



2 December 2015

Independent Communications Authority of South Africa

Attention: Mr Gumani Malebusha

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CC: enduser@icasa.org.za

Dear Sir,

ISPA SUBMISSIONS IN RESPECT OF THE DRAFT AMENDMENT END-USER AND SUBSCRIBER SERVICE CHARTER REGULATIONS 2015

1. We refer to the Draft Amendment End-User and Subscriber Service Charger Regulations 2015 published as General Notice 966 in Government Gazette 39270 of 9 October 2015 (“the Draft Regulations”) and to the Authority’s invitation to comment thereon, and we set out the ISPA submission below.

GENERAL REMARKS

2. ISPA currently a large body of 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 the obligations therein, and they accordingly have a direct interest in the Draft Regulations. ISPA accordingly sets out its comments and concerns on the Draft Regulations herein.

SUBMISSION ON SPECIFIC REGULATIONS

Definitions (Regulation 1)

3. ‘Recognized Agents’: the definition of “alternative dispute resolution” includes a reference to “other recognized agent” who can assist in resolving an end-user or subscriber complaint without litigation. We are uncertain as to the process for recognition of any alternative dispute resolution body as this is not spelt out anywhere in the Draft Regulations. We would specifically query the role of industry associations such as ISPA which have their own Code of Conduct which is binding on and enforceable against their members and which accepts complaints against their members for breaches against this

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code of conduct in accordance with a published complaints procedure. We have previously made submissions to the authority regarding the need for there to be a clear escalation path in respect of complaints and the need to avoid forum shopping.

4. 'Availability of ECS': This definition references "national network services". It does not take cognisance of the fact that not all networks are national. It is unclear to ISPA why availability of ECS is being defined with reference to "network services" and we submit that the definition should specifically refer to the percentage of time for which ECS are available as opposed to network service.

The definition further makes references to "period of one month or quarter whichever is the monitoring cycle" whilst the Reporting Format requires monthly information. It is submitted that the Authority should amend the latter part of this definition for consistency.

5. 'Availability of ECNS': The definition references "National Network Resources" that are available to the end-user "including the base stations, base transceiver stations (BTS) and the mobile switching centres". ISPA notes again that the reference to National Network Resources does not accommodate the large number of networks of sub-national scope. The references to base stations, BTS and mobile switching centres are mobile-centric and we submit that these should be deleted.
6. 'Fixed Wireless': ISPA submits that this definition should reference the provision of ECNS utilising Radio Frequency Spectrum to deliver connectivity to a fixed location.
7. 'Fixed service': ISPA submits that this definition should be amended by the deletion of the words "radio communication".
8. 'Service Activation Time': ISPA submits that the words "and/or subscriber" where they appear at the end of this definition should be deleted as the term subscriber is incorporated in the definition of End-User.
9. We request that the Authority define 'service outlet' and 'indirect service outlet'.
10. As a general submission, ISPA notes that there is significant confusion in the definitions adopted between the roles of ECNS and ECS licensees and licence-exempt persons and which obligations should attach to each of these. We urge the Authority to, wherever possible, use language which is consistent with that of that of the ECA rather than using vague definitions which will lead to implementation challenges.

Purpose of the regulations (regulation 2)

11. ISPA supports the underlying motivation for the development of the regulations as required by Section 69(3) of the ECA.
12. With reference to sub-regulation (2)(a) we query how it is possible to for an ECNS licensee (Class and Individual) to provide ECS to end-users or to have minimum standards prescribed in respect of the

provision of ECS to End-Users. In the event that a licensee holds both ECNS and ECS licences, the Authority must clearly distinguish between the two sets of services authorised and the distinct sets of obligations imposed on ECNS and ECS respectively.

13. We further seek clarity from the Authority in respect of the mechanisms by which the obligations set out in the Draft Regulations will be applicable to and enforceable against Resellers.

End-User and Subscriber Service Charter (Regulation 5)

14. ISPA notes that Section 69(3) of the ECA does not set out “the minimum standards applicable” but rather establishes the scope of matters for which the Authority is able to do so within these regulations. It is requested that the Authority amend this section accordingly.

Information to End-Users and Subscribers (Regulation 5)

15. ISPA members are appreciative of the minimum information requirement at the time of concluding a contract or finalising a purchase order.
16. We note that Regulation 5(3) requires that licensees submit a report on the random checks conducted over the Reporting Period. We would like to query what should be included in this report, as this is not included in the Reporting Format included in Schedule 1 to the Draft Regulations.

Promotions (Regulation 6)

17. We request that the Authority confirm that a simple notification will suffice and that the Authority’s approval for such promotion is not required.
18. It is recommended that the Authority include a section for reporting on promotions in the Reporting Format, to ensure that licensees are consistent in reporting on their promotions.

Quality of Service (Regulation 10)

19. We note that this regulation requires licensees to report on their availability of ECNS and ECS, which is to be averaged over 6 months, yet the Reporting Format only provides the provision of the monthly information relating to the availability of ECNS and ECS. We recommend that the Authority include another column under these sections in the Reporting Format, wherein the licensee can insert the 6-monthly average figure.
20. ISPA submits that the parameters in respect of installation of services must explicitly acknowledge that they are only applicable where the service provider has an existing Electronic Communications Network and that only a “last mile” link is required to connect the requesting subscriber to such network.

Service Upgrades (Regulation 12)

21. We recommend that the Draft Regulations specify that End-users be notified of the planned service upgrades and interruptions on their selected platform of communication, whether this be by email, SMS or otherwise.

Audit and Network Monitoring (Regulation 13)

22. We support the Authority's intention to undertake audits on the reports submitted by licensees. We request that the Authority advise:
 - 22.1. Whether the results of the audit will be published;
 - 22.2. Whether the standards determined by the Authority from time to time will be published;
 - 22.3. The retention period for supporting data and documentation which informs the figures in the Reporting Format.

Complaints (Regulation 14)

23. While we support the requirement that licensees should have a complaints handling procedure and terms and conditions applicable to the use of their services, we think it's excessive to require that these be included on invoices and display packaging as well. We agree that the subscriber should be made aware of the complaints handling procedure at the time of contracting (as required in regulation 5), and that this should also appear on the licensee's website and be available at its service outlets and offices.
24. We request that the Authority clarify what it would consider to be 'places accessible to End-Users' where a licensee does not have service outlets. We also request that the Authority confirm that publication of the complaints handling procedure on the licensee's website and at its offices is sufficient where it does not have service outlets.
25. We request that the Authority confirm that the acknowledgement of receipt of the complaint is to be sent to the complainant within 48 working hours.
26. We recommend that the Authority indicate that a complainant may also escalate a complaint to an industry body to which the licensee subscribes where the complaint has not been resolved to the satisfaction of the complainant. Industry bodies, such as ISPA, have codes of conduct with which its members must comply, and these industry bodies have processes in place to deal with complaints received against its members.

Alternative Dispute Resolution (ADR) (Regulation 15)

27. We request that the Authority advise on its criteria and timelines for the recognition of ADR schemes, and when it anticipates inviting interested bodies to apply to be recognised as an ADR scheme in terms of these Draft Regulations.

28. We also request the Authority advise as to when it will convene its ADR Committee, and when it will publish the rules to which the ADR Committee will adhere.
29. We note that “Complaint” is defined in the Definitions section as “any grievance by an end-user alleging non-compliance by a licensee with the terms and conditions of its licence, empowering legislation and underlying statutes”, but that the ADR process will only apply to unresolved complaints that “do not relate to non-compliance with the Act, underlying statutes, licence or regulations.” We request that the Authority clarify exactly what types of complaints it intends to be heard in terms of this ADR process.
30. Given the fact that the ADR Committee or a recognised ADR scheme will address complaints on a national basis, we recommend that the Authority make explicit allowance for these to be held via a telephonic or electronic teleconferencing facility. It may be problematic for all parties to attend at a specific location where they are not based in the area of the ADR Committee’s or ADR Scheme’s offices, whereas everyone should be able to attend telephonically/electronically without incurring unnecessary costs.
31. On the awareness campaigns to be run for the mitigation of complaints, the Authority is requested to confirm that this will only apply to those licensees who receive complaints in terms of its complaints procedure, and that the minimum awareness campaigns are not required where no complaints have been received.

Redress (Regulation 16)

32. We submit that it is not appropriate to require that a licensee is liable for the non-performance of its service providers or agents, without providing a corresponding recourse for the licensee to claim this as a rebate from the service provider or agent.
33. We submit further that the provisions of this draft regulation constitute an unwarranted and unjustified intrusion into the commercial relationship between service provider and subscriber, which relationship is already governed in this regard by *inter alia* the Consumer Protection Act¹.

Customer Service Care Line (Regulation 17)

34. We submit that it is unreasonable to require that all licensees to operate a customer service centre which is open 24/7. While this is a fair request for larger operators, many licensees run small, regional operations with low revenue and would not be able to operate such a customer service centre. If the Authority wishes to make this a requirement, it should set criteria to determine which licensees should have a 24/7 customer service centre, for example a minimum number of subscribers.
35. We also submit that it is unreasonable to require that calls to this customer service centre be free of charge, particularly where the licensee does not provide voice services; this would mean that the licensee is forced to absorb the cost of the call, and would likely have to raise its prices to cater for

¹ Act 68 of 2008

this service. We recommend that this requirement only apply to those who provide a voice service, and that only calls to the customer service centre utilising the licensee's network and service should be free of charge.

Contravention and Penalties (Regulation 21)

36. While we support the idea of publication of non-compliance on licensees' website, we submit that it is unlikely that this will be applied due to requiring the Authority's direction on the content and location of such notice. We are aware of the workload of the employees within the relevant division of the Authority, and think that it's unlikely that this will be applied consistently to all licensees.
37. If the publication is required, we request that the Authority clarify the exemption process and how it will arrive at its decision. Where an exemption is applied, we request that the Authority publish the fact that an exemption has been granted on its website, to ensure that a level of fairness is maintained.
38. We recommend that a timeline be set for publication of the notice of non-compliance; it will not be possible to remedy the non-compliance, as the Reporting Period covers the previous 6 months and an operator would not be able to change historical reporting information.

REPORTING FORMAT

39. While we have made some comments above relating to the Reporting Format, we set out these out again hereunder for the Authority's ease of reference when considering the Reporting Format.

Section A – Quality of Service

40. ISPA notes that the applicable measurement parameters for ECNS and ECS are averaged over 6 months in the Draft Regulations. ISPA accordingly recommends that the Authority add another column to the table, to cater for the Average over the 6 months being reported.
41. With regard to Installation & Service Activation, we note that the Draft Regulations require additional information where the targets are not met, specifically relating to the numbers of applications not installed/activated in the prescribed timeframe, the category and geographic location of same, and an explanation of the variance. ISPA recommends that the Authority add a section for this in the Reporting Format, to ensure that this information is reported consistently and timeously.
42. ISPA notes that the Authority has erred in the Fault Clearance section, calling it "Fault Repairs" instead. ISPA recommends that the Authority correct this for the avoidance of confusion. ISPA also notes that certain information is required in terms of the Draft Regulations where the targets are not met, specifically the number of faults not cleared in the specified timeframes, the cause of the faults and an explanation of the variance. ISPA recommends that the Authority add a section for this in the Reporting Format, to ensure that this information is reported consistently and timeously.

Section B – Complaints

43. The Reporting Format indicates that licensees must indicate how they classify complaints, but does not cater for the type of complaint in the table below. ISPA submits that it makes sense for the Authority to be able to assess how many of each type of complaint is received, as is required in the current EUSSC Report and Complaints Report, and recommends that the reporting structure be amended to allow for the reporting of the number of complaints received and resolved in each category. The classification or categorisation of complaints will then follow from the reporting, and need not be a separate question.
44. In the reporting table, ISPA recommends that the Authority clarify that row 2 applies to those resolved within 14 working days, and that row 3 applies to those cleared after 4 working days.

Section C – Miscellaneous

45. ISPA is uncertain why this section appears in the middle of the Complaints reporting section.
46. On the reporting table for ADR Complaints, ISPA submits that requiring the name and reference number for each complainant in the table wherein monthly figures are to be reported is not practical. The rows on the left should reflect 'Complaints' and 'Percentage Resolved', with the rows reflecting monthly reporting figures. Another section can be added should the Authority require the names and reference numbers of complainants.

4. Force Majeure Service Unavailability Report

47. ISPA notes that where a licensee is unable to provide End-users with service due to circumstances beyond its control, the licensee must alert the Authority of this as soon as they become aware of the outage, and submit a detailed report to the Authority within 7 working days. We accordingly submit that it is inappropriate to include this detailed report in the Reporting Format which is only due for submission every 6 months, and it should form its own Report – perhaps as Schedule 2 – to allow licensees to use this format to report consistently on outages.

CONCLUSION

48. ISPA thanks the Authority for its efforts herein, and requests that the Authority afford it the opportunity to make oral presentations at any public hearings which it may elect to conduct in connection with this process.

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ISPA REGULATORY ADVISORS