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Draft End User and Subscriber Service Charter Amendment Regulations 2024

INTRODUCTION

1. The South African Communications Forum (the SACF) is a voluntary industry association which is member funded and represents members across the ICT ecosystem. We primarily participate in advocacy in the policy and regulatory environment to contribute a competitive and inclusive sector that is capable of attracting and sustaining investment.
2. We welcome the opportunity to provide comments on the Draft End User and Subscriber Service Charter Amendment Regulations 2024 (EUSSC Regulations 2024).
3. Should the Authority decide to hold public hearings, the SACF confirms its intention to participate in such public hearings.
 - a. It is imperative that the regulatory approach adopted by the Authority should create an environment where industry players are able to dynamically respond to the needs of consumers.

General Comments

4. The ECA in section 2 seeks to promote amongst others connectivity to all, innovation, competition and prohibits the undue interference in the commercial activities of licensees.
5. Accordingly, regulations ought to be framed within the above parameters, specific enabling framework within the founding legislation, in this case Section 69 and be evidence based.
6. Section 69 subsections 3-6 sets out the parameters empowering ICASA in developing the End-User and Subscriber Service charter Regulations which includes:
 - The minimum standards applicable to quality of service standards;
 - Minimum levels of information required to be provided to subscribers and end-users;
 - Protection of end-user and subscriber information;
 - Procedures for billing, charging, collection and credit practices;
 - Complaints procedures and other matters affecting consumers.
7. The current amendments appear to attempt to standardise various elements of service provision including the rollout of voice and SMS'. The SACF cautions ICASA of this approach as it seems to unintentionally thwart innovation and competition. This could not have been the Authority's intention. Instead, the SACF is of the view that ICASA would be better placed to establish the principle to enable its envisaged outcome and promote innovation and competition among licensees. This in our view is more likely to result in the development of products and services that would address a multiplicity of consumer needs and preferences which ultimately reduces the cost to communicate. It does so by providing consumers products that both address their specific needs and levels of affordability.

8. An unintended consequence of product standardisation is the increase in costs to licensee from having to provide for additional capacity on the network for a significantly longer period of time.
9. Instead, the SACF advocates for ICASA creating an enabling framework which encourages innovation and competition which results in products and services that address affordability.
10. The focus on data pricing in previous iterations of the End-User and Subscriber Service Charter has been based on consumer usage trends and the critical importance of data. This amendment however, focuses on the voice and SMS services which is based on usage trends are declining in volumes. The Explanatory Note does not in our view provide sufficient clarity on the current focus on voice and SMS services. While, they have a role to play consumer trends demonstrate a continued shift towards data services including the use of OTT services.
11. It is also imperative to note that consumer needs are varied. Some consumers require uninterrupted services due to the sensitivity of service provision and cannot afford to have a drop or cut off of a service. The current amendment does not appear to recognize the differentiated services i.e. data vs voice and SMS. Logistically the current amendment is in our view unworkable. For voice and SMS' this service would have to be terminated instantly and not at the end of a session. This will have significant harm on consumers. Therefore, an optout approach is more pragmatic than an opt-in approach for voice and SMS.
12. The current approach appears to unduly interfere in the commercial activities of licensees and has the potential to create a secondary market.

Problem to be cured

13. We note ICASA's inclusion of voice services in the draft Amendment. We further note that the Explanatory Note does not clarify the current inclusion of voice services when it has been excluded in all other previous drafts and amendments of the EUSSC Regulations. We would further appreciate clarity on the problem being cured with the new amendments.

Merging of Sections 8A and 8B

14. The ECA prohibits the undue interference in the commercial activities of the regulator. We note that several of the provisions are overly prescriptive and seems to standardize services to a level that will potentially reduce competition and innovation.

14.1 periods of validity, rollover, expiry of bundles, transfer of bundles are innovations that contribute to competition which benefit the consumer.

14.2 We are further of the view that ICASA needs to conduct a RIA to understand the impact of the proposed changes and the potential impact on pricing.

14.3 It is the view of our members that the proposed regulation 8A(2) and (3) amounts to regulatory overreach. It requires that the following obligations apply to voice, SMS, data and OTT services:

(2) At all times a Licensee must ensure that end-users are provided with the option to:

?(a) opt out of usage depletion notifications;

(b) buy additional bundles via the USSD platform, push notification, or any other appropriate means; and

(c) opt in to or opt out of out-of-bundle usage charges.

(3) In the event that a service bundle is depleted, and the end-user has not opted in to out-of-bundle charges as per regulation 8A (2)(c) above, a Licensee must not permit any out-of-bundle usage by, or out-of-bundle charges to, the end-user until such time that the end-user purchases a new bundle or opts into out-of-bundle usage and charges.

14.4The above-mentioned obligations have only ever been applicable to data usage. We are unaware of the basis to change the current practice of voice calls that switch to out of bundle rates once the limit is reached, in fact the obligation to provide usage depletion notifications to end-users via SMS, push notification or any other applicable means, when usage

reaches 50%, 80% and 100% depletion of each bundle already addresses the concern that the Authority attempts to cure in the proposed obligations set out in regulations 8A(2) and (3).

14.5 Instead, the current regulations set out transparency measures that ensure that end-users are aware of all applicable costs and tariffs. This empowers the end-user.

14.6 It is accordingly proposed that the current approach of only making the requirements set out in regulation 8A(2) and (3) applicable to data services be retained.

15. One of the key requirements set out in the objects of the Electronic Communications Act is that for the purpose of regulating electronic communications in the public interest, there should not be undue interference in the commercial activities of licensees (section 2(y)).

Undue Interference in Commercial Activities

16. It is submitted that regulations 8A (6) and (7) amounts to undue interference in the commercial activities of licensees. For your ease of reference these draft sub-regulations provide as follows:

(6) A Licensee must, in the case of medium-term bundles, at the end of the validity period, roll-over 50% of any unused bundle for an equivalent validity period, provided that any unused portion of any bundle should be rolled over at least twice.

(7) A Licensee must, in the case of long-term bundles, at the end of the validity period, roll-over 25% of any unused bundle for an equivalent validity period, provided that any unused portion of any bundle should be rolled over at least once.

- i. Licensees see roll-over provisions in their service offerings as competitive differentiators, and by regulating roll-overs to 50% for medium-term bundles and 25% for long-term bundles, the Authority is removing any possibility that consumers could have had for a more beneficial deal. This would be the case even if the Authority would add the words "at least" in front of the 50% and 25% roll-overs for medium and long term bundles respectively. The setting of minimum requirements leads to a

homogenization of products and services and may stifle rather than promote competition.

- ii. It is proposed that these requirements be deleted.
- iii. The SACF members would furthermore like to point out that in considering the requirements set out in regulations 8A(6) and (7) the wording caused significant confusion. It is not clear whether the roll-over in the second month would amount to the original 50/25% applicable in the first month, or would it apply to 50/25% of the amount already rolled over in the first month.
- iv. Regulations 8A (9) and (10) are of particular concern to SACF members. For your ease of reference, these provisions provide as follows:

(9) A Licensee must provide an end-user with an option to transfer bundles or portions thereof to any end-user utilising services of the same Licensee, and the same bundle conditions, including but not limited to those applicable to expiry, roll-over and transfer, must continue to apply to the transferred bundle or portions thereof.

(10) The transfer of bundles in terms of sub-regulation (9) 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.

- v. It is submitted that allowing transfers of bundles in the way proposed would create a dilution of bundles and pricing and an unregulated secondary market.
- vi. Licensees already provide for the transfer of certain bundles, but these are subject to reasonable terms and conditions that regulates abuse.
- vii. Moreover, and importantly regulating transfers as proposed may not only have but could ultimately result in no differentiating rates being offered at all. There would be no incentive on industry players to offer any reduced rates which would ultimately reduce innovation and consumer choice.

- viii. It is submitted that the ability to transfer bundles should be done on commercial terms.
- ix. Indeed, the proposals set out in regulations 8A(6), (7), (9) and (10) could only ever be implemented after a Chapter 10 process

Proposed Definitions

- b. The current definitions of “long-term bundle”, “medium-term bundle” and “short-term bundle” are unclear in that the Proposed Amendments state that:
 - i. A short-term bundle means a bundle valid for less than seven (7) days from activation. This definition does not expressly include 7-day bundles which means that bundles up to and including 6 days are short term bundles.
 - ii. A medium-term bundle means a bundle valid between seven to 30 days from activation. In accordance with rules of grammar, “between” is not inclusive of the endpoints in a particular range whereas “from” includes the endpoints in a range. This means that bundles of 8 to 29 days are medium-term bundles.
 - iii. A long-term bundle means a bundle valid for more than thirty days from activation. Similarly, to the definition of short-term bundle, this definition is not expressly inclusive of 30-day bundles which means bundles from 31 days and above are long-term bundles.
- c. Therefore, 7-day bundles and 30-day bundles are not captured by any of the definitions provided.
- d. Propose that the Authority revise the definitions as follows:
 - i. “**Long-term bundle**” means a bundle valid for *equal to or*

more than thirty (30) days from activation; and

- ii. **“Short-term bundle”** means a bundle valid for *equal to or less* than seven (7) days from activation.

- e. “Medium-term bundle” means a bundle valid for more than 7 days but less than 30 days from activation.

Additional Comments

Impact of loadshedding on Quality of Service Targets

17. The SACF submits that no regulatory amendment process should be seen as an independent process, but that it should rather be considered as part of the entire regulatory system that it supports. With this in mind, the SACF reminds the Authority that it submitted a detailed response to its “Notice of intention to conduct an inquiry on the effects of load shedding and the regulatory relief measures the Authority may consider as it seeks ways to alleviate the impact of load shedding on the electronic communications, broadcasting and postal sectors” on the 1 of March 2024.
- a. In this submission, it is explained how load shedding has had an immense impact on the electronic communications sector. It is accordingly proposed that quality of service obligations (“QoS”) contained in the End-User and Subscriber Service Charter be deferred for the duration of loadshedding with periodic reviews. This would as a result exclude all parameters related to QoS and network issues including targets, complaints, and remedies.
 - b. Regulation 9 addresses QoS by setting measurable targets for availability of networks and services, time to install and fault clearance and require compliance reporting twice annually, with a detailed analysis of performance.
 - c. Regulation 14 (Rebates), requires licensees to offer rebates to end users if they have not received services in terms of a contract for the days of service lost which should be prorated against the end-user’s subscription.

d. Regulation 16 (Impossibility of performance) provides for the following:

(1) In the event that a licensee fails to provide end-users with service due to circumstances beyond its control or a period of more than two (2) hours, a licensee must:

(a) As soon as it becomes aware of the outage"

(i) Notify the Authority in writing;

(ii) Issue a public notice to affected end-users;

(b) Indicate timeframes within which end-users should expect the service to be restored; and

(c) Submit a report to the Authority detailing the event/s that lead to the impossibility of performance, including:

(i) The cause of the outage;

(ii) Steps taken to minimize a repeat of the outage, if applicable; and

(iii) Steps taken to inform end-users of the outage.

e. The current level of administration required to comply with the requirements in regulations 9, 14 and 16 is unnecessary and wasteful of valuable resources. The operators have no control over loadshedding nor the loadshedding schedule.

f. As explained in our submission on the load shedding inquiry, networks are designed with a reliance on the grid as the primary source of electricity. Rolling blackouts have however transformed the role of back-up power to become supplementary power. This shifts the approach to an almost equal reliance on back-up power and grid-power and significantly changes the risk profile of resiliency.

g. The state of security in the country has had a further impact on the ability of networks to provide services with network providers having to weather high levels of theft, vandalism, and sabotage with little support from law enforcement.

i. .

Consolidated regulations following numerous amendments

- h. The EUSSC Regulations have been amended almost every year since 2016 barring two years – 2020 and 2021 after originally being published in 2009.

This has in the SACFs view that the EUSSC Regulations unnecessarily difficult to read due to numerous amendments. It is submitted that a user friendly version of the entire document with all preceding changes should be published after this latest amendment, in order to improve the ease of use of these regulations.

- i. Furthermore, all regulations are only as effective when the target market is aware of the rights and obligations afforded through the regulations. As these regulations have a consumer focus, we strongly recommend that ICASA embark on awareness campaigns to create awareness about the rights and obligations emanating from these regulations.

18. Conclusion

The SACF and its members greatly appreciate this opportunity to comment on the draft EUSSC amendments and trust that the submissions above will be taken on-board.