

17 June 2022

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Chairperson
End User Subscriber Service Committee
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Per Email: eussc@icasa.org.za
Chairperson@icasa.org.za

Dear Dr. Modimoeng

Re: DRAFT END-USER AND SUBSCRIBER SERVICE CHARTER AMENDMENT REGULATIONS, 2022

1. The draft amendment regulations regarding End-user and Subscriber Service Charter Regulations, 2016, *Government Gazette No. 39898* (Notice No 189), as amended published for consultation in *Government Gazette 46153* on 31 March 2022 (“**the Regulations**”) refers.
2. Cell C welcomes the Authority’s invitation to comment on these Regulations. Cell C confirms that it would be participating in the oral hearings when they are convened.
3. Cell C would like to thank the Authority for granting an extension for the written comments during this very important consultation phase and for providing a supporting Explanatory Memorandum in *Government Gazette 46154* which attempts to explain the rationale behind the latest amendments.
4. It is Cell C’s understanding from the Draft Regulations that the purpose of this exercise is to consult on amendments which are informed by perceived regulatory gaps with regards to unexpired data, voice and sms, i.e electronic communication services. In addition, the Authority intends introducing new quality of service reporting and testing parameters and public awareness/emergency notification obligations on licensees. In principle, Cell C is in support of the promotion of the interests of consumers with regards to the price, quality and the variety of electronic communications services.

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5. Cell C is extremely concerned with the draft amendment in its current form, the unintended consequences thereof, and the process the Authority has adopted to motivate its decision to include these new amendments. Cell C will elaborate these concerns in this written submission in the following sections.

6. Cell C has set out the written submission below with general, legislative and specific comments including recommendations.

Yours sincerely



Mr Themba Phiri

Executive Head: Regulatory

CELL C WRITTEN COMMENTS ON THE PROPOSED DRAFT AMENDMENTS TO THE END-USER AND SUBSCRIBER SERVICE CHARTER REGULATIONS, 2016, PUBLISHED IN GOVERNMENT GAZETTE NO. 39898 (NOTICE NO 189) ON 1 APRIL 2016, AS AMENDED

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1. GENERAL COMMENTS

- 1.1. Cell C would like to thank the Authority for the opportunity to present these written comments and requests the opportunity to both elaborate on the points below as well as to raise further points via oral submission when public hearings are convened on the Regulations.
 - 1.2. Cell C recommends that all the proposed amendments contained in the Regulations are prescribed in accordance with Section 69 of the Electronic Communications Act no. 36 of 2005, as amended, (“**ECA**”) and read with Section 2, Objects of the Act.
 - 1.3. Cell C consistently maintains that all subscribers must be provided with electronic communication services that are of a decent quality, affordable and available. To this end, Cell C further believes that the existing minimum standards for end-user and subscriber service charter regulations require minimum revision.
 - 1.4. Cell C believes that the final Regulations must be simplified so that all stakeholders can clearly understand their roles and responsibilities in ensuring their implementation and enforcement. These roles and responsibilities relate to the provision of quality services by licensees to subscribers, the efficient lodging and management of subscriber complaints and the frequent reporting thereof. The Regulations should be in a language that enables subscribers to understand their rights in terms of recourse when they receive poor services from licensees. The recourse procedure for subscribers must be efficient to an extent that it is practical, implementable, inexpensive and should not lead to unintended consequences for example fraudulent claims.
 - 1.5. Cell C has concerns with the amendments, albeit, some are within the framework of the ECA. Cell C believes that other amendments in the draft regulations may fall outside the Authority’s mandate and therefore these proposed amendments are viewed as *ultra-vires*. In addition, Cell C notes with concern that the approach and process adopted during this round of consultation is limited and or repetitive as compared to the Authority’s approach adopted in the consultations in 2017 and 2018 and the outcomes thereof. Prior to the 2018 and 2019 final amendments of the End-user and Subscriber Service Charter Regulations (“**EUSSCR**”), the Authority conducted an extensive Regulatory Impact Assessment (“**RIA**”) which later informed
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the way forward. Subsequent RIA's were performed by the Authority but no findings were published to date or used as background to support these Regulations.

- 1.6. Cell C would like to draw the Authority attention to Cell C's submissions and correspondence previously made on the 2018 and 2019 amendments to the EUSSCR. The reasons for this request is that the Regulatory Impact Assessment framework has such measures to manage impact of such requirements, and unintended negative impact on Cell C, and other licensees. If Cell C is required by regulation to implement the extension of the data availability on its network, such undertaking will have significant impact on Cell C business sustainability. These articulations were also made in the previous submissions listed below:
 - 1.6.1. Cell C response: Industry/Business Practices to data expiry and out of bundle data billing dated 9 May 2017 (Annexure A- Confidential);
 - 1.6.2. Cell C response: Responses to questions raised at the ICASA and NCC meeting on industry /business practices pertaining to data expiry rules and out of bundle data billing dated 1 July 2017 (Confidential);
 - 1.6.3. Cell C written submission with respect to the draft amendments to the End-user and Subscriber Service Charter regulations as published in Government Gazette 41030 dated 18 September 2017;
 - 1.6.4. Cell C submissions in response to the proposed amendments to the End-user and subscriber Service Charter Regulations,2016 dated 3 January 2018;
 - 1.6.5. Cell C response to ICASA compliance request with respect Data Roll Over and Transfer of Data dated 28 August 2019 (Confidential);
 - 1.6.6. Cell C response to the ICASA Regulatory Impact Assessment on End-User and Subscriber Service Charter Regulations dated 18 February 2020 (Confidential);
 - 1.6.7. Cell C response to the ICASA Regulatory Impact Assessment on End-User and Subscriber Service Charter Regulations, supplementary submission dated 6 May 2020 (Confidential);

2. LEGAL FRAMEWORK

- 2.1. The Authority is the statutorily created regulator for the electronic communications sector. It only has powers set out in the sector laws, the ICASA Act, 2000 ("**ICASA Act**") and the ECA.
 - 2.2. Section 69 of the ECA provides that the Authority must "*prescribe regulations setting out a code of conduct*" for licensees, and all licensees must comply with that code. The Authority may also "*develop different minimum standards for end user and subscriber service charters for different types of services*".
 - 2.3. Cell C humbly submit that the Authority may have erred in its introduction of certain sections in this regulation, an error interpretation of its functional authority. In our view, the ECA does not confer powers to make regulations which prescribe minimum validity period of promotional or tariffs, product and services in the market. The point we are making is that the concept of product validity period in the retail market should be left to the retail market competitiveness, in terms of sec 2 (y) of the Electronic Communications Act 2002.
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2.4. The matters that may be addressed are set out in this section and although the list is not limited, it is instructive to consider the types of matters that are included by way of example of what the Authority might include in its regulations. These are:

- a) The provision of information... regarding services, rates, and performance procedures;
- b) Provisioning and fault repair services;
- c) Protection of private end user and subscriber information;
- d) End user and subscriber charging, billing, collection and credit practises;
- e) Complaint procedures and remedies; and
- f) Any other matter of concern.

2.5. Although (f) potentially admits a very wide set of issues, lawmakers do not allow creatures of statute unbridled liberty when exercising their powers. In South Africa, all administrators including the Authority are required to act in a manner that is administratively fair and reasonable. "Reasonableness" is tested against the circumstances and the requirements of other legislation.

2.6. The President had established a set of guidelines for regulatory impact assessments ("RIA"). Among other things, these explain that RIA would have to be applied both to primary legislation and subordinate legislation at the national level because subordinate legislation can have a much greater social and economic impact than primary legislation. The list of issues for consideration when proposing to regulate is:

2.6.1. Nature of the problem. What is the problem that needs addressing?

2.6.2. Is regulation actually needed (what will happen if there is no regulation)?

2.6.3. Are the goals of the proposals clear and reasonable?

2.6.4. Alternative solutions. What are the alternative approaches to dealing with the problem, including non-regulatory action?

2.6.5. Benefits of regulating. What are the likely benefits of the proposed options? What groups will incur these benefits?

2.6.6. Cost of regulating. What are the likely costs of proposed options? What groups will incur these costs?

2.6.7. Public consultation. What are the views of the public and key stakeholders on the issued and proposed options?

2.6.8. Support for regulation. What support is there amongst key stakeholder groups for the proposed options?

2.7. It is unclear whether the Authority is acting within its mandate or has carried out a RIA in this round or has determined a finding from previous RIA's.

2.8. We say this because the "problem" identified by the Authority has only been raised in the form of amendments to the previous amendments to the End User and Subscriber Service Charter Regulations, rather than in any discussion document for consultation, which we do not believe is appropriate. In the rest of this submission Cell C will discuss this in more detail.

3. SPECIFIC COMMENTS

3.1 s3 Amendment of regulation 8A of the Regulations

“Regulation 8A of the Regulations is hereby amended by the ~~insertion after~~ sub-regulation (3) of the following sub-regulations:

“(4) Unused voice and SMS services obtained through either prepaid or post-paid channels shall not expire before expiry of a period of 6 months, except for promotional packages.”

AND

s4. Amendment of regulation 8B of the Regulations

“4.1 Regulation 8B of the Regulations is hereby amended by the substitution for sub-regulation (3) of the following sub-regulation:

“(3) Unused data and data services obtained through either prepaid or post-paid channels shall not expire before expiry of a period of 6 months, except for promotional packages.”

Cell C is concerned that the Authority has re-introduced the concept of mandatory extending the duration of unused data in this consultation (in this case six (6) months). In addition, the Authority has included unused voice and SMS to only expire after six (6) months. Cell C’s concerns stems from the fact that the Authority consulted extensively on this intervention in 2017 and 2018 which then informed the regulatory provisions as contained in the 2018 and 2019 EUSSCR amendments.

Cell C positions regarding the above mentioned proposed regulations is as follows:

- 3.1.1 The amendments are not of a sort that can be included in the Regulations which clearly deal with the issues of quality of service, availability, consumer complaints about availability, and remedies for these problems – types of issues that can be categorised as network service quality-oriented matters. The amendments introduce concepts which are not network service quality-oriented matters but matters to do with the way in which particular kinds of retail services are made available to subscribers.
 - 3.1.2 The Authority states in section 4.1.1.2 of the Explanatory Memorandum that it has identified a Regulatory Gap on how unused voice and SMS services must be rolled over as this was not contained in the current regulations. Cell C believes there is a reason for the exclusion of this requirement in the current regulations. The reasons are that the Authority in 2017 embarked on a joint exercise with the National Consumer Commission (“**Commission**”) to address *“current industry rules on data expiry and out of bundle data billing as matters that impact consumers (in most respects, negatively) and which require attention”*. The focus of the Authority at the time was with respect to data expiry and out of bundle data billing. It is Cell C view and recommendation that if the Authority seeks to now include the rollover of unused voices services and SMS or extend the duration thereof, the Authority must follow the same exercise as it did in 2017 and 2018. This exercise means conducting a RIA and establishing that the Authority is empowered under legislation to make regulations in this regard. This will also prevent any unintended consequences such unnecessary litigation.
 - 3.1.3 In the Authority’s letter dated 31 March 2017 to Cell C, titled *“Industry/Business Practices Pertaining to data Expiry Rules and Out-of-bundle Data Billing”*, Cell C would like to refer to the last paragraph in the Conclusion section which states:
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“The Authority and the Commission hope to find an industry-led solution to address stakeholder concerns and to service the best interest of consumers whilst safeguarding the stability of the industry players and the sector as a whole”

It is Cell C's recommendation that the Authority adopts the same principle as stated above when deciding on the regulatory intervention sort. This ensures that there is consistency in the approach adopted by the Authority.

- 3.1.4 A negative economic and financial impact on Cell C will arise from the Authority's interventions. Cell C leases capacity on infrastructure owned by backhaul service providers such as Seacom and Dark Fibre Africa. to provide mobile data, voice and SMS services to 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. This is referred to as 'provisioning' its network. Cell C bases its estimated capacity usage on the number of mobile data and voice bundles that have been sold in any given month, as this is the most accurate and consistent basis for forecasting subscribers' usage. If Cell C's subscribers use more than the estimated capacity in any given month, Cell C is required to pay penalties to its service providers. The cost of the penalties imposed by service providers for capacity over-usage is significant which places a strain on Cell C's operational costs. It thus costs Cell C more to use more capacity on behalf of its customers than it can estimate upfront.
 - 3.1.5 Cell C also has national roaming agreements with Vodacom and MTN in terms of its new network model strategy. Cell C subscribers roaming on Vodacom's network and MTN network can use data, voice and SMS services. Cell C pays a commercially agreed price for capacity in order to receive these services from the national roaming partners which is based on an estimated monthly usage. If Cell C subscribers use more data, voice, SMS than is covered by the commercially agreed price for capacity, Cell C must pay a higher price or incremental roaming cost for the services as penalties for use of capacity in excess of forecasts. This adds a significant further operational cost to Cell C's business and possibly impact Cell C's competitive position.
 - 3.1.6 The cost of carrying the data, voice and SMS over six months would be higher and not lower as we would be incurring higher costs to service and maintain customers' data, voice and SMS balances for a longer period. Cell C believes that there would be a significant impact on its network resources to accommodate subscribers who have not depleted their data over the six (6) months. Some of the network resources that would be affected are the Business Systems Stack (BSS), new software licences, new hardware and updates to the HLR's and VLR's. We need to dimension and manage the network in advance. This means we have to gauge the usage of data, voice, SMS and manage network usage whilst taking subscriber behaviour into account.
 - 3.1.7 Numbers are a scarce resource and need to be managed efficiently, The Authority has 80% utilization requirement before applying for more numbers. It must be noted that the reserve numbering capacity for mobile services in terms of the ICASA Numbering Plan are near exhaustion. The requirement for extending the duration of unused data, voice and SMS over six (6) months will have a negative effect on the numbering resources where more MSISDN's will be locked for a longer duration of time. The outcome is that the numbering resource will be used more negatively.
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- 3.1.8 The Authority states in section 4.1.2.2 of the Explanatory Memorandum that “*The six month period aligns with the current numbering plan practice, taking into account 90-day minimum period during which a number is deemed to remain active, plus a further 90-day period applied by licensees before recycling the number assigned a SIM card.*” It is Cell C view that the Authority assertion that there is some form of correlation between the six (6) month extended duration for unused data, voice and SMS and each licensees MSISDN churn process is incorrect. We say this because currently there is no prescribed rules for the MSISDN churn process. When licensees report on subscriber information, various MSISDN statuses can be used such as Active 3 or Active 4 etc.
- 3.1.9 The Authority recognized that voice minutes (and SMS’s) expire once the package has been depleted, as long ago as 2005 when mobile number portability was introduced. Under section 4(5) of the Functional Specification which is attached as a schedule to the Number Portability Regulations and subsequent amendment, the porting in network (recipient network) is required to give notice to its subscriber on receiving a port request that “*any credit, unused allowances, bundled services, data credits and any third party services will no longer be available once the number is ported*”. The concept is not a new one. It is therefore unclear on what basis the Authority purports to include unused or credited data, voice and SMS within the Regulation. In addition, the proposed amendments appears to contradict the set of donor network operator rejection reasons as contained in section 5 of the Schedule A of the Number Portability regulations, (Government Gazette 41949). We say this because the donor operator is not allowed to reject a port request if there is unused data, voice or sms credits on the subscriber account irrespective of duration limit on the credits.
- 3.1.10 Section 2(y) of the ECA specifically 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*”. The electronic communication needs of the public have not been defined by the Authority to include data, Voice and SMS bundles, but insofar as the public has a right to pay for and receive services, Cell C is offering services to the public for a price. In addition, by increasing the validity period without an equivalent increase in price, Cell C’s current catalogue of bundles will be unprofitable. By purporting to regulate the terms on which Cell C makes that service available, the Authority is interfering in the commercial activities of Cell C
- 3.1.11 The supply of and demand for services is regulated by the consumer-provider relationship which is based on the terms and conditions of service captured in Cell C’s contracts with postpaid subscribers, and in the terms and conditions on which prepaid services are provided to end users. The Authority is given specific powers to impose terms and conditions in contracts between interconnecting parties or parties to facilities-leasing agreements when those parties are unable to reach agreement or when the terms and conditions of any such agreements do not comply with the provisions of Chapter 7 or 8 the Interconnection Regulations, 2010 or Facilities-Leasing Regulations, 2010, as the case may be. The power to impose remedies under Chapter 10 for a market failure which may include rate regulation, is limited to the relationship between licensees, or licensees and the Authority – not the relationship between licensees and consumers unless an inquiry has been undertaken in terms of section 67. In this case, any remedy must be “proportionate”. The Authority has not declared that there is a market for any kind of “data, voice or

SMS services” in terms of section 67 of the ECA which deals with competition regulation.

3.2 s 4. Amendment of regulation 8B of the Regulations by substitution of :

“5) The transfer of data in terms of sub-regulation (4) must not be limited to specific products and/or payment types, with the exception of uncapped or free promotional bundled products, 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 data;”

3.2.1 Cell C had launched a data share services option in response to the previous data sharing requirement. Data Transfer allows the customer to share data with anyone on Cell C network. Friends can share with friends, parents can share with kids, employers can share with employees.
<https://www.cellc.co.za/cellc/value-added-services-dataTransfer>

3.2.2 A customer can send someone data from any data bundle purchased or from the inclusive data as part of the contract.

3.3 The need for a Regulatory Impact Assessment (RIA)

3.3.1 It would appear that the Authority has not considered the information provided to it by Cell C during the 2017 and 2018 consultation on the amendments to the EUSSCR and the information provided in terms of the two RIA’s conducted in 2020. The Authority has decided to pursue the Regulation despite Cell C’s previous responses. It is unclear why, having requested information from Cell C, the Regulation purports to deal with the same matters raised previously without support from any finding’s outcome of the 2020 RIA’s.

3.3.2 Had the Authority considered conducted RIA, in line with Cell C’s responses contained in section 1.4 above, it would have recognized the technical and financial issues that will face Cell C and other operators should it impose the provisions in the Regulation on licensees. These issues will, if the Authority presses ahead with the Regulation, increase the cost of providing service, which cost will in some form have to be borne by consumers. This also assumes that the Authority considered the technical and financial issues facing operators and whether they can be overcome, or if compliance with the Regulation is even possible.

3.3.3 If the Authority had carried out a RIA it would have considered what alternatives were open to it. As part of the RIA, The Authority should have considered whether or not an alternative would be suitable or achieve a similar purpose to the obligations now included in the Regulation, and whether that purpose is in fact appropriate, i.e. the regulation of the terms of provision of data, voice and SMS bundles, in all the circumstances. In addition, many voluntary interventions have been implemented since the publication of the 2019 amendments and have not been considered in finalising this Regulation. For example, Cell C entered into a Memorandum of Agreement (“**MoA**”) with the Competition Commission on 31 March 2020. In the MOA Cell C had volunteered to provide a free lifeline package and implement an effective rate usage notification for certain data bundles and including advertising transparency thereof. The transparency on the cents/MB in the advertising of data bundles, a purchase history for prepaid consumers and a single landing page for all promotional offers would improve consumer decision-making and competition.

3.4 Competition

- 3.4.1 Setting a six (6) month period for the expiry of data, voice and SMS bundles would significantly undermine competition.
- 3.4.2 Different service providers offer different data, voice, SMS bundles at different prices and with different expiry periods. Data, voice, SMS bundles expiry periods, timing and volume are key ways that service providers firms differentiate themselves and compete in the market. This promotes competition as required by the objects of the ECA (section 2f). The regulations wish to standardize expiry periods across the board. This would eliminate product differentiation on services which would lessen competition to the detriment of the consumer and Cell C as a challenger operator in the market. Accordingly, the financial and operational impact of the Regulations on Cell C is substantial and more significant relative to its larger competitors.
- 3.4.3 Pricing is an important input when placing a value on a business product or service. Setting the competitive pricing for sms, voice, data requires the consideration of the nature of the service, validity of the service, input costs of offering the service, type of technology and different customer interfacing channels. Cell C commits to superior customer service at affordable prices informed by pricing strategies that facilitates low-cost entry price points with shorter validity periods. The pricing of bundles follow pricing curves that portrays a link between the extension of the validity period and pricing, thus an increase in bundle validity will result in higher bundle pricing.
- 3.4.4 In addition, as explained above, this regulatory intervention would considerably increase the costs of providing data, voice and SMS services. This would impact challenger (smaller) electronic communications network and service licensees' disproportionality as they would not be able to bear these additional costs without passing them on in a great proportions to the subscriber. Larger electronic communications network and service licensees may be able to cross subsidise these costs or better absorb them.
- 3.4.5 It is Cell C 's view that rather than promoting competition in the ICT sector, the Regulations will have a significant anti-competitive effect. If the Regulations is promulgated in its current form, it will be reviewable under section 6(2)(f)(i)of PAJA as it conflicts with section 2(f) of the ECA which as an objective that requires the promotion of competition in the ICT sector.
- 3.4.6 The ECA itself highlights the importance of reducing costs for the provisions of electronic communications services for end-users. Its objects include the provision of quality of services at reasonable prices; and the promotion of the interests of end-users with regard to the price, quality and variety of services in terms of sections 2(m) and (n) of the ECA.

3.5 s3 " Regulation 8A of the Regulations is hereby amended by the insertion after sub-regulation (3) of the following sub-regulations:

(6) A Licensee, in instances where the end user is unable to utilise specific promotional voice/SMS products (such as promotional packages) due to a fault on the part of the Licensee (such as network outages or service breakdowns), must compensate the end user appropriately (such as by giving a rebate or by extending the validity period of the product concerned).

AND

s4 “4.1 Regulation 8B of the Regulations is hereby amended by the substitution for sub-regulation (3) of the following sub-regulation:

(7) A Licensee, in instances where the end user is unable to utilise specific promotional data packages or bundles due to a fault on the part of the Licensee (such as network outages or service breakdowns), must compensate the end-user appropriately (such as by giving a rebate or by extending the validity period of the product concerned).

3.5.1 The Authority does not provide an explanation or reasons for the inclusion of sub-regulation 3(6) and 4(7). In addition, “network outages”, “service breakdowns”, “compensate the end-user appropriately” are undefined or opened to interpretation. This leads to vagueness and will therefore make it impossible for licensees to comply with the Regulation because they will not know what will be required of them and end-users unsure of the rebate compensation. If the regulations is promulgated in it current form, it will be reviewable under section 6(2)(i) of PAJA as being impermissibly vague and uncertain.

3.6 Promotions

Section 5(1) of EUSSCR , *Government Gazette 39898* requires:

“A licensee must lodge its promotional tariffs and the duration of the application of the during tariffs promotional tariffs with the Authority no less than seven (7) days prior to its launch, or any periods of extension”

Cell C recommends that that the filing of promotional or product tariffs must have been filed at least one (1) business day prior to the provision of the said promotion as opposed to the seven (7) business days. We say this because of the following reasons:

- 3.6.1 The filing of the promotional tariffs is a form of notification to ensure transparency to the Authority;
- 3.6.2 The longer the duration for filing of such promotional tariffs fees prior to launch of service, the more negatively a licensee and subscribers are impacted in terms of its go to market timeline which goes against Section 2(y) of the ECA which specifically 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*”
- 3.6.3 Public holidays and weekends worsen the go to market timeline as these days are not counted as business days which further delays the launch date. It is further unclear why these days are excluded as products and services are available to the public during these times;
- 3.6.4 The Authority is currently consulting on the amendments to the Standard Terms and Conditions for Individual Licences regulations wherein proposed changes to the seven (7) days are contemplated for the filing notification for standard fees/tariffs, services and terms and conditions. For consistency, Cell C recommends that the date for filing notification for standard fees/tariffs, promotional tariffs and amendments thereof to the Authority must be the same



to avoid unnecessary human error and not to be found to be non-compliant due to administration oversights.

- 3.6.5 Due to the fluctuations of the rand dollar exchange, there are instances where Cell C has to react immediately on certain product tariffs to avoid the negative revenue impact arising from such fluctuations. By having a seven (7) business day tariff filing notification prior to launch or amendment thereof, the implication is that Cell C loses revenue during the seven (7) business day duration due to such fluctuations.
- 3.6.6 Cell C understands the promotional tariff filing notification requirement, minor changes such as an amendment to the naming of a product follows the same promotional filing notification timelines for product price and Terms and Conditions amendments. An amendment of this nature should not take more than a business day notification, and
- 3.6.7 The Authority introduced a one (1) business day filing for standard fees, promotional tariffs and services that benefit subscribers under the COVID-19 Regulations. This worked well with Cell C and the Authority. The process was efficient with no challenges or queries from the Authority or subscribers. We see no reason why the same approach should not be adopted for the promotional tariff notification timeline.

3.7 Measurement Parameters for Fixed, Fixed Wireless and, for Mobile Services

3.7.1 s2."Substitution of regulation 9 of the Regulations"

(13) *The applicable measurement parameters are as follows:"*

Parameter	Threshold	Cell C Comments
3G VOICE SERVICE		
Average Call Setup Success Ratio	≥ 98 %	Cell C recommends that this measurement must be based over a period of 6 months, using PM stats or DT in areas with 3G signal levels that is > -95 dBm
Average Call Setup Time	≤ 9 seconds	Cell C recommends that this measurement must be based over a period of 6 months, using PM stats or DT in areas with 3G signal levels that is > -95 dBm
Average Dropped Call Ratio	≤ 2%	Cell C recommends that this measurement must be based over a period of 6 months, using PM stats or DT in areas with 3G signal levels that is > -95 dBm
Average Speech Quality Mean Opinion Score (MOS)	≥ 3	Cell C advises that this measurement is dependent on CODEC and call type assigned. Cell C recommends that this measurement must be based over a period of 6 months, using DT in areas with 3G signal levels that is > -95 dBm
Average SMS End-to-End Delivery Success Rate	≥ 98%	
Average SMS End-to-End Delivery	≤ 10s	Cell C recommends that this measurement must be based over a period of 6 months, using PM stats or DT in areas with 3G signal levels that is > -95 dBm

Parameter	Threshold	Cell C Comments
3G PS DATA SERVICES (3G Preferred mode)		
Application Throughput	Average value of Download ≥5Mbit/s	Cell C recommends ≥ 0.8 Mbit/s for this parameter and the measurement to be based over a period of 6 months, using PM stats or DT in areas with 3G signal levels that is > -95 dBm

Parameter	Threshold	Cell C Comments
<i>File Transfer Protocol (FTP) Average Download Throughput</i>	<i>Average value of Download ≥ 5Mbit/s</i>	Cell C recommends ≥ 0.8 Mbit/s for this parameter and the measurement to be based over a period of 6 months, using PM stats or DT in areas with 3G signal levels that is > -95 dBm
<i>File Transfer Protocol (FTP) Average Upload Throughput</i>	<i>Average value of Upload $\geq 1,5$ Mbit/s</i>	Cell C recommends ≥ 0.2 Mbit/s for this parameter and the measurement to be based over a period of 6 months, using PM stats or DT in areas with 3G signal levels that is > -95 dBm
<i>Hypertext Transfer Protocol (HTTP) Average Download Throughput</i>	<i>Average value of Download $5 \geq b$ it/Ms</i>	Cell C recommends ≥ 0.8 Mbit/s for this parameter and the measurement to be based over a period of 6 months, using PM stats or DT in areas with 3G signal levels that is > -95 dBm
<i>Hypertext Transfer Protocol Average Upload Throughput</i>	<i>Average value of Upload $\geq 1,5$ Mbit/s</i>	Cell C recommends ≥ 0.2 Mbit/s for this parameter and the measurement to be based over a period of 6 months, using PM stats or DT in areas with 3G signal levels that is > -95 dBm
<i>Round Trip Time RTT (Latency)</i>	<i>Average value ≤ 100ms</i>	Cell C recommends that this measurement must be based over a period of 6 months, using DT in areas with 3G signal levels that is > -95 dBm
<i>Average Speech Quality Mean Opinion Score (MOS)</i>	≥ 3	N/A - this is a voice KPI, see above
<i>3G Signal Strength RSCP</i>	≥ -105 dBm	Cell C recommends that this measurement must be based over a period of 6 months, using DT and on weighting factors proposed in ETSI TR 103 559 V1.1.1 (2019-08)

Parameter	Threshold	Cell C Comments
4G PS DATA SERVICES (4G Preferred mode)		

Parameter	Threshold	Cell C Comments
<i>Application Throughput</i>	<i>Average value of Download ≥ 10 Mbit/s</i>	Cell C recommends ≥ 5 Mbit/s for this parameter and the measurement to be based over a period of 6 months, using PM stats or DT in areas with 4G signal levels that is > -100 dBm
<i>File Transfer Protocol (FTP) Average Download Throughput</i>	<i>Average value of Download ≥ 10Mbit/s</i>	Cell C recommends ≥ 5 Mbit/s for this parameter and the measurement to be based over a period of 6 months, using PM stats or DT in areas with 4G signal levels that is > -100 dBm
<i>File Transfer Protocol (FTP) Average Upload Throughput</i>	<i>Average value of Upload $\geq 2,5$ Mbit/s</i>	Cell C recommends ≥ 1 Mbit/s for this parameter and the measurement to be based over a period of 6 months, using PM stats or DT in areas with 4G signal levels that is > -100 dBm
<i>Hypertext Transfer Protocol (HTTP) Average Download Throughput</i>	<i>Average value of Download ≥ 10Mbit/s</i>	Cell C recommends ≥ 5 Mbit/s for this parameter and that this measurement must be based over a period of 6 months, using DT in areas with 4G signal levels that is > -100 dBm
<i>Hypertext Transfer Protocol Average Upload Throughput</i>	<i>Average value of Upload $\geq 2,5$ Mbit/s</i>	Cell C recommends ≥ 1 Mbit/s for this parameter and the measurement to be based over a period of 6 months, using PM stats or DT in areas with 4G signal levels that is > -100 dBm
<i>Round Trip Time RTT (Latency)</i>	<i>Average value ≤ 50ms</i>	Cell C recommends that this measurement must be based over a period of 6 months, using DT in areas with 4G signal levels that is > -100 dBm
<i>Average Speech Quality Mean Opinion Score (MOS) (VoLTE)</i>	≥ 4	This parameter is only applicable where VoLTE is available and used. The measurement is dependant on CODEC and call type assigned and must be based over a period of 6 months DT in areas with 4G signal levels that is > -100 dBm
<i>4G Signal Strength RSRP</i>	≥ -115 dBm	Cell C recommends that this measurement must be based over a period of 6 months, using DT and on weighting factors

Parameter	Threshold	Cell C Comments
		proposed in ETSI TR 103 559 V1.1.1 (2019-08)

Parameter	Threshold	Cell C Comments
END USER TEST CASES		Cell C did not measure these parameters in the past, a vendor has been appointed recently to perform these DT measurements. Cell C is unable to provide input at this time and will provide comment when sufficient samples have been gathered and in future engagement with the Authority.
<i>Web Page Access Success Rate</i>	≥ 98 %	
<i>Web Page Completion Success Rate</i>	≥ 98 %	
<i>Web Page Download time</i>	≤ 5 sec	
<i>Video Streaming Set-up Success Rate</i>	≥ 98 %	
<i>Video Streaming Completion Success Rate</i>	≥ 98 %	
<i>Video Streaming Reproduction Cut-off Ratio</i>	≥ 98 %	

3.7.2 It is Cell C's view that there are many factors that may influence the final results under the quality of service ("QoS") parameters listed above and must be taken into account. For example, these are: how the test is measured, the nature of the location, the size of sample set, the loadshedding impact on sites and transmission at time of testing, receive level, the network load at the time of measurement and the effect of equipment vandalism/theft.

3.7.3 The parameters in the above tables may be considered maximum standards and therefore there is a higher probability of licensees been found to be non-complaint. Cell C recommends that a working group be established and chaired by the Authority or similar group such SABS TC 74 Quality of Service Workgroup which had done work previously on QoS Methodology for Voice services. This working group can consult and agree with the Authority on practical and reasonable quality of service parameters that can be prescribed within the regulatory framework. In addition, it must be noted that in time technologies change and spectrum is re-farmed according to user demand, thus what is determined today may not be valid in future and may require a refresh.

- 3.7.4 Cell C notes that the Authority has not specified the period for the “averaged” calculation, and this may have been an oversight as the existing regulations specify that the quality of service parameter must be averaged over six (6) months. Cell C recommends that the Regulation be updated accordingly and where relevant.

3.8 s7. Substitution of regulation 10 of the Regulations with:

“(2)The Authority will monitor Quality of Service performance provided by Licensees, at any given time, or on an ad-hoc basis by means of drive tests, walk tests, probes and/or counters, crowdsourcing, data acquired from the Network Performance Monitoring System (NPMS) and submitted by Mobile Network Operators, and other methods that the Authority finds relevant to audit Licensees on.

(3) The frequency of the Quality of Service audits referred to in Regulation 10

(2), as well as the applicable Licensee(s), the services, parameters, reporting areas and reporting periods that require audits, are at the sole discretion of the Authority, and will not be advertised in advance.

(5) A Licensee shall provide raw network performance data post hoc to the Authority upon request.

(6) A Licensee shall grant the Authority access to collect raw network performance data from the Licensee’s platform(s) by an appropriate means of monitoring, including but not limited to software and / or hardware application.”

- 3.8.1 Different operators use different vendors for the supply of network infrastructure. These vendors all have their own interpretation and implementation of Key Performance Indicators (“KPIs”) or parameters such as Call Setup Success Rate, etc. The data from different networks cannot be used for comparison purposes nor evaluation of whether such networks have reached their targets or not as this will not be a ‘like for like’ comparison. So in effect this data will not be a true comparison of QoS network performance.
- 3.8.2 Even where different operators do use the same vendors in their networks, the difference in software versions and calculation methodologies make the KPIs incapable of like for like comparison. Most KPIs listed in the Regulations are only broadly stated and are unclear as to the exact measurement process, measurement environment, event trigger points and formulas for calculation.
- 3.8.3 Cell C therefore recommends the use of a mutually developed benchmark methodology to accurately compare the KPI targets of networks. This can be done by the SABS TC 74 Quality of Service Workgroup or similar. Cell C therefore recommends the use of a mutually developed benchmark methodology to accurately compare the KPI targets of networks. This can be done by the SABS TC 74 Quality of Service Workgroup.
- 3.8.4 It is Cell C’s view that some of the regulatory interventions proposed are extremely intrusive and borders along the lines of interfering with the commercial activities of licensee which goes against section 2(y) of the ECA. In addition. Cell C seeks clarity on the empowering provisions in the ECA that supports the Authority in making such determination. Lastly it is unclear to Cell



C if such interventions are required in the absence of ~~any wrongdoing~~ by licensees. Cell C supports the Authority's QoS drive testing exercises as these are the closest to what a subscriber will experience (user experience) when accessing services of a licensee's network.

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