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Independent Communications Authority of South Africa

Attention: Mr Gumani Malebusha

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WAPA SUBMISSION – DRAFT REVISED END-USER AND SUBSCRIBER SERVICE CHARTER REGULATIONS

INTRODUCTION

1. We refer to the Draft Revised End-user and Subscriber Service Charter Regulations 2012 published as General Notice 30 in Government Gazette 37251 of 22 January 2012 (“the Draft Regulations”) and to the Authority’s invitation to comment thereon, and we set out the WAPA submission below.

GENERAL

General Remarks

2. WAPA currently has 185 members, the majority of whom hold Electronic Communications Network Services (ECNS) Licences and Electronic Communications Services (ECS) Licences. These members will be subject to the Draft Regulations, and they accordingly have a direct interest in the Draft Regulations and have thus been very vocal on the content thereof. WAPA accordingly sets out its comments and concerns on the Draft Regulations herein.
3. WAPA members welcome the revision of the existing End-User and Subscriber Service Charter Regulations¹ (“the Regulations”), as they recognise that there are sections of the Regulations that would benefit from revision.
4. As commented by one WAPA member:

I do welcome this type of regulation, as a consumer and as a provider! I agree with the concerns raised about enforcement and the lack thereof - but I don't believe that should negate the value of such regulation.

¹ Published as General Notice R774 in Government Gazette 32431 of 24 July 2009.

5. However WAPA is not sure if the Draft Regulations serve to address the issues found in the Regulations. WAPA's detailed responses to the Draft Regulations are set out hereunder, but WAPA is concerned that the proposed amendments have not taken note of the problematic sections of the Regulations. There is also a noticeable lack of reasons provided by the Authority for the various proposed changes, which leads to a lack of comprehension as to the necessity for the inclusion of certain requirements in the Draft Regulations.

Reasons for the Draft Regulations

6. As will be noted throughout this submission, there is a fair amount of uncertainty as to the reasoning behind the proposed obligations set out in the Draft Regulations, specifically where these differ from those in the Regulations.
7. WAPA requests that the Authority publish an Explanatory Memorandum or similar document setting out its reasons for making the changes that it has made, and how it arrived at the need for making such changes.
8. WAPA also recommends that the Authority consider entering into direct consultation with industry in the form of a workshop, so that the Authority can enjoy real-time feedback on proposed obligations and enter into discussions on what might be more suitable, before finalising these Draft Regulations.

Scope of the Draft Regulations

9. WAPA has concerns about whether the Authority has not considered the scope of the Draft Regulations with particular reference to the definitions of the terms 'end-user' and 'subscriber' as set out in the Electronic Communications Act². As 'end-user' is understood to incorporate 'subscribers' (ie consumers) as well as those in the service provision value chain who obtain wholesale services from other licensees, it will then mean that the quality of service parameters set out in the Draft Regulations will apply both between licensees and consumer and between licensees in a wholesale relationship.
10. WAPA requests that the final text of the regulations specifically refer to the category of relationships being referred to in the quality of service and other obligations, for the avoidance of all doubt.

Regulatory Burden & Utility of Reporting

11. WAPA members have raised queries as to how the Authority currently analyses reports submitted in terms of the Regulations and whether the Authority has considered the effectiveness of the current reporting obligations when considering consumer protection.

² No. 36 of 2005.



12. WAPA members have indicated that they are not certain if the Authority considers the reports currently submitted, as receipt is not acknowledged and they are unaware of a publicly-available document to assist consumers in the exercise of their rights to choose a provider and complain. WAPA members have also queried whether there have been any successful complaints lodged against a licensee in terms of the Regulations.
13. WAPA requests that the Authority make specific reference to its own obligations in respect of analysing and collating the various reports submitted and utilising these for their intended purpose. The Authority should specifically consider:
 - 13.1. What the Authority hopes to achieve with the data received;
 - 13.2. How the Authority intends validating the data received;
 - 13.3. The cost to licensees of producing the data; and
 - 13.4. The frustration to end-users who have to be inconvenienced with inflexible systems necessitated by the reporting requirements.
14. These queries and requests arise from the fact that WAPA members view compliance with regulations of this nature as extremely burdensome, and they have also highlighted the fact that compliance herewith presents a real and significant challenge to licensees. Smaller licensees in particular face challenges in this regard given their capacity and financial constraints.
15. One WAPA member summed up the general concern in this regard:

The Government has stated that it wishes to encourage the roll out of affordable broadband to the greater population.

The proposed regulations violate the guiding principles in the following manner:

- More reporting requirements will further burden the already-burdened SMME licensees. We are drowning under paperwork, and there will be a point at which it will simply not be worth the effort anymore.
- SMME's have flat cost and management structures, thus additional reporting requirements may be ignored or not met accurately, placing the SMME in an illegal position, the penalties of which will cause financial ruin, and criminal procedure – not really a landscape conducive to creation of new businesses.
- If the smaller licensees battle to survive, they will be swallowed up and replaced by larger corporations, which will simply factor the cost of legislation compliance into the final cost of broadband, which will drive the cost to customer up, thus violating the need for affordable broadband.

The WIFI industry is about as flat and competitive as any. A WISP providing poor or expensive service will simply cease to exist. There are no laws stronger than the law of supply and demand. Complex reporting will only serve to make the industry less competitive and therefore less efficient.



16. WAPA is also concerned by the one-size-fits-all approach seemingly adopted in the Draft Regulations, which does not seek to address the fact that practical reality that licensees differ in size, service provision and capabilities. A WAPA member has noted that:

It would make sense that certain parts of the Draft Regulations should only be applied to licence-holders who exceed certain thresholds such as

- a. Number of customers;
- b. Nature of services (eg excluding last mile carriers)

The extra administration load, and the implementation of formal monitoring capabilities, would cripple the smaller licence holders who are trying to grow with limited resources.

Scope of Reporting Obligation

17. WAPA members have repeatedly conveyed their confusion as to the scope of the reports to be compiled by a licensee. It is uncertain how to accurately report where licensees are depending on an upstream provider or where connecting its network to that of another licensee. There is also uncertainty as to whether there will be a duplication of reporting by multiple licensees.
18. Specific concerns that have been raised by WAPA members include whether they are required to report on service availability where it is largely a function of the upstream provider's network availability, and how licensees should approach faults and fault reports where same are received due to the retail nature of the licensee but where the fault is on a related/upstream network rather than the licensee's network.
19. A sampling of some of the comments received from WAPA members in this regard:

Many ECNS licence holders rely on other ECNS holders to provide them with services. So a dropped call at my client is actually not an error on my network, but with an upstream licence holder, but still on the upflow side of the value chain. Where does my responsibility begin and end? This is applicable with voice and Internet access. The regulations have to cater for the demarcation of responsibility, up and down stream. Should my upstream provider report again all the errors I reported on already?

I believe that this regulation is flawed when it comes to ECNS holders using other ECNS holders' services. In these cases the downstream providers can only report on the performance of their own networks and services - surely all services flowing from upstream providers should not be re-reported on by downstream licence holders! Currently we are going to do a lot of double reporting which will certainly not paint the correct picture. Surely I should only declare my relation to the upstream providers, and exclude all such service reporting from my submissions?

My main concern is the MASSIVE amount of double reporting that is taking place. Many/most ECS & ECNS licensees obtain their services from other ECS / ECNS license holders. So whatever I report on is also reported on by someone else, unless I obtain my services directly as a "first level" ECS / ECNS licensee. I believe the model for ECS / ECNS reporting should change. Shouldn't my obligation be to report on the status and performance of my network as an ECNS licensee - to the point where I handover to the upstream provider?



Voice Service

20. WAPA notes that the Authority does not specify any parameters for VoIP providers, instead only referencing “Mobile Services” throughout the Draft Regulations. WAPA notes that this is rooted in the original mobile network licences, which explains the focus on mobile networks. However, WAPA is of the view that mobile and VoIP services all fall to be considered as Voice services.
21. Despite WAPA’s views, the Draft Regulations only refer to Mobile Services, and as such WAPA will not comment on the sections relating to Mobile Services as it does not count any mobile network operators among its members. WAPA reserves the right to comment on these provisions if the Authority subsequently decides to make them applicable to all voice service providers.

COMMENTS ON REGULATORY PROVISIONS

Definitions

22. WAPA notes that the definition of ‘Fault’ merely references the failure of a network which results in disruptions or degradation of services, which also has an impact on related definitions.
 - 22.1. WAPA wishes to highlight that many licensees are also reliant on upstream providers’ networks, and have no control over such networks or failures on such networks.
 - 22.2. Accordingly, WAPA submits that the following amendment to the proposed definition:
“Fault” means the failure of the licensee’s [a] network which results in disruptions or degradation of services.
23. WAPA notes that the definition of ‘Fixed Wireline Service’ is vague and not adequate to define what is included in this category. WAPA requests that the Authority reconsider this definition and revise it to be clear. The inclusion of examples of the types of services that will be considered to fall under this definition would also be helpful.
24. WAPA wishes to point out that the definitions of ‘Installation’ and ‘Service Installation’ are substantially similar, and considers the latter to be redundant and suggests that it be deleted. The latter term is only used once in the Draft Regulations, in Schedule 2.
25. WAPA also notes that the Authority is conflating ‘Installation’ with ‘Service Activation’. Installation is meant to reference setting up the network portion, not the service. Accordingly, it is submitted that the Authority revise the definition of ‘Installation’, and instead use the definition of ‘Installation’ in the Regulations, wherein it is defined as:
“Installation” means making available the network infrastructure on the customer interface side.



Availability of ECNS (4.1)

26. The Draft Regulations indicate that there is a target of 99% for the availability of ECNS, and that the reporting period is quarterly.
27. However, the Draft Regulations do not include this in the Compliance Report contained in Schedule 2, nor do the Draft Regulations set out how this is to be measured (whether 99% averaged over the 3 months, or 99% per month).
28. WAPA submits that it will prove problematic for its members to satisfy this requirement, as WAPA counts among its members several licensees who rely on licence-exempt spectrum in order to provide their services because licensed spectrum suitable for the provision of access services is not available to such licensees.

Availability of ECS (4.2)

29. The Draft Regulations indicate that there is a target of 95% for the availability of ECS, and that the reporting period is quarterly.
30. However, the Draft Regulations do not include this in the Compliance Report contained in Schedule 2, nor do the Draft Regulations set out how this is to be measured (whether 95% averaged over the 3 months, or 95% per month).

Average Time to Install and Activate Services (4.3)

31. WAPA notes that the measurement parameter lists Activation, and assumes that the Authority means this to be a reference to Service Activation as defined in the Draft Regulations.
32. The target for the measurement parameter for Installation of Fixed Wireless/Wireline Services is listed as 95% within 20 days in the Draft Regulations. The Regulations specify that licensees must attain a 90% success rate within 30 days, with the remaining 10% being met within 40 days of request. There is thus an increase in the requirement for Installation and a lessening of the time period within which the requirement is to be met, and WAPA would like to query on the basis on which this has been done, and on what networks has the Authority based such change – there has been a lack of information to indicate why this change has been made. While a fair number of WAPA members can meet this requirement, it is submitted that the type of network may have an impact on the average time for installation, and that the Authority should consider the different types of installations and determine the installation periods based on that.

33. The Compliance Report contained in Schedule 2 only requires reporting on Installation by Fixed Wireline Services, with the overall target listed as 98%, separated into 79% within 24 hours and 19% within 5 working days. There is thus a discrepancy between the requirement in the Draft Regulations and the reporting obligation in the Compliance Report in Schedule 2 thereto. WAPA recommends that the Authority align the reporting obligations with the requirement.
34. The target for the measurement parameter for Activation of Fixed Wireless/Wireline Services is listed as 95% within 5 days in the Draft Regulations. The Regulations specify that licensees must attain a 90% success rate within 7 days, with the remaining 10% being met within 15 days. WAPA would like to query why the time period for service has been shortened, and on what basis the Authority has made this change.
35. The Compliance Report contained in Schedule 2 only requires reporting on Service Activation by Fixed Wireline Services, with the overall target listed as 99%, separated into 95% within 5 days and 4% within 8 days. There is thus a discrepancy between the requirement in the Draft Regulations and the reporting obligation in the Compliance Report in Schedule 2 thereto. WAPA recommends that the Authority align the reporting obligations with the requirement.

Average Time to Clear Faults (4.4)

36. The target for the measurement parameter for clearing faults of Fixed Wireless/Wireline Services is listed as 90% within 3 days in the Draft Regulations. The Compliance Report contained in Schedule 2 only requires reporting on the Fault clearance rate by Fixed Wireless Services, with the overall target listed as 90%, separated into 80% within 24 hours and 10% within 5 working days. There is thus a discrepancy between the requirement in the Draft Regulations and the reporting obligation in the Compliance Report in Schedule 2 thereto. WAPA recommends that the Authority align the reporting obligations with the requirement set out in the Draft Regulations.

Connectivity Failure Rate (4.5)

37. For Internet session login success ratio, the Draft Regulations require that dial-up users must be able to connect at least 95% of the time. The Compliance Report in Schedule 2 indicates that dial-up users must be able to connect at least 90% of the time. In addition to the discrepancy noted, WAPA would also like to query whether this is only meant to apply to those providers offering dial-up access, and as such can be ignored by providers utilising broadband.
38. WAPA submits that 'delay ratio' is redundant as it bears the same meaning as 'latency', and as such WAPA recommends that 'delay ratio' should be deleted.
39. The draft Regulations provide no indication of the distance over which the calculation of latency is to be conducted. WAPA submits that final regulations should clearly indicate that calculations are required for a national destination or specify an international region to which the measurement applies.

40. WAPA is uncertain what the reporting obligation is in this regard, and the Compliance Report does not set out any clarity in this regard. WAPA requests that the Authority provide clarity on the requirement and the reporting obligation in this regard.

Operator Assisted Call Response Time (4.6)

41. WAPA notes that the Call Centre Answer Success Ratio and Operator Assisted Response Time are to be reported on a quarterly basis in the Draft Regulations, but that the Compliance Report in Schedule 2 specifies that the information is to be averaged over a period of 6 months. WAPA requests that the Authority align the reporting obligation with the requirement in the Draft Regulation.
42. WAPA notes that the Draft Regulations do not indicate what is considered to be an operator assisted call response. The Draft Regulations do indicate that it should be non-automated, but WAPA requests further clarity in this regard.
43. WAPA also requests clarity on the methodology set out in Schedule 1 for Call Centre Answer Success Ratio and the Operator Assisted Calls Response Time.

Billing (7.2)

44. The Draft Regulations require that licensees must provide subscribers with itemised billing statements showing *inter alia* websites visited.
45. WAPA would like to point out that there is no current obligation on licensees to monitor websites visited unless requested to do so by relevant law enforcement authorities. In fact, section 78 of the Electronic Communications and Transactions Act³ specifies that there is no general obligation on service providers to monitor the data which it transmits or stores.
46. This section also serves to provide confidentiality to end-users, who would likely and rightly object to their Internet traffic being monitored.
47. In addition, the requirement which the Authority seeks to impose will constitute a criminal offence under the Regulation of Interception of Communications and Provision of Communication-related Information Act 70 of 2002 (“RICA”) unless it is done with the express consent of the consumer – WAPA questions whether the Authority intends licensees to seek such consent, and what licensees should do where such consent is refused.
48. For the aforementioned reasons, WAPA urges the Authority to re-consider this requirement.

³ No. 25 of 2002.



49. The Draft Regulations specify that 90% of billing complaints must be resolved within 14 calendar days, with the reporting period being quarterly. The Regulations state that complaints are to be resolved within 14 days. WAPA would like to query why the time period for the resolution of complaints has been shortened, and on what basis the Authority has made this change.
50. The Compliance Report contained in Schedule 2 indicates reporting on 90% of billing complaints to be resolved within 4 working days, which WAPA assumes is a typo, and indicates the reporting period as an average over a period of 6 months. There is thus a discrepancy between the requirement in the Draft Regulations and the reporting obligation in the Compliance Report in Schedule 2 thereto. WAPA recommends that the Authority align the reporting obligations with the requirement.

Complaints

51. WAPA appreciates the revision of the complaints procedure in the Draft Regulations, and the levels of dealing with complaints once escalated. WAPA wishes to point out that it does have a process for consumer complaints against its members to be filed with WAPA, for resolution by WAPA. Other industry bodies such as ISPA have similar consumer complaints procedures in place. As such, WAPA recommends that the Authority consider providing to escalation to such industry bodies before the complaints are escalated to the Authority.
52. The introduction of the requirement that licensees must display their complaints handling procedures on their websites, invoices and display boards at service outlets seems excessive. It seems that the Authority might have intended this to apply primarily to mobile network operators, but extending the requirement to all licensees is not feasible, and it is uncertain if the Authority intended it to be applicable to all licensees. The Code of Conduct Regulations⁴ just require that the complaints handling procedure be displayed prominently for customers to note. This has been interpreted as publishing the complaints handling procedure on licensees' website and having a copy of same available at their premises, and bringing the customers' attention to it when signing up.
53. As also noted above, the Draft Regulations require that complaints be resolved within 14 calendar days, and any complaints referred to licensees are also to be resolved within 14 days. The Regulations state that complaints are to be resolved within 14 days. WAPA would like to query why these time periods for the resolution of complaints has been shortened, and on what basis the Authority has made these changes.

⁴ Regulations in respect of the Code of Conduct for Electronic Communications and Electronic Communications Network Services Licensees published as General Notice 1740 in Government Gazette 30553 of 7 December 2007.

54. WAPA notes that Compliance Report contained in Schedule 2 to the Draft Regulations indicate that licensees should report the complaints resolution time, with the target being 21 working days, and the reporting period is indicated as an average over a period of 6 months. WAPA notes that this does not align with the requirement in the Draft Regulations.
55. In the event of a complaint escalated to the Authority, the Draft Regulations specify that the licensee is to provide proof of the complainant's agreement with the resolution complaint forwarded to the licensee. As the complaint had been escalated to the Authority, it would seem logical that the Authority pursue confirmation of the complainant's satisfaction with the resolution of the complaint.

Remedies applicable to the Authority to address End-User and Subscriber Complaints

56. While WAPA applauds the intentions behind the proposed mediation process for the resolution of unresolved complaints in the Draft Regulations, WAPA severe reservations about the feasibility of the proposed mediation process and fears that it is doomed to fail.
57. The Draft Regulations specify that the mediation process in the event of an unresolved complaint will be conducted in all 9 provinces, and will be chaired by an ICASA Councillor. As the Councillors are all based at the ICASA head office in Johannesburg and are understandably busy satisfying their mandates, it is uncertain whether they will be in a position to facilitate this process.
58. WAPA also has concerns about who will fund the trips to the different provinces, where service provider representative may not be in the same province as the complainant.
59. It is unfortunate that the Authority has not considered holding the mediation process electronically (via video conferencing facilities on a platform like Skype) or telephonically. This would make the most sense for all parties concerned, and would ensure that the mediation process could run successfully.

Reporting on Escalated Complaints

60. The Draft Regulations require that a monthly report of complaints forwarded to licensees by the Authority be prepared and submitted by licensees, which report is to be in the format prescribed by the Authority from time to time. This report is to refer to the number of complaints received, closed and pending, and the time taken to address such complaints.
61. As the Authority will be directly involved in the receipt and resolution of these escalated complaints, it is uncertain why there is also a requirement to provide a monthly report on such escalated complaints.
62. It is also uncertain why monthly reports are required in this instance, when the Compliance Report in Schedule 2 is meant to be submitted on a quarterly basis.



63. It is also uncertain whether the Authority requires all licensees to compile and submit this monthly report, regardless of whether or not it has received any escalated complaints from the Authority, or whether this reporting requirement is limited to those licensees who have received escalated complaints in a specific month.
64. WAPA submits that this reporting obligation places an unnecessary regulatory burden on licensees, and submit that it should be deleted.

Rebates

65. WAPA is strongly opposed to the notion that the Authority stipulate rebates in the Draft Regulations.
66. WAPA appreciates the Authority intention of providing consumer relief, but submits that:
 - 66.1. It is not practically possible to implement the proposed rebate system;
 - 66.2. The obligations set out in the Draft Regulations are too vague, nebulous and inappropriate in their application to certain service forms to allow for accurate reporting and therefore to allow for the application of a rebate system;
 - 66.3. It is feasible that it will be uncertain as to which party is responsible for payment of the rebate, particularly where an electronic communications service licensee has a retail relationship with a consumer in respect of a service, the provision of which is directly reliant on the provision of upstream connectivity services by an electronic communications network services licensee. The practical difficulties involved in a retail consumer seeking the rebate from its service provider which must then in turn seek the rebate from the upstream licensee are massive. The Authority has direct experience of the difficulties presented by such arrangements through its attempts to introduce e-Rate Regulations which allow the downstream licensee to require that an upstream licensee pass through the 50% discount to be made available to a qualifying school;
 - 66.4. The proposed rebates constitute an unwarranted and unlawful interference in the commercial relationships established between licensees and between licensees and consumers of their services on a retail basis.

Service Upgrades

- 66.5. WAPA notes that the Authority has not catered for planned and unplanned maintenance in this section, and recommends that the Authority insert same.

Reporting and Publication

- 66.6. WAPA notes the requirement to publish a list of non-cleared faults on licensees' websites, print and broadcast media. WAPA would like to request clarity as to the addition of this requirement.



66.7. WAPA is of the view that this places an unnecessary administrative and financial burden on licensees – affected consumers would be aware of the faults and would have direct interaction with the licensees as regards the non-cleared faults.

Contraventions

66.8. It should be clear after reading through this submission that it is not possible in all instances, and with reference to the different forms of electronic communications network services and electronic communications services currently available, to achieve the targets as set out in the service parameters in the Draft Regulations or to publish accurate information to the Authority about licensees' quality of service.

Repeal of Regulations

67. WAPA notes the intention to repeal the Regulations.

68. WAPA submits that the Authority should also seek to repeal or amend the Compliance Manual Regulations insofar as is applicable and the Minimum Standards for End-user and Subscriber Service Charter Reporting Format.

69. WAPA submits that the final regulations should specifically reference sections of other regulations which it intends to replace, as also detailed in these submissions.

Schedule 1

70. WAPA notes the recordal that the Authority may review measurements methods as and when necessary, and hopes that such review will be subject to a consultative process before finalisation.

Schedule 2

71. WAPA notes that there are some references to 'working days' in the Compliance Report, with other references to 'days'. WAPA assumes that the Authority means the latter to be a reference to calendar days. WAPA requests that the Authority be explicit if that is the case, by referring to 'working days' where relevant and to 'calendar days' where relevant. WAPA also requests that this change be carried over into the text of the Draft Regulations, for the avoidance of any uncertainty.



Conclusion

72. WAPA trusts that the above submissions will be of assistance to the Authority in its efforts to understand the implications of its proposed revision of the Regulations, and will gladly provide any further assistance which may be asked of it.

73. WAPA confirms its desire to participate in any oral hearings or other events scheduled in respect of the Draft Regulations.

Regards,

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WAPA Regulatory Advisor