



NATIONAL CONSUMER COMMISSION

Office of the Commissioner

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

Per Email: 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

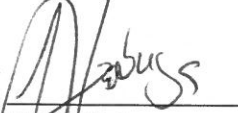
"A licensee must provide an option to post-paid users to rollover unused data of the monthly data allocation to the next billing period or to transfer the monthly data allocation or a portion thereof to other end- users on the same network."

- 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

A handwritten signature in black ink, appearing to read 'Thezi Mabuza', written over a horizontal line.

Thezi Mabuza

Deputy Commissioner: National Consumer Commission

Date: 21/12/2017