

Independent Communications Authority of South Africa

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Comments on proposed ICASA regulations.

Dear Mr Gumani Malebusha

Thank you for the opportunity to comment on these proposed regulations. If anything in my comments is unclear or you require further clarification please contact me by email.

Introduction

ICASA has proposed regulations that will, to some extent, protect the most vulnerable in our society from exploitation by service providers. I support the ambit of these proposed ICASA regulations and propose some simplifications and amendments that close some exploitation loopholes still available to service providers.

The accounting gradient

The service provider and end user are very unequal in their ability to account for network data usage. The provider has a vast computer network, the end user a few pop up messages that may or may not be substantially delayed. The service provider ought to act in the best interests of the end user but currently seldom does so. Regulations should reflect that given this unequal relationship it is essentially fraudulent for the service provider to increase rates by more than an order of magnitude. ICASA need to make this clear to service providers: legal nit picking to fleece end users is unacceptable and will result in harsh action. And exploiting the most vulnerable people in our society in such an exercise are the actions of a bully and should not be tolerated

Universal rate.

Universal rate describes an alternative to the in-bundle, out-of-bundle mess that these proposed regulations partially address.

Suppose a consumer purchases a 500MB bundle valid for 30 days that costs R105. Out of bundle charges are R0.60 per MB. I'll define the *universal rate* for this bundle as $105/500 = R0.21$ per MB. Universal rate equates to the theoretical minimum in-bundle rate.

Now suppose this bundle is depleted after 10 days. The consumer who has bought this bundle has already paid for 500MB at R0.21 per MB? Why can't they have another 500MB at the same rate within the same period? They have in effect bought two of the same bundles at the same price.

Another way to look at this is that a contract existed between SP and end-user to supply 500MB of data at R0.21 per MB. Contracts are available to supply more data at a lower rate per MB so therefore the end user should logically be entitled to purchase 500MB or more at R0.21 per MB. This does not materially disadvantage the service provider it simply prevents the service provider from capitalizing on the end user's mistakes.

So instead of asking consumers to guess their maximum data usage and penalizing them when they get it wrong we specify that the service provider must continue to supply out-of-bundle data at the in-bundle rate until the expiry of the bundle.

By purchasing a bundle a consumer locks in a rate for a specified period of time. The universal rate applies throughout the bundle period.

| Out of bundle rate | 0.60 MB | | | |
|--------------------|----------------|----------------|---------------------|-----------------------|
| Bundle | 0.21 MB | | 500MB Bundle R105 | |
| Consumer uses MB | Current charge | Universal rate | Current cost per MB | Universal rate per MB |
| 100 | 105.00 | 105.00 | 1.05 | 1.05 |
| 250 | 105.00 | 105.00 | 0.42 | 0.42 |
| 500 | 105.00 | 105.00 | 0.21 | 0.21 |
| 800 | 285.00 | 168.00 | 0.36 | 0.21 |
| 1000 | 405.00 | 210.00 | 0.41 | 0.21 |

One could take this logic a little further and legislate that the end-user be able to upgrade their bundle to a larger (maybe even smaller?) bundle if their existing bundle is depleted or partially depleted. So if the user above had reached 800MB they might upgrade their 500MB bundle to a 1GB bundle costing R160 and receive an R8 credit. Perhaps service providers could be convinced to do this automatically?

Specific comments on the proposed regulations

(1) A Licensee must send notifications for voice and SMS usage intervals to an end-user, the intervals must show 50%, 75%, 90% and 100% service depletion. The notification must be through SMS or any other applicable means.

-Comment: this should stipulate "at no charge."

-Comment: although this might assist the end user the timing of messages is not guaranteed and the end user might not be able to read the messages and react timeously.

(2) A Licensee must provide end-users who are on post-paid / hybrid tariff plans with an option to buy additional voice services or SMS services upon depletion of such services.

-Comment: I have described *universal rate* in the context of data but I believe it can easily apply to voice and sms bundles.

(3) *Where an end-user who is on a post-paid / hybrid tariff plan does not buy additional voice services or SMS services, the licensee will disconnect the end-user from access to services and allow such end-users to only use emergency services and customer care services.*

Comment: I presume the regulation's intent is to protect the end user from out-of-bundle rates on voice and sms? If this is the case the regulation could be worded better. *Universal rate* negates the need for this protection.

(1) *A Licensee must provide a mechanism for end-users to opt-in for, or opt-out of, out-of-bundle charges when their data bundle is depleted.*

Comment: *Universal rate* would require the amendment of this to read "...when their data bundle expires." The underlined words clarify the meaning.

(a) *sent data depletion notifications on regular intervals through SMS, USSD or any other applicable means, the interval must show 50%, 75%, 90% and 100% depletion of data bundles;*

Comment: I receive many of these notices in several languages. They are generally of low utility and often a complete nuisance. Timing can often be erratic.

(b) *sent warning notifications when his / her data bundle has completely run out or is depleted;*

-Comment: This is a duplication of regulation (a) in the 100% case and can be removed.

(c) *provided with an option to buy additional data bundles upon depletion of his / her allocated data through the USSD platform or any other applicable means;*

Comment:

Under *universal rate* the consumer can continue to use data at the in bundle rate. (c) is unnecessary.

It would benefit end users if they could upgrade their data bundle to a larger bundle. So for example a user who has almost depleted a 500Mb / 30 day bundle ten days after purchase should be allowed to change that bundle to a 1GB bundle. Should you accept the upgrade proposal ICASA should protect the end user from predatory marketing that would, for example allow the service provider to market a higher bundle with an unreasonably short remaining life.

Expiry of data practices:

(4) *A Licensee must adhere to the table below with regard to the validity period for data expiry:*

| <i>Data bundle sizes</i> | <i>Minimum Validity periods</i> |
|--------------------------|--|
|--------------------------|--|

| | |
|----------------|-----------|
| 1 MB – 50MB | 10 days |
| 50MB – 500 MB | 30 days |
| 500MB – 1 Gig | 60 days |
| 1Gig – 5 Gig | 90 days |
| 5 Gig – 10 Gig | 180 days |
| 10 Gig – 20Gig | 12 months |
| 20 Gig > | 24 months |

Comment: At least one service provider is now offering hourly data packages. It's highly likely the profit model on these packages relies on the end user extending usage inadvertently into the out-of-bundle rate. The short period improves the possibility of this happening.

If a service provider can show how hourly bundles might benefit consumers then perhaps they should be allowed? Yet my gut feel is that somehow they are designed to deceive.

One also doesn't want to stifle innovation. Some foreign providers provide free 2G data and only charge for 3G and above. Orange Ivory Coast offers this and some united states carriers.

(7) A Licensee must provide end-users with an option to roll over unused data when end-users recharge with data bundles before the expiry date. The roll over validity period will be as per the table in sub section (4).

Remembering exactly which date to repurchase a new data bundle is unnecessarily onerous on the end user. A small memory lapse results in loss off roll over data or loss of useful period in the new bundle if renewed too early. The regulations should allow roll over if the bundle is renewed within a reasonable time, say 30 days, and allow a new bundle to begin after the expiry of an existing bundle. End users should at the very least receive a notification that they need to renew to achieve rollover. And what if the end user is out of the country at rollover time? Why should they forfeit data for simply traveling?

8C. CONSUMER EDUCATION AND AWARENESS

Comment: The service provider is typically a profit orientated, historically consumer gouging, company. Should they be tasked with educating consumers on the same products that they use to gouge?

Perhaps rather, they ought to contribute to a credible NGO that educates advocates for and advises consumers? This in its current form seems to be a hand washing ritual.

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Proposed regulations altered to reflect my comments above

“8A. VOICE AND SMS SERVICES

(1) A Licensee must send notifications at no charge for voice and SMS usage intervals to an end-user, the intervals must show 50%, 75%, 90% and 100%

service depletion. The notification must be through SMS or any other applicable means.

(2) A Licensee must provide end-users who are on post-paid / ~~or~~ hybrid tariff plans with ~~an option to buy~~ additional voice services or SMS services at the in-bundle rate upon depletion of such services.

~~(3) Where an end-user who is on a post-paid / hybrid tariff plan does not buy additional voice services or SMS services, the licensee will disconnect the end-user from access to services and allow such end-users to only use emergency services and customer care services.~~

8B. DATA SERVICES

Out of bundle billing practices:

(1) A Licensee must provide a mechanism for end-users to opt-in for or opt-out of out-of-bundle charges when their data bundle ~~is depleted~~ expires.

(2) A Licensee must ensure that an end-user is:

(a) sent data depletion notifications on regular intervals through SMS, USSD or any other applicable means, the interval must show 50%, 75%, 90% and 100% depletion of data bundles;

~~(b) sent warning notifications when his / her data bundle has completely run out or is depleted;~~

(c) provided with an option to ~~buy additional~~ upgrade data bundles ~~upon~~ depletion of his / her allocated data through the USSD platform or any other applicable means;

~~(d) not defaulted automatically to out of bundle data charges upon depletion of his / her data bundles; and~~

(d) charged at the in-bundle rate upon depletion of the data bundle until the bundle's expiry; and

(e) provided an option through SMS, USSD or any other applicable means to opt-in or opt-out of data bundle usage.

(3) Where an end-user does not opt-in or opt-out of out-of-bundle data usage when his / her data bundle has been depleted, a Licensee must automatically disconnect the end-user from out-of-bundle data usage until such time that the end-user gives express consent or authorization.

Expiry of data practices:

(4) A Licensee must adhere to the table below with regard to the validity period for data expiry:

| | |
|-------------------|---|
| Data bundle sizes | <u>Minimum</u> Validity periods / <u>roll over window</u> |
|-------------------|---|

| | |
|----------------|-----------------------------|
| 1 MB – 50MB | 10 days / <u>10 days</u> |
| 50MB – 500 MB | 30 days / <u>30 Days</u> |
| 500MB – 1 Gig | 60 days / <u>60 days</u> |
| 1Gig – 5 Gig | 90 days / <u>90 days</u> |
| 5 Gig – 10 Gig | 180 days / <u>180 days</u> |
| 10 Gig – 20Gig | 12 months / <u>180 days</u> |
| 20 Gig > | 24 months / <u>180 days</u> |

(5) A Licensee must notify its end-users with expiry of their data period within seven (7) days prior to expiry date of such data.

(6) The notification must be through SMS, USSD or any other applicable means.

(7) A Licensee must ~~provide end-users with an option to~~ roll over unused data when end-users recharge with data bundles ~~before~~ within the roll over window indicated in the table in section (4). The roll over validity period will be as per the table in sub section (4). Bundles renewed early run consecutive to the original bundle.

8C. CONSUMER EDUCATION AND AWARENESS

(1) A Licensee must conduct education awareness campaigns aimed at:

- (a) educating end-users on the use of smart phones;
- (b) educating end-users on how to use data; and
- (c) educating end-users on a broad range of products and services offered.

(2) A Licensee must conduct four (4) quarterly education campaigns per annum.”