

15 April 2024

## ICASA

**Attention:** Chairperson: End User Subscriber Service Committee

Per email: [eussc@icasa.org.za](mailto:eussc@icasa.org.za)

Dear Chairperson

SUBMISSIONS: DRAFT END-USER AND SUBSCRIBER SERVICE CHARTER AMENDMENT REGULATIONS 2024

1. The Internet Service Providers' Association of South Africa (**ISPA**) has noted the publication of the Draft End-User and Subscriber Service Charter Amendment Regulations 2024 ("**the Draft Regulations**") for comment and has set out submissions raised by its members below.
2. ISPA's membership includes a large number of electronic communications service (ECS) licensees as well as electronic communications network service (ECNS) licensees, who have a direct interest in this process.
3. ISPA is aware that the EUSSC Regulations and the proposed amendments are relevant in the main to the provision of mobile services, but notes that pricing models utilized in fibre deployments into lower LSM areas in some respects mirror those typically associated with mobile data services. Internet over fibre is available in these areas on a time-based basis (e.g. R10 for 1 day) and on a usage basis (e.g. R10 for 10GBs).

### General submissions

4. ISPA's members expressed the view that the proposed amendments represent a reasonable compromise between consumer protection and commercial flexibility.
5. For this reason, the approach taken to bundle roll-over, order of bundle expiry and transfer of bundles is generally supported.
6. ISPA also supports the merging of regulations 8A and 8B.

### Definitions

7. *Activation*
  - 7.1. While the insertion of this definition is supported, the definition is problematic when applied across the EUSSC Regulations, particularly sub-regulation 9(5) relating to quality-of-service metrics.
  - 7.2. Ideally this term would be capitalized when used in the Regulations, alternatively the Authority is referred to the submissions below in respect of limiting the application of the definitions of *Day* and *Hour*.

## 8. *Day and Hour*

8.1. The insertion of these definitions is supported.

8.2. However, the Authority needs to have regard to the EUSSC Regulations as a whole when inserting definitions.

8.3. For example:

8.3.1. The proposed definition of *Day* does not make sense within the context of sub-regulation 5(1)<sup>1</sup>:

### 5. PROMOTIONS

(1) *A licensee must lodge its promotional tariffs and the duration of the application of the promotional tariffs with the Authority no less than seven (7) days prior to its launch, or any periods of extension.*

8.3.2. The proposed definition of *Hour* does not make sense within the context of sub-regulation 12(6):

(6) *A licensee must acknowledge receipt of the complaint from an end-user within forty-eight (48) hours by:*

8.4. Further, the defined term is *Day* but only *day* is found in the Regulations. Similarly, the defined term is *Hour* but only *hour* is found in the Regulations.

8.5. The proposed definitions to be inserted are intended to be associated with and underpin the proposed amendments to regulation 8 only.

8.6. ISPA therefore suggests that these definitions are located at the beginning of regulation 8A and limited in application to only that regulation.

*For the purposes of this regulation 8A:*

***“Day”*** *means a period of twenty-four (24) hours from the time of activation of a bundle*

***“Hour”*** *means a period of 60 minutes from the time of activation of a bundle*

8.7. Ideally, these terms would be capitalized when used in regulation 8A.

## 9. *promotional bundle*

9.1. ISPA submits that this definition is overly broad. On a literal interpretation this includes any bundle offered to the market – whether promotional or otherwise.

9.2. The Explanatory Memorandum states that the definition of *promotional bundle* has been inserted “to distinguish between standard bundles and promotional bundles in order to clarify the applicability of the bundle roll-over and transfer”<sup>2</sup>.

9.3. However, in ISPA’s view there is no practical difference between the definitions of *bundle* and *promotional bundle*.

---

<sup>1</sup> The definition is also problematic where the term *days* appears in regulations 9 through to 12.

<sup>2</sup> @ para 4.1.5

9.4. Further, the only distinction between *bundle* and *promotional bundle* is in the proposed sub-regulation 8A(10) relating to transfers of bundles:

*(10) The transfer of bundles in terms of sub-regulation (9) must not be limited to specific service types, with the exception of uncapped, free or promotional bundles, and applies to any SIM card or device on the same network, including SIM cards or devices owned by the same end-user, and exists without limit on the number of times that the end-user may transfer such bundles.*

9.5. There is no distinction between *bundles* and *promotional bundles* in respect of data rollover set out in the proposed regulation 8A.

9.6. ISPA is aware that promotional bundles have been used to circumvent consumer protection requirements and suggests that the Authority consider tightening up this definition.

9.7. Relevant factors would include that the promotion involves a deviation from existing tariff plans filed with the Authority and that it is temporary in nature.

#### 10. OTT

10.1. ISPA members queried whether a definition of this term is required.

10.2. The regulatory treatment of “OTTs” remains controversial and at the heart of this is a lack of clarity as to what falls within this definition.

10.3. For the purposes of regulation 8A, offering a bundle providing 300MB weekly access to WhatsApp is no different from providing a general data bundle for 300MB weekly. Use of WhatsApp or Facebook involves use of data, and both bundles are subject to the same rules under regulation 8A.

#### **Regulation 5(1)**

11. ISPA requests that the Authority take this opportunity to amend sub-regulation 5(1) to provide for a period for lodging notices of promotions on no less than five (5) days prior to launch of the promotion, rather than the seven (7) days currently specified in the Regulations.

12. As the Authority is aware, this would align the timing in the EUSSC Regulations with that applicable to tariff notices in the Standard Terms and Conditions for Individual Licences Regulations.

#### **Bundle expiry order**

13. The proposed amendment is sensible and supported.

14. The Authority may wish to make it explicit that expiry order rules also apply to promotional bundles.

#### **Classification of bundles**

15. ISPA suggests a minor amendment to the definition of medium-term bundle to ensure the definitions relating to types of bundles are clear:

*"Medium-term bundle" means a bundle valid between seven (7) to thirty (30) days (both inclusive) from activation*

**Transfer of bundles**

16. ISPA members have noted that a time-based service – e.g. where internet access is made available for a fixed period without usage restrictions – is effectively a time-limited uncapped service and will not be subject to the rules regarding data transfers.

**Conclusion**

17. ISPA trusts that the above is helpful to the Authority.

Regards

ISPA