



# Government Gazette Staatskoerant

REPUBLIC OF SOUTH AFRICA  
REPUBLIEK VAN SUID AFRIKA

Vol. 693

29

March  
Maart

2023

No. 48329



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ISSN 1682-5845



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**INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA**

**29 March 2023**



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## REASONS DOCUMENT FOR THE END-USER AND SUBSCRIBER SERVICES CHARTER AMENDMENT REGULATIONS, 2023

## 1. Introduction

- 1.1. On 31 March 2022, the Independent Communications Authority of South Africa ("Authority") published a notice of its intention to amend the End-User and Subscriber Service Charter Regulations of 2016 (Government Gazette No 39898), under General Notice No 1958 in the Government Gazette No 46153 ("the draft EUSSC Regulations") and invited public comments to be made within a period of thirty (30) working days.
- 1.2. On 15 May 2022, the Authority published a notice of extension<sup>1</sup> of written representations on the draft Regulations from 18 May 2022 to 17 June 2022.
- 1.3. The proposed amendments were necessitated by:
  - 1.3.1. The need to introduce additional quality of service parameters for electronic communication services, as well as to adjust some existing ones, in order to enable the Authority to continue to monitor and enforce compliance with customer care standards in the changing environment;
  - 1.3.2. The general concerns raised by various stakeholders, including consumer groups and social media campaigns, with regards to data / voice / SMS expiry rules, high out-of-bundle rates and rules, and out-of-bundle voice and Short Messaging Service ("SMS") rules currently applied by licensees; and
  - 1.3.3. The current regulations are perceived not adequately to address the loss of unused data / voice / SMSs by consumers, thus resulting in the loss of value of the purchased post- and pre-paid services.

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<sup>1</sup> Government Gazette 46375

1.4. To address the above-mentioned concerns, the draft EUSSC Regulations proposed, among other things, an amendment of the following provisions to empower end-users:

- 1.4.1. the insertion of a number of additional definitions under sub regulation 1, with the purpose of defining and providing clarity on terms, some of which are currently used in the Regulations but were previously not defined, as well as to introduce definitions for a number of new quality of service parameters;
- 1.4.2. the amendment of regulations 8A and 8B, which provide for the expiry period of post-paid and pre-paid services, the usage of the oldest voice / data / SMS services (rollover rules), and the transfer of data not limited to specific products or payment plans, in a manner that will benefit end users by minimising the risk of losing purchased data / voice / SMS bundles;
- 1.4.3. the amendment of regulation 8C which provides that Licensees must conduct quarterly consumer education and awareness campaigns to educate end-users on the use of smart phones, use of data and provision of information on the broad range of products and services offered by Licensees;
- 1.4.4. the amendment also aimed to introduce additional quality of service parameters for electronic communication services, as well as to adjust targets of the existing parameters to enable the Authority to continue to monitor the performance of voice and data services being offered by Licensees and to enforce compliance with good Quality of Service standards.

- 1.5. On 26 September 2022, the Authority published a notice to conduct virtual public hearings<sup>2</sup> in respect of the Draft End-user and Subscriber Service Charter Amendment Regulations, 2022 ("Draft Regulations") as published on 31 March 2022 in the Government Gazette, No 46153.
- 1.6. The Authority had received written representations<sup>3</sup> before the public hearings from the following stakeholders:
- 1.6.1. Cell C;
  - 1.6.2. Competition Commission;
  - 1.6.3. Consumer Advisory Panel;
  - 1.6.4. Free Market Foundation;
  - 1.6.5. ISPA;
  - 1.6.6. John Alexandre;
  - 1.6.7. John Brodrick;
  - 1.6.8. Malefetsane Tsolo.
  - 1.6.9. MTN;
  - 1.6.10. Telkom;
  - 1.6.11. The Institute for Technology and Network Economics (ITNE); and
  - 1.6.12. Vodacom.

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<sup>2</sup> Government Gazette No 46978

<sup>3</sup> <https://www.icasa.org.za/legislation-and-regulations/regulations-underway/end-user-and-subscriber-service-charter-amendment-regulations>

- 1.7. All interested parties who submitted written responses to the draft EUSSC Regulations participated in the public hearings, except John Alexandre and John Brodrick<sup>4</sup>.
- 1.8. After the public hearings the Authority received supplementary written representations from the following stakeholders: -
- 1.8.1. CAP;
  - 1.8.2. Cell C;
  - 1.8.3. ISPA;
  - 1.8.4. ITNE
  - 1.8.5. MTN;
  - 1.8.6. Telkom; and
  - 1.8.7. Vodacom.

## **2. Legislative framework**

- 2.1. The amendment of the End-User and Subscriber Service Charter Regulations of 2016 was initiated in terms of section 4 read with section 69 (3) of the Electronic Communications Act, 2005 (Act No 36 of 2005) ("ECA").
- 2.2. Section 4(1) of the ECA stipulates as follows:
- "The Authority may make regulations with regard to any matter which in terms of this Act or the related legislation must or may be prescribed, governed or determined by regulation."* (our emphasis)
- 2.3. Section 69 (3) of the ECA stipulates as follows:

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<sup>4</sup> Both John Alexandre and John Brodrick confirmed via email their unavailability to participate in the public hearings.

*"The Authority must, as soon as reasonably possible after the coming into force of this Act, prescribe regulations setting out the minimum standards for end-user and subscriber service charters."*

2.4. Furthermore, section 69 (5) of the ECA stipulates that:

*"The matters which an end-user and subscriber service charter may address include, but are not limited to—*

- (a) the provision of information to end-users and subscribers regarding services, rates, and performance procedures;*
- (b) provisioning and fault repair services;*
- (c) the protection of private end-user and subscriber information;*
- (d) end-user and subscriber charging, billing, collection and credit practices;*
- (e) complaint procedures and the remedies that are available to address the matters at issue; and*
- (f) any other matter of concern to end-users and subscribers."*

### **3. Submissions received on the draft EUSC Regulations and the Authority's response**

#### **3.1. General comments**

##### **3.1.1. Submissions received:**

3.1.1.1. Vodacom supports the objectives of Government and ICASA to ensure that mobile services, and mobile data services, are accessible and affordable to as many South African consumers and businesses as possible.<sup>5</sup>

3.1.1.2. Vodacom is committed in investing significant amounts to expand and deepen its network in the next three years. However, Vodacom

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<sup>5</sup> Vodacom submission Para 2 Page 2



petitions ICASA's Draft Regulations to provide regulatory stability that would encourage investment in its network, and to avoid the negative impact on the usage of mobile services.<sup>6</sup>

- 3.1.1.3. Vodacom raises concerns that ICASA's proposals related to the minimum required validity period for all data, voice and SMS services, together with its proposed data transfer rules will reduce, substantially, the ability of all and any mobile operator to serve effectively.<sup>7</sup>
- 3.1.1.4. Cell C recommends that all the proposed amendments contained in the Regulations must be 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.<sup>8</sup> Cell C's view is that the ECA does not confer powers to make regulations which prescribe minimum validity period of promotional or tariffs, product and services in the market.
- 3.1.1.5. Cell C consistently maintains that all subscribers must be provided with electronic communication services that are of a decent quality, affordable and available.<sup>9</sup>
- 3.1.1.6. Cell C believes that the Regulations ought to be written in a simplified language such that subscribers can understand their options for legal action in the event that licensees provide poor services.<sup>10</sup>

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<sup>6</sup> Vodacom submission Para 3 Page 2

<sup>7</sup> Vodacom submission Para 2 Page 4

<sup>8</sup> Cell C submission sec 1.2

<sup>9</sup> Cell C submission sec 1.3

<sup>10</sup> Cell C submission sec 1.4

- 3.1.1.7. The Free Market Foundation (FMF) advocates that regulation is not necessary, and that the market should be left free to compete, as the users have the power to decide where to put their money.<sup>11</sup>
- 3.1.1.8. MTN expresses a view that the Draft Regulations are overly prescriptive, and therefore infringe on the mobile network operators' (Licensees') commercial practices.
- 3.1.1.9. Telkom raises concerns that certain proposed amendments are impractical, and will substantially increase the regulatory burden on Telkom, which may result in an unintended increase in the cost of communications to consumers, contrary to the object of the Regulations.<sup>12</sup>
- 3.1.1.10. ISPA's central difficulty is the one-size-fits-all nature of the EUSSC Regulations, a feature entrenched throughout the Draft Regulations.<sup>13</sup>

3.1.2. The Authority's position:

- 3.1.2.1. The Authority commends the Operators for supporting the regulations and is of the view that the regulations are essential to address the limitations in the current regulations, e.g., quality of service parameters which lack data service parameters and are not enforceable with compliance and customer care standards.
- 3.1.2.2. These regulations will also aim to close the gap in matters relating to the customer's loss of value as a result of the expiry rules by prescribing expiry period for voice and data bundles. The current data, voice and SMS validity regime does not adequately address

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<sup>11</sup> Free Market Foundation submission

<sup>12</sup> Telkom submission Para 2 Page 2

<sup>13</sup> ISPA Submission Para 2 page 1

the high cost to communicate that government is attempting to reduce.

- 3.1.2.3. Furthermore, the regulations aim to prescribe Quality of Service parameters aligned to the various electronic communication technologies.
- 3.1.2.4. The Authority intends to undertake further consultations to address the strong views raised by stakeholders regarding the proposed amendments to regulation 8A and 8B of the Draft EUSSC Regulations. Generally, Licensees are opposed to the proposed 6 months' expiry period, stating this will lead to less consumer choice, higher prices, and will impede competition.

## 3.2. Legal framework

### 3.2.1. Submissions received:

- 3.2.1.1. Vodacom submits that imposing a 6-month minimum validity period for all voice, SMS and data services, and the proposed unbounded transfer rules are "ultra vires". They expressed a view that the proposed amendments do not constitute minimum standards for a 'service charter' (as defined). They also do not set thresholds to measure performance or service outcomes on matters such as those in s69(5), but rather restrict the electronic communications services that may be offered.<sup>14</sup>
- 3.2.1.2. Cell C also contends that the Authority should have carried out a regulatory impact assessment (RIA) prior to the proposed amendments. They state that the Authority is the statutorily created regulator for the electronic communications sector. It only

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<sup>14</sup> Vodacom submission Para 4 Page 35

has powers set out in the sector laws, the ICASA Act, 2000 ("ICASA Act") and the ECA.

- 3.2.1.3. Cell C believes that the ECA does not confer powers to ICASA to make regulations which prescribe minimum validity period of promotional or tariffs, product and services in the market, basing this on section 2 (y) of the Electronic Communications Act 2005, which 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".<sup>15</sup>
- 3.2.1.4. MTN submits that, although section 69 of the ECA empowers the Authority to prescribe minimum standards for end-user and subscriber service charters, the Authority does not have the power to interfere with the contractual relationship between Licensees and their end-users and to prescribe the products that a Licensee should provide.<sup>16</sup>
- 3.2.1.5. MTN submits that the proposed act by the Authority also falls foul of the object set out in section 2(z) of the ECA, in that it amounts to an undue interference in the commercial activities of Licensees. MTN states that the Authority seeks to dictate to Licensees the commercial terms that must be applied by the Licensees in making products and/or services available to end-users.<sup>17</sup>
- 3.2.1.6. MTN submits that enforcing a 6-month validity period on all products will negatively impact differentiation, stifle innovation and harm competition, in particular for smaller operators who are

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<sup>15</sup> Cell C submission sec 3.1.10

<sup>16</sup> MTN submission Para 4 Page 11

<sup>17</sup> MTN submission Para 2 Page 12

currently able to differentiate their service offerings from larger competitors.<sup>18</sup>

- 3.2.1.7. ITNE suggests that the Authority's proposed new regulation 4.1 prevents operators from offering bundles that are valid for short periods e.g., one hour bundles. ITNE urges the Authority to drop the expiry rule stipulated in 4.2 as it will harm the consumer<sup>19</sup>.

3.2.2. The Authority's position:

- 3.2.2.1. Section 69 (3) confers the Authority with the powers to develop minimum standards on any matter of concern to end-users and subscribers. Furthermore, section 69 (4) and (5)(d) & (f) of the ECA empowers the Authority to develop different minimum standards for, and end-user and subscriber service charters for different types of services, including, but not limited to, end-user and subscriber charging, billing, collection and credit practices, as well as any other matter of concern to end-users and subscribers.
- 3.2.2.2. In interpreting the provisions of section 69 (4) and (5) of the ECA, it is the Authority's view that the matters that end-user and subscriber service charter regulations may address are not exhaustive and may include any matters that are of concern to end users.<sup>20</sup>
- 3.2.2.3. In fact, the Authority has already made regulations that prescribe the minimum standards regarding the validity period for unused data in terms of the regulation 8B (3) of the End-User and

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<sup>18</sup> MTN submission Para 1 Page 10

<sup>19</sup> ITNE Submission Para 10 page 2

<sup>20</sup> Paragraph 12 of the Legal Opinion on Submissions to the Proposed Amendments to the End-User and Subscriber Service Charter Regulations, Dated 31 March 2022.

Subscriber Service Charter Amendment Regulations, 2018. This accordingly means that the Authority has already exercised its powers to issue regulations in this regard in consultation with stakeholders.

- 3.2.2.4. RIA, although recommended for all government departments and agencies in their performance of statutory powers<sup>21</sup>, is not a mandatory legislative process, and was therefore not carried out by the Authority. The Authority is of the view that there is enough evidence that the current data, voice and SMS regime still does not address the unfair market condition borne from the data expiry rules set by Licensees.

### **3.3. Amendment of Regulation 8 (A)**

#### **3.3.1. Submissions received:**

- 3.3.1.1. Vodacom queried the Authority's mandate in prescribing the type of the products and services that may be offered by a licensee by setting "minimum standards" despite it being an essential empowerment provision conferred by section 69 of the ECA.<sup>22</sup>
- 3.3.1.2. Vodacom supports a differentiated set of services, with a variety of prices and other characteristics, which in their view is the likely outcome of well-functioning competition in the market for mobile services.<sup>23</sup>
- 3.3.1.3. Cell C submits that the cost of carrying the data, voice and SMS over six months will be high, and Cell C will incur higher costs to

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<sup>21</sup> Regulatory\_impact\_assessment\_brochure\_2019.

<sup>22</sup> Vodacom submission Para 2 Page 6

<sup>23</sup> Frontier report sec 3.3

service to maintain customers' data, voice and SMS balances for a longer period.<sup>24</sup>

3.3.1.4. ISPA supports the extension of the roll-over period for unused voice, SMS and data bundles to a period of six months.<sup>25</sup>

3.3.1.5. Telkom submits that the 6-month validity period in respect of unused voice, SMS and data will result in Telkom not being in a position to provide consumers with the option of various bundled offerings. It will also negatively affect its ability to offer lower prices to customers that can only afford or require bundles for shorter validity periods.<sup>26</sup>

3.3.1.6. Telkom was requested to expand on its proposal to add a 6-month expiry option to address consumer concerns over the loss of unused data / minutes / SMSs that have been purchased.

3.3.1.7. Telkom indicated that it has a suite of offerings that also include offerings with a 6-month validity. Telkom believes that the decisions around validity and roll-over periods should be left to licensees who should communicate the options available to their customers clearly and transparently. They cannot be dictated by the Authority, as that will only result in less customer choice and undue interference with the commercial activities of licensees - which will only ultimately increase the cost of communications."<sup>27</sup>

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<sup>24</sup> Cell C submission sec 3.1.6

<sup>25</sup> ISPA submission Para 16 page 3

<sup>26</sup> Telkom submission Para 3p page 2

<sup>27</sup> Telkom Supplementary submission

3.3.2. The Authority's decision and reasons:

3.3.2.1. The Authority will defer amendment of regulation 8(A), as it intends to undertake further consultations regarding inputs received from various stakeholders.

3.4. **Amendment of Regulation 8 (B)**

3.4.1. Submissions received

3.4.1.1. Vodacom submits that ICASA's regulations on imposing a minimum validity period of six months on voice, SMS and data allowances, and a stringent requirement facilitating the transfer of data across packages, are significantly intrusive measures which can reasonably be assumed to have a number of negative consequences, i.e. consumers will face less choice and, in some cases, higher prices and this will have a knock-on impact on network costs.<sup>28</sup>

3.4.1.2. Since Vodacom asserts that the draft Regulations are ultra vires, it was requested to provide specific proposals that are within the bounds of the law as to how the draft data expiry rules might be adjusted to deal with consumer concerns and complaints over the loss of unused data / minutes / SMSs that have been purchased, proposals. Vodacom responded by submitting that the Regulations should not contain "data expiry rules" which would prevent licensees from selling shorter validity products.<sup>29</sup>

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<sup>28</sup> Frontier Report Page 24

<sup>29</sup> Vodacom Supplementary submission



- 3.4.1.3. Vodacom indicated that the Authority's proposed regulations on data transfer will have a negative impact on consumers.<sup>30</sup>
- 3.4.1.4. MTN submits that requiring Licensees to adhere to prescribed validity periods (as set out in the Validity Period Requirements) not only amounts to the Authority fixing the terms applicable to the provision of data, voice, and SMS services, but it also impedes (or at best, restricts) competition in the market.<sup>31</sup>
- 3.4.1.5. MTN submits that a minimum expiry period of six months will have a substantial impact on the services experienced by subscribers and increase its financial liability.<sup>32</sup>
- 3.4.1.6. MTN further submits that the Authority's proposal would mean that MTN could no longer offer diverse packages and pricing points, which would have the concomitant effect of end-users losing the ability to choose from a large variety of products and services.<sup>33</sup>
- 3.4.1.7. MTN was requested to provide supplementary specific proposals as to how the draft data expiry rules might be adjusted to address consumer concerns over the loss of unused data/minutes/SMSs that may have been purchased. The primary existing measures that MTN has in place to prevent subscribers from forfeiting unused bundles due to expiration are:
- (a) Data bundle sharing (enhanced in October 2020 to allow sharing with up to 20 people); depletion and consumption rules;
- (b) Roll-over propositions; and

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<sup>30</sup> Vodacom submission Para 2 Page 22

<sup>31</sup> MTN submission Para 4 Page 12

<sup>32</sup> MTN submission Para 41.5 Page 17

<sup>33</sup> MTN submission Para 1 Page 15

(c) Varied portfolio of different products (including long-term data bundles with 3-, 6- and 12-month expiry).<sup>34</sup>

3.4.1.8. MTN submits that unlimited and unrestricted data transfer will open licensees up to arbitrage i.e., allowing subscribers to transfer data an unlimited number of times could open a secondary market, where data can be resold by the subscriber.<sup>35</sup>

3.4.1.9. Telkom indicated that provisions requiring unlimited data transfers will effectively result in the regulation of the market where electronic communications services are resold without the necessary licence/s or oversight.<sup>36</sup>

3.4.1.10. Cell C submits that the regulations will have a negative effect on numbering resources. The numbering resource will be used more negatively.<sup>37</sup>

3.4.1.11. ISPA supports the extension of the roll-over period for unused voice, SMS and data bundles to a period of six months.<sup>38</sup>

3.4.2. The Authority's decision and reasons:

3.4.2.1. The Authority will defer amendment of regulation 8(B), as it intends to undertake further consultations regarding inputs received from various stakeholders.

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<sup>34</sup> MTN Supplementary submission

<sup>35</sup> MTN submission Para 3 Page 24

<sup>36</sup> Telkom submission Para 4 Page 2

<sup>37</sup> Cell C submission sec 3.1.7

<sup>38</sup> ISPA submission Para 16 Page 3

### 3.5. **Amendment of Regulation 8 (C)**

#### 3.5.1. Submissions received:

- 3.5.1.1. Vodacom submits that the requirement for licensees to provide “public health warnings and public safety notifications, State of Disaster / State of Emergency notifications” is ultra vires section 69 (3) read with section 69 (5) of the ECA.<sup>39</sup>
- 3.5.1.2. MTN does not oppose the amendment except for the part where the Authority directs that the Licensee must send out messages to consumers. MTN submits that this is beyond the Authority’s powers. This should be prescribed after consulting with licensees.<sup>40</sup>

#### 3.5.2. The Authority’s decision and reasons

- 3.5.2.1. After consideration of the submission made by various stakeholders, the Authority has decided to proceed with the implementation of the provision of regulation 8C which provides that the Authority may, from time to time, in writing, order or direct Licensees to issue consumer advisories to educate consumers on specific issues such as Cybersecurity, SIM Swap fraud, etc., which may affect consumers and are in the public interest.

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<sup>39</sup> Vodacom submission Para 2 Page 26

<sup>40</sup> MTN submission Para 1 Page 35

### 3.6. **Substitution of Regulation 9**

#### 3.6.1. Submissions received:

- 3.6.1.1. Vodacom supports a number of the objectives / reasons set out by ICASA in its Explanatory Memorandum for the proposed amendment. However, Vodacom sets out that the QoS parameters relating to 4G services are in conflict with existing spectrum obligations and are overly stringent. Vodacom proposes that ICASA's QoS regulations relate to combined 3G and 4G service levels – not setting technology-specific QoS parameters.<sup>41</sup>
- 3.6.1.2. Telkom submits that the new proposed service parameters also fail to take into account that 3G technology is in the process of being phased out and quality of service parameters in relation to 3G voice and data services are therefore impractical.<sup>42</sup>
- 3.6.1.3. Through supplementary questions Telkom was asked to propose to the Authority on how QoS monitoring affecting 3G users should be addressed or conducted, as it indicated that it is phasing out 3G technology and re-farming most of the 2100 MHz spectrum for 4G. Telkom is of the view that network measurements should be technology neutral.<sup>43</sup>
- 3.6.1.4. MTN intends to decommission 3G services within the medium-term and not to decommission 2G in the near future. MTN is currently refarming spectrum away from 3G services towards 4G services and will only consider decommissioning 2G services after this process is complete.<sup>44</sup>

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<sup>41</sup> Vodacom submission Para 3 Page 28

<sup>42</sup> Telkom submission Para 5 Page 2

<sup>43</sup> Telkom Supplementary submission

<sup>44</sup> MTN submission Para 1 Page 39

- 3.6.1.5. MTN submits that the Authority must limit their 'quality of service' obligations to those technologies that operators are actively offering.
- 3.6.1.6. In respect of the proposed Mean Opinion Score (MOS), this measurement parameter is a subjective metric. MTN queries the inclusion of such criteria because all regulations need to be objectively implemented. Moreover, MTN recommends that the Authority set the MOS value to that of less than 4, and that this should be the weighted average over a specified time frame across the overall performance of the network, namely 6 months.<sup>45</sup>
- 3.6.1.7. MTN noted the disparity between the proposed average throughput requirements (i.e., >10Mbps) in the Draft Regulations compared to the throughput obligations laid out in section 12 of the Invitation to Apply published on the 10 December (Government Gazette No 45628), which now form part of MTN's licence obligations under the Radio Frequency Spectrum Licence No: IMT/RF0003/APR/22.
- 3.6.1.8. ISPA is concerned that the proposed parameters appear to assume service provision by a vertically integrated licensee. It is questioning how will the parameters be applied where service provision is split between an ECNS licensee providing connectivity and an ECS licensee providing Internet access and other services?
- 3.6.1.9. Regulation 9(12) stipulates that the service level parameters set out in regulation 9(13) apply to "fixed, fixed wireless and mobile services". It is, however, immediately apparent that the proposed parameters do not all apply or do not apply equally to these three categories of service.<sup>46</sup>

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<sup>45</sup> MTN submission Para 2 Page 39

<sup>46</sup> ISPA submission para 17&18 page 3

3.6.1.10. Cell C recommends that this measurement be based over a period of 6 months, using Performance Management stats or Drive Test in areas with 3G signal levels that is > -95 dBm.<sup>47</sup>

3.6.2. The Authority's decisions and reasons:

3.6.2.1. The Authority accedes to the proposal that QoS regulations must relate to combined 3G and 4G service levels, i.e. not setting technology-specific QoS parameters. Therefore, the QoS parameters have been reframed so as to be technology neutral, in line with the Authority's overall approach to the principle of technology neutrality.

3.6.2.2. The Authority is in agreement to reduce the download throughput to 5 Mbps to align with spectrum licence obligations, in the interests of ensuring alignment with SA Connect policy targets<sup>48</sup>.

3.6.2.3. The Authority is in agreement to reduce the MOS to less than 4. Due to inherent good speech quality of the digital or IP based systems, the Authority accedes to the reduction of the MOS level to less than 4.

3.7. **Substitution of Regulation 10**

3.7.1. Submissions received:

3.7.1.1. MTN submits that the installation of software and hardware into or onto a Licensees' systems is overly intrusive, and may expose Licensees to breaches of network security, confidential information,

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<sup>47</sup> Cell C submission sec 3.7.1  
National Broadband policy 2013

trade secrets and personal information of end-users without any safeguards.

3.7.1.2. MTN does not object to the substitution of regulation 10(1) in the Charter with regulation 10(1) in the Draft Regulations.

3.7.1.3. MTN indicated that Regulation 10(2) is impermissibly vague and ambiguous. The Authority had proposed to measure quality of service by certain methods "and other methods that the Authority finds relevant to audit Licensees on."

3.7.1.4. MTN does not object to the insertion of regulation 10(5) of the Draft Regulations.

3.7.1.5. MTN submits that it is not necessary to require Licensees to provide the Authority with access to Licensees' platforms to collect raw network performance data, where Licensees are already obliged in terms of regulation 10(5) of the Draft Regulations to provide the Authority with raw network performance data. MTN further submits that the installation of software and hardware into or onto a Licensees' systems is overly intrusive, and may expose Licensees to breaches of network security, confidential information, trade secrets and personal information of end-users without any safeguards.

3.7.2. The Authority's decision and reasons:

3.7.2.1. The Authority has revised regulation 10(2) to provide greater clarity regarding QoS monitoring methodologies by removing crowdsourcing and NPMS connected to Licensee networks, and has therefore considered to use the following methods; drive-test, walk-test, probes and analysing raw network performance data provided by the Licensees.

3.7.2.2. Crowdsourcing has been excluded as it still needs to be standardised with stakeholders.

3.7.2.3. The Authority accedes that the installation of software and hardware such as NPMS into Licensees' system is overly intrusive, as it may violate legislation such as RICA<sup>49</sup> and POPIA<sup>50</sup>. Therefore, the NPMS will be used for the purpose of analysing raw network performance data provided by the Licensees, and the format of such raw data will be in compliance with applicable statute laws including but not limited to RICA and POPIA.

### 3.8. **Substitution of regulation 11**

#### 3.8.1. Submissions received:

3.8.1.1. Telkom suggests that the Authority consider referring to SMS notifications, notifications on a licensee's website or notifications per social media as examples, since there are a number of means for reaching consumers. This includes OTT messaging services such as WhatsApp and Telegram, which may prove more effective in reaching certain consumers than the platforms suggested.<sup>51</sup>

3.8.1.2. ISPA submits that the provision must be made for consumers to opt out of notifications, and for licensees to respect this choice.

#### 3.8.2. The Authority's reasons and decision:

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<sup>49</sup> Regulation of Interception of Communications and Provision of Communication Related Information Act 70 of 2002

<sup>50</sup> Protection of Personal Information Act of 2023

<sup>51</sup> Telkom submission Para 23 page 6



- 3.8.2.1. The Authority agrees with Telkom on offering alternative means of informing end users about service or system upgrades that will interrupt services. The Authority accedes that there are several means of reaching consumers, and thus various methods can be used.
- 3.8.2.2. Thus, Regulation 11(1) has been revised accordingly, i.e. Licensees must notify end-users via SMS, and on Social Media platforms, or on its own website about service or system upgrades that will interrupt services.
- 3.8.2.3. The Authority agrees with ISPA that the regulations should allow for the end-user to opt in and out of the notification platform of their choice. This is to avoid unsolicited messages and also being perceived as spam messages. The default must be that end-users are opted in but provided with the option to opt out (or to opt back in again if they have previously opted out).
- 3.8.2.4. The Licensee can limit the extent of details communicated (if they feel that there is a business risk), but users must be informed about the imminent planned service interruptions in advance. The draft regulations do not instruct the licensee to provide detail to an extent where the licensee's network or service might be exploited by external parties.





Printed by and obtainable from the Government Printer, Bosman Street, Private Bag X85, Pretoria, 0001  
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