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**GOVERNMENT NOTICES • GOEWERMENTSKENNISGEWINGS**

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**INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA**

NO. 1959

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**EXPLANATORY MEMORANDUM ON THE DRAFT END-USER AND SUBSCRIBER SERVICE CHARTER AMENDMENT REGULATIONS, 2022****1. INTRODUCTION**

- 1.1. This Explanatory Memorandum is intended to provide clarity on the reasons for the proposed amendments to the End-user and Subscriber Service Charter Regulations, 2016 ("Regulations").
- 1.2. The proposed amendments aim to strengthen the provision of quality of service for electronic communication services, and to add new regulations on voice, SMS and data services.
- 1.3. The proposed amendments were necessitated by 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 the customer care standards in the changing environment.
- 1.4. The proposed amendments were also necessitated by general concerns raised by various stakeholders, including consumer groups and social media campaigns, with regards to data expiry rules, high out-of-bundle rates and rules, and out-of-bundle voice and Short Messaging Service ("SMS") rules currently applied by licensees.

**2. THE PROCESS**

- 2.1. Following the above-mentioned complaints and concerns, the Authority

resolved to establish a Council Committee to review the Regulations.

- 2.2. During the process of reviewing the Draft Regulations, the Authority conducted research on Quality of Service parameters, including a desktop international benchmarking exercise (Appendix A: International QoS Parameters Benchmark) which contributed to the formulation of the Draft Regulations.

### **3. PROPOSED DRAFT END-USER AND SUBSCRIBER CHARTER AMENDMENT REGULATIONS, 2022**

#### **Regulation 1: Amendment of regulation 1 of the 2016 Regulations**

The Authority intends to insert 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 a number of new quality of service parameters. This is intended to aid stakeholders in understanding and applying the End-User Regulations, 2016, as amended. Further, the definitions have been aligned with the standards adopted by the European Telecommunications Standards Institute<sup>1</sup>.

#### **4. Regulation 8A: Amendment of regulation 8A of the 2018 Regulations**

##### **4.1.1. Regulatory gap**

- 4.1.1.1. When regulation 8A was promulgated in 2018, it was intended to empower end-users to monitor usage and to limit spend, as well as to avoid or minimise bill shock as a result of out-of-bundle charges. It further sought to provide post-paid users with an option to buy additional voice or SMS services, and to protect post-paid / hybrid users against the practice of defaulting them to out-of-bundle charges upon depletion of their monthly allocated bundled services.

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<sup>1</sup> See, inter alia: ETSI 92009) 'ETSI EG 202 057-2 V1.3.1 (2009-02) - ETSI Guide: Speech Processing, Transmission and Quality Aspects (STQ); User related QoS parameter definitions and measurements; Part 2: Voice telephony, Group 3 fax, modem data services and SMS', [https://www.etsi.org/deliver/etsi\\_eg/202000\\_202099/20205702/01.03.01\\_60/eg\\_20205702v010301p.pdf](https://www.etsi.org/deliver/etsi_eg/202000_202099/20205702/01.03.01_60/eg_20205702v010301p.pdf).

- 4.1.1.2. However, the current Regulation 8A is silent on how licensees must implement the possible rolling over of unused voice and SMS services. In the current Regulations the Authority only specified parameters for the rollover of unused data. This created a regulatory gap on how unused voice and SMS services must be rolled over.
- 4.1.1.3. By contrast, Regulation 8B (3) of the current Regulations requires that a licensee shall in the first instance apply data usage against the rolled-over data until that data is fully depleted, and thereafter against the newly-allocated data.
- 4.1.1.4. Such “first in first out” approach is not provided for the possible rollover of unused voice and SMS services. This has allowed licensees to develop their own additional terms and conditions in this regard.
- 4.1.1.5. The Authority has noted that this has led to different ways in which the respective licensees are providing for the rollover of voice and SMS services, including not adopting a “first in first out” approach and depleting new voice and SMS allocations against the older ones.
- 4.1.1.6. This practice prejudices consumers by leaving them vulnerable to losing their old voice and SMS services as licensees deplete newly-allocated voice and SMS instead of older voice and SMS balances still remaining on the allocated bundled services of the end-user.
- 4.1.2. Proposed amendments
- 4.1.2.1. Therefore, the Authority proposes to amend Regulation 8A to remove the issue of rollover in its entirety, and to provide for unused voice and or undepleted SMS services, obtained through either prepaid or post-paid channels, not to expire before a period of 6 months, except for promotional packages.
- 4.1.2.2. The six-month period aligns with the current numbering plan practice, taking into account 90-day minimum period during which a number is deemed to remain active, plus a further 90-day period applied by licensees before recycling the number assigned a SIM card.

- 4.1.2.3 The above provisions will serve to protect consumers from losing unused voice minutes and SMS, without leaving it to licensees to prescribe their own terms and conditions, which may be unfair to consumers.

## **5. Regulation 8B: Amendment of regulation 8B of the 2022 Regulations**

### 5.1.1. Regulatory gap

- 5.1.1.1. When regulation 8B was promulgated in 2018, it was intended to provide for the rollover and transfer of data, in a manner so as to benefit end-users by minimising the risk of premature expiry of data bundles.
- 5.1.1.2. Regulation 8B (3) is silent, however, on how licensees must implement the rollover of unused data, save to prescribe that there exists an "option" to roll over data, and that the rollover must be done before the expiry date.
- 5.1.1.3. The Regulations do not provide for a minimum standard or prescribed guideline on how the rollover of data obligation must be met by licensees. The Regulations only provide a "first in first out" approach on the usage of data after the roll over. Licensees have, therefore, developed their own additional terms and conditions in ensuring compliance with regulation 8B (3) of the Regulations.
- 5.1.1.4. The Authority has noted that this has led to different ways in which licensees are providing for the rollover of data, including requiring a consumer to purchase additional data of any value or of a similar value to the data that the consumer wishes to roll over, or requiring a consumer to purchase what is called a data extender. This results in the consumer being forced to make an additional purchase in order for their data to be rolled over. Some licensees also require that consumers roll over data at given times, such as two days before the data expires.
- 5.1.1.5. Regulation 8B (4) is silent on how licensees must implement the transfer of data, save to prescribe that there exists an "option" to transfer data and that the transfer has to relate to another end-user on the same network. The Regulations do not provide for a minimum standard nor do

they prescribe guidelines on how the transfer of data obligation must be met by licensees. This allows licensees to develop their own additional terms and conditions in ensuring compliance with regulation 8B (4) of the Regulations.

5.1.1.6. The Authority has noted that this has led to different ways in which the respective licensees are providing for the transfer of data, including restricting the transfer of data across products and payment types.

5.1.1.7. Furthermore, the Authority has noted that this has led to restrictions on the transfer of data in instances where the end-user has more than one device, as some licensees do not allow the transfer of data between different devices owned by the same user. The terms and conditions that some licensees have implemented, therefore, have the effect of undermining the purpose for which the Regulations were intended.

5.1.2. Proposed amendments

5.1.2.1. Considering the above, and to remedy the inconsistency, the Authority proposes an amendment to Regulation 8B (3) to remove the issue of rollover and to provide that unused data services, obtained through either prepaid or post-paid channels, shall not expire before a period of 6 months, with the exception of promotional packages.

5.1.2.2. The Authority further intends to provide certainty as to the transfer of data to any SIM card or device, whether owned by the same end-user or not, in order to provide clarity in respect of subscribers with multiple SIM cards, since the current regulations are not clear in this regard.

5.1.2.3. The proposed amendment also seeks to ensure that no restriction is placed on the number of times that end-users are allowed to transfer data, as some licensees currently limit the number of times that consumers are allowed to transfer data.

5.1.2.4. The Authority, therefore, proposes that Regulation 8B (4) be amended by the insertion of a clause that gives clarity and guidance on how the data transfer obligation must be met by the licensees.

5.1.2.5. The six-month period proposed again aligns with the current numbering plan practice, taking into account 90-day minimum period during which a number is deemed to remain active, plus a further 90-day period applied by licensees before recycling the number assigned to that SIM.

## **6. Regulation 8C: Amendment of regulation 8C of the 2018 Regulations**

### 6.1.1. Regulatory gap

6.1.1.1. An increasing number of consumers have fallen prey to the rising incidence of fraudulent SIM-swaps, data breaches, phishing and scams of one kind or another. This, together with the coming into effect of the Protection of Personal Information Act, has exposed the growing need to increase consumer awareness in respect of cybersecurity, protection of their information and related issues.

6.1.1.2. When regulation 8C (1) was promulgated in 2018, it was intended for licensees to conduct awareness campaigns aimed at:

a) Educating end-users on the use of smart phones

b) Educating end-users on how to use data: and

c) Educating end-users on a broad range of products and services offered by licensees.

6.1.1.3. The current provisions of Regulation 8C are, however, silent on the products and services in respect of which licensees need to conduct educational and awareness campaigns.

6.1.1.4. Further, the Covid-19 pandemic and the current State of Disaster have highlighted the need to be able to advise consumers, either nationally or in specific areas, of emergencies and issues of public health and safety.

### 6.1.2. Proposed amendments

6.1.2.1. The Authority proposes that the provisions be amended to extend the range of mandatory educational and awareness campaigns in respect of which licensees may be required to conduct at the request of the Authority, to include awareness campaigns relating to the increase in fraudulent SIM swaps, fraudulent number porting, billing, and other issues which affect consumers and which require increased levels of consumer awareness and end-user vigilance.

6.1.2.2. The Authority further proposes to ensure that it may request that licensees provide specific notifications to end-users based on public emergencies and similar events, or guided by the number of complaints which the Authority has received from consumers. The licensees may be required to give such notifications on a biweekly, monthly or quarterly basis, depending on the nature of the incident.

## **7. Regulation 9 (12): Amendment of regulation 9 (12) of the 2021 Regulations**

7.1. The previous sub-regulation 9 (12) referred to itself instead of referring to sub-regulation 9 (13). The new sub-regulation corrects this.

## **8. Regulation 9 (13): Amendment of regulation 9 (13) of the 2016 Regulations**

8.1. The proposed amendments aim to strengthen the provision of quality of service for electronic communication services through setting out minimum standards to protect and promote the interests of customers. Further, they aim to enable the Authority to monitor and enforce compliance with the minimum standards of service provided.

- 8.2. The Authority proposes to substitute Regulation 9(13) of the Regulations with a new table of revised and updated quality of service parameters and their applicable values, entitled "The applicable measurements parameters". which include: 3G voice services, 3G PS data services, 4G PS data services, parameters applicable Internet and broadband services, as well as end-user test cases.
- 8.3. The inclusion of new parameters is necessitated by changes in the market, and in the technology environment, where Internet access and services are increasingly central to the end-user experience and to consumer satisfaction.
- 8.4. Some legacy parameters have been dropped as they are no longer of key importance to consumers and users. The values of others have been revised in the light of advances in technologies and services.
- 8.5. The aim of each proposed parameter is to:
- 8.5.1. Streamline Parameters/KPIs – The Authority wants to establish a concise list of practical and achievable KPIs that are understandable to consumers to allow for meaningful comparisons of available services. This means discarding some KPIs in favour of a modern, simplified monitoring and enforcement regime.
  - 8.5.2. Align QoS regulations with local market dynamics – The development and selection of KPIs and the level of quality requirements was determined in relation to a specific context, which considers local dependencies.
  - 8.5.3. Establish objective measurements – To measure QoS effectively and objectively, the Authority needs to keep pace with technology, market and business innovations.
  - 8.5.4. Increase collaboration with service providers – The relationship with the operators is important in defining appropriate parameters and in finding the right solutions to measure and improve quality, considering external factors that may be beyond the operators' control.



- 8.5.5. Monitor international best practices – The Authority should keep abreast with these conversations, especially in relation to the impact of new technologies, such as 4G and 5G, AI and IoT, on network usage patterns.
- 8.5.6. The amendment of targets for KPIs enables the Authority to assist Government in achieving its goals set out in the SA Connect policy. To guide the implementation of the policy, the overall goal is to achieve a universal average download speed of 100 Mbps by 2030.
- 8.5.7. To reach this target in a measured manner, reviewable targets have been set, starting with average user experience of 5 Mbps to be reached by 2016 and available to 50% of the population and to 90% by 2020, with the quality of service monitored by ICASA. SA Connect also stipulates minimum average targets that will be supplemented by the Authority by quality of service standards, which may include download and upload speeds and latency.
- 8.6. See 'Appendix A: International QoS Parameters Benchmark' for further details.
- 8.7. The International Desktop Research (Appendix A) indicates that the Authority lags behind international good practice in the requirements of its Voice QoS targets - e.g. the Authority's Call Setup Time (CST) target is less than 20 seconds and Dropped Call Ratio (DCR) is less than 3%. The research shows that majority of regulators have set these targets at less than 10 seconds for CST, and less than or equal to 2% for DCR.
- 8.8. Furthermore, the research shows that the Authority lacks a number of QoS Data parameters and targets, compared to its peers. Hence the Authority will include data parameters, the targets for which will be in line with the policy targets of SA Connect to achieve download throughput of more than 5 Mbps.
- 8.9. The Authority has noticed a trend around the world and in South Africa of mobile operators shutting down their 2G networks in order to free up spectrum for upcoming new technologies.

- 8.10. Accordingly, the Authority has decided to discontinue the measurement of Quality of Service standards for 2G voice services.
- 8.11. The Authority also reviewed its QoS measurements reports for the years 2019, 2020 and 2021 in different provinces. Its analysis of the technologies in use indicates that the overwhelming majority of voice and data services are accessed through 3G and 4G technologies as opposed to 2G technology<sup>2</sup>. Hence the Authority has decided to strengthen its QoS regulations for services provided on 3G and 4G technologies.
- 8.12. The amendment of the QoS parameters is in line with Section 2(c), read with sections 2(n) and 2(m), of the Electronic Communications Act No 36 of 2005, as amended, which provides as follows:
- 2(c) promote the universal provision of electronic communications networks and electronic communications services and connectivity for all;*
- 2(m) ensure the provision of a variety of electronic communications services at reasonable price;*
- 2(n) promote the interests of consumers with regards to price, quality and the variety of electronic communications services.*
- 8.13. The amendment of QoS parameters and targets is also in line with Sections 69 (3) and (4) of the Electronic Communications Act No 36 of 2005 as amended, which provides as follows:
- 69(3) The Authority must, as soon as reasonably possible after the coming into force of this Act, prescribe regulations setting out the minimum standards for and end-user and subscriber service charters.*
- 69(4) The Authority may develop different minimum standards for and end-user and subscriber service charters for different types of services.*

## **9. Regulation 10: Amendment of regulation 10 of the 2016 Regulations**

### **9.1. Regulatory gap**

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<sup>2</sup> See: <https://www.icasa.org.za/pages/quality-of-service-reports>.

- 9.1.1. The Authority could not adequately verify the bi-annually submitted compliance reports through the drive test methodology of monitoring.
- 9.1.2. Previous regulations only provided for Drive-test and Compliance Reports to monitor Quality of Service.
- 9.1.3. As a result, the Authority was unable to enforce compliance with a full range of parameters.

## 9.2. Proposed amendments

- 9.2.1. More methodologies are introduced in QoS monitoring, such as active and passive methodologies, to allow continuous monitoring, such as drive tests, walk tests, crowdsourcing, a Network Performance Monitoring System (NPMS) and the deployment of QoS measurement probes.
- 9.2.2. The proposed regulations also seek to empower the Authority to conduct audits and inspections any time.

## **10. Regulation 11: Amendment of regulation 11 of the 2016 Regulations**

### 10.1. Regulatory gap

- 10.1.1. The regulations only required a licensee to notify end-users of service upgrades, and not of service interruptions.
- 10.1.2. The notifications were only limited to SMSs and publications on the licensee's website.
- 10.1.3. The heading of the sub-regulation only referred to service interruptions due to planned service or system upgrades, and not to service interruptions due to unplanned network outages.

### 10.2. Proposed amendments

- 10.2.1. The proposed new heading now also covers service interruptions due to unplanned network outages.
- 10.2.2. The amendments now include notifications to the end-users when there are service interruptions, such as unplanned network faults, service / network outages and major incidents of vandalism.
- 10.2.3. Other platforms, such as social networks, are proposed to be included as channels of notification.
- 10.2.4. This amendment covering notifications to end-users is in line with section 69(5) of the Electronic Communications Act No 36 of 2005, as amended, which provides as follows:

*69(5) 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.*

**Appendix A:**

Some of the countries reviewed included Ghana, Nigeria, Rwanda, Botswana, USA, Australia, Brazil and Bahrain. The Authority chose these countries because they have similar demographics, socio-economic landscapes and regulatory regimes as South Africa.

URL	Methods	Call Setup Time	Drop Call Rate	Call Setup Success Rate	Speech Quality	Application Throughput	3G Application Throughput	4G Application Throughput	3G HTTP Download Data Throughput	3G HTTP Upload Data Throughput	3G FTP Download Data Throughput	3G FTP Upload Data Throughput	4G FTP Download Data Throughput	4G FTP Upload Data Throughput	Latency	Web Access Time	Web Page Access Success Rate	Web Page Completion Success Rate	Web Page Download Time	Video Streaming Service Access Time	Video Streaming Reproduction Cut-off Ratio	Video Streaming Completion Success Rate	Video Streaming Set-up Success Rate	ZG Rx Lx	3G RSCP	4G Signal Strength RSRP	Video Streaming Service Access Time	
<a href="https://www.itu.int/ITU-T/inf/infocentre/infocentre.aspx">https://www.itu.int/ITU-T/inf/infocentre/infocentre.aspx</a>	NPMS/QSS/  drive test	< 10 seconds	< 2	> 99	> 3.5	> 2Mbps									< 5 seconds	> 99%	> 98%	> 99%	< 5 seconds									
<a href="https://www.itu.int/ITU-T/inf/infocentre/infocentre.aspx">https://www.itu.int/ITU-T/inf/infocentre/infocentre.aspx</a>	OS reports submitted monthly/driver's/Mobile Network Operators must carry out complete Drive Test activity twice a year	5-9 sec	5%	≥ 95%	≥ 3	≥ 2.5 Mbit/s									≤ 300ms for 3G and 500ms for 4G	≥ 99%	≥ 98%	≥ 98%										
<a href="https://www.itu.int/ITU-T/inf/infocentre/infocentre.aspx">https://www.itu.int/ITU-T/inf/infocentre/infocentre.aspx</a>	Relies on Operator reports	< 55sec	≤ 2%	≥ 98%	≥ 3.5	≥ 1Mbps					≥ 2Mbps	≥ 2Mbps			80 millisecond	≤ 5 seconds												
<a href="https://www.itu.int/ITU-T/inf/infocentre/infocentre.aspx">https://www.itu.int/ITU-T/inf/infocentre/infocentre.aspx</a>	Relies on Operator reports		< 2%	≥ 95%		Transmission greater or equal to 80% of the CONTRACTED TRANSMISSION RATE																						
	Crowd Sourcing under the Measuring Broadband America (MBA) policy/FCC Speed Test App																											
<a href="https://www.fcc.gov/consumers/protect-yourself/protect-yourself.aspx">https://www.fcc.gov/consumers/protect-yourself/protect-yourself.aspx</a>	USA: (FCC)																											
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<a href="https://www.fcc.gov/consumers/protect-yourself/protect-yourself.aspx">https://www.fcc.gov/consumers/protect-yourself/protect-yourself.aspx</a>	Singapore (IMDA)																											
<a href="https://www.fcc.gov/consumers/protect-yourself/protect-yourself.aspx">https://www.fcc.gov/consumers/protect-yourself/protect-yourself.aspx</a>	UK (Ofcom)																											

The FCC also provides an annual report into the performance of fixed broadband providers across a number of different technologies. At the present time there are no plans for a mobile broadband performance report, but the FCC recognizes that this data collected with the aid of a volunteer community can have value to the research community and others interested in broadband network performance, and releases it for this purpose.

The ACCC runs a broadband monitoring program that aims to provide consumers with accurate, independent and comparable information about broadband speeds and performance.

The voluntary Codes of Practice on Better Broadband Speeds do not explicitly set out the minimum speed or quality of service, instead focusing on a number of key principles including providing consumers with more realistic speed estimates at the point of sale (including estimates for peak times).