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GENERAL NOTICES • ALGEMENE KENNISGEWINGS

INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA

NOTICE 901 OF 2017

ELECTRONIC COMMUNICATIONS ACT, 2005 (ACT NO. 36 OF 2005)

REGULATIONS

The Independent Communications Authority of South Africa ("the Authority") hereby intends to amend End-user and Subscriber Service Charter Regulations 2016 published in Government Gazette No 39898 of 1 April 2016 to the extent indicated in the schedule.

A copy of the proposed regulations is available on the Authority's website (www.icasa.orgza) and in the ICASA Library at 164 Katherine Street, Pin Mill Farm, Sandton, Block D, Ground floor during the Authority's business hours (8:00 to 16:30).

Interested persons are hereby invited to submit written representations with regard to the proposed regulations. Written representations must be submitted to the Authority within thirty (30) working days from the date of the publication of this notice by post or hand delivery or email as follows:

Independent Communications Authority of South Africa
Chairperson: Priority Markets and Data Services Committee
Block B, Pin Mill Farm
164 Katherine Street
SANDTON
2146
E-mail: priioritymarkets2017@icasa.org.za

Paris Mashile
Acting Chairperson
Date: 15/11/2017

ELECTRONIC COMMUNICATIONS ACT, 2005 (ACT NO. 36 OF 2005) REGULATIONS

The Independent Communications Authority of South Africa has, under section 4, read with section 69(3) of the Electronic Communications Act, 2005 (Act No. 36 of 2005), made the regulations in the schedule.

SCHEDULE

1. Definitions

In these regulations "the Regulations" means the regulations published by Government Notice No. 39898 of 1 April 2016.

2. Amendment of regulation 1 of the Regulations

2.1 Regulation 1 of the Regulations is hereby amended by the insertion of the following definitions, after the definitions of "Complainant" and "Speech Quality", respectively:

"Data bundle" means set amount of data for a set price.

"Unstructured Supplementary Service Data (or USSD)" means a Global System for Mobile communication technology that is used to send text between a mobile phone and an application program in the network."

2.2 Regulation 1 of the Regulations is hereby amended by the deletion of the definitions "Quality of Service of Measurements", "Service Activation" and "Service Activation Time".

3. Amendment of regulation 4 of the Regulations

3.1 Regulation 4 of the Regulations is hereby amended by the substitution for sub-regulation (2) of the following sub-regulation:

"(2) A licensee must conduct random checks on points of sale and service outlet to monitor compliance with the provision of information to end-users as contained in sub-regulation (1)."

3.2 Regulation 4 of the Regulations is hereby amended by the addition of the following sub-regulation (4):

"(4) The report in terms of sub-regulation (3) must be submitted to the Authority twice annually, in February and August of each year."

4. Amendment of regulation 5 of the Regulations

Regulation 5 of the Regulations is hereby amended by the addition of the following sub-regulation (4):

"(4) The report in terms of sub-regulation (3) must be submitted to the Authority twice annually, in February and August of each year."

5. Amendment of regulation 8 of the Regulations

Regulation 8 of the Regulations is hereby amended by the deletion of sub regulation (7).

6. Insertion of regulations 8A, 8B and 8C respectively in the Regulations

The following regulations are hereby inserted in the Regulations, after regulation 8:

"8A. VOICE AND SMS SERVICES

(1) A Licensee must send usage notifications for voice and SMS to an end-user, the intervals must show 50%, 75%, 90% and 100% service depletion. The notification must be through an SMS, push notification or any other applicable means.

(2) A Licensee must provide end-users who are on post-paid plans with an option to buy additional voice services or SMS services upon depletion of such services.

(3) Where an end-user who is on a post-paid / hybrid tariff plan does not buy additional voice services or SMS services, a licensee must provide end-users with an option to be disconnected from access to the relevant depleted services and allow such end-users to only use emergency services, customer care services and to receive incoming voice calls and SMSs and other free services.

8B. DATA SERVICES

Out of bundle billing practices:

(1) A Licensee must ensure that an end-user is:

(a) sent data usage depletion notifications on regular intervals through SMS, push notification or any other applicable means, showing 50%, 75%, 90% and 100% depletion of data bundles;

(b) provided with an option to buy additional data bundles upon depletion of their allocated data through the USSD platform or any other applicable means;

(c) not defaulted to out-of-bundle data charges when their data bundle is depleted; and

(d) provided an option through SMS, push notification, USSD or any other applicable means to opt-in or opt-out of data bundle usage per session.

(2) Where an end-user opt-out of out of bundle data usage when their data bundle is depleted, a Licensee must disconnect an end-user from out of bundle data usage until such time that the end-user gives express consent or authorisation to be charged out-of-bundle rate.

Expiry of data practices:

(3) A licensee must provide prepaid data bundles with minimum expiry period of three (3) years, save where such prepaid data bundles have been exhausted prior to the expiry of three (3) years, in line with section 63 of the Consumer Protection Act, 2008 (Act No. 68 of 2008).

Roll over of unused and transfer of data:

(4) A Licensee must provide an option to post-paid users to roll over 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.

8C. CONSUMER EDUCATION AND AWARENESS

(1) A Licensee must conduct education awareness campaigns aimed at:

(a) educating end-users on the use of smart phones;
(b) educating end-users on how to use data; and
(c) educating end-users on a broad range of products and services offered.

(2) A Licensee must conduct at least four (4) education campaigns per annum."

7. Amendment of regulation 13 of the Regulations

Regulation 13 of the Regulations is hereby amended by the substitution for sub-regulation (1) of the following sub-regulation:

"(1) A complaint may be referred to the Authority's ADR where a licensee was not able to resolve the complaint in terms of regulation 12."

8. Short Title and Commencement

These regulations are called the End-User and Subscriber Service Charter Amendment Regulations 2017 and will come into force upon publication in the Government Gazette.

Independent Communications Authority of South Africa
Pinmill Farm, 164 Katherine Street, Sandton
Private Bag X10002, Sandton, 2146

Draft End-user and Subscriber Service Charter Regulations 2017

Explanatory Note

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1. Introduction and background

On 7 August 2017, the Authority, published amendment to the End-User and Subscriber Service Charter Regulations of 2016, Government Gazette 41030, ("the draft Regulations") for public comments for 30 working days.

This amendment was necessitated by general concerns raised by various stakeholders, including consumer groups and social media campaigns, with regards to data expiry rules, high out-of-bundle rates and rules and also out-of-bundle voice and SMS rules currently applied by licensees. These concerns range from consumer complaints about the unfairness arising from the expiry of data bundles or the forfeiture of unused data if it is not used within a particular period; to pronouncements by parliament and other authorities to the effect that these industry rules and or practices prejudice consumers and are perceived to be contrary to the provisions of section 63 of the Consumer Protection Act No 68 of 2008. In addition, concerns have been raised about 'open line' of post-paid[1], hybrid and prepaid[2] tariff plans being susceptible to being charged at out-of-bundle rates when monthly allocated data bundles are exceeded. Furthermore, the Authority frequently receives complaints from consumers who are faced with exorbitant data bills ranging from R1 000 to R30 000 and sometimes even higher, and such consumers complaining that they are not able to afford such bills. The Authority is concerned that the affected consumers, particularly post-paid users, may not be subjected to affordability tests prior to being billed. This places them at risk of becoming over-indebted and defaulting on their debt.

[1] The Authority is aware that licensees offer post-paid users an option to set limit to their account. However, licensees have confirmed that this service is offered on the basis of best effort and is not guaranteed which expose end-users to bill shock as a result of out-of-bundle charges.

[2] Technically hybrid and prepaid tariff plans are not 'open line' tariff plans as an end-user cannot spend more than the available balance on the account. However, some licensees expose hybrid and prepaid end-users to out-of-bundle rate via airtime once their bundles are depleted.

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To address the aforementioned concerns, the Authority proposed amendment to End-user and Subscriber Service Charter Regulations, Government Gazette 39898 of 2016, through the insertion of regulations 8A, 8B and 8C, which are summarised below:

Regulation 8A

- Notifications of service depletion to be sent to the end-user at set intervals
- Provision for end-users on post-paid/hybrid plans to purchase additional services upon such depletion
- End-user must be disconnected if does not buy additional bundles

Regulation 8B

- Provision for end-users to opt-in or out of out-of-bundle charges
- The expiry of data bundles is to be linked to the bundle size, from 10 days for 1-50 MB to 24 months for >20 GB
- An allowance for the roll-over of unused data (same as set validity periods) when an end-user recharges prior to the expiry date must be made

Regulation 8C

- Four campaigns per annum to be conducted by licensees to provide educational awareness campaigns.

The Authority received written submission from the following interested parties:

- Vodacom
- MTN
- Cell C
- Telkom
- MWEB

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- South African Communications Forum
- Joris Stork
- Nonkululeko Abavana
- KE Mokone
- Liquid Telecom
- Ivan Roux
- Nhlakanipho Zuma
- JP du Plessis
- Mr M.P. Yates
- PA du Plessis
- Izak Nothling
- Johan Kriel
- Ofentse Maloba
- Jo-Anne Stolp
- SANCU

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2. Proposed amendments

2.1. Regulation 8A - Voice and SMS

2.1.1. Reason for the proposed insertion:

- The Authority has received complaints from end-users about bill shock or unexpected significant increase in their typical monthly spend not caused by a change in usage fees or change in the terms and conditions of their tariff plans. The bill shock could arise as a result of unanticipated out-of-bundle charges and delayed usage notification sent to end-users by licensees or not receiving the usage notification.

- The Authority is aware that some licensees provide this usage notification messages to end-users but the Authority is concerned that end-users do not have an option to elect to be disconnected from accessing voice and SMS services to avoid paying high out-of-bundle charges, which result in bill overruns or excessive usage bill.

- The Authority proposes the insertion of regulation 8A to minimise or avoid bill shock.

2.1.2. Submissions received in relation to draft regulation 8A(1):

- MTN indicated that the Authority has not stipulated whether the proposed amendment refers to prepaid and/or post-paid end-users. MTN also stated that for low denomination bundles prescribed notification intervals may be excessive and may result in a poor end-user experience. MTN proposed that it be left up to a licensee to determine reasonable intervals at which to send

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usage notifications taking the size of the bundle or inclusive value into account.

- SACF stated that the Authority's proposed notification intervals failed to consider materiality or proportionality of different bundle sizes. SACF indicated that this proposed notification is likely to have a serious negative impact on the end user's experience. SACF also stated that should this proposal become law the frequency of notifications should be left to the discretion of licensees.

- Jo-anne Stolp proposed that the phrase "The notification must be through SMS or…" should be replaced with the phrase "The notification must be through SMS and…"

- Vodacom stated that it currently sent usage interval notifications of their bundles, and prompted them to buy additional bolt-on bundles. Additionally, Vodacom indicated that this requirement is reasonable as it has already implemented similar functionalities.

- Telkom indicated that the proposed percentage based notifications would impact individual packages differently and may not be technically feasible. Telkom proposed that its current usage notification in absolute numbers is sufficient and should be adopted.

- Liquid Telecoms proposes deletion of the proposed regulation 8A (1) as it is cumbersome and a costly duplication of service platforms currently available to cater for the needs of consumers in general. Furthermore, Liquid Telecom

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indicated that the call limit facility is offered on the basis of best effort and that it is challenging to offer 100% guarantee due to IT system constraints.

- NCC is of the view that notification for voice and SMS is already in practice but supports this provision.

The Authority's preliminary view

After analysis of submissions by interested parties, the Authority's preliminary view is that this provision should be retained in order to minimise bill shock as a result of out-of-bundle voice and SMS charges especially for post-paid subscribers who have not activated monthly usage limit.

The Authority is of the view that alerting end-users prior to incurring additional usage charges will not result in negative customer experience or customer irritation as it will empower them to monitor their usage patterns and adjust their usage accordingly in line with their needs and affordability levels. The Authority is aware that some licensees sent usage alerts voluntarily and therefore this provision is not expected impact licensees and end-users negatively.

2.1.3. Submissions received in relation to draft regulation 8A(2):

- MTN is of the firm view that it is not necessary to provide for the option to buy additional voice services or SMS services as hybrid or post-paid subscribers are able to do so.

- SACF indicated that proposal is interpreted as interference in terms of section 2(y) of the Electronic Communications Act, 2005 (Act No. 36 of 2005) ("ECA"). SACF stated that an option to buy additional voice services

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or SMS services upon depletion is not necessary as it is currently available to end-users

- Telkom supports the proposed amendment

- NCC supports this provision.

- Liquid Telecom supports the proposed amendment in regulation 8A(2), consumers on hybrid tariff plans and "top-up" post-paid contracts should be given an option of buying additional voice and data services/bundles.

The Authority's preliminary view

The Authority's preliminary view is that this option is necessary as some of the operators do not provide post-paid users an option to buy additional voice or SMS services upon depletion of their threshold level of voice and SMS allocation except through an open line which may result in high usage charges.

2.1.4. Submissions received in relation to draft regulation 8A(3):

- MTN raised a concern that this provision seeks to indirectly to regulate the prices charged by licensees to end-users by attempting to ensure that end-users are never charged out-of-bundle charges.

- Additionally, MTN stated that regulation 8A(3) ought to be deleted as is ultra vires or falls outside the remit of the Authority's powers in terms of section 69(5) of the ECA.

- MTN stated that section 69(5)(f) of the ECA does not empower the Authority to regulate prices of services in the charter for the following reasons:

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- section 69(5) (f) must be considered in the context of what it is that is meant to be achieved by means of the charter. Section 69(5) empowers the Authority to make determinations on minimum standards and practices applicable to the provision of services to end-users and not the regulation of the behavior of licensees in the retail market or price regulation, whether directly or indirectly, which is overly prescriptive.
- any regulation of the price of services by the Authority would need to be preceded by a market inquiry contemplated in Chapter 10 of the ECA.

- MTN is of the view that proposed amendment is unnecessary as:

  - Prepaid and hybrid products limit outgoing calls and SMS's once the airtime or inclusive voice and SMS's have been depleted
  - Post-paid products allow for additional usage after inclusive allocations are depleted. MTN stated that it has put in place measures aimed at ensuring that post-paid end-users have mechanisms at their disposal to control and limit their spend.

- With regard to proposed customer disconnection, including incoming calls and SMSs (excluding emergency and customer care services), MTN stated it is unreasonable for the Authority to expect a licensee to disconnect all services should the end-user fail to buy additional voice or SMS services - especially because incoming calls and SMSs have no bearing on the price paid by an end-user for services. MTN proposed that regulation 8A (3) should accordingly be deleted.

- SACF indicated that this proposal seeks to unnecessarily interfere in a licensee's ability to contract with the end user. SACF indicated the proposal to disconnect end-users from all services, including incoming calls and SMSs (excluding emergency and customer care services), is punitive.

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- NCC supports this provision.

- Vodacom indicated that this provision would result in the suspension of all services although only one of the service bundles within (or bolted onto) a tariff plan has been depleted. Additionally, Vodacom stated that hybrid and postpaid users will likely suffer financially as they will be precluded from using the remainder of bundles although they have already paid for it. Vodacom stated that the Authority did not provide any reason or justification for abolishing out of bundle usage or why all services should be suspended if only one of the bundles has been depleted.

- Telkom is of the view that its current options offered to customers are sufficient and supports the proposed amendment if it does not impose on customer choice.

- Cell C indicated that this provision is not appropriate and may inconvenience hybrid and postpaid subscribers as they choose contracts so that they are guaranteed access to the services they pay for in the month they pay them.

- Liquid Telecom supports this provision but recommends that an amendment to allow end-users to continue to receive incoming voice and SMS services.

The Authority's preliminary view

The Authority's preliminary view is that this provisions does not seek to directly or indirectly regulate prices or prescribe the level of out-of-bundle charges of voice and SMS services in terms of chapter 10 of the ECA. In addition, the Authority is of the view that this provision does not violate section 2(y) of the ECA as it is meant to protect end users against the current practice of not providing end users with an option to be disconnected from certain services in order to avoid paying out-of-bundle charges.

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The Authority is aware that some operators offer post-paid users an option to soft lock or set monthly limit on their account to avoid bill shock. The Authority is aware that this service does not prevent end-users from incurring higher than expected usage bill, as a result of out-of-bundle charges, as the Authority understand this service is not offered on real-time basis and is offered on the basis of best effort due to system constraints.

2.2. Regulation 8B – Data services

2.2.1. Reason for the proposed insertion

- The Authority has noted public outcry from consumers with regards to expiry of data and out-of-bundle practices.
- Consumers raised concerns about the forfeiture of the unused portion of data bundles despite being paid for. Consumers also raised a concern that the loss of unused data bundles is prejudicial as they are effectively paying more than the face value of the bundle.
- Another concern raised by consumers was that out-of-bundle data rates are relatively high[3] compared to in-bundle data rates.
- The Authority propose the insertion of regulation 8B to address the aforementioned concerns.

2.2.2. Submissions received in relation to draft regulation 8B(1):

- MTN stated that it is not necessary to implement an opt-in or opt-out functionality as it currently provides a variety of products and services with options to limit and control spend.

[3] https://mybroadband.co.za/news/cellular/100842-mobile-data-price-comparison-in-bundle-vs-oob.html .

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- MWEB indicated that this proposal may lead to end-users losing downloads and being forced to initiate a download for the second time leading to extra charges.

- SANCU propose the rewording of this subsection: "A Licensee must provide a mechanism for end-users to opt-in for, or opt-out of, out of bundle charges when their data bundle is depleted. The applicable out of bundle tariffs shall be clearly indicated to the end-user when making the selection."

- NCC supports this provision.

- Cell C indicated that opt-in and -out mechanism already exist in the form of data bundles with expiry date.

- Liquid Telecom stated that this provision is unnecessary as there are at present sufficient mechanisms utilised by consumers in the electronic communications industry to monitor usage.

The Authority's preliminary view

The Authority agrees with Liquid Telecom that this provision is unnecessary and should be deleted as there are currently sufficient mechanisms utilised available to end users to monitor usage and it a repetition of regulation 8B(2)(d) and regulation 8B(2)(e) of the draft Regulations.

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2.2.3. Regulation 8B(2)

2.2.3.1. Submissions received in relation to draft regulation 8B(2)(a):

- MTN proposed that it be left up to a licensee to determine reasonable intervals at which to send usage notifications, taking into consideration the size of the bundle and/or the inclusive value.

- MWEB is of the view that this provision may be inefficient as end-user may receive these notifications simultaneously, or in extremely close succession. MWEB indicated that the end-user should be responsible for monitoring their usage with the tools provided by the licensee.

- Jo-anne Stolp proposed that the phrase "through SMS, USSD or any other applicable means…" should be replaced with "through SMS and USSD, and any other applicable means…"

- Vodacom indicated that it currently notifies Prepaid, Hybrid and Post-paid users of their in-bundle data usage.

- Telkom indicated that it already offers this service for its existing pure data plans. Additionally, Telkom indicated that there are sufficient measures in place for customers to be aware of their data bundle balances and that the regulation should not be prescriptive as to how the data balances should be presented.

- IAB South Africa has no objection to this provision.

- Cell C indicated that an end-user will not be able to received SMS notification regarding depletion if h/she is not using a mobile phone.

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The Authority's preliminary view

Similar to the voice and SMS services usage notification, the Authority's preliminary view is that this provision should be retained to assist end users to monitor, on a real-time basis, their usage of data bundles. The Authority is also of the view that this provision would not impact licensees negatively as some licensees sent their subscribers data usage notifications, albeit at different usage intervals. The Authority is of the view that this notification should be standardised across all licensees.

2.2.3.2. Submissions received in relation to draft regulation 8B(2)(b):

- MTN submits that this insertion is unnecessary since usage notifications will be sent in accordance with 8B(2)(a).

- Telkom indicated that this functionality is already available on all its current data plans and therefore has no objection to the proposed amendment.

The Authority's preliminary view

After consideration of the interested parties input, the Authority is of the view that this provision is unnecessary and should be deleted as it a repetition of regulation 8B(2)(a) of the draft Regulations

2.2.3.3. Submissions received in relation to draft regulation 8B(2)(c):

- MTN indicated that it is not necessary to require licensees to provide end-users with the option to buy additional data bundles as they are currently doing so.

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- Telkom has no objection to the proposed amendment.

- Jo-anne Stolp proposed that the phrase "through the USSD platform or…" should be replaced with "through the USSD platform and…"

- Cell C indicated that this provision is unnecessary as the option to purchase data bundles exist all the time.

The Authority's preliminary view

The Authority's preliminary view is that this provision should be retained to provide an option to end users to buy additional bundles as not all licensees provide this service to their end-users.

2.2.3.4. Submissions received in relation to draft regulation 8B(2)(d):

- MWEB indicated that this proposal may lead to end-users losing downloads and being forced to initiate a download for the second time leading to extra charges.

- SANCU proposed that the following words be added after the word bundles "unless the end-user has opted-in for out of bundle charges" in line with regulation 8B(1).

- Vodacom indicated that it obtains end-user consent for out-of-bundle usage at the time the end-user subscribes to the Hybrid or Post-paid tariff plan of their choice. Vodacom stated per incident consent will create regulatory burden on licensees to meet the requirement which is unreasonable, and technically and practically difficult (likely unattainable in every instance) to execute.

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- Vodacom also stated that suspension of the service upon depletion of data bundle will impact negatively on critical security, financial and emergency services, which rely on uninterrupted data service.

- Telkom stated that this option to default automatically should ultimately be for the customer to choose, and should not be enforced by default, as this could lead to poor customer experience. Telkom also stated that its low OOB data rate at R0.29/ MB reduces the likelihood of bill shock if customers are made aware that they are being charged OOB rates

The Authority's preliminary view

The Authority's preliminary view is that this provision is necessary to provide protection to end users against bill shock owing to significant difference between in-bundle and out-of-bundle rates of up to 2000%. The Authority is of the view that current practice by licensees to charge end-users, particularly prepaid users, out-of-bundle rates using their airtime without their express consent is prejudicial as some users may not be fully aware of the consequences of exceeding their data bundle. The Authority is not aware of technological or technical challenges that would prevent licensees to automatically prevent its subscribers from paying out-of-bundle data rates without their consent once they deplete their data bundle as Telkom Mobile is providing this service to its subscribers.

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2.2.3.5. Submissions received in relation to draft regulation 8B(2)(e):

- Telkom indicated that service is available on its customer service portal.

- Jo-anne Stolp proposed that the phrase "through SMS, USSD or…" should be replaced with "through SMS and USSD and…"

The Authority's preliminary view

The Authority's preliminary view is that this provision is necessary to minimise bill shock as a result of high out-of-bundle data rates.

2.2.4. Submissions received in relation to draft regulation 8B(3):

- MTN proposed that this regulation be deleted in line with its comment on regulation 8B(3) above.

- SACF proposed deletion of this regulation as it is deemed to unnecessarily interferes in the commercial operations of a licensee and removes the end-users' choice.

- Telkom indicated that this option is available for all customers, except for Telkom's FreeMe plans. Telkom therefore indicated that customers should be given the choice to elect packages where they have the ability to automatically default to OOB.

- NCC recommends that a record of expressed consent must be made available to consumers on demand, this is in keeping with Constitutional right of access to information and PAIA.

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- Cell C stated that this provision will impact postpaid subscribers negatively as they generally wish to be connected to network services on a permanent basis.

The Authority's preliminary view

The Authority's preliminary view is that this provision is necessary to minimise bill shock as a result of high out-of-bundle rates.

2.2.5. Submissions received in relation to draft regulation 8B(4):

- MTN submits that the Authority is not empowered or expressly authorized by legislation to prescribe validity periods for data expiry the terms of section 69(5) of the ECA

- MTN stated that the Authority's proposal to prescribe expiry periods would mean that end-users would no longer have the ability to choose from a large variety of products and services and this will disadvantage the end-users both from a choice and affordability point of view. MTN also stated that prescribing expiry period amounts to the Authority fixing terms applicable to the provision of data services and preventing licensees from being able to compete with one another.

- MTN stated that it is unclear what the Authority is aiming to achieve by prescribing these validity periods and how the Authority arrived at the periods. MTN stated that it sees no rationale reason for the inclusion of subsection 8B (4) and submits that this section should be deleted.

- MWEB indicated that it is essential for a licensee to know the expected usage on the network in order to properly manage the network and determine pricing. MWEB stated that the proposed validity periods could certainly have

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the unintended consequence of considerable price increases since it would be impossible for licensees to determine when an end-user will use the data he has accumulated.

- SACF indicated that it is not clear how the Authority arrived at the proposed periods of validity of data bundles. SACF also indicated that the proposed period of validity interferes in the commercial operations of licensees, has the potential to increase prices and disadvantages consumers.

- SANCU indicated that this provision in conflict with the requirements of section 63 of the CPA[4], which states that any form of prepayment must not expire for at least three years, or until its full value has been redeemed. Additionally, SANCU indicated that the ECA, under which the proposed regulations are issued provides no alternative guidance and therefore the provisions of the CPA must surely apply. SANCU proposed that the following wording for 8B(4) in its entirety: "A Licensee must ensure that the validity period for data expiry is not less than three years, regardless of the data bundle size."

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[4] Sec 63 states that:
"(1) …a transaction in which a supplier—
(a) accepts consideration from a person in exchange for a prepaid certificate, card, credit, voucher or similar device; and
(b) expressly or implicitly agrees to provide goods or services to any person who subsequently presents that certificate, card, credit, voucher or similar device, up to the value represented by it,
but does not apply with respect to such a device, or the value represented by it, after all of the value of the device has been exchanged for goods, services or future access to services.
(2) A prepaid certificate, card, credit, voucher or similar device contemplated in subsection (1) does not expire until the earlier of—
(a) the date on which its full value has been redeemed in exchange for goods or services or future access to services; or
(b) three years after the date on which it was issued, or at the end of a longer or extended period agreed by the supplier at any time.
(3) Any consideration paid by a consumer to a supplier in exchange for a prepaid certificate, card, credit, voucher or similar device contemplated in subsection (1) is the property of the bearer of that certificate, card, credit, voucher or similar device to the extent that the supplier has not redeemed it in exchange for goods or services, or future access to services."

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- Vodacom is of the view that prescribing specific validity periods for data bundle sizes would be unreasonable, as it will limit end-user choice, negatively impact on competition among operators by enforcing uniform validity period onto operators for prescribed data bundle ranges, and negatively impact on data income.

- Vodacom stated that prescribing specific validity period violates the prohibition of undue interference as contemplated in section 2(y) of the ECA.

- Vodacom stated that prescription of the products to be charged doesn't fall within the concept of "minimum standards" as contemplated in section 69(3) of the ECA. Furthermore, Vodacom stated that prescribing the basic product offering on which all prices in a service must be set goes far beyond prescribing "minimum standards" to address "billing practices" or "charging practices" as per section 69(3) read with section 69(5).

- Telkom stated that this proposal will lead to potential revenue losses and increase cost (e.g. network cost, IT development cost, etc.) which in turn will lead to less funds being available to invest in network improvement. Telkom proposed that the current expiry rules are sufficiently flexible and should remain in place.

- NCC is of the view that this provision violates sec 63 of the CPA.

- Cell C raised a concern that the Authority does not have the authority to impose commercial terms on licensees that not only increase costs to licensees and amount to pro-competitive remedies which require the Authority to have undertaken section 67 inquiry.

- Liquid Telecom request clarity on the definition of validity periods.

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- Ivan Roux indicated that the proposed expiry of data should be applied to SMS bundles as they generally expiry after 30 days. Ivan also indicated that data bundles should have a uniform pricing.

- Mr Martin MP Yates stated that cost of data should be regulated and not the volume of data (for prepaid and top-up contracts). Mr. Martin also stated that all data that a network provides free of charge, or purchased by using loyalty points, should not have any minimum expiry date. Mr Martin proposed the following minimum expiry period linked to the value of the data bundle:

  R0 and R9.99 - minimum expiry of 10 days;
  R10 and R49.99 - minimum expiry of 30 days;
  R50 and R99.99 - minimum expiry of 60 days;
  R100 and R399.99 - minimum expiry of 90 days;
  R400 and R999.99 - minimum expiry of 180 days;
  R1000 and above - minimum expiry of 365 days

- PA du Plessis indicated that data should not expire and also that prepaid data should be cheaper than post-paid data.

- T.R Nelson indicated that validity period of SMS bundles should be regulated. T.R. Nelson also indicated that end-user who buy small data bundles pay high unit cost compared to those who buy large data bundles

- Ofentse Maloba indicated that the minimum expiry period should be increased from 10 days to minimum of 30 days. Ofentse also indicated that the proposed validity period should be reviewed as they seem to favour end-users who buy large data bundles.

- Jo-anne Stolp indicated that the minimum validity period of small data bundles should be reviewed to protect the poor.

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The Authority's preliminary view

From the onset, the Authority is of the view that prescribing the minimum validity period of data of prepaid bundle does not fall outside the remit of the Authority's powers in terms of section 69(5) nor does it violate section 2(f) and (y) of the ECA for the following reason:

- Section 69 (5) (f) of the ECA afford the Authority the powers to include in the end-user and subscriber service charter minimum standards on "any other matter of concern to end-users and subscribers". The Authority is of the view that the proposed minimum expiry period of prepaid data bundles fall within the ambit of section 69(5) of the ECA as it will protect the interests of consumers insofar as premature expiry of data bundles is concerned.

After considering interested parties written submissions, the Authority revised the mandatory set expiry periods for data bundles as proposed in regulation 8B(4) in the draft EUSSC Regulations (now regulation 8B(3)) to be in line with section 63 of the CPA. It is the Authority's understanding that prepaid data bundles should expire after three (3), save where such prepaid data bundles have been exhausted prior to the expiry of three (3) year, as per section 63 of the CPA which states that:

"A prepaid… credit, voucher or similar device contemplated in subsection (1) does not expire until the earlier of—

(a) the date on which its full value has been redeemed in exchange for goods or services or future access to services; or

(b) three years after the date on which it was issued, or at the end of a longer or extended period agreed by the supplier at any time."

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The Authority is of the view that the scope of section 63 of the CPA only extends to prepaid and not post-paid users. Notwithstanding this, the Authority is of the view that the current post-paid data bundles expiry period of thirty (30) days is not adequate. The post-paid users should therefore be afforded an option to roll over unused data of the monthly data allocation and top-up data to the next billing period or transfer the monthly data allocation or a portion of the monthly data allocation to other end-users on the same network as per the Authority's proposal in regulation 8B(4) of the Regulations.

2.2.6. Submissions received in relation to draft regulation 8B(5):

- While MTN agree with the proposal to send expiry warning to end-users. MTN stated that sending a notification 7 days before expiry is far too long a period before an expiry date. MTN propose that 48 hours before expiry combined with reasonable usage notification intervals (i.e 90% wallet depletion; 48 hours before expiry; when 50% of recharge value is depleted; and a notification is sent for every 5MB out-of-bundle usage to remind end-users to buy a new bundle).

- SACF stated that provision does not consider or provide the difficulty in attempting to predict the usage of the end-user.

- Telkom is of the view that this proposal is not necessary as it supports the current practice of sending an SMS notifications confirming the purchase showing the validity period of that bundle

- Cell C indicated that licensees will be unable to comply with the provision where data bundles have been exhausted prior to their expiry dates.

- Liquid Telecom recommends deletion of the regulatory requirement of notifying end-users seven (7) days prior to expiry date of data.

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The Authority's preliminary view

After consideration of interested parties input, the Authority is of the view that this is not necessary and should be deleted as end-user can view their data expiry period and data bundle balance using USSD, self-service option or other means.

2.2.7. Submissions received in relation to draft regulation 8B(6):

- Telkom supports the proposal if it is understood that any form of notification is permissible and therefore suggests that the word "either" be included in the amendment.

- Cell C indicated that this provision is vague.

- Jo-anne Stolp proposed that the phrase "through SMS, USSD or…" should be replaced with "through SMS and USSD and…"

The Authority's view

After consideration of interested parties input, the Authority is of the view that this is not necessary and should be deleted in line with the proposed deletion of regulation 8B(5) of the draft Regulations.

2.2.8. Submissions received in relation to draft regulation 8B(7):

- MTN stated that the Authority is not empowered to prescribe an option to rollover unused data in terms of section 69 of the ECA. However, MTN indicated that it provides an option for the rollover of data bundles

- MWEB indicated that it is uncertain if it is correctly worded. MWEB said this regulation implies that if an end-user recharges with a data bundle before

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the existing data bundle expires, the validity period of the unused existing data bundle will start afresh.

- SACF stated that the roll over provision is not clear.

- Telkom proposed that the last sentence in the proposed amendment be removed.

- Cell C indicated that provision is vague.

- Liquid Telecom supports the requirement of rolling-over the unused data in line with validity period applicable. However, Liquid Telecom stated that licensees cannot keep unused data active for a protracted period as licensees incur administration, billing and other costs.

- JP du Plessis indicated that postpaid users must automatically rollover and rolled-over data must first be depleted before new contract data for the month is used since rolled-over data has already been paid for.

- Johan Kriel indicated that some operators provide an option for data rollover. However, Johan raised a concern with the current practice with regard to the order of consumption where end-users have no access to roll-over data unless they have depleted the current month's allocation first. Johann stated that end-users must always have access to rolled over data first.

The Authority's preliminary view

After analysis of submissions by interested parties, the Authority's preliminary view is that this provision should be retained to protect post-paid end-users, who are not protected by section 63 of the CPA, against unexpected expiry of data bundles by affording post-paid users an option to roll over unused data of the monthly data allocation and top-up data to the next billing period or transfer the monthly data allocation or a portion of the monthly data allocation to other end-

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users on the same network. For example, if a post-paid user has 1024 MB data allocation in November 2017 but only use 524 MB on the last day of November 2017, the remaining 500 MB should be rolled over into the next month (i.e. December 2017) giving the user a new allocation of 1524 MB (500 MB rolled over data and 1024 MB monthly allocation for December 2017) to use in December 2017.

The Authority is aware of licensees who offer end-users an option to roll over unused data and also share their data with other users of the same network.

2.3. Regulation 8C – Consumer education and awareness

- MTN indicated that it fully supports the consumer and awareness campaigns as proposed in the Draft Regulations. MTN also indicated that these campaigns must be as frequent as possible to ensure that end-users understand the product and service choices they make.

- MWEB stated that consumer awareness should be conducted by the Authority to ensure consistency and that the correct message is conveyed to the consumer. MWEB also stated that requiring a licensee to conduct quarterly education campaigns per annum is an unreasonable financial and administrative burden.

- SACF indicated that the current Regulations already provides for the awareness campaigns or is already incorporated in the current Regulations.

- Vodacom indicated that this obligation is not necessary as it is in the interest of licensees to provide educational awareness campaigns.

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- Telkom supports the Authority's proposal that customers should be empowered to use their devices.

- Cell C stated that this provision is likely to be unenforceable.

- Liquid Telecom proposes deletion of the regulatory requirement of conducting four (4) quarterly education campaigns per annum. Liquid Telecom stated that the Authority should utilise their Consumer Affairs Division to conduct education campaigns.

- Jo-anne Stolp indicated that consumer education campaign requirements should be replaced with a quarterly advertisement that clearly ranks all available price plans in order of cost, with clear instructions on how to change your price plan.

- NCC recommended that the Authority should consider including a monitoring requirements for submission by network operators of periodic consumer awareness reports following consumer satisfaction surveys and trends analysis.

The Authority's preliminary view

After consideration of interested parties input, the Authority is of the preliminary view that provision should be retained to mandate licensees to educate customers to, among others, to better monitor and manage the use of their devices and avoid unexpected data charges. Licensees are required to conduct at least four (4) education campaigns per annum.

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3. Conclusion

After consideration of the written representations received on the draft Regulations, the Authority has decided to revise the draft Regulations. To this end, the Authority has also decided to publish the revised draft Regulations and invite further written representations. The revised draft Regulations also propose to amend the End-user and Subscriber Service Charter Regulations 2016 published in Government Gazette No 39898 of 1 April 2016, so as to repeal obsolete definitions; to correct cross references; to provide clarity on the reporting time interval; and to provide for matters connected therewith.

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