



CHANGE YOUR WORLD

CELL C LIMITED

Waterfall Campus

Cnr Maxwell Drive and Pretoria Main Road  
Buccleuch, Ext 10, 2090

Private Bag X36, Benmore, 2010  
Johannesburg, South Africa

T +27 (0)84 174 4000

F +27 (0)84 167 6598

W [www.cellc.co.za](http://www.cellc.co.za)

Registration Number: 1999/007722/06

24 April 2004

The Chairperson

Independent Communications Authority of South Africa

End-User Subscriber Service Committee

350 Witch-Hazel Ave

Eco-Park Estate

Centurion

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

Dear Sir,

## Draft End-user and Subscriber Service Charter Amendment Regulations, 2024 (Draft Regulations)

### A. Introduction

1. We refer to the Draft End-User and Subscriber Service Charter Amendment Regulations, 2024 published in Government Gazette No 50241 dated 29 February 2024 (**Draft Regulations**).
2. Cell C welcomes the opportunity to make written representations to the Independent Communications Authority of South Africa (**Authority**) on the Draft Regulations.
3. Cell C has championed consumer interests through the introduction of lowering since its inception in 2001. In this context, Cell C has serious concerns with the introduction of the regulations which will have unintended consequences. The proposals are contrary to the end goal of reducing data prices in the country. Cell C specifically does not support the proposed amendments to regulation 8A:
  - 3.1 8A(1);
  - 3.2 8A(2)(a) and (b) and (c);
  - 3.3 8A(4); and
  - 3.4 8A(5).
4. Notwithstanding the above, and that some of the proposed amendments are already implemented by Cell C, Cell C has several significant concerns regarding certain

portions of the Draft Regulations. Cell C's concern's stem from, amongst others, the following:

- 4.1 Various proposed amendments are not commensurate with, and in fact exceed, the powers of the Authority as set out in the Electronic Communications Act 36 of 2005 (**ECA**).
- 4.2 Certain proposed amendments are: 1) overly prescriptive; 2) fail to strike a balance between the best interests of consumers and stakeholders; 3) fail to have regard to the current state of the market and will ultimately hinder the growth of the market, and have a negative impact on consumers, and Licensees.
- 4.3 Several proposed amendments will negatively affect competition, which will ultimately negatively impact consumers, Licensees (particularly Licensees who do not have significant market power), and the market.
5. Cell C's submission is structured as follows:
  - 5.1 The Authority's powers under the ECA;
  - 5.2 Status of the market;
  - 5.3 Competition;
  - 5.4 Proposed amendments relating to out-of-bundle usage and charges;
  - 5.5 Proposed amendments relating to the roll-over of unused bundles;
  - 5.6 Proposed amendments relating to bundle transfer;
  - 5.7 Extension of bundle validity periods;
  - 5.8 Timing of implementation of the Draft Regulations; and
  - 5.9 Conclusion.

## **B. The Authority's powers under the ECA**

6. The Authority is the regulatory body responsible for overseeing the electronic communications, broadcasting, and postal services in South Africa, which involves the Authority regulating sectors, granting licenses, managing spectrum, protecting consumers, promoting fair competition, developing policies, enforcing regulations, and representing South Africa internationally.
  7. In terms of section 69 of the ECA, the Authority must prescribe regulations setting out the minimum standards for end-user and subscriber service charters. In doing so, the Authority is empowered to develop different minimum standards for end-users and subscriber service charters. These minimum standards extend to the matters set out in section 69(5).
-

8. Section 69(5) does not, under any reasonable interpretation, provide the Authority with the power to interfere with the contractual relationship between Licensees and end-users, nor does it empower the Authority to dictate the products and services which Licensees can offer end-users, as well as the contractual terms applicable to such products and services.
9. This is in line with section 2(y) of the ECA which requires the Authority to "*refrain from undue interference in the commercial activities of licensees while taking into account the electronic communication needs of the public*".
10. Cell C is concerned that certain portions of the Draft Regulations are tantamount to the Authority interfering with the contractual relationship between Licensees and end-users and dictating the products and services which Licensees can offer end-users. This clearly falls outside the ambit of the Authority's powers in terms of the ECA, will have unintended negative consequences (as elaborated on further in this submission) and is thus *ultra vires* and susceptible to review. In particular:
  - 10.1 By abruptly eliminating the option for Licensees to offer end-users uninterrupted access to bundled products and services at in-bundle rates where such an end-user has not made an election to opt-in or opt-out of out-of-bundle usage charges, the Authority is, rather than setting out minimum standards applicable to out-of-bundle usage and charges, prescribing the products and services which Licensees can offer end-users.
  - 10.2 By forcing Licensees to roll-over medium and long-term unused bundles, without requiring any action and without incurring any cost to the end-user, the Authority is essentially prescribing the contractual terms upon which roll-overs must take place.
  - 10.3 Lastly, Cell C is of the view that in prescribing requirements applicable to the transfer of bundles, the Authority is in essence dictating the contractual terms which must be applied in relation to the sale of bundles between Licensees and its customers.

### **C. Status of the market**

11. Cell C submits that it experienced slow growth following the impact of Covid-19 and loadshedding along with the general South African economy, which had weakened over the period.
  12. Cell C is of the view that the industry is at a critical stage of development and is concerned about the impact which certain proposed amendments in the Draft Regulations may have on the industry, its growth, and the increased cost of doing business, particularly for small players in the market.
  13. It is vital for the Authority to guard against overly prescriptive regulations, and to continuously have regard to the primary object of the ECA, which is to provide for the regulation of electronic communications in South Africa in the public interest and for that purpose to, *inter alia*, "***refrain from undue interference in the commercial activities of licensees while taking into account the electronic communication needs of the public.***"
-

14. The Authority should always strive to strike a balance between the interests of consumers with those of industry players. This has been recognised by the Authority, who has stated in a letter to Cell C that the Authority “...*hope[s] to find an industry led solution to address stakeholder concerns and to serve the best interest of consumers, whilst safeguarding the stability of industry players and the sector as a whole*”<sup>1</sup> (our emphasis).
15. In safeguarding the stability of industry players and the sector as a whole, the Authority needs to guard against overly prescriptive regulations. The failure to do so could lead to the stifling of innovation, a reduction in competition and a reduction in economic growth.
16. In Cell C’s view, certain aspects of the Draft Regulations will significantly increase the cost of compliance for Licensees. Moreover, in formulating certain portions of the Draft Amendments, it appears that the Authority has not had proper regard to the significant strides that Licensees have taken in the benefit of the public’s interest in alleviating the Authority’s concerns.
  - 16.1 For example, in 2020 mobile network operators introduced lower pricing offerings and reduced most of its bundle offerings after entering into mandatory agreements with the Competition Commission following its findings in the Data Services Market Inquiry, which was completed in 2019.
  - 16.2 Data prices have decreased since 2020, including the concessions for public benefit organisations and government URLs which are zero-rated, the provision for more pricing transparency and a single landing page for promotions. It is clear that the industry is doing a lot to bring relief to customers already in distress due to these economic realities.
17. Cell C has, and will continue to, take steps to improve the affordability and quality of its products and services and has consistently shown its support for the purpose of the End-User and Subscriber Service Charter Regulations. These efforts, together with the efforts by the industry, will be undermined if the Authority does not ensure that its regulations are not overly prescriptive and a balance between the interests of consumers with those of industry players is maintained.

#### **D. Competition in the Data Services Market**

18. Cell C is concerned that certain portions of the Draft Regulations (which is dealt with throughout this submission) may hinder the ability of Licensees to enter the market and to effectively compete with one another.
19. Licensees compete strongly to expand their market share. Such vigorous competition has historically had the effect that Licensees are constantly introducing innovative offerings, expanding consumer choice, and introducing competitive prices and offerings.

---

<sup>1</sup> Letter from ICASA to G Mackinnon of Cell C, dated 31 March 2017.

20. The Draft Regulations, in various respects, seek to prescribe the contractual terms to be applied in relation to the provision of bundled products and services and, in some instances, prescribe what bundled products and services can be offered to end-consumers. This will severely limit the ability of Licensees to compete with one another by differentiating their bundled products and services to consumers.
21. Moreover, the implementation of certain portions of the Draft Regulations will result in a significant increase in costs to Licensees, which costs will have a disproportionate negative impact on smaller players in the market who are not able to absorb such costs and will ultimately have to pass these costs onto its consumers. This will impede the ability of smaller Licensees to effectively compete with SMP operators
22. In addition to the above, overly prescriptive regulations will result in (1) higher barriers to entry the market;
  - 22.1 Disadvantageous to both the growth of the market as well as the ability of smaller Licensees to grow in a highly competitive market.
  - 22.2 Lastly, the regulations, if passed in their current form will further entrench the dominant position of Significant Market Operators, who would benefit from their on-net position in the retail market.

#### **E. Proposed amendments relating to out-of-bundle usage and charges.**

23. In terms of the proposed amendments to regulation 8A of the Draft Regulations, specifically 8A(2)(c) and 8A(3), Licensees must ensure that end-users are provided with the option to opt in or opt out of out-of-bundle usage charges. Moreover, if a 'service bundle' (which is not defined in the Draft Regulations) is depleted and the end-user has not opted in to out-of-bundle charges, a Licensee must not permit any out-of-bundle usage by, or out-of-bundle charges to, the end-user until such time as the end-user purchases a new bundle or opts into out-of-bundle usage and charges.
24. The amendments in the Draft Regulations, particularly 8A(3) in so far as it relates to data, reflect a departure from the End-User and Subscriber Service Charter Regulations published in Government Gazette No 42225 dated 12 February 2019 (**2019 Regulations**) wherein regulation 8B(2) was amended by substitution for the following sub-regulation:

*“(2) Where an end-user does not opt-in to out-of-bundle data charge as per regulation 8B(1)(c) above, a Licensee must not permit any out-of-bundle data usage by an end-user until such time that an end-user purchases new data bundles or opt-in to out-of-bundle usage. **In the event that an end-user does not make an election, whether to opt-in or opt-out of out of bundle usage, the Licensee may either immediately terminate data services or continue to provide data services, provided that the provision of the service shall be on the same terms and conditions applicable under in-bundle usage.**” (our emphasis)*

---

25. Cell C submits that the substitution for Regulation 8B(2) in the 2019 Regulations, particularly the election provided to Licensees to continue providing services at in-bundle rates, significantly benefitted end-users in terms of both convenience (end-users had the convenience of uninterrupted access to bundled services where their bundle usage had been depleted and where they had chosen not to make an election to either opt-in or opt-out of out-of-bundle usage charges) and cost (end-users benefitted from the materially lower cost of in-bundle rates, as opposed to out-of-bundle rates).
26. According to the Explanatory Memorandum on the Draft Regulations, the rationale for the substitution of Regulation 8A with 8A(2)(c) and 8A(3), is to prevent consumers from being charged 'exorbitant' rates without their explicit consent when bundled services have been depleted.
27. Cell C submits the substitution of Regulation 8A with 8A(2)(c) and 8A(3):
  - 27.1 Firstly, is not necessary.
    - 27.1.1 End-users are not charged 'exorbitant' data rates but benefit from low in-bundle rates. The Authority has not provided any evidence that end-users are dissatisfied with the current position (following the 2019 Regulations) and that they view the current practice of charging in-bundle rates upon depletion of their bundle where no opt-in or opt-out election has been made has resulted in 'exorbitant' rates.
    - 27.1.2 Moreover, consumers are- as a result of usage depletion notifications-empowered to monitor their usage and limit spending as well as avoid or minimise bill shock because of out-of-bundle usage charges. Consumers also have the ability to set limits on their out-of-bundle spend.
  - 27.2 Secondly, will result in less consumer choice.
    - 27.2.1 End-users will no longer benefit from the ability to choose to purchase bundled services from Licensees who, following the 2019 Regulations, have made an election to offer uninterrupted bundled services at in-bundle rates where consumers have not opted-in to out-of-bundle usage charges.
    - 27.2.2 In addition, the proposed amendments will preclude Licensees from offering unique and competitive price plans thereby limiting consumer choice.
  - 27.3 Thirdly, will only serve to inconvenience (and potentially prejudice) end-users by removing the benefit of uninterrupted access to bundled services.
    - 27.3.1 For example, if a consumer lacks both airtime and data, has no access to Wi-Fi and has not opted in to out-of-bundle charges, they would be unable to make a voice call in an emergency situation that is not 112 related. This contrasts with the status quo where certain consumers (depending on their service provider) can make such calls without airtime or data through out-of-bundle usage. This change could inadvertently hinder a consumer's ability to communicate during critical situations.

- 27.3.2 If the Authority's primary rationale is to ensure consumers are not charged 'exorbitant' rates, Cell C submits that the Authority should, instead of requiring Licensees to halt services where consumers have not opted-in to out-of-bundle usage charges, have regard to alternative (less restrictive) remedies such as a reduction of out-of-bundle rates or requiring Licensees to make an election to either halt services or continue to provide services at in-bundle rates (i.e., extending the application of the amendments to regulation 8B(2) beyond just data). Currently Cell C provides this flexibility where the customer benefits from choice either to make an election or to continue with accessing uninterrupted services without any hindrance or inconveniencing to the customer.
- 27.4 Fourthly, will result in significant costs to certain Licensees to comply with the proposed amendments, as well as result in substantial revenue loss.
- 27.4.1 In particular, for those Licensees who, because of the 2019 Draft Regulations, opted to provide end-users with uninterrupted bundled services at in-bundle rates where the end-user did not make an election to opt-in or opt-out of out-of-bundle usage charges. These Licensees, who already incurred significant costs *vis-à-vis* the amendment of its technical requirements to comply with the 2019 Regulations, will now have to incur further costs to comply with the proposed amendments.
- 27.4.2 Allied to the above, certain Licensees will have an unfair advantage over those Licensees who, as a result of the 2019 Regulations, made the election to terminate bundled services where a consumer has depleted their bundle and as not opted-in to out of-bundle usage charges. These Licensees will not incur significant costs to comply with the Draft Regulations.
- 27.4.3 In addition, from Cell C's perspective, forcing Licensees to terminate the provision of bundled services until such a time that the end-user has either purchased a new bundle or opted-in will result in significant revenue loss and . Cell C derives a portion of revenue the market which include customers who have elected to the in-bundle option, enjoying seamless customer experience.
- 27.4.4 The Authority should be aware that the proposal will have detrimental effect to consume on their preference for electronic communications services convenience without any interruptions.
- 27.5 Lastly, exceeds ICASA's powers in terms of the ECA.
- 27.5.1 The proposed amendments seek to limit the retail services which Licensees can offer end-users, and no not fall within the concept of 'minimum standards, under section 69(3) read with section 69(5) of the ECA.
28. For the reasons set out above, the proposed amendments pertaining to out-of-bundle usage charges are not in the best interests of end-users or Licensees. The proposed amendments should be re-drafted to provide Licensees with the election to either terminate the provision of bundled services, alternatively, to continue to provide
-

bundled services at in-bundle rates where end-users have not opted into or out of out-of-bundle usage charges.

29. It is vital that the Authority ensures the option for Licensees to provide uninterrupted products and services at in-bundle rates.
30. Cell C will continue providing more education and awareness to consumers regarding the terms and conditions of using in-bundle rates for customer convenience and support.

#### **F. Proposed amendments relating to roll-over of unused bundles.**

31. The proposed insertion of regulation 8A(6)-8A(8) in the Draft Regulations provides for the roll-over of any unused medium and long-term bundles for an equivalent validity period, which roll-over must occur without requiring any action and without incurring any cost to the end-user.
32. Cell C notes that the aforementioned amendments seek to address stakeholder submissions which were raised pertaining to roll-over provisions contained in End-User and Subscriber Service Charter Regulations published in Government Gazette No 46153 on 31 March 2022 (**2022 Regulations**).
  - 32.1 More specifically, in terms of the Explanatory Memorandum on the Draft Regulations:
    - 32.1.1 The Authority conceded that applying a 6-month validity period across all services will undermine market dynamics, and limit end-user choice, and that this may lead to an increase in prices for consumers who are currently benefitting from low unit prices on short-validity bundles.
    - 32.1.2 The Authority is of the view that there remains strong consumer resistance to the 'loss' of unused data etc. when it comes to bundles of longer duration, hence the roll-over (and transfer) provisions detailed under the Draft Regulations.
    - 32.1.3 The proposed differentiation between medium-term and long-term bundles further intends to cater for consumers who desire to benefit from bundles with longer expiry dates and to stimulate offerings to consumers in that segment of the market.
    - 32.1.4 The additional terms and conditions developed by Licensees in ensuring compliance with sub-regulation 8B(3) of the 2022 Regulations, such as requiring a consumer to purchase additional data or a 'data extender' unfairly disadvantages consumers through forced additional purchases or other roll-over restrictions.
    - 32.1.5 The proposed amendments seek to ensure that end-users are not unduly disadvantaged by the total loss of their purchased bundles and further benefit them from minimising the risk of premature expiry of bundles.



- 32.1.6 The limitation of the roll-over provisions to longer-term bundles and the number of times the roll-over can take place is intended to protect consumers from the unexpected loss of unused services, whilst ensuring that roll-over specifications are not open-ended and thus likely to have a negative impact on numbering resources.
33. In Cell C's view, the proposal that medium and long-term bundles must be rolled-over **automatically** and at **no additional cost to the consumer** will have significant detrimental unintended consequences to Licensees, consumers and competition, and goes further than what is required in order to address the concerns identified by the Authority in paragraph 32 above.
34. As set out in Cell C's previous submissions, the cost of carrying data, voice, and SMS over an extended period of time will be high, and Cell C will incur higher costs to service to maintain customers' data, voice and SMS balances for a longer period. Cell C leases capacity on infrastructure owned by backhaul service providers to provide mobile data, voice, and SMS services to its customers. Cell C must estimate, on a monthly basis, the amount of capacity which it will need and pays a monthly fee to its service providers based on the level of capacity required. Cell C bases its estimated capacity usage on the number of bundles which have been sold in any given month for purposes of forecasting subscribers' usage.<sup>2</sup> If Cell C's subscribers use more than the estimated capacity in any given month (**which will likely be the case if all medium and long-term bundles are automatically rolled-over at no additional cost to the consumer**), Cell C will have to pay penalties to its service providers. The cost of penalties for capacity over-usage is significant. Accordingly, in Cell C's view, the proposed amendments will have a particularly detrimental effect on smaller players in the market (such as Cell C), who lease capacity on infrastructure, an effect which is not applicable to bigger players in the market. The detrimental effect on smaller players within the market could potentially impede their ability to effectively compete in the market.
35. More generally, without the ability to prescribe (reasonable) terms and conditions applicable to a roll-over (for example, by way of requiring the consumer to purchase a 'data extender'), Licensees will be unable to recover the additional cost of maintaining customer's data, voice, and SMS balances over a longer period. This will result in operators offering tariff plans with higher effective rates to consumers than existing tariffs which will only be to the detriment of end-users and could potentially encourage migration to smaller bundles. The proposed amendments will also decrease the frequency of bundle purchases, which will have a concomitant negative impact on Licensees' revenue.
36. As indicated in Cell C's previous submission to the Authority, numbering resources (which is a scarce resource) should be managed efficiently. Cell C previously submitted that *"the requirement for extending the duration of unused data, voice and SMS over six months will require that more MSISDN's will be locked in for a longer duration of time resulting in the numbering resource being used negatively"*. In the Explanatory

---

<sup>2</sup> Cell C's submission to ICASA on the Draft End-User and Subscriber Service Charter Amendment Regulations 2022, dated 17 June 2022.

Memorandum to the Draft Regulations, the Authority provides that its proposal to specify the roll-over requirements for longer-term bundles by providing for the automatic roll-over of unused portions, whilst at the same time limiting the number of times such automatic roll-over may take place, ensures that roll-over specifications are not open-ended and thus likely to have a negative impact on numbering resources. In Cell C's view, the Authority's proposed amendments does not address its concern *vis-à-vis* the use of numbering resources, particularly given that **all** longer-term bundles must be rolled-over.

37. As per the Explanatory Memorandum on the Draft Regulations, the Authority is of the view that additional terms and conditions which have been developed by Licensees pertaining to roll-over of bundles '*unfairly disadvantage consumers through forced additional purchases or other roll-over restrictions*'. If the Authority's primary concern is that consumers are being charged unfair prices and/or unfair terms and conditions relating to roll-overs are being imposed on consumers, such a concern may be better addressed by way of a complaint to the Competition Commission of anti-competitive conduct, and not by prescribing the contractual terms upon which roll-overs must take place (which, in Cell C's view, falls outside of the remit of the Authority's powers in section 69(5) of the ECA).
38. In addition, by prescribing the contractual terms upon which roll-overs must take place, the Authority is effectively removing the ability of Licensees to compete with one another *vis-à-vis* the provision of roll-over of unused bundles, resulting in reduced variety of choices available to end-users and the stifling of innovation. In addition, the unintended consequence hereof, may possibly lead to the changes in market dynamics where some bundle types with varying durations may be removed from a licensee's bouquet of product and services limiting Cell C offerings. This will certainly not have the desired effect (as set out in the Explanatory Memorandum) of 'stimulating offerings' to consumers who desire to benefit from bundles with longer expiry dates.
39. For the reasons set out above, Cell C submits that the roll-over of unused medium and long-term bundles should not take place automatically. In addition, it is vital that Licensees are able to impose commercially determined prices reasonable terms and conditions applicable to the roll-over of unused bundles to foster competition as prescribed in section 2 (f) of the ECA, which requires the Authority to "promote *competition within the ICT sector*".

#### **G. Proposed amendments relating to bundle transfer.**

40. The proposed amendments to regulations 8A(9) in the Draft Regulations provide that the Licensee must provide an end-user with an option to transfer bundles, or portions thereof, on the same bundle conditions, to any end-user utilising services of the same Licensee.
  41. Regulation 8A(10) provides that the transfer of bundles must not be limited to specific service types, with the exception of uncapped, free, or promotional bundles, and applies to any SIM card or device on the same network, including SIM cards or devices owned by the same end-user, and exists without limit on the number of times that the end-user may transfer such bundles.
-

42. Cell C notes that the amendments proposed by the Authority seek to, amongst other things, provide:
    - 42.1 clarity on the transfer of bundles, for instance, in circumstances where an end-user has multiple SIM cards; and
    - 42.2 guidance on how the bundle transfer obligations must be met by Licensees, for instance, Licensees may not place restrictions on the number of times that end-users are allowed to transfer bundles.
  43. Cell C is of the view that in prescribing requirements in relation to the transfer of bundles, the Authority is essentially dictating the contractual terms which must be applied in relation to the sale of bundles between the Licensees and its customers, which falls outside of the remit of the Authority's powers in section 69(5) of the ECA and thus susceptible to review.
  44. In addition, Cell C submits that the proposed amendments are likely to lead to competitive arbitrage. In circumstances where end-users are entitled to transfer bundles (an unlimited number of times) across different services, to other end-users on the same network, and potentially charge a higher or lower price than the price charged by the Licensees, a secondary market will be created. Such secondary market will be unregulated and immune from the Authority's and the Licensees' control and oversight. The ability on the part of Licensees to develop and implement terms and conditions in relation to the transfer of bundles is (and has been) essential to mitigate against potential abuse and fraud associated therewith.
  45. According to the Explanatory Memorandum on the Draft Regulations, the Authority has acknowledged the concern regarding potential competitive arbitrage and advised that a secondary market can only exist where there is a significant differentiation in the unit price of bundle services between larger and smaller denomination bundles.
  46. Despite the Authority's argument, the Draft Regulations do not place any restrictions on intra-user bundle transfers, including restrictions relating to whether such bundles can be transferred at a price (and if so, at what price) from one end-user to another. The ability of end-users to transfer bundles across services is of particular concern and heightens the risk of competitive arbitrage. This is because different services, depending on the nature, technology, and cost of such services, attract different pricing. The possibility of end-users being charged inflated prices or reduced prices for bundles by other end-users is thus not adequately addressed.
  47. The Draft Regulations do not go far enough to prevent the formation of a secondary market by obliging end-users to purchase bundles at market-related and competitive prices from Licensees directly, or at least, placing a limit on the number of times end-users can transfer bundles amongst themselves and/or the prices at which such transfers can be completed.
  48. For instance, in the absence of any regulation, an end-user may transfer bundles to another at an inflated price resulting in unfair and anti-competitive pricing which is, ultimately, disadvantageous to the purchasing end-user. Alternatively, an end-user may transfer bundles to another at a reduced price. The incentive on end-users to
-

purchase bundles at lower prices from other end-users, as opposed to from Licensees, will not only negatively impact Cell C's wholesale business, but will also result in Licensees competing with the lower prices charged by end-users rather than with the unique product and service offerings offered by other Licensees within a market in which the price is regulated. This would disincentivise innovation amongst Licensees and limit end-users' choices to unique and competitive product and service offerings developed by Licensees.

49. For the reasons set out above, should the proposed amendments be implemented, they will not achieve the Authority's intended purpose but would instead result in further confusion in respect of the operations of bundle transfers amongst end-users, have a significant impact on Cell C's revenue and have potentially, anti-competitive implications. Cell C submits that Licensees should retain the discretion to impose (reasonable) terms and conditions associated with the transfer of bundles.

#### **H. Extension of bundle validity periods**

50. The proposed insertion of regulation 8A(11) in the Draft Regulations provides for the extension of bundle validity periods in circumstances where an end-user is unable to utilise the bundle due to a 'fault on the part of the Licensee'.
51. The Draft Regulations do not define or provide any further guidance on what is meant by 'fault on the part of the Licensee', leaving the proposed amendment entirely open to interpretation. To avoid such an interpretation having potentially detrimental implications for Licensees, Cell C submits that the Authority should clearly define what is meant by 'fault on the part of the Licensee' (for example, loadshedding, *force majeure* events etc., should clearly not be attributed to a fault on the part of a Licensee).

#### **I. Technical Implementation**

52. After consideration of the Draft Regulations proposed by the Authority, Cell C is of the opinion that Licensees will benefit from being afforded an opportunity to provide input on and agree, together with the Authority and other industry stakeholders, This will ensure that the Licensees are given adequate and reasonable time to address any shortcomings or internal changes required for purposes of compliance before the Authority imposes a deadline within which Licensees must comply.
  53. Cell C therefore does not support these interventions, and state here that it will not be in a position to implement such changes immediately or in the short to medium term. Cell C is currently undergoing an overhaul of its network systems, core components, and its Business Support Systems ("BSS") which it requires for our competitive urge to continue offering affordable product propositions in the medium term. The legacy systems of the BSS must and will be replaced and migrated to a consolidated singular BSS platform. Cell C foresees this process to successfully conclude within 12 months. Taking these network technology changes into account, Cell C will only be in a position to accommodate the complex regulatory changes after 12 months. It is important to note that failure to correctly implement and test changes on the network poses a huge risk to the customer experience where customers may be incorrectly billed or encounter poor quality of service.
-

**J. Conclusion**

54. Cell C firmly urges the Authority to rethink the provisions in the regulations pertaining to Out-of-bundle, roll-over of unused data indefinitely, and transfer of all services.
55. As stated above, the inclusion of voice call services in these restrictions are extremely concerning, and unwarranted. Should ICASA had conducted a Regulatory Impact Assessment (RIA) as a primary requirement for evidence regulation making, on these regulations, Cell C believes that it would have come to the same conclusion that these rules cannot support the drive to lower prices for data and OTT services.
56. Cell C proposes that ICASA must consider the broader economic circumstances of slow growth, unemployment, and high inflation impacting customers currently. Cell C respectfully requests the Authority to:
- 56.1 Assess the necessity of these proposed amendments and guard against overly prescriptive regulations (for example, by having regard to alternative, less restrictive, remedies such as continued awareness campaigns in terms of electronic communications service use and charges).
- 56.2 ensure that any amendments adequately balance the interests of the end-users with those of the Licensees, thereby safeguarding the stability of the industry as a whole.
- 56.3 have due regard to Cell C's inability to immediately effect any complex changes on its network due to its current network technology upgrades.
- 56.4 have due regard to the Authority's powers in the ECA, and not to impose regulations which exceed those powers; and
- 56.5 promote, and not impede, effective competition in the market.

Yours faithfully



**Mr Themba Phiri**  
**Managing Executive: Regulatory and Policy Affairs**

---