and transfer of data”).

⁴³ Sic (presumably “unused” should read “unused data”).

- 1) Whether to roll over unused data in a month's allocation, to a succeeding month;⁴⁴
- 2) Whether to transfer any data in a month's allocation,⁴⁵ to other end-users.

The subregulation would prescribe compulsory terms of contracts in terms of which licensees supply data to users, and would intrude in the commercial activities of licensees.

The Act⁴⁶ in its provisions which govern subscriber and end-user service charters⁴⁷ does not authorise the Authority to prescribe compulsory terms of supply such as are proposed in this subregulation.

As mentioned, the Act—

Defines a “service charter” as a document which sets out the standards of service the licensee’s subscribers and end-users can expect and is a performance-measurement tool focusing on service outcomes,⁴⁸ and stipulates that the matters which a service charter may address include⁴⁹ matters that all fall in the category of customer service.

A service charter should be developed by a licensee and should merely set out the standards of service that its subscribers and end-users can expect.

These provisions of the Act do not authorise the Authority to prescribe compulsory contractual terms of supply that oblige licensees to give users an option to roll over unused data, or to transfer data to other users.

The proposed regulation to oblige licensees to offer a data-rollover or data-transfer option falls outside the category of customer-matters matters.

(It is conceded that, if any other provision of the Act gives the Authority power to make regulations obliging licensees to offer a data rollover or transfer option, then the fact that the Authority seeks in the proposed 2017 Amendments to make such a regulation, but cites as the enabling provision the incorrect provision of the Act,⁵⁰ would not invalidate those provisions of the Amendments.⁵¹

⁴⁴ Or months.

⁴⁵ Presumably even before the month expires.

⁴⁶ Electronic Communications Act 36 of 2005.

⁴⁷ Electronic Communications Act ss 69(3)–(5).

⁴⁸ Electronic Communications Act s 1 svv “service charter.”

⁴⁹ Electronic Communications Act s 69(5). This subsection states, in full:

(5) The matters which an end-user and subscriber service charter may address include, but are not limited to—

- (a) the provision of information to end-users and subscribers regarding services, rates, and performance procedures;
- (b) provisioning and fault repair services;
- (c) the protection of private end-user and subscriber information;
- (d) end-user and subscriber charging, billing, collection and credit practices;
- (e) complaint procedures and the remedies that are available to address the matters at issue; and
- (f) any other matter of concern to end-users and subscribers.

⁵⁰ i.e., Electronic Communications Act s 69(3).

⁵¹ *Avenue Delicatessen and others v Natal Technikon* [1986] 2 All SA 1 (A) p 4.

(However, although many provisions in the Act empower or require the Authority to prescribe particular matters by regulation,⁵² none of them enables the Authority to make regulations obliging licensees to offer a data rollover or transfer option.)

The proposed regulation to oblige licensees to offer a data-rollover or data-transfer option is hence *ultra vires*.

Regulations of 2016 probably *ultra vires*

The End-user and Subscriber Service Charter Regulations, 2016⁵³ themselves are *ultra vires* and invalid.

The Regulations prescribe compulsory obligations for licensees, rather than only minimum standards for service charters which licensees then develop.

The Act states that —

A service charter is a document “developed by a Licensee,” after consultation with its staff, subscribers and end-users;⁵⁴ and

⁵² The following provisions of the Act empower or require the Authority to make regulations which prescribe certain matters:
Chap 2 Policy And Regulations—s 4 Regulations by Authority;
Chap 3 Licensing Framework—s 5 Licensing, s 6 Licence exemption, s 8 Terms and conditions for licences, s 9 Application for and granting of individual licences, s 11 Renewal of individual licence, s 12 Surrender of individual licence, s 13 Transfer of individual licences or change of ownership, s 16 Class licence, s 17 Registration for Class Licence, s 18 Refusal of registration for class licence, s 19 Renewal of class licence;
Chap 4 Electronic Communications Networks And Electronic Communications Facilities—s 20 Application, s 21 Rapid deployment of electronic communications facilities, s 28 Height or depth of electronic communications network facilities;
Chap 5 Radio Frequency Spectrum—s 31 Radio frequency spectrum licence, s 33 Frequency co-ordination, s 34 Radio frequency plan;
Chap 6 Technical Equipment And Standards—s 35 Approval of type, s 36 Technical standards for equipment and electronic communications facilities;
Chap 7 Interconnection—s 38 Interconnection regulations, s 40 Notification of interconnection disputes, s 41 Interconnection pricing principles, s 42 Carrier pre-selection;
Chap 8 Electronic Communications Facilities Leasing—s 43 Obligation to lease electronic communications facilities, s 44 Electronic communications facilities leasing regulations, s 45 Filing of electronic communications facilities leasing agreements, s 46 Notification of electronic communications facilities leasing agreement disputes, s 47 Facilities leasing pricing principles;
Chap 9 Broadcasting Services—s 50 Community broadcasting service licences, s 54 Code of conduct for broadcasting service licensees, s 55 Control over advertisements, s 60 Restriction on subscription broadcasting services, s 61 Preservation of South African programming;
Chap 10 Competition Matters—s 67 Competition matters;
Chap 11 Numbering—s 68 Numbering plans and number portability;
Chap 12 Consumer Issues—s 69 Code of conduct, end-user and subscriber service charter, s 70 Persons with disabilities, s 71 Consumer Advisory Panel;
Chap 13 General—s 73 E-rate, s 75 Directory services, s 76 Establishment of public emergency communications centres;
Chap 14 Universal Service and Access Agency of South Africa—s 88 Application of money in Universal Service and Access Fund, s 89 Contributions to Universal Service and Access Fund;
Chap 15 Transitional Provisions—s 92 Existing licences.

⁵³ Gen Notice 189 of 2016, “End-user and Subscriber Service Charter Regulations, 2016” (*Gazette* 39898 of 1 Apr 2016).

⁵⁴ Electronic Communications Act s 1 svv “service charter.”

That “service charter” definition states in full:

“**service charter**” means a document, developed by a licensee after consultation with its staff, subscribers and end-users which sets out the standards of service subscribers and end-users can expect and is a performance measurement and accountability tool that focuses on subscriber and end-user service outcomes.”

the Authority must prescribe regulations setting out the “minimum standards” for⁵⁵ service charters.⁵⁶

This means that—

Each Licensee should develop its own service charter; and
the Authority should only prescribe minimum standards for licensees’ service charters.

But the Authority has itself developed a service charter, embodied in the 2016 Regulations, which consist of compulsory obligations which Licensees “must” carry out.⁵⁷

The 2016 Regulations mention service charters only once,⁵⁸ in the regulation which states that a licensee must develop an end-user-friendly version of “the” service charter in simple language, and publish it on its website and make it available or display it at its service outlets.⁵⁹ That regulation refers to “the” service charter. This implies that Authority regards the Regulations themselves as constituting the one, and the only, service charter.

The 2016 Regulations have created confusion about service charters:

Some hold the view that there is indeed only one Service Charter, that the Regulations constitute that service charter, and that licensees must develop a customer-friendly version of *the regulations*;⁶⁰

Others hold the view that a licensee must indeed have a service charter (but that its service charter itself must be in simple language, not just a user-friendly version of it).⁶¹

⁵⁵ End-user and subscriber.

⁵⁶ Electronic Communications Act s 69(3).

⁵⁷ In relation to matters addressed in the Regulations: see End-user and Subscriber Service Charter Regulations, 2016, paras: 4 Provision of information to end-users, 5 Promotions, 6 International roaming, 7 Awareness of the charter and compliance, 8 Billing, 9 Quality of service, 10 Electronic communications network monitoring, 11 Service upgrades, 12 Complaints, 13 Alternative dispute resolution, 14 Rebate, 15 Service care line centre, 16 Impossibility of performance, 17 Compliance reporting.

⁵⁸ Apart from the title of the Regulations.

⁵⁹ End-user and Subscriber Service Charter Regulations, 2016, par 7.

That paragraph of the Regulations reads as follows:

7. AWARENESS OF THE CHARTER AND COMPLIANCE

A licensee must:

- (a) develop an end-user friendly version of the end-user and subscriber service charter in simple language and;
- (b) publish an end-user version of the end-user and subscriber service charter on its website and must be available and/or displayed at its service outlets.

In subpara (a), the passage at the end “and;” should read “; and”.

In subpara (b), the reference to an “end-user version” should be to an “end-user *friendly* version;” the expression “and must be available and/or displayed” should read “and *make it available or display it.*”

⁶⁰ Cell C: End User And Subscriber Service Charter Regulations.

“[Here] is Cell C’s plain language and customer friendly version of *the regulations* as required in terms of regulation 7.”

⁶¹ Michalsons attorneys, Cape Town: Focus areas: Electronic communications regulation: End-user subscriber service charter regulations:

“Licensees must have a written Service Charter informing end-users and subscribers of the service levels and how to complain if the licensee fails to deliver on them. The Service Charter must be in plain and understandable language. It must be published on the licensee’s website and displayed at all outlets.”

<https://www.michalsons.com/focus-areas/electronic-communications-regulation/end-user-subscriber-service-charter-regulations> (accessed 29 Nov 2017).

(If any provision of the Act enables the Authority to prescribe a service charter, then the fact that the Authority, when it made the Regulations, cited as its enabling provision one that does not authorise it to prescribe a service charter,⁶² would not invalidate the Regulations.⁶³

(But, while many provisions in the Act empower⁶⁴ the Authority to make regulations on various matters,⁶⁵ none authorises the Authority to prescribe a service charter.)

It is concluded that the 2016 Regulations may well be invalid, in purporting to prescribe a service charter of compulsory obligations for licensees, rather than just minimum standards for service charters to be developed by licensees as contemplated by the Act.

Minor final point

Draft Amendment clause 2.1 defines the Regulations to mean the regulations published by “Government Notice No. 39898 of 1 April 2016.”

⁶² Electronic Communications Act s 69(3).

⁶³ *Avenue Delicatessen and others v Natal Technikon* [1986] 2 All SA 1 (A) p 4.

⁶⁴ Or require.

⁶⁵ The following provisions of the Act empower or require the Authority to make regulations which prescribe certain matters:

Chap 2 Policy And Regulations—s 4 Regulations by Authority;

Chap 3 Licensing Framework—s 5 Licensing, s 6 Licence exemption, s 8 Terms and conditions for licences, s 9 Application for and granting of individual licences, s 11 Renewal of individual licence, s 12 Surrender of individual licence, s 13 Transfer of individual licences or change of ownership, s 16 Class licence, s 17 Registration for Class Licence, s 18 Refusal of registration for class licence, s 19 Renewal of class licence;

Chap 4 Electronic Communications Networks And Electronic Communications Facilities—s 20 Application, s 21 Rapid deployment of electronic communications facilities, s 28 Height or depth of electronic communications network facilities;

Chap 5 Radio Frequency Spectrum—s 31 Radio frequency spectrum licence, s 33 Frequency co-ordination, s 34 Radio frequency plan;

Chap 6 Technical Equipment And Standards—s 35 Approval of type, s 36 Technical standards for equipment and electronic communications facilities;

Chap 7 Interconnection—s 38 Interconnection regulations, s 40 Notification of interconnection disputes,

s 41 Interconnection pricing principles, s 42 Carrier pre-selection;

Chap 8 Electronic Communications Facilities Leasing—s 43 Obligation to lease electronic communications facilities, s 44 Electronic communications facilities leasing regulations, s 45 Filing of electronic communications facilities leasing agreements, s 46 Notification of electronic communications facilities leasing agreement disputes, s 47 Facilities leasing pricing principles;

Chap 9 Broadcasting Services—s 50 Community broadcasting service licences, s 54 Code of conduct for broadcasting service licensees, s 55 Control over advertisements, s 60 Restriction on subscription broadcasting services, s 61 Preservation of South African programming;

Chap 10 Competition Matters—s 67 Competition matters;

Chap 11 Numbering—s 68 Numbering plans and number portability;

Chap 12 Consumer Issues—s 69 Code of conduct, end-user and subscriber service charter, s 70 Persons with disabilities, s 71 Consumer Advisory Panel;

Chap 13 General—s 73 E-rate, s 75 Directory services, s 76 Establishment of public emergency communications centres;

Chap 14 Universal Service and Access Agency of South Africa—s 88 Application of money in Universal Service and Access Fund, s 89 Contributions to Universal Service and Access Fund;

Chap 15 Transitional Provisions—s 92 Existing licences.

That is⁶⁶ incorrect. The clause should state that the Regulations were published by “General Notice 189 of 2016.” (It could⁶⁷ add “in *Gazette*⁶⁸ 39898 of 1 April 2016.”⁶⁹)

Prepared by
Gary Moore
Senior Researcher
Free Market Foundation
8 December 2017 for 3 January 2018 deadline

—————ooo0ooo—————

⁶⁶ With the greatest respect.

⁶⁷ Although not essential.

⁶⁸ In any law or regulation thereunder, reference to the “*Gazette*” means the “*Government Gazette*.” Interpretation Act 33 of 1957 s 2 sv “*Gazette*” par (c).

⁶⁹ Reference to the *Gazette* in which the Regulations were originally published will become misleading after amendment Regulations are published from time to time in subsequent *Gazettes*.