



Submission to ICASA:

“Draft End-user and Subscriber Service Charter Regulations”

Government Gazette No. 37251, Notice 30 of 2014, 22 January 2014

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1. INTRODUCTION

1. Neotel thanks the Independent Communications Authority of South Africa (“the Authority”) for the opportunity to comment on the “Draft End-user and Subscriber Service Charter Regulations” published in Government Gazette No. 37251, Notice 30 of 2014, 22 January 2014, herein referred to as the “Draft regulations”.
2. Neotel also wishes to commend the Authority for the consultative and responsive manner of engagement on this critical issue.
3. Neotel’s submission is structured in this manner: we commence with a brief history of the service charter standards, then we proceed with comments on the specific sections of the Draft Regulations, then concise comments on Schedule 2. Lastly, we conclude our submission with a concise summary and concluding remarks.

2. BRIEF HISTORY OF THE SERVICE CHARTER STANDARDS

4. In the past Neotel has made several submissions to the Authority highlighting the prevailing challenges regarding the standards set-out in the Regulations in terms of Section 4 read with section 69(3) of the Electronic Communications Act 36 of 2005 (“ECA”), setting out the minimum standards for end-user and subscriber service charters “Current regulations”.
5. We expressed our view that the measurement standards should be different for the two classes of end-users. The enterprise customers should not be incorporated or included in the reporting of compliance to the End-user and subscriber Service Charter regulations. Neotel believes the required regulatory statistics only practically apply to the individual/household end-users.
6. The ECA provides a broad definition of the term end-user, which is defined as ‘a subscriber and persons who use the services of a licensed service’. Whilst the definition reasonably refers to consumers in general and enterprise customers it is not concise and comprehensive. The definition of enterprise customer is a small or medium-sized business. Consumer is defined as an individual who buys services or products for personal use.
7. Section 69 of the ECA specifically deals with consumer issues and the End-user and subscriber Service Charter emanates from this chapter. Furthermore section 69 (4) stipulates that the Authority may develop different minimum standards for end-user and subscriber service charters for different types of services. This clause acknowledges the different nature of the services provided by licensees. The Current regulations seeks to regulate ECS and ECNS services, therefore the regulations have integrated services without appreciating the dissimilarities of the service categories and the different processes undertaken in rendering services to the two classes of end-users.

8. The Authority should also be cognisant of the challenges ECNS licensees are confronted with in providing services to enterprise customers. The installation and acquisition process are sometimes protracted by the negotiation processes with owners in gaining access to their property or facilities to enable installation a service. On 11 August 2011 the Department of Communications issued a Government Notice No, 643 for the withdrawal of proposed guidelines for rapid deployment of electronic communications facilities. Currently there is an industry stakeholder forum, in conjunction with ICASA and the SABS underway in the drafting of new rapid deployment guidelines. However, until these guidelines or proposed regulation are promulgated and enforced, licensees will still be confronted with these challenges. As such, it will be impossible and impractical for licensees to meet the proposed installation time-frames. Consequently, it will be prejudicial for the Authority to penalize licensees for non-compliance. Moreover, various metropolitan and local councils have various processes to obtain right of way and access to properties.
9. Neotel submits that there should be uniform processes for access to properties and rights of way in the various municipal areas.

3. DEFINITIONS IN THE DRAFT SERVICE CHARTER

10. Regulation 1 of the Draft regulations assigns meaning to the numerous terms used in the Draft regulations. Neotel proposes that the definition of the term '*broadband*' should be aligned with the definition published in the National broadband policy. In the policy broadband is defined in terms of functionality, an ecosystem of high capacity, high speed and high quality electronic networks , services, applications and content enhancing variety uses and value of information and communications for different users. In general broadband refers to the wide bandwidth characteristics of a transmission medium, with the ability to transport multiple signals and traffic types simultaneously.
11. The definition of '*blocked call*' in the Draft regulations is limited to only mobile stations. Neotel's suggestion is that blocked call should rather be defined as a call not successfully completed because parts of the network are operating in full capacity.
12. Neotel proposes an amendment to the definition of '*call setup*'. The definition should rather refer to the establishment of physical or logical connection needed for a call or for network access.
13. As previously suggested by Neotel, the term '*end-user*' should be separated between the two classes of end-users (consumer and enterprise) utilising electronic communications services.
14. Neotel proposes an amendment to the definition of '*quality of service*'. The general definition of '*quality of service*' in the electronic communications sphere, refers to a

set of technologies for managing network traffic to enhance user experience for home and enterprise environments. The term should not measure the degree of consumer satisfaction, the measure should rather focus on the level of user experience.

4. REGULATION 4 IN THE DRAFT REGULATIONS – ECNS & ECS SERVICE AVAILABILITY

15. Regulation 4 in the Draft regulations refers to the service availability for the electronic communications network services “ECNS” and the electronic communications services “ECS”. Subsection 4.1 has the parameter targets to measure ECNS services. The Authority seeks to amend the applicable parameters in the Draft regulations. In the Current regulations, target parameter was 95% measured over a period of 6 (six) months.

Neotel’s view is that the targets proposed in the draft regulations are too high, therefore the targets in the current regulations should remain unchanged. Furthermore, the reporting period should remain bi-annually instead of quarterly. This will certainly alleviate the administrative burden on both ICASA and the operators alike.

16. The Authority seeks to amend the average time to install and activate services. In the Current regulations the targets are 90% success rate in 30 (thirty) days and remaining 10% must be met in 40 (forty) days. The success rate in the Draft regulations is currently not feasible as the network operators still face the same challenges of obtaining approval from Local Municipalities and the property owners. The process of installing and activating services is protracted by negotiations with several stakeholders. Neotel humbly requests the Authority to be cognisant of the issues that directly impact the installation and activation process. Secondly, activating mobile services is seamless as there is no physical installation process involved. The turn-around times for Neotel’s CDMA services which can be classified as fixed-mobile services, are determined by other processes that run concurrently. For example service activation for the individual or household customers is impacted by the Regulation of Interception of Communications and provision of Communication-related Information Act no. 70 of 2002 “RICA” process. Neotel’s consumer services such as the CDMA services can certainly achieve these targets.
17. Regulation 4.5 measures the connectivity failure rate. In this respect Neotel seeks clarity from the Authority regarding the targeted parameter for inter-network or off-net call connection loss. Does the target refer only to off-net calls that terminate on our network?
18. In the Draft regulations the Operator assisted call response time remains unchanged. However, regulation 4.6 of the Draft regulations stipulates the Call centre answer success ratio, is 98% measured quarterly. Neotel believes the ratio should be reduced to 90% as a minimum standard. In Schedule 1 of the Draft regulations the Authority specify the formula to be utilised when calculating the success ratio. The

Authority suggests that the measurements should be obtained from at least 1 500 test calls that are 60 seconds apart. Furthermore, the calls should be from traffic weighted locations inside or outside the reporting area during the busy time for the service.

Neotel hereby requests the Authority to clarify what the inside and outside reporting areas are. While we do not fully comprehend the calculation requirement, Neotel still propose the ratio to be reduced to 90% considering the peak service times when the call volumes are higher.

19. Finally, the 98% ratio will have cost implications for Neotel, as we may have to recruit more Call centre agents who will only be effective during peak hours and be redundant during off-peak hours of the service.

5. REGULATION 7 – CHARGING, BILLING, COLLECTION AND CREDIT PRACTICES

20. The charging, billing, collection and credit practices are covered in regulation 7 of the Draft regulations. Neotel suggests in addition to the aforementioned list, the subscription fee for the duration of the contract must be communicated to the end-users prior to provisioning of services.

21. In the Draft regulations the Authority seeks to measure the billing performance of Licensees. The target parameter for the metering and billing credibility should not exceed more than 1% of the bills issued over a given billing cycle. In this respect Neotel's view is that the parameter is unreasonable, as Licensees have no control over consumer's behavior. A reasonable parameter is stated in the Regulations regarding Standard terms and conditions for Individual Licenses under chapter 3 of the ECA, published 14 June 2010 (Government gazette no. "GG" 33294), herein referred to as the "Standard terms and conditions regulations". In the Standard terms and conditions regulations, section 10 stipulates the standard for metering and billing arrangements. According to section 10 (1) *A Licensee shall install and operate metering and billing systems which **accurately record** the extent of the service(s) provided to any end-user*, and section 10 (2) *A Licensee must provide **an accurate invoice** with a detailed statement of services rendered to any end-user at no charge*. Neotel strongly believes that these requirements that emanate from the Standard Terms and Conditions Regulations are sufficient in safeguarding end-user's rights to accurate bills and ensuring billing system credibility.

22. Regulation 7.2 (b) in the Draft regulations specifies the billing items that must be reflected on the itemized billing statements. The billing items specified are a detailed records of SMS, voice and websites visited. Neotel seeks clarity on whether regulation 7.2 (b) of the Draft regulations is a supplement or a duplication of section

10. 4 (a) of the Standard terms and conditions regulations. Regulation 10.4 (a) of the Standard terms and conditions specifies items that must be contained in every itemized billing statement, *each detailed itemized bill shall contain at least the following information in relation to each individual transaction (voice or data call) charge incurred by the subscriber during the relevant billing period:*

- (1) destination,
- (2) dialled number,
- (3) date,
- (4) time,
- (5) charge for each individual transaction

23. Furthermore, regulation 10 (4) (b) states that “Licensees can charge a reasonable price fee for the itemized statement, the different fees should depend on the mode of delivery”.

24. The Authority proposes rules/principles to define a suitable degree of end-user protection regarding billing complaints. In subsection 7.3 (i) the Authority recommends that the Licensees should not disconnect the service of customers who have billing complaints while the investigation is still pending. The general industry practice is that customers with billing complaints should keep their account payments up to date. This means that despite the pending investigations the customer account should not have a default. Neotel’s recommendation is that the applicable principle should take all the merits of the billing complaint into consideration. For example, a billing complaint with a default may result in the complainant accumulating an even higher debt.

25. Neotel proposes that regulation 7.3 (a) v. should be deleted for the reasons mentioned in the above paragraph.

6. REGULATION 8 – COMPLAINTS PROCEDURES

26. The Authority proposes to reduce the number of days for licensees to acknowledge receipt of complaints and allocate a reference number. In the Current regulations, acknowledgement response should be provided within 3 (three) days and the proposed turn-around time is 24 (twenty-four) hours. Neotel’s view is that the response time depends on the mode of communication used by the complainant when lodging the complaint. Neotel therefore believes the current acknowledgement response time of 3 (three) days should remain unchanged.

27. In regulation 8.1 (b) the Authority proposes that a summarized version of the complaints handling procedures should be displayed on our devices and SIM card

packaging. In Neotel's view this requirement will not be practically possible, as the physical space on the device and on the SIM/RUIM card packaging is not sufficient. We believe the requirement to publish the procedures on our website, invoices, welcome letters and the ICASA Code of Conduct is adequate.

28. The Authority intends on making an official written response a requirement for concluding complaints. The current practice is providing a response via different mediums depending on the mode of communication used by the complainant when initially lodging the complaint. For complaints that are received via the Customer Care Call Centre, Neotel sends electronic mails or SMSes to inform customers of the resolution of the complaint. The administrative process of sending an official response will be cumbersome and will delay communication of the resolution to the complainants.
29. Regulation 8.4 of the Draft regulations outlines the steps to be followed when complaint resolutions are disputed. In regulation 8.4 (iii) the Authority's mediation process will be conducted in all 9 (nine) provinces in order to ensure protection of all end-users in the Republic. Due to financial constraints, travelling to the different provinces will not be feasible. Neotel submits that telephonic conferences would suffice in the process of negotiations to reach an amicably compromise to resolve complaints.

7. REGULATION 9 – REPORTING ON ESCALATED COMPLAINTS

30. Neotel would like to highlight the typo in regulation 9 (b) where a reference is made to sub regulation 13 instead of 9.

8. REGULATION 10 - REBATE

31. The Authority seeks to introduce the concept of rental rebates for fault clearance complaints. Neotel supports the opinion that end-users should ***not*** receive full monthly rental fees or subscription fees, if they do not receive services for the full month. Neotel endorses the notion of compensating end-users with service credits in instances where Neotel services fails. Whilst the rebates are used to encourage good customer service and speedy clearance of faults, Neotel believes the applicable rebates on the Draft regulations are arbitrary and unreasonable.
32. For the enterprise customers, Neotel has Service Level Agreements in place which compels Neotel to accede service credits for fault clearance complaints. The

contractual service credits are legally enforceable and benefit the enterprise customers whilst encouraging good network performance and speedy resolution of fault complaints. This further illuminates the point we raised in section 2 of this submission, that procedures used for the two classes of end-users differ and the fact that the Current regulations apply more to the individual customers and not the enterprise customers.

33. Currently with our individual customers and small enterprise customers we offer credits that are equivalent to the severity and the duration of the faults suffered by end-users. Neotel's view in respect of rebates is that rebates should be equivalent with the number of days that a fault remains pending or unresolved.
34. Lastly, in calculating the number of days a fault remains pending, the Authority should be cognisant of some of the technicalities that impact or protracts the mean time or turn-around times. In some instances the technicians have to coordinate their schedule with the schedule of the complainant, and in other instances the complaints are not cooperative. Therefore, the Authority should consider all the steps taken by network operators in attempts to resolve complaints on faults reported.

9. REGULATION 18 – PENALTIES

35. Neotel notes that the Authority seeks to amend the current provision relating to penalties. The current regulations set out various penalties for the contravention of various regulations, namely:
 - I. R500 000.00 for regulation 4, dealing with availability of the ECN and EC services, average time to install and activate service, connectivity failure rate (including dropped calls), operator assisted calls response time, ECN monitoring and fault clearance rate / mean time to clear faults.
 - II. R150 000.00 for a contravention of regulations 5 and 6. This pertains to complaints reported to the licensee, complaints escalated to the Authority by End-Users and Subscribers as well as the requirement to keep and maintain a record of all complaints received from end-users and subscribers, and the preparation of six-monthly reports on complaints received and processed.
 - III. An additional R50 000.00 for every repeated offence.
36. In all of the above-mentioned instances, a monetary fine will be imposed on the defaulting licensee upon conviction by the Complaints and Compliance Committee ("CCC").

37. The amended regulations do not distinguish between the different types of transgressions and the applicable monetary penalty. According to the amended regulations, a licensee who is found guilty of contravening any of these regulations will be liable to a fine not in excess of R1 000 000.00. The regulations further seek to impose, for any repeated offence, a non-disclosed payment of a fine and publication of the non-compliance on the websites of both the Authority and the licensee.
38. It is unclear from the regulations why the Authority seeks to impose a penalty of up to a million rand on each and every contravention. It also does not make sense for the Authority to impose a penalty of up to a million rand for repeated offences. In some instances, some contraventions are so trivial that they do not warrant a million rand penalty. In this regard, Neotel proposes that the penalties should remain as they are in accordance with the 2009 regulations. Alternatively, the Authority should consider reducing a million rand penalty for non-trivial offences to a more acceptable and reasonable limit, for example, R50 000.00.
39. Neotel further submits that the imposition of a monetary penalty is sufficient to deter a would-be offender to repeat the same offence. As such, an additional penalty of the publication of the adverse finding on the licensee's own website is unnecessary and would impose a significant administrative burden on the licensee itself.

11. COMMENTS ON SCHEDULE 2

40. Schedule 2 in the Draft regulations outlines the format for the compliance report. The report entails the parameters for network performance, the technical parameters and the complaints report. The Authority has not stated whether Schedule 2 will repeal or supersede the End-user Subscriber Service Charter Reporting format "Reporting format" published 24 October 2011 (GG no. 34708) and Form 12 A of the Compliance Procedure Manual Regulations published on 15 December 2011 (GG no. 34863). The Reporting format was developed in line with clause 6 of the Current regulations, clause 6 requires Licensees to submit six-monthly reports on complaints processed by Licensee and to submit statistical reports pertaining to clause 4 of the Current regulations.
41. In the Draft regulations the Authority proposes submission of reports quarterly, in April, July, October and January. In Neotel's view the current reporting period of six months is sufficient for the Authority to monitor network performance. We believe the quarterly reports are administratively burdensome and the same monitoring and

enforcement function of the Authority can be achieved with six months reports. Neotel therefore proposes that the Authority retains the current compliance report period as it is specified in the Reporting format of Current regulations and the Compliance manual.

Moreover, the Authority should specify if the Draft regulations will repeal the different sections/clauses of the regulations mentioned above. This will avoid duplication in compliance reporting.

42. Schedule 2 in section 3.2 refers to the non-technical parameters. In this regard Neotel would like to highlight a typo on the billing performance target. The turn-around times for billing performance complaints is 14 (fourteen) days as quoted on regulation 7.2 (page 22) on the Draft regulations.

12. CONCLUSION

43. Neotel would like to participate in any hearings that the Authority may hold in respect of these Draft Regulations.
44. Neotel remains at the Authority's disposal to clarify any issue that may arise regarding this submission or to assist in the finalization of these Draft Regulations.