



Submission to the Independent Communications Authority of South Africa (ICASA) on the 'Draft End-user and Subscriber Service Charter Amendment Regulations 2024'.

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Introduction

The following is a submission to the Independent Communications Authority of South Africa (ICASA) concerning the 'Draft End-user and Subscriber Service Charter (EUSSC) Amendment Regulations 2024' for purposes of ensuring greater transparency of communication services and bringing down the cost of communication in South Africa. The submission is made on behalf of amandla.mobi - an organisation with over 960,000 members. The core elements of the submission remain the same as those raised during as part of the Regulatory Impact Assessment on the EUSSC and subsequent concerns raised with the authority on multiple occasions, in-person, virtually and in writing¹;

1. Ensure the rollover of unused data, voice, etc., especially for low-income consumers who can often only afford short to medium-term bundles, i.e. hourly, daily and, or seven-day bundles.
2. End bill shock. Consumers must be notified that their bundle is running out, and networks can only charge out-of-bundle rates if the consumer has consented by opting in.

Since then, public support for ensuring low-income consumers have data access, SMS etc, has continued to grow. In 2020, our petition to mobile networks gathered over half a million signatures². Public frustration with mobile networks has also grown since then. Networks have not complied with the regulations or found ways to evade the regulations. Networks understood the spirit of the 2018 EUSSC regulations, but it appears they found creative ways to purposely create complexity and confusion for consumers to limit rollover of bundles and maintain high use of out-of-bundle rates to maximise profit while having the audacity to claim "compliance".

In 2020, we made a submission to ICASA for the Regulatory Impact Assessment of the EUSSC along with over 500 completed Regulatory Impact Assessment questionnaires which exposed how networks were not complying with the regulations and were bypassing them. In this submission, we once again reiterate these concerns and further substantiate our submission, having spoken to hundreds of low-income consumers in recent months.

¹ See annexure A.

² https://act.amandla.mobi/campaigns/dmf_covid-19

As an organisation whose work is focused on Black women from low-income communities, the submission focuses particularly on issues affecting the poor. Our key recommendations are as follows:

- Low-income consumers continue to face price discrimination.
- Out-of-bundle rates disproportionately impact low-income consumers, so we support the requirement for consent to opt-in to out of bundle.
- The roll over of bundles is important, but the regulations exclude short-term bundles from rollover, which are the very bundles low-income consumers primarily rely on. Without a doubt, these dynamic, innovative bundles should be protected as they have offered a pathway for low-income consumers to be online. But the consumers reliant on them should also be protected by the regulations, as they are the most affected by expiry.
- We support the creation of regulatory parameters or prescribed minimum standards for roll-over of unused voice, SMS and other data related services, not limited only to data bundles specifically.

Aspects of the regulations are a step in the right direction. Allowing consumers to transfer bundles or portions of bundles is important, as is extending the validity periods of bundles due to a fault on the part of the network.

1. Price discrimination against low-income consumers continues because of the pricing of small and short-term bundles.

As we have noted in our 2018 submission, research suggests low-income consumers buy data in small quantities³. As TABLE 1 shows, the bundles low-income consumers can afford are small and short-term bundles which charge more per MB.

TABLE 1 - Prices of selected mobile data bundles from the largest mobile Internet operator (Vodacom April 2024)⁴

Data bundle	Price (R)	Cost per megabyte (MB) in cents
Examples of data bundles low-income consumers can afford		
50MB, 1 hour	R5	10 cents
1GB, 1 hour	R12	
35MB, 1 day	R5.50	16 cents

³ See <http://www.makingallvoicescount.org/publication/izolo-mobile-diaries-less-connected/> accessed 2 January 2018

⁴ See <https://www.vodacom.co.za/vodacom/shopping/data/prepaid-data#ae486950-tabs-vertical--item-wrapper-3304977692-3304977692> accessed 10 April 2024

150MB, 7 days	R18	12 cents
75MB, 30 days	R13	17 cents
If the bundle runs out or expires, the consumer is charged out-of-bundle rates (using airtime) per MB.	n/a	49 cents
Examples of large bundles and contracts wealthy consumers can afford		
120GB, 30 days	R999	1 cent
50GB, monthly contract ⁵	R299 pm x 24 months	1 cent

Annexure A

	
<p><i>Dec 2019, RIA physical submission</i></p>	<p>5:24 PM · Mar 23, 2023 · 1,023 Views</p> <p><i>March 2023, Virtual Consultations on the impact of load-shedding on the telecommunications, broadcasting and postal sectors.</i></p>

⁵ See <https://www.vodacom.co.za/shopping/deal-details-page/DV4DD08259?contractSkus=DV4DD08259> accessed 10 April 2024

2. Out-of-bundle rates hurt low-income consumers the most.

Out-of-bundle pricing is untransparent and unfair for low-income consumers. The evidence we have presented suggests that the major operators are engaging in unfair and anticompetitive conduct regarding low-income consumers. De Lanerolle, Walton and Schoon's research suggests that low income consumers are buying small data bundles. Low-income consumers who are generally buying airtime and data in very small quantities are particularly susceptible to unintentionally going 'out of bundle'. For example, looking at the cheapest and most expensive data bundles in TABLE 1, the low-income consumer who can only afford a R5 bundle receives 50MB which lasts only one hour. If they run out of data or their data expires after an hour, they are forced to pay out-of-bundle rates of 49 cents. The wealthy consumer on the other hand does not have to watch the clock because their data lasts 30 days and they have 120,000MB (2GB) so they are less likely to finish their bundle in 30 days and pay out-of-bundle rates.

Networks made huge sums of money for years by creating an environment where the consumer was likely to pay out-of-bundle rates. Vodacom's June 2017 quarterly results⁶ state that, for prepaid customers in South Africa (which is to say the vast majority of customers) 75% of Vodacom's revenue from voice and data came from out-of-bundle rates. At the time customers were likely to be paying R1.50 per MB or R1,500 (\$115) per GB in out-of-bundle rates. In 2013 it was even worse, according to the June quarterly results 92% of Vodacom's prepaid revenue came from charging people out-of-bundle rates. It should be noted that after our submissions pointed out this gross profiteering, Vodacom changed their financial reports so as not to include a breakdown of revenue in terms of in-bundle or out-of-bundle.

The automatic transition from in-bundle to out-of-bundle pricing without enabling the consumer to choose whether they wish to continue to use data at prices up to 49 times higher is unfair and exploitative - especially for low-income consumers. People's economic circumstances can change rapidly, therefore if a customer opts into out-of-bundle rates, it should not be in perpetuity. Rather each time a bundle is depleted, there must be no out-of-bundle usage until the user opts-in to out-of-bundle rates. The onus must be on the networks to gain ongoing informed consent from the consumer. What is more, ICASA must provide oversight to ensure networks provide clear information and an easy to use process so as to limit situations where consumers may inadvertently opt-in to out-of-bundle rates. We cannot afford a repeat where networks once again find creative ways to evade regulations.

3. ICASA must not exclude low-income consumers from the rollover of bundles.

⁶ <https://vodacom.com/pdf/investor/quarterly-results/2017/vodacom-announcement-Q1-2017-new.pdf>

On the face of it, the proposal to roll over bundles is good. But the amendments do not allow for the rollover of short-term bundles of less than 7 days. It does not make sense that the rollover of bundles is only provided for medium-term and long-term bundles. Small and/or short-term bundles have a lower price point making them affordable to low-income consumers, while at the same time forcing these consumers to pay a higher rate per MB than what wealthy consumers who can afford medium to long-term bundles that are bigger. Networks may argue that allowing short-term bundles to roll over will impact the market and they may have to increase prices on short-term bundles, there may be some truth to this, but it is also true that the current profiting model is built on charging the low-income majority more per MB of data, while charging the wealthy minority the least per MB of data.

We propose that at least the short-term bundles and medium-term 7 day bundles should benefit from a rollover of a portion of any unused bundle for an equivalent validity period.

We completely support the amendments that ensure the rollover of bundles occurs without requiring any action and without incurring any cost to the consumer. We also support the amendment that networks apply bundle usage sequentially against unused bundles with the earliest expiry, until such bundles are depleted and thereafter against the next earliest expiry of any bundle.

4. The impact of load shedding on low-income consumers

In March 2024, amandla.mobi surveyed communities around Soweto and Ivory Park to better understand which mobile networks people were using to access the internet and whether there was connectivity during load-shedding in low-income communities. Amongst many other issues raised, the impact of load shedding on internet costs and the quality of network came up as one of the top issues that affect people. Mobile network providers stand to gain from load-shedding despite their threats of increasing prices due to it⁷.

Given the impact of load shedding on mobile networks, consumers, especially low-income consumers who are most likely to be on short-term bundles (e.g. hourly or daily), are being hit hard by the signal loss. In the event of load shedding that leads to network cuts, prepaid customers using these limited bundles lose out on their purchases.

For example, a consumer using their already limited funds purchases an hour bundle. Then there's load shedding, and the network goes for the next two hours or so. By the time it comes back, the bundle has expired. That is completely unfair and is precisely what amandla.mobi had pointed out as a limit to the effectiveness of the EUSSC as they currently stand.

While Vodacom, for example, scrapped plans to charge consumers for the data rollover following public outrage, they have found another way to limit the benefits of the regulations to consumers. For data to rollover, Vodacom requires that a consumer purchase a bundle of the same size, which essentially

⁷ MTN hikes prices, blaming power cuts and crime, TechCentral, 22 February 2023

means that consumers must spend money to enjoy the benefits of the regulations - which prejudices low-income consumers, who are less likely to have the funds, in particular.

The right to communicate is a fundamental right, and not ensuring that consumers are able to consistently access their network is an infringement on that right. Mobile network operators need to do more to limit network disruptions during load shedding. This can be done by:

- Ensuring that all their towers have a backup supply that is logistically feasible for them to maintain.
- Regularly replacing run-down batteries of their backup supply.
- Improve infrastructure by making it fit for purpose for a load-shedding environment. While load shedding has gotten worse, it is not new and started as far back as 2007. The mobile networks should have been adapting to this reality, but it has become urgent that they do.

While mobile networks will raise eyes at this call for them to invest in their infrastructure to make it load-shedding ready, we should not forget that they have for years been unjustifiably exploiting low-income consumers and profiteering from pick-pocketing them. So this could be seen as a corrective measure to that. And, of course, this by no means suggests that we are letting government off the hook from their responsibility to provide electricity; we just recognise that while that is being addressed, consumers, low-income consumers in particular, should not be prejudiced by the current state of things.

“You get seriously frustrated by load-shedding, that eish I cannot connect for the next two hours and you wander aimlessly.” - Mfolo Resident

ICASA's research report on the State of the ICT Sector in SA⁸ notes how networks have spent a huge sum of money on generators because of the load-shedding crises. However, the Competition Commission has noted that big businesses can use legitimate crises to justify unfair pricing and practices⁹. It should be noted that 2022 had double the amount of load-shedding of 2021, yet according to Vodacom's operating results, there was only about a 1% change in their profitability margin¹⁰. Networks have remained extremely profitable, and we should be cautious that they may cry poor, increase prices and cut jobs as a scare tactic to stall and water down regulations.

End.

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⁸ <https://www.itweb.co.za/article/icasa-counts-load-shedding-costs-for-telcos/8OKdWMDXyl9MbznQ>

⁹ Excessive pricing in the time of COVID-19: insights from a regulator's perspective, Competition Commission, November 2020

¹⁰ Vodacom Historical Financial Information 31 March 2023 - South Africa EBITDA profit margin change between March 2023 and March 2022.

