



By email

Attention: Chairperson: End User Subscriber Service Committee

Email: eussc@icasa.org.za

24 April 2024

RAIN'S SUBMISSION ON THE DRAFT END-USER AND SUBSCRIBER SERVICE CHARTER AMENDMENT REGULATIONS, 2024

1. Introduction

1.1. On 29 February 2024, the Independent Communications Authority of South Africa ("ICASA") published a notice setting out its intention to amend the End-User and Subscriber Service Charter Regulations, 2016 ("End-User Regulations") by publishing the Draft End-User and Subscriber Service Charter Amendment Regulations, 2024¹ ("Draft Regulations") for public comment by 24 April 2024. Rain Proprietary Limited ("rain"), is grateful for the opportunity to comment on the Draft Regulations and trust that ICASA will take rain's submission into consideration when finalising the proposed amendments in the Draft Regulations.

1.2. The Draft Regulations suggest amendments to regulations 8A and 8B of the End-User Regulations. The proposed changes were initially published in 2022 ("2022 Draft Regulations") but deferred for further consultations. The Draft Regulations propose to consolidate and apply a consistent approach to voice, SMS and data services and the expiry, transfer and roll-over of bundles for these services.

1.3. Section 2 of the of the Electronic Communications Act 36 of 2005 ("ECA") stipulates various regulatory objectives that ICASA must promote. These include, amongst other things:

¹ Published under Government Gazette No 50241 of 29 February 2024.

- 1.3.1. encouraging innovation in the communications sector;
- 1.3.2. promoting competition in the ICT sector;
- 1.3.3. promoting the interests of consumers with regard to price, quality and a variety of electronic communications services;
- 1.3.4. refraining from undue interference in commercial activities of licensees whilst considering the electronic communication needs of the public; and
- 1.3.5. promoting stability in the ICT sector.

1.4. Some of the proposed amendments are inconsistent with these regulatory objectives.

2. Comments on the Draft End User Regulations

- 2.1. rain welcomes ICASA's efforts to protect consumers' interests when using electronic communication services.
- 2.2. rain is, however, of the view that the proposed amendments in the Draft Regulations do not fully take into account or address the concerns that were raised by the public on the 2022 Draft Regulations.

Percentage roll-over

- 2.3. We note that ICASA has proposed the inclusion of regulation 8A (6) and (7) in the End-User Regulations, which require that a licensee must roll over 50% of any unused medium-term bundles and 25% of any unused long-term bundles.
- 2.4. This proposed requirement says that licensees must manage the expiry and roll-over of bundles in a uniform way (ie that all licensees must roll-over 50% and 25% of medium- and long-term bundles respectively). This limits the ability of licensees to create compelling competitive product offerings, and could prevent licensees from creating more consumer-centric offerings by ensuring that bundles are not "lost". This is not aligned with the objectives in sections 2(m) and (n) of the ECA.
- 2.5. In addition, it is unclear from the Explanatory Memorandum how the roll-over percentages have been determined, and if these are commercially viable in relation to the different service bundles offered by licensees with varying business models.



While rain understands that the intention is to create a degree of uniformity, rain isn't convinced that a one-size-fits-all approach will be effective in this regard.

2.6. This is particularly true for rain with its newly launched mobile offering. Since rain is a newer entrant in the market, as compared to other players who have a well-established service offering in this regard, rain should be allowed and encouraged to maximise its revenues by incentivising subscribers to spend on or buy more affordable, diverse and competitive products and services in the market.

2.7. We would therefore like to propose that the **current** wording in regulation 8B of the End-User Regulations that requires licensees to provide customers with an option to roll-over or transfer data, be maintained. Licensees should continue to have the commercial freedom to decide how to provide such options to transfer and roll-over bundles in line with their specific business models. rain believes that the current regime serves a purpose, still has a place in the market and still gives end-users the right to choose to roll-over unused bundles. At the same time rain acknowledges and agrees that licensees must refrain from imposing unfair or unreasonable terms and conditions on the consumer. For example, licensees should not be allowed to require that end-users purchase new bundles to exercise their right to choose to roll-over unused data.

Timelines for logging promotional tariffs

2.8. The Draft Regulations do not suggest any changes to the timeframes for logging promotional tariffs under regulation 5 of the End-User Regulations.

2.9. rain requests ICASA to take the opportunity to shorten the period prescribed for filing both new tariffs and promotional tariffs.

2.10. rain's view is that the requirement for licensees to lodge product/service tariffs at least 5 (five) working days (under the regulation 9 of the Individual Licence Standard Terms and conditions Regulations, 2010 (**Standard Terms**)) and promotional tariffs at least 7 (seven) working days (under regulation 5(1) of the End-User Regulations) ahead of launch, inhibits agility and innovation for licensees who want to provide dynamic telecommunication products with competitive and affordable pricing for end-users.

- 2.11. First, it isn't clear why promotional tariffs must be filed 7 days before launch but tariffs for ordinary products and services must be filed 5 days before launch.
- 2.12. By way of context, on 28 March 2023, ICASA published the Third Amendment to the Standard Terms and Conditions for Individual Electronic Communications Services, 2023², in terms of which the tariff notification period was reduced from 7 days to 5 days. In its Reasons Document, ICASA stated that it decided to do this in an effort to '*accommodate licensees' commercial considerations*'. It makes sense for the same shorter time period to apply to promotional tariffs particularly considering that promotions (and the associated tariffs) generally run for a limited period.
- 2.13. Second, for a smaller player in the market such as rain, we are constantly creating different products with competitive pricing and promotions to provide electronic communication services that are affordable to consumers whilst competing with incumbent players in the market. The requirement to lodge tariffs so far in advance hinders rain's ability to vary prices or dynamically explore and research different pricing points for its products, which ultimately prevents innovation in competitive pricing for customers.
- 2.14. Third, it isn't clear what purpose is served by the requirement to notify ICASA about new tariffs in advance. Although it might be appropriate for licensees that are subject to price controls to have to notify the regulator so that the regulator can check that tariffs are in line with the applicable limits, there doesn't seem to be any reason for licensees that are not subject to price controls to be subject to the same requirement. If ICASA wants to obtain general information about prices and tariffs in the market, rain suggests that licensees should instead only have to notify ICASA *after* the launch of a particular product. This is similar to the notification requirement in the Standard Terms in terms of which licensees must notify ICASA of changes to their details 14 (fourteen) days *after* occurrence of the change.
- 2.15. If ICASA still thinks advanced notice is necessary, we suggest that ICASA draws from the experience of the truncated time periods that were permitted during the State of National Disaster under the ICT COVID-19 National State of Disaster

² Published under Government Gazette No.48317 of 28 March 2023 p19 and p41.



Regulations, 2021. These regulations required tariff notifications 1 (one) day prior to commencement of such tariff. The shorter time periods illustrated that 1 (one) day was sufficient time for ICASA to note tariffs.

3. Conclusion

3.1. The Draft Regulations are an improved effort by ICASA to address the issues that were raised by the public in relation to regulations 8A and 8B of the current regulations. In particular, rain commends ICASA for removing the commercially problematic 6 (six)-month validity rule for expiry of bundles. However, the introduction of a percentage roll-over requirement seems to reintroduce similar issues.

3.2. In short, we request that ICASA maintains the current requirements, which is for licensees to provide customers with an option to roll-over and transfer unused SMS, voice and data bundles regardless of the validity period of the bundles, rather than prescribe a roll-over percentage.

3.3. In addition, we request ICASA to take the opportunity when finalising the Draft Regulations to also consider amending the prescribed time-period for lodging both standard and promotional tariffs.

3.4. Please feel free contact the writer in case of any questions.

Yours faithfully

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