

Independent Communications Authority of South AfricaPinmill Farm
Block B
164 Katherine Street,
Sandton, 2146

Attention: Chairperson: Priority Markets and Data Services Committee

By email: prioritymarkets2017@icasa.org.za

3 January 2018

Dear Sirs

SUBMISSION IN RESPECT OF THE PROPOSED AMENDMENTS TO THE END-USER AND SUBSCRIBER SERVICE CHARTER REGULATIONS

We refer to the above published Notice 901 of 2017 in Government Gazette no 41263 on 17 November 2017.

The written response of Liquid Telecom to the above is attached to this letter.

We confirm our availability to participate in public hearings in regard to this consultation, should the Authority elect to hold same following the receipt of the written responses.

Kindly acknowledge receipt of this submission.

Yours faithfully


LIQUID TELECOMPer: Mike Silber
General Counsel

Submission to The Independent Communications Authority of South Africa ("ICASA")
by
Liquid Telecom
on
Proposed amendments to the End-user and Subscriber Service Charter Regulations

INTRODUCTION

1. Liquid Telecommunications South Africa ("**Liquid Telecom**") extends its appreciation to the Independent Communications Authority of South Africa ("**the Authority**" / "**ICASA**") for the opportunity to comment on the proposed amendments (the "**Proposed Amendments**") published as Notice 901 of 2017 in Government Gazette no 41263 on 17 November 2017, to the End-user and Subscriber Service Charter Regulations (the "**Current Regulations**").
2. ICASA has invited interested persons to submit written comments on the Proposed Amendments, which comments follow.
3. To avoid confusion, Liquid Telecom notes that it previously operated under the name "Neotel", which name has been changed to Liquid Telecom. The necessary amendments have been filed with the Authority. References to Liquid Telecom are to both the former-Neotel as well as Liquid Telecom Operations which is also licensed by the Authority.
4. Liquid Telecom supports a consultative and responsive manner of engagement on this critical issue and notes that the Notice does not provide for the possibility of hearings or an opportunity to make oral submissions. Liquid Telecom notes that these issues are of significant public interest and requests the Authority to consider holding hearings on this matter, or at least to afford operators the opportunity to make oral submissions to the Authority, in an open forum which can be attended by the public (even if they chose not to make presentations).
5. Liquid Telecom notes that a previous version of the Proposed Amendments was published in August 2017 and thanks the Authority for the consideration of its previous submissions and the rapid turnaround in analysing those comments and publishing a new version. This responsive approach is greatly appreciated.
6. This submission is made in two parts, comprising our general comments and certain specific comments.

PART A: GENERAL COMMENTS

7. Liquid Telecom has previously noted concerns with the Current Regulations during the course of our compliance reporting. We consider it unfortunate that the Authority did not seek to address these issues in this amendment process.
8. Liquid Telecom notes that:
 - 8.1. the Electronic Communications Act defines “end-user” as “a subscriber and persons who use the services of a licensed service, or use a service pursuant to a licence exemption, referred to in Chapter 3”;
 - 8.2. the Act further recognises a “person” as both “a natural or a juristic person”;
 - 8.3. the Act defines a “subscriber” as “a person who lawfully accesses, uses or receives a retail service of a licensee referred to in Chapter 3 for a fee or the retail services of a person providing a service pursuant to a licence exemption”; and
 - 8.4. for good measure, “retail” means “the sale, lease or otherwise making available of services offered by licensees to subscribers”.
9. The purpose of repeating these definitions here is to remind the Authority that the “end-users” and “subscribers” sought to be protected in these regulations include natural persons both young and old, educated and illiterate, rich and poor. However, they also include massive enterprises, listed companies, small, medium and micro enterprises. Liquid Telecom supports the Authority’s attempts to provide measured and reasonable protection for the interests of individuals and small business; however, Liquid Telecom submits that “one size fits all” regulations are onerous on it as a licensee and inappropriate with regards large companies.
10. Mobile Centricity
 - 10.1. Liquid Telecom is further concerned that the Authority continues to focus on mobile services and licensees offering mobile services in both the Current Regulations as well as in preparing the Proposed Amendments. It appears that the Authority continues to ignore the reality that the majority of licensees, including Liquid Telecom, do not fit into a single category of providing mobile services. Both the Current Regulations and the Proposed Amendments are mobile-centric in their use of terminology, choice of measurements and overall approach.
 - 10.2. Liquid Telecom recognises that the provision of mobile services to individual natural persons are the most prevalent services in South Africa. However, there are a significant number of operators, including Liquid Telecom, who focus on fixed services, specifically SMME and enterprise services. These services are often different from mobile services and Liquid Telecom requests the Authority to review its insistence on treating these services in a uniform manner.

11. Recognition of Different Markets

- 11.1. Liquid Telecom notes that the fixed services markets (particularly in the SMME and enterprise space, but increasingly in the consumer market) are far more competitive than the mobile services markets.
- 11.2. This has resulted in a situation where end users are able to select providers based on a variety of factors, including price, quality, speed and convenience.
- 11.3. The Authority should be cautious in adopting consumer protection regulations which simply ignore the different levels of competition in different sub-markets. As a general principle, there is less need for such regulations in competitive markets where consumers have real choice, such as in the fixed services markets.

PART B: SPECIFIC COMMENTS

12. Section 2 - Amendment of Regulation 1 of the Current Regulations

- 12.1. Liquid Telecom supports the proposed insertion of the definition of “data bundle” and consider the proposed definition to be accurate,
- 12.2. Liquid Telecom questions the reason for the proposed deletion of the “Service Activation” and “Service Activation Time” definitions? These definitions provide guidance for compliance in respect of Regulation 9(5) of the Current Regulations. Regulation 9(5) stipulates the measurement parameter for installation and activation of services.

13. Section 5 – Amendment of regulation 8 of the Current Regulations

- 13.1. Liquid Telecom notes the proposed deletion of sub-regulation 8(7).
- 13.2. Liquid Telecom supports the proposed deletion, however is concerned that sub-regulation 8(7)(b) is removed as well as 8(7)(a). We are uncertain if this is indeed the intent, as there may be harmful consequences to consumers arising from the deletion of 8(7)(b).

14. Section 6 – Insertion of Regulations 8A in the Current Regulations

- 14.1. As indicated previously, the proposed regulation 8A is a mobile centric regulation that is inappropriate in a technology neutral, converged licensing environment. The vast majority of Liquid Telecom’s voice services are not sold in “bundles” and accordingly the notion of depletion notifications makes no sense in the context of such services.
- 14.2. Liquid Telecom urges the Authority to recognise that this regulation is only applicable to a specific set of services, sold by certain operators and not to all voice services provided. Such differentiation is vital to ensure compliance.

- 14.3. The notion of “usage notifications” may be applicable in a mobile context where the voice device is also capable of being used for such notifications, however Liquid Telecom submits it is inappropriate in a non-mobile context.
- 14.4. Furthermore, the references to “post-paid plans” and “hybrid tariff plans” are not defined and capable of varied interpretation. In terms of Liquid Telecom’s contracts, there is no “depletion” of services, as such this proposed regulation is largely inapplicable.
- 14.5. In respect of the very small number of services provided by Liquid Telecom, Liquid Telecom accepts a need for reasonable notification, where applicable only. Liquid Telecom requests the Authority to be mindful of the different platforms currently available for consumers to monitor their usage and that monitoring should be a consumer responsibility; accordingly, Liquid Telecom has various self-service options to provide real-time balances.

15. Section 6 – Insertion of Regulations 8B in the Current Regulations

Out of Bundle Billing Practices

- 15.1. Liquid Telecom repeats its comments in 14.1 - 14.3 above.
- 15.2. Liquid Telecom urges the Authority to recognise that this regulation is only applicable to a specific set of services, sold by certain operators and not to all data services. Liquid Telecom encourages the Authority to specifically exclude any data services not sold in such usage “bundles” and consider appropriate and applicable regulations for those services.
- 15.3. Liquid Telecom notes some possible drafting improvements at: 8B(1)(d) – “opt-out of **out of bundle data** usage” and 8B(2) – “end-user opts **out of further** data usage **following data bundle depletion**, a Licensee must **not permit any out of bundle data usage by that end-user** until such time as **that** end-user **purchases a new data bundle or expressly consents to the charging of out of bundle rates**.”
- 15.4. Liquid Telecom does not operate a mobile network and as such does not have access to USSD. Liquid Telecom notes the generic “any other applicable means” has been included almost as an afterthought. What is not considered is that such “other applicable means” may not have the immediacy of the technologies suggested and may have a cost associated. Liquid Telecom encourages the Authority to consider these factors when finalising the Proposed Amendments.
- 15.5. Liquid Telecom further notes that providing an opt-in or opt-out on a “per session” is not possible using most (non-mobile) data services / technologies and any network modification to allow for such an approach would be incredibly cumbersome and costly, which cost would need to be passed on to the end-user.
- 15.6. Liquid Telecom further notes that consumers have a joint responsibility to monitor their usage and licensees should not be held solely liable for the irresponsible behaviour of some consumers.

Expiry of data practices

- 15.7. Liquid Telecom notes the proposed insertion of regulation 8B(3) to bring the expiry of “prepaid data bundles” in line with the Consumer Protection Act. Liquid Telecom notes that it is aware of an exemption application having been made, however is not aware of the outcome thereof.
- 15.8. With respect to the proposed 8B(3), Liquid Telecom notes that the terminology used is inexact and requests the provision be redrafted to exclude any time-based pre-payment; for example, there are certain services charged in advance for a specified period. Provided the terms are adequately communicated and the service delivered for the contractually committed period, the service should expire at the end of that period. To the extent that this proposed regulation is introduced it should be limited to data “bundles” denominated in units of data throughput.
- 15.9. Liquid Telecom notes that the proposed regulation 8B(3) imposes a significant overhead on licensees and requests that the Authority conduct a full regulatory impact assessment in respect thereof. While the explanatory note attached to the Proposed Amendments is very helpful, on this issue Liquid Telecom respectfully submits that it is inadequate.
- 15.10. Liquid Telecom respectfully submits that Section 63 of the Consumer Protection Act does not deal with a situation where a pre-payment is only partially used. Liquid Telecom could accept a situation where a pre-payment is made and remains valid for the proposed three-year period. However, here a licensee is expected to maintain an active “account” over a protracted period (certainly in the electronic communications industry, three years is a long time). There are costs associated with such maintenance. Liquid Telecom suggests that active use should be a requirement for maintaining the validity of such balance – with active use being use once every fourteen days. Liquid Telecom further recommends the consideration of a *de minimis* threshold below which balances may be written off and suggests that a reasonable threshold be R1, in conjunction with the fourteen-day active usage window. If the active usage window is increased then the *de minimis* threshold should likewise increase.

Roll over of unused and transfer of data

- 15.11. Liquid Telecom supports the concept of rolling over specified post-paid data allocations to the next billing period. In most cases of monthly billing, this would be the following month. Liquid Telecom submits that this ends on termination of the contractual term.
- 15.12. Such roll-over is feasible for those licensees with integrated ECNS and ECS operations. An ISP that provides ECS over Liquid Telecom’s ECNS may not be in a position to roll-over data bundles if it changes to a different ECNS for access or backhaul services.
- 15.13. With regards the proposed transfer of data allocations, the complexity of designing and developing such a system would be prohibitive and time consuming; furthermore, it potentially establishes the end-user transferring

such data allocation into an unlicensed operator; or a reseller without an appropriate reseller exemption. It also has the potential to be used for the purposes of money laundering.

- 15.14. Absent a more detailed regulatory impact assessment, Liquid Telecom is compelled to reject the proposed transfer of unused bundles.

Consumer Education and Awareness

- 15.15. Liquid Telecom again notes that the provisions of this proposed regulation are mobile-centric and repeats its request to the Authority to not impose inappropriate requirements on operators who do not operate mobile networks.

CONCLUSION

16. Liquid re-iterates its appreciation to ICASA for the consultative way in which it is approaching these important consumer protection issues.