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Dear Mr Malebusha

SUBMISSION TO REVISED END-USER SUBSCRIBER CHARTER REGULATIONS

1. Introduction

- 1.1 Broadband Infraco SOC Limited ("Broadband Infraco") welcomes the opportunity to submit this response to the Revised End-User and Subscriber Service Charter Regulations published on 22 January 2014 in Government Gazette No. 37251 ("the draft Regulations").
- 1.2 Broadband Infraco notes the significant change in scope of the draft Regulations compared to their predecessor published in 2009 in Government Gazette 32431 ("the current Regulations"). Specifically, the definitions and scope of the draft Regulations differ substantially from those contained in the current Regulations.
- 1.3 Our submission, categorised into general and specific comments, will canvass various issues of compliance and / or concern that Broadband Infraco has in relation to (amongst others) definitions, scope and quality of service, and reporting requirements imposed on licensed operators.

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2. General Comments

- 2.1 Broadband Infraco takes cognisance of the increased quality of service mentioned in the draft Regulations. The draft Regulations propose that the availability of electronic communications network services be increased from 95% to 99%, and that 95% of service requests be activated within 5 days (a departure from the current requirement of 90% activation of service requests within 7 days). Broadband Infraco would like to draw the Authority's attention to the possible financial implications that may ensue from this draft Regulations. That is, licensees may incur additional capital and / or operational expenditures to increase the quality of service, and these costs may be passed on to end-users to sustain the requisite services.
- 2.2 Furthermore, the consequent increase in the quality of service may result in licensees, whose contractual commitments to customers are regularized by Service Level Agreements ("SLAs"), having to re-negotiate the terms of these SLAs with their customers. The effective date of the draft Regulations (if promulgated in their current form) should therefore be delayed for a period of not less than 12 months from their date of promulgation to allow such licensees sufficient time to re-negotiate the aforesaid SLAs.
- 2.3 Another issue of general concern that Broadband Infraco has in relation to the draft Regulations is the proposed increase in the frequency of compliance reporting, by licensees, from half-yearly to quarterly submissions of compliance reports. We have noted, in this regard, that ICASA is already experiencing challenges in providing licensees with timeous feedback on their half-yearly submissions. Broadband Infraco cautions that, unless ICASA is sufficiently capacitated to deal with the increased volume of submissions, the draft Regulations would not, in this regard, achieve their intended objectives.

- 2.4 Broadband Infraco welcomes the inclusion of the definition of “End-user” in the draft Regulations. We nevertheless suggest that this definition be amended to specifically exclude juristic persons from its ambit. Broadband Infraco is of the view that the draft Regulations should be aimed at the protection of the most vulnerable consumers and not juristic persons, whose dealings with service providers are normally governed by comprehensive contracts. These contracts generally guarantee customers’ access to information relevant to the provision of their requested services, safeguard customers’ confidential information, contains elaborate provisions dealing with billing, payments and the resolution of billing disputes, and outlines SLAs dealing with escalation procedures in the event of complaints, as well as rebates and other remedies available to customers in the event of breach of these SLAs. Consequently, the application of draft Regulations 5, 6, 7, 8, 9, 10, 11 and 13 to service providers already bound by commercial contracts concluded with juristic persons would be superfluous, and would violate the double jeopardy principle (imposing both contractual and regulatory sanctions on a service provider arising from the same cause of action).

3. Specific Comments

3.1 DEFINITIONS

- 3.1.1 **Broadband** – SA Connect defines “*broadband*” as being an *eco-system of high-capacity, high-speed, high quality electronic networks, services, applications and content that enhances the variety, uses and value of information and communications for different types of users*”. The draft Regulations adopts a narrower definition of “*broadband*”, which may lead to confusion and inconsistencies in the implementation of various ICT policies and regulations.
- 3.1.2 **Complainant** – this definition should be limited to *End-users* only. We have proposed a definition of *End-user* below that incorporates reference to a *subscriber, periodic-user* and a *once-off user*. The terms *periodic-user* and *once-off user* are mainly intended to cover pre-paid users, but may incorporate other similar users as well.

- 3.1.3 **End-user** – means a natural person who uses a licensed service on a subscription, periodic or once-off basis.

All references to the term “Subscriber” should be deleted from the draft Regulations.

In light of the proposed changes to the definition of *End-user*, we suggest that the title of the draft Regulations should be “the *Revised End-User Service Charter Regulations*”.

Since “*End-user*” is a defined term, it should be capitalised throughout the draft Regulations, such that under the definition “*Connectivity Failure*”, for example the definition should read: “means the inability of an electronic communications network system to connect End-users to the service”.

3.2 PURPOSE OF THE REGULATIONS

- 3.2.1 Ad draft Regulation 2(d) - Broadband Infraco suggests that the Authority amend draft Regulation 2(d) to read in the following manner:

Clarify and expand processes that are intended to improve turnaround times for the resolution of End-user complaints and provide for timeous redress.

Our suggested amendment stems from the inclusion of “*Alternative Dispute Resolution*” as a process to resolve disputes. Alternative Dispute Resolution is not included in the current Regulations.

3.3 ELECTRONIC COMMUNICATION(S) [sic] NETWORK SERVICE (ECNS AND ELECTRONIC COMMUNICATIONS SERVICE (ECS) [sic] SERVICE AVAILABILITY

- 3.3.1 **Connectivity Failure Rate For Fixed Wireless, Fixed Wireline, Mobile, Internet and Broadband Services**

We would like to draw the Authority's attention to the possible challenge of licensees' implementing the broadband download speed as determined by the Minister of Communications (the "Minister"). Broadband Infraco would like to urge the Authority to advise the Minister to provide licensees with sufficient lead time to upgrade their networks and amend their operational processes to meet the determined broadband download speed.

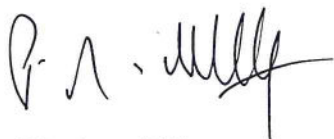
3.4 SERVICE UPGRADES

- 3.4.1 Although a vertically integrated licensee could hold both an ECNS and an ECS license, draft Regulation 13 should only apply to ECNS licensees as ECS licensees do not operate their own networks.
- 3.4.2 Moreover, as part of their SLA terms and conditions, ECNS licensees provide regular and timeous notifications to their customers of planned network upgrades or cut-overs. This is the case even if such planned network upgrades or cut-overs may not have direct implications on services delivered to ECNS licensee's customers.

4. CONCLUSION

- 4.1 Broadband Infraco generally supports the spirit and thrust of the draft Regulations in that they seek to improve the quality of service end-users experience from Electronic Communications Network Service and Electronic Communications Service licensees. Broadband Infraco believes that the spirit of the draft Regulations is consistent with the National Broadband Policy's ("SA Connect") intentions of improving the public's ICT experience, which should naturally lead to increased demand for ICT technologies and services.
- 4.2 Broadband Infraco's comments are intended to enhance the effectiveness of the draft Regulations. Broadband Infraco is, accordingly, willing to further engage the Authority on its submissions.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'P. Nkhereanye', with a stylized flourish at the end.

Phatang Nkhereanye
Manager, Regulatory Affairs