



NATIONAL CONSUMER COMMISSION

**Office of the Commissioner**

1 Dr Lategan Road, Block C, SABS Campus, Pretoria, Email: [t.mabuza@thencc.org.za](mailto:t.mabuza@thencc.org.za)

The Independent Communications Authority  
Chairperson: Priority Markets and Data Services Committee

Per Email: [prioritymarkets2017@icasa.org.za](mailto:prioritymarkets2017@icasa.org.za)

Dear Chairperson

**NATIONAL CONSUMER COMMISSION: WRITTEN REPRESENTATIONS**

**1. INTRODUCTION**

- 1.1 The National Consumer Commission (NCC) is the primary national consumer protection body in South Africa.
- 1.2 The NCC has considered the proposed amendments contained in Notice No. 41263, published in Government Gazette dated 17 November 2017: ***Intention to amend End-user and Subscriber Service Charter Regulations*** (draft amended regulations) and hereby makes the following representations.

**2. COMMENTS ON DRAFT AMENDED REGULATIONS**

**2.1 8A Voice and SMS Service**

The word "voice" is not defined in the Electronic Communications Act, Act No. 36, of 2005. It is also not defined in the End-user and Subscriber Service Charter Regulations. Unless there is a commonly accepted definition of "Voice" it is recommended that it be defined just as "sms" has been defined.

**2.2 Rollover Over of unused and transfer of data**

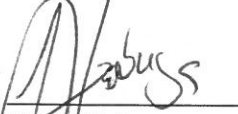
***"A licensee must provide an option to post-paid users to rollover unused data of the monthly data allocation to the next billing period or to transfer the monthly data allocation or a portion thereof to other end- users on the same network."***

- i.* It is submitted that users of post-paid data ordinarily enter into fixed term agreements with network providers or their agents. Fixed term agreements are regulated in terms of the Consumer Protection Act 68 of 2008 (CPA).
- ii.* Section 14 of the CPA deals with fixed term agreements. Section 14 (3) of the CPA states that upon cancellation of a consumer agreement the supplier **must** credit the consumer with any amount that remains the property of the consumer as of the date of cancellation, as prescribed in terms of subsection (4).

- iii. Section 14 (4) states that the Minister may, by notice in the Gazette, prescribe the manner, form and basis for determining the reasonableness of these credits.
- iv. Minister has prescribed the manner, form and basis for determining the reasonableness of these credits. To this end, CPA Regulation 5 (2) reads as follows:
  - “(2) For purposes of section 14(3), a reasonable credit or charge as contemplated in section 14(4)(c) may not exceed a reasonable amount, taking into account-**
  - (a) the amount which the consumer is still liable for to the supplier up to the date of cancellation;**
  - (b) the value of the transaction up to cancellation;**
  - (c) the value of the goods which will remain in the possession of the consumer after cancellation;**
  - (d) the value of the goods that are returned to the supplier;**
  - (e) the duration of the consumer agreement as initially agreed;**
  - (f) losses suffered or benefits accrued by consumer as a result of the consumer into the consumer agreement;**
  - (g) the nature of the goods or services that were reserved or booked;**
  - (h) the length of notice of cancellation provided by the consumer;**
  - (i) the reasonable potential for the service provider, acting diligently, to find an alternative consumer between the time of receiving the cancellation notice and the time of the cancelled reservation; and**
  - j) the general practice of the relevant industry.”**
- v. In summary, upon cancellation of a fixed term agreement (including expiry by effluxion of time), the CPA requires a supplier to pass onto the consumer, reasonable credit which may not exceed a reasonable amount, taking into account, amongst other things, the value of the goods returned to the supplier.
- vi. Therefore, the relevant draft amended regulation, as proposed by ICASA, contradicts both the provisions of Section 14 and regulation 5 of the CPA. Seemingly, the draft regulation, permits a forfeiture of consumers’ data (without any credit) that remain beyond the “next” billing period, whereas Section 14 of the CPA states that **“the supplier...must credit the consumer with any amount that remains the property of the consumer as of the date of cancellation”**
- vii. The said draft amended regulation seek to further limit the minimum rights granted to consumers (as contained in Section 14 and Regulation 5 of the CPA) by stipulating that consumers either rollover monthly data to the next billing period or transfer the monthly data allocation or a portion thereof to other end- users on the same network.
- viii. It is submitted that a fair “credit” regime for post-paid consumers, as envisaged by the CPA, would be one that enables consumers to rollover all unused data; and or transfer unused data; and or claim a refund, upon cancellation of the agreement (including expiry), on all

unused data. In the event of a cancellation of the agreement prior to expiry, then the value of the unused data must be considered in determining an early cancellation penalty.

Kind Regards



**Thezi Mabuza**

Deputy Commissioner: National Consumer Commission

**Date: 21/12/2017**