A division of Internet Solutions
Digital (Pty) Ltd

SUBMISSION BY MWEB A DIVISION OF INTERNET SOLUTIONS DIGITAL (PTY) LTD ("MWEB") ON THE PROPOSED END-USER AND SUBSCRIBER SERVICE CHARTER REGULATIONS PUBLISHED ON 17 NOVEMBER 2017

1. Introduction

We thank the Authority for considering our last submission in response to the draft Regulations published on 7 August 2017 ("last submission") and having made some amendments which are reflected in the draft Regulations published on 17 November 2017.

MWEB believes that a complete review of the Regulations is essential and, in this submission, we will again highlight certain points from our last submission relating to the current Regulations, after which we will comment on the draft Regulations.

2. Definitions

As per the Regulations, "Fixed Service" means a **radio communication** service between specified fixed points" (our emphasis), which definition excludes fixed telephone, ADSL and fibre connections. We note that the definition was taken from the ITU Radio Regulations Articles 2012 to describe fixed services in relation to radio communication. However, considering that the definition of "Fixed Wireless" is included in the Regulations, it is unlikely that it was the intention of the Authority to use "Fixed Service" in relation to radio communication and exclude the services mentioned above. We are not certain whether the use of "fixed line service" in the definition of "Installation" should have read "Fixed Service" or whether the Authority intended to include a definition of "Fixed Line".

3. Regulation 5(2)

Regulation 5(2) requires certain information, including fair usage policies, be included in all platforms communicating a promotion. Fair usage policies should only be included in promotional material where the policy for the promotion differs from the usual policy of the licensee. It is impractical to include the obligations of the end-user at the expiry of the promotion in promotional material. The options available to the end-user may vary by the time the promotion expires. Also, the terms and conditions of the promotion will explain how the promotion will work to enable the end-user to make an informed decision at the expiry of the promotion. The platform used to communicate the promotions must also be considered, as it is impractical and difficult to convey long messages on certain platforms. We believe it is sufficient to comply with the requirements as set out in the Advertising Standards Authority of South Africa Code of Conduct.

4. Regulation 7

We believe that awareness in terms of Regulation 7, must lie with the Authority. Without prescribing what must be included in an end-user friendly version of the Regulations, there will be inconsistency across the industry with licensees providing their own interpretation of what they believe should be included. In any event, whereas licensees are required to display the key commitments as outlined in the Code of Conduct for Electronic Communications and Electronics Communications Network Services Licensees Regulations 2007 at all their service centres and on their website, is it really necessary to introduce an end-user friendly version of the Regulations as well? In the event the Authority deems it necessary, then we submit that in order to create certainty, which will benefit the end-user, the Authority must prescribe the text for such a version.

5. Regulation 9(3)

We note that in terms of Regulation 9(3), the format for reporting in terms of Regulation 9(1) and 9(2) has not yet been prescribed.

6. Regulation 9(5)

The requirement for reporting Installation of Fixed Services in Regulation 9(5) separates "Residential Services" and "Business Services". Business Services is not defined. Requesting data on different categories of end-users is burdensome as licensees may not currently have a requirement to differentiate between these end-users. The definition of end-user includes a natural or a juristic person in terms of the Electronic Communications Act 2005 (see definitions of "end-user", "subscriber" and "person"). Therefore, there should be no differentiation between "Residential Services" and "Business Services".

The format for reporting in terms of Regulation 9(6) has not yet been prescribed.

7. Regulation 11

With respect to Regulation 11, licensees should not be required to notify end-users more than once via SMS of a planned outage. A licensee should notify end-users of planned outages via the type of service they offer. Sending an SMS to each end-user, and more importantly sending more than one SMS to each end-user could prove very costly for an ISP who will rely on third party services to comply with this requirement. In any event, businesses are increasingly using various other acceptable methods, including instant messaging, to communicate with their end-users. The Authority should not prescribe the method of communication, but word the Regulation to ensure that the message is in any event communicated to the end-user via any of the acceptable methods (example Whatsapp).

8. Regulation 12(8)

Regulation 12(8) should include a timeframe within which end-users report complaints to the Authority once the complaint has been closed by the licensee. Without a prescribed timeframe, end-users may lodge complaints with the Authority months after the complaint was closed by the licensee and this becomes an administrative burden as business processes need to be stopped again (considering Regulation 12(11)). It appears that Regulation 12(8)(b) is in need of amendment. It refers to sub-regulation 6, however this does not make sense.

There is no timeframe within which a complaint must be closed by the Authority. This creates uncertainty on the part of the end-user and the licensee and this will hinder the licensee's business processes. It could also result in losses for the licensee. It is imperative that there is a reasonable, prescribed timeframe within which the Authority will close a complaint. Considering that the licensee must respond to a complaint within 14 days of receipt of the complaint from the Authority, it is reasonable that the complaint is settled and closed by the Authority within 14 days of receipt of the response from the licensee should it be satisfied that the licensee is not in breach.

9. Regulation 12(9)

Regulation 12(9) implies that where an end-user is not satisfied with the resolution proposed by the licensee, the complaint will in all cases then be referred to ADR. As MWEB previously submitted in 2014, 2015 and our last submission, we again submit that there should be screening of the complaint before it is referred to ADR. The complaint and the resolution proposed by the licensee must be evaluated to determine whether there is merit and there should be a reasonable monetary threshold before a complaint is referred to ADR. It is unreasonable that all complaints will be referred to ADR where the end-user says he is not happy with the licensee's resolution. Referral of all cases to ADR will also burden the Authority. Further, the licensee and end-user may be situated in different provinces and attending mediation procedures across provinces will prove costly and will create a strain on resources.

10. Regulation 12(11)(a)(b)

Compelling licensees not to suspend the service as per Regulation 12(11)(a) leads to end-users racking up huge bills. In reality, there are end-users who do not want to pay any part of the account, even the undisputed portion while an investigation into their complaint is underway. This results in all amounts becoming due and the end-user refusing or being unable to pay the account.

Without stipulating a reasonable timeframe within which the Authority will close a complaint, it is unreasonable to require a licensee to comply with Regulation 12(11)(b). This requirement will hinder the licensee's business processes and will lead to exorbitant amounts being owed to licensees. This requirement opens licensees to abuse. Also, where a complaint lodged at the licensee is closed by the licensee, the procedures to collect the outstanding amounts starts again. Weeks or months later, the complaint is then lodged via the Authority by the end-user. By this time, the collection procedure is complete or nearly complete.

11. Regulation 12(13)

It is unclear how a licensee is to determine "the top three complaints" in terms of Regulation 12(13). Does this refer to the most common complaints?

12. Regulation 13(1)(2)

It is important for the Authority to be clear as to what circumstances will lead to a complaint being referred to ADR for the reasons discussed earlier.

"…other suitably designated person/s…" in Regulation 13(2) is too wide. The Regulation must be clear as to who has the authority to chair ADR. There should be clarity as to whether this person is independent and what qualifications make them suitable.

13. Regulation 14(1)

Regulation 14(1) is unclear and does not give certainty as to when a rebate should be paid. Is the rebate paid only when the licensee is non-compliant with Regulation 9? The loss of service may be due to a failure of the services of an upstream service provider. There is no regulation compelling an upstream service provider to reimburse the licensee for rebates paid to end-users. Upstream service providers provide services on a best effort basis and as is to licensees and that is the reason why licensees provide their services to end-users on the same basis. Therefore, imposing rebates will result in financial loss for licensees. At the very least, licensees should only be compelled to issue rebates where they have not complied with Regulation 9 and where non-compliance was due to a fault of the licensee.

14. Regulation 15(2)

It is only feasible to comply with Regulation 15(2) where the call to the licensee is made on the licensee's network. It would be extremely costly for licensees to otherwise foot the bill for calls made by an end-user to their service care line. This Regulation should require the licensee not to charge the end-user for communication sent to the service care line via the channel in which the licensee provides services.

15. Regulation 16(1)(a)(ii)

With regard to Regulation 16(1)(a)(ii), it is impractical for a licensee to issue a public notice where there is no service for more than 2 hours. There are also no guidelines as to what constitutes a public notice. If the licensee is obliged to notify the Authority of the service failure, then it should be sufficient that the Authority and the licensee publish the notice of service disruption on their respective websites.

16. Regulation 18(2)

The monetary penalty outlined in Regulation 18(2) is exorbitant and will leave any small licensee financially crippled. The penalties should be related to the impact of the non-compliance of the Regulation. The manner in which that Regulation is currently worded implies that one could incur the maximum fine for non-compliance with any Regulation.

We will now comment on the proposed Regulations published on 17 November 2017.

17. 8B(1)(c); 8(B)(1)(d)

End-users are made aware of how the product works when entering the agreement. It is at this stage that the end-user opts in to out of bundle usage. The Consumer Protection Act 2008 requires suppliers to provide information to end-users in plain language, and therefore it is clear to the end-user that he will pay out of bundle charges once the data bundle is utilised. Proposed Regulation 8C, compelling awareness campaigns to be run, will also give guidance to the end-user as to how the products work. Further, licensees provide end-users with usage monitoring tools. Considering these requirements and the monitoring tools available to end-users, there should not be a need to request the end-user to opt in or out of out of bundle usage every time they reach the data bundle. As mentioned previously, hard capping data bundles may lead to end-users losing downloads and being forced to initiate a download for the second time, which may lead to additional costs.

We note that 8(B)(1)(d) requires that the end-user must be requested to "opt-in or opt-out of out of data bundle usage **per session**" (our emphasis). We understand this to mean that if the end-user opts in once his data bundle is depleted, the moment he closes that session and initiates the next session, he will be required to opt in again. If this understanding is indeed correct, we consider this requirement impractical, unfeasible and leaves the licensee completely disadvantaged. This process will also frustrate the end-user as the experience will not be seamless.

While it is important to ensure consumer protection, the licensee should not be hindered to an extent that it is nearly impossible to conduct their business. Compliance should not be overly burdensome.

18. Regulation 8B(3)

We submit that prepaid data is not equivalent to a prepaid certificate, credit or voucher in terms of s63 of the Consumer Protection Act 2008, and s63 should not apply to prepaid data. A prepaid data bundle is sold as a set amount of data for a set price whereas a prepaid certificate, credit, card, voucher or similar device is sold with a set value only. The value (e.g. R200) of a prepaid certificate, credit or voucher may be utilised within a three year period while, if Regulation 8B(3) is accepted, the end-user holding on to a prepaid data bundle will be entitled to utilise a set amount of data which was purchased at a specific value within a three year period while the value of the data will have either increased or decreased and in all likelihood it would be the latter (e.g. 1GB which may have cost R100 in year one, may cost R50 in year two or three), disadvantaging the end-user (i.e. user will be out of pocket by R50 in the example used).

It is also not feasible for a licensee to allow validity for extended periods as there would be no way to project the expected usage since it would be impossible to determine when an end-user will use the data he has accumulated. Overselling is an important factor in determining commercial models. It is essential for a licensee to know the expected usage on the network in order to properly manage that network.

19. Regulation 8B(4)

MWEB is satisfied with the requirement to roll over unused post paid data to the next billing period.

Proposed Regulation 8B(4) would also require licensees to allow end-users to transfer their monthly data allocation or part thereof to other end-users on the licensee's network. This would create an administrative burden on the part of the licensee, which could result in increased pricing for the end-user.

20. Regulation 8C

Similar to our comments regarding Regulation 7, consumer education and awareness in terms of Regulation 8C should be conducted by the Authority. Any consumer awareness program should be conducted by the Authority to ensure consistency and that the correct message is conveyed to the end-user. Requiring a licensee to conduct quarterly education campaigns per annum is an unreasonable financial and administrative burden.

21. Conclusion

We understand the purpose of the proposed Regulations, however, the requirements are excessive and will not benefit the end-user but will force licensees to increase pricing to accommodate compliance with the Regulations. The Regulations should be feasible and fair to both the end-user and the licensee. We urge the Authority to give careful consideration to our submission.