

9 March 2018

Independent Communications Authority of South Africa

Attention: Chairperson, Priority Markets and Data Services Committee

Per email: prioritymarkets2017@icasa.org.za

DRAFT END-USER AND SUBSCRIBER SERVICE CHARTER AMENDMENT REGULATIONS: SUPPLEMENTARY SUBMISSIONS

1. ISPA refers to the Draft End-User and Subscriber Service Charter Amendment Regulations published as General Notice 901 in Government Gazette 41263 of 17 November 2017 (“the Draft Regulations”) and to the subsequent public hearings held in connection therewith.
2. During the course of the public hearings, the Authority requested that ISPA provide supplementary submissions in respect of the following matters:
 - 2.1. ISPA’s view on the proposed regulation that licensees must disconnect end-user from out-of-bundle data usage until the end-user provides express consent/authorisation to be charged out-of-bundle rate.
 - 2.2. Clarity on the billing methodologies ISPA has included in paragraph 11 of its initial submissions, that lead to proposed definitions for Pre-Paid and Post-Paid.
 - 2.3. Assist in guiding the Authority as to how the other operators (ie non-mobile operators) can do consumer education awareness.

Consent/authorisation for out-of-bundle usage

3. ISPA submits that the Authority must have regard to the practicalities of service provision and billing engines as used by ISPA members who record usage and bill for it. ISPA members will not be aware of the precise time at which a user goes out of bundle where this happens during what is referred to as a TCP session¹. A TCP session is essentially a discrete time period of use of access services by an end-user without any interruption or breakage. For example, if an end-user is downloading a 1GB movie, then a session will be initiated at the commencement of the download and will only conclude after the download has been effected. It is only at this stage, once the TCP session has finished, that the service

¹ https://en.wikipedia.org/wiki/Transmission_Control_Protocol

provider's billing systems will be notified that the end-user has gone out of bundle, and it is only at this stage that the service provider can suspend the use of the services pending further authorisation. This implies that there will be some out-of-bundle usage prior to suspension.

4. ISPA submits that the wording of this regulation needs to take this practical reality into account and to ensure that consumers have a proper understanding of their rights in this regard.
5. ISPA notes that this is a non-issue where there is no difference between in- and out-of-bundle rates.

Billing Methodologies

6. ISPA is concerned that service agreements whereby subscribers contract for services for ongoing services over a fixed term, the payment terms of which require monthly payments in advance, will be interpreted as being "pre-paid" for the purposes of section 63 or 64 of the Consumer Protection Act. For example, when taking out a cell phone contract, the bundle subscription fee and handset charges are payable monthly in advance, whilst the out-of-bundle calls and/or data are charged monthly in arrears.
7. ISPA thus requests that the Authority draw a distinction between pre-paid and post-paid, and has provided the Authority with suggested definitions.

Proposed consumer education awareness

8. As currently proposed, regulation 8C would require consumer education awareness campaigns to be run covering the use of smartphones, the use of data over such smartphones, and product and service offerings.
9. While the need for consumer education is very important, it was submitted that the requirement as set out in this proposed regulation is not very practical, as it only seems to be applicable to mobile broadband service providers. ISPA proposed that the Authority be clear as to which licensees are required to run such consumer education awareness campaigns, and that it be clear that other retail ECS operators – such as the fixed-line retail services operators and fixed wireless retail services operators – are not included in this requirement.
10. ISPA does have a Code of Conduct with which its members have to be compliant. The ISPA Code of Conduct does set out certain consumer protection and minimum standards which are applicable to its members, as set out below:

D. Consumer protection and provision of information to customers

6. ISPA members must provide the following information on their web sites: their registered name, email address, telephone and fax numbers and physical address.

7. ISPA members must inform their customers that members of ISPA must uphold and abide by this Code of Conduct. Members' web sites must include a reference to ISPA membership, a prominent copy of ISPA's logo and a link to the section of the ISPA website that contains the Code of Conduct, complaints and disciplinary procedure and the take-down procedure.
8. ISPA members must have policies for acceptable or fair use for their Internet access services. This policy must be made available to customers prior to the commencement of any such service agreement and at any time thereafter, on request.
9. Policies for acceptable or fair use must include:
 - o a requirement that the customer will not knowingly create, store or disseminate any illegal content;
 - o a commitment by the customer to lawful conduct in the use of the services, including copyright and intellectual property rights; and
 - o an undertaking by the customer not to send or promote the sending of spam.
10. In their dealings with consumers, other businesses, each other and ISPA, ISPA members must act fairly, reasonably, professionally and in good faith. In particular, pricing and other material information about services must be clearly and accurately conveyed to customers and potential customers.
11. ISPA members may only offer service levels which are reasonably within their technical and practical abilities.
12. ISPA members must comply with all compulsory advertising standards and regulations.

E. Terms and conditions

13. ISPA members must make available to customers (and potential customers) any applicable terms and conditions prior to the commencement of any contract. Terms and conditions must include all information and terms relevant to the relationship with the recipient of the service.
 14. Terms and conditions must give an ISPA member the right to remove any content hosted by that member which it considers illegal or for which it has received a take-down notice.
 15. Terms and conditions must give the ISPA member the right to suspend or terminate the service of any customer that does not comply with the terms and conditions, acceptable or fair use policies, or any other contractual obligations.
11. ISPA submits that the requirements as set out in its Code of Conduct together with the requirements in the End-User and Subscriber Service Charter Regulations, 2016 ("the Regulations") are sufficient for its members.
 12. If the Authority still sees the need for additional consumer education awareness for retail fixed ECS consumers and retail fixed wireless ECS consumers, then ISPA cautions that the Authority should not be too prescriptive of the content of such consumer education awareness, which can have the unintended consequence of making such requirements only applicable to handful of licensees, but to rather leave it

to the discretion of the licensee as to the level of consumer education required by their particular end-users, while providing guidance on what can be done. In this case, ISPA recommends that the Draft Regulations should rather request that the licensee set out details of any consumer education awareness undertaken by the licensee during the year, rather than prescribing how many campaigns should be run throughout the year.

13. The Authority can indicate that consumer education awareness could include the following:
 - 13.1. Welcome packs, setting out certain minimum information on the package selected by the end-user and terms related to the service offering. This is already covered to an extent by regulation 4 of the Regulations, which sets out certain information that must be communicated to end-users at the point of sale or prior to contracting; this information includes in- and out-of-bundle rates, possibility of tariff changes, rules for carryover, fair usage policies.
 - 13.2. Licensees can develop FAQs with some commonly-asked questions, to enable end-users to find information relating to the topic on which they need clarity. An example of this would be <https://www.vox.co.za/faq/>.
 - 13.3. Explainer videos, which can be used by the licensee to express complicated topics to end-users in simple terms. An example of this can be found at the following link: <https://www.youtube.com/watch?v=IN2wI0GZIAU&feature=youtu.be>.
 - 13.4. Monthly mailers to end-users and/or website notices containing guidance as to certain topics can be put together as and when the licensee determines the need for same among its customer base. This will also help the licensee in reducing the call for ongoing support on common topics raised by its end-users.

Conclusion

14. ISPA thanks the Authority for its efforts herein and looks forward to the conclusion of this process. ISPA is willing to provide any additional information that may be requested.

Regards,
ISPA Regulatory Advisors