

INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA

NO. 7027

23 January 2026



**END-USER AND SUBSCRIBER SERVICE CHARTER AMENDMENT  
REGULATIONS, 2025**

I, Mothibi Ramusi, Chairperson of the Independent Communications Authority of South Africa ("the Authority"), hereby publishes the sixth amendment to the End-user and Subscriber Service Charter Regulations 2016 to the extent reflected in the Schedule.

A handwritten signature in black ink, appearing to read 'Mothibi Ramusi'.

**MOTHIBI G. RAMUSI**

**CHAIRPERSON**

**DATE: 25 /11 /2025**

## SCHEDULE

### 1. DEFINITIONS

In these regulations, "the Regulations" means the Regulations published in Notice No. 189 (Government Gazette No. 39898) of 1 April 2016, as amended by Notices No. 233 (Government Gazettes No. 41613) of 7 May 2018, No. 128 (Government Gazette No. 42225) of 12 February 2019, No. 286 (Government Gazette No. 42266) of 28 February 2019 and No. 3207 (Government Gazette No. 48318) of 28 March 2023.

### 2. Amendment of regulation 1 of the Regulations

Regulation 1 of the Regulations is hereby amended –

(a) by the insertion after the definition of "Act" of the following definition:

“**Activation**” means the time when the bundle is provisioned and made available for use to the end-user;”

(b) by the insertion after the definition of "Authority" of the following definition:

“**Bundle**” means a set amount of data, voice minutes, SMSs or a combination thereof, valid for a specific period, sold for a single price for the set of services included in the package;”

(c) by the deletion of the definition of "Data bundle;"

(d) by the insertion after the definition of "Post-paid plans" of the following definition:

“**Promotional bundle**” means any bundle offer made available to end-users for a period, and subject to terms and conditions as prescribed by the Licensee, including but not limited to –

(a) discount vouchers,

- (b) free gifts, or
- (c) entry into a rewards scheme or loyalty programme."

### **3. Amendment of regulation 5 of the Regulations**

Regulation 5 of the Regulations is hereby amended by the substitution for sub regulation (1) of the following sub regulation:

"(1)A licensee must lodge its promotional tariffs and the duration of application of the promotional tariffs with the Authority no less than five (5) days prior to its launch, or any periods of extension."

### **4. Substitution of regulation 8A of the Regulations**

The following regulation is hereby substituted for regulation 8A of the Regulations:

#### **"8A Voice, SMS data services**

- (1) A Licensee must send usage depletion notifications to end-users via SMS, push notification or any other applicable means, when usage reaches 50%, 80% and 100% depletion of each bundle.
- (2) At all times, a Licensee must ensure that end-users are provided with the option to:
  - (a) opt out of or into usage depletion notifications;
  - (b) buy additional bundles via the USSD platform, push notification, or any other appropriate means; and
  - (c) opt in to or opt out of out-of-bundle usage charges.
- (3) In the event that a service bundle is depleted, and the end-user has not opted in to out-of-bundle charges as per regulation 8A (2)(c) above, a Licensee must not permit any out-of-bundle usage

by, or out-of-bundle charges to, the end-user until such time that the end-user purchases a new bundle or opts into out-of-bundle usage and charges.

- (4) A Licensee shall apply bundle usage sequentially against unused bundles with the earliest expiry, until such bundles are depleted, and thereafter against the next earliest expiry of any bundle.
- (5) A Licensee must, at the end of the validity period of a bundle, roll over any unused bundle or portions thereof at least once, and subject the bundle rolled over to the same terms and conditions applicable to the original bundle, except for bundles that are 7 days or less and excluding uncapped, free and promotional bundles.
- (6) The roll-over of bundles must occur without requiring action and without incurring any cost to the end-user, provided that the number remains active.
- (7) A Licensee must provide an end-user with an option to transfer bundles or portions thereof to any end-user utilising services of the same Licensee, such transfer must be subject to the same terms and conditions applicable to the original bundle.
- (8) The transfer of bundles in terms of sub-regulation (7) must be subject to the following conditions:
  - (a) not limited to any specific type of service,
  - (b) not limited to the number of times or volume that the end-user may transfer such bundles,
  - (c) applies to any SIM card on the same network,
  - (d) excludes the transfer of uncapped, free or promotional bundles.

(9) The validity period of a bundle must be extended when the end-user is unable to utilise the bundle due to a fault on the part of the Licensee.

**5. Repeal of regulation 8B of the Regulations**

Regulation 8B of the Regulations is hereby repealed.

**6. Short title and Commencement**

These Regulations are called the End-User and Subscriber Service Charter Amendment Regulations, 2025 and will come into force Twelve (12) months after publication in the Government Gazette.

## GENERAL NOTICE



### REASONS DOCUMENT FOR END-USER AND SUBSCRIBER SERVICE CHARTER AMENDMENT REGULATIONS, 2025

#### 1. Introduction

- 1.1 On 29 February 2024, the Independent Communications Authority of South Africa ("Authority") published a notice of its intention to amend the End-User and Subscriber Service Charter Regulations 2016,<sup>1</sup> under General Notice No. 4449 in the *Government Gazette* 50241 and invited public comments to the Draft Regulations<sup>2</sup>.
- 1.2 The Draft Regulations<sup>3</sup> sought, *inter alia*, to prescribe amendments to regulations 8A and 8B, which the Authority had deferred for further consultations, as it explained in its reasons document of 29 March 2023<sup>4</sup>.
- 1.3 The consultation was to address, among others, the following:
  - 1.3.1 Addition of definitions to provide clarity on some of the provisions within the regulations.
  - 1.3.2 Notifications of bundle depletion to be sent to the end-users at set intervals, and the provision for end-users on post-paid/hybrid plans to purchase additional services upon such depletion or be disconnected if end-users do not purchase additional bundles.
  - 1.3.3 Providing end-users with an option to opt-in or out of out-of-bundle charges to minimize bill shock.

<sup>1</sup> *Government Gazette* No. 39898 of 1 April 2016

<sup>2</sup> The due date for submission of written representations was 15 April 2024.

<sup>3</sup> *Government Gazette* No 50241 of 29 February 2024.

<sup>4</sup> Reasons Document for The End-User and Subscriber Services Charter Amendment Regulations, 2023 (*Government Gazette* No 48329 of 29 March 2023).

- 1.3.4 Allowance for the roll-over of unused bundles at the end of the validity period of such bundles without requiring action from or cost to the end-user.
- 1.3.5 Allowance for the unrestricted transfer of bundles by an end-user.
- 1.3.6 Prohibition of any out-of-bundle usage by, or out-of-bundle charges to, the end-user until such time that the end-user purchases a new bundle or opts into out-of-bundle usage and charges.
- 1.3.7 Sequential depletion of bundles with the earliest expiry bundles being depleted first "First Expiry First Out rule (FEFO).
- 1.4 The Authority received written representations on the Draft Regulations from:
  - 1.4.1 Vodacom
  - 1.4.2 MTN
  - 1.4.3 Cell C
  - 1.4.4 Telkom
  - 1.4.5 CAP
  - 1.4.6 ISPA
  - 1.4.7 SACF
  - 1.4.8 ACT
  - 1.4.9 RAIN
  - 1.4.10 Amandla.mobi
  - 1.4.11 Mr. Keith Lucas
- 1.5 The Authority published a media release on its website<sup>5</sup> on 23 September 2024 with respect to the public hearings to be held on 01 and 02 October 2024 on the Draft Regulations.
- 1.6 All interested parties, except RAIN, who submitted written representations on the Draft Regulations, participated in the public hearings.
- 1.7 Subsequent the public hearings, the Authority requested further information in the form of questions regarding and received supplementary written representations from the following stakeholders:
  - 1.7.1 Vodacom
  - 1.7.2 MTN

<sup>5</sup> <https://www.icasa.org.za/news/2024/icasa-to-conduct-public-hearings-on-the-draft-end-user-and-subscriber-service-charter-amendment-regulations-2024> (last accessed on: 27 May 2025)

- 1.7.3 Cell C
- 1.7.4 Telkom
- 1.7.5 ACT
- 1.7.6 Amandla.mobi
- 1.7.7 CAP
- 1.7.8 Mr. Keith Lucas

## **2. Legislative Framework**

2.1 Section 4(1) of the ECA stipulates as follows:

*"The Authority may make regulations with regard to any matter which in terms of this Act or the related legislation must or may be prescribed, governed or determined by regulation." (our emphasis)*

2.2 Section 69(3) of the ECA stipulates as follows:

*"The Authority must, as soon as reasonably possible after the coming into force of this Act, prescribe regulations setting out the minimum standards for end user and subscriber service charters."*

2.4. Furthermore, section 69(5) of the ECA stipulates that:

*"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."*

## **3. Submissions Received on the Draft EUSSC Regulations and the Authority's Response**

### **3.1 Regulatory Impact Assessment**

#### Submissions received

- 3.1.1 MTN submits that the Authority must conduct a regulatory impact assessment to demonstrate that the current mechanisms are inadequate to achieve the purpose of enabling end-users to manage the usage of their bundles. Alternately, MTN proposes that the Authority must identify a market failure which requires the Proposed Amendment as a remedy.<sup>6</sup>
- 3.1.2 Vodacom submits that the Authority has also failed to conduct an impact assessment, which is necessary to demonstrate not only that the proposals have benefit but to prevent unintended consequences that may exacerbate the very issues the Authority intended to address. Therefore, even if the proposed measures were not contrary to the relevant legal framework (which Vodacom believes is the case), the Authority has not demonstrated that they are necessary or that they are the least cost and least intrusive way of achieving its objectives.<sup>7</sup>
- 3.1.3 Vodacom submits that had the Authority conducted an impact assessment, it would not have proposed these regulations as they are not in the best interest of consumers. The draft regulations are instead harmful to customers, unreasonable and irrational and, for the reasons set out in their submissions, the proposed measures should be reconsidered or withdrawn.<sup>8</sup>
- 3.1.4 South African Communication Forum submits that ICASA needs to conduct RIA to understand the impact of the proposed changes and the potential impact on pricing.<sup>9</sup>

### **3.2 The Authority's Decision**

- 3.2.1 **Section 4 (3) (h) of the ICASA Act provides that “the Authority may conduct research on all matters affecting the broadcasting, electronic transactions, postal and electronic communications sectors in order to exercise its powers and perform its duties.”**  
**(own emphasis)**

<sup>6</sup> MTN Initial Submission 2024 Page 26 Para 5.42

<sup>7</sup> Vodacom Initial Submission 2024 Page 3 Para 8

<sup>8</sup> Vodacom Initial Submission 2024 Page4 Para 9

<sup>9</sup> South African Communications Forum (SACF) Initial Submission 2024 Page 4 Para. 14.2

- 3.2.2 **It is evident that while the Authority may conduct studies such as Regulatory Impact Assessment in order to perform its duties, it is not obligated to do so. Therefore, the absence of an impact assessment study does not prevent the Authority from making these necessary changes to ensure that consumers are protected.**
- 3.2.3 **RIA, although recommended for all government departments and agencies in their performance of statutory powers, is not a mandatory legislative process, and was therefore not carried out by the Authority.**
- 3.2.4 **The Authority is of the view that there is enough evidence that the current data, voice and SMS regime does not adequately address the unfair market condition borne from the data expiry rules set by Licensees.**

### **3.3 Ultra vires**

#### Submission received

- 3.3.1 MTN submits that the Proposed Amendments do not pass the test of legality because they are ultra vires, which means that the Authority is not acting within the confines of its mandate, in that the draft regulations amount to an undue interference in the contractual terms governing the provision of services to end-users by Licensees.<sup>10</sup>
- 3.3.2 Vodacom submits that the draft regulations in their current form, most notably parts of regulation 1 (definitions) and regulation 8A, can be impugned on several bases in that they are susceptible to legal challenge on the basis that elements of the draft regulations are ultra vires anti-consumer in their effect, unlawful, unreasonable, and irrational.<sup>11</sup>
- 3.3.3 Vodacom submits that Section 69 of the ECA is entitled "Code of conduct, end-user and subscriber service charter" and in particular Section 69(3) empowers and requires the Authority to prescribe regulations setting out the minimum standards for end-user and subscriber service charters.

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<sup>10</sup> MTN Initial Submission 2024 Page 30 Para 6.7, 6.8

<sup>11</sup> Vodacom Initial Submission 2024 Page 4 Para 12

- 3.3.4 Vodacom indicates that the ECA defines a service charter as a document, developed by a licensee after consultation with its staff, subscribers and end-users, which sets out the standards of service subscribers and end-users can expect and is a performance measurement and accountability tool that focuses on subscriber and end-user service outcomes
- 3.3.5 Vodacom indicates that Section 69(3) does not empower the Authority to make regulations that do something more or different. Further, the power of the Authority in section 69(3) must be read with and in terms of sections 69(4) and 69(5).
- 3.3.6 Section 69(4) confirms that the Authority may develop different minimum standards for end-user and subscriber service charters for different types of services. Section 69(5) sets out the matters which an end-user and subscriber service charter may address.
- 3.3.7 Vodacom submits that the list in section 69(5)(a) -(e) is not intended to be exhaustive, as the introductory words record that the matters which an end-user and subscriber service charter may address "include, but are not limited to" this list and section 69(5)(f) states that the end-user and subscriber service charter may address "any other matter of concern to end-users and subscribers." However, this does not mean that section 69(3) creates a wide and unfettered power for the Authority to promulgate regulations. The Authority remains empowered, in terms of section 69(3), only to set minimum standards for end-user and subscriber service charters.
- 3.3.8 Therefore, section 69(3) read with section 69(5), is prescriptive and narrowly tailored and thus anything that falls outside of the scope of a service charter is ultra vires.
- 3.3.9 Vodacom submits that the Authority exceeds the scope of its powers in two respects. It firstly seeks to prescribe the substantive terms of a service charter, where the Act leaves that to the licensee; and secondly, it goes beyond the ambit of section 69 and seeks to impermissibly regulate the products and services offered by the licensee in the market.<sup>12</sup>

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<sup>12</sup> Vodacom Initial Submission 2024 Page 10 Para 31

3.3.10 Vodacom submits, having regard to the proper interpretation of section 69(3), read with section 4, being the empowering provision in the ECA relied on by the Authority, that section does not confer power on the Authority to regulate the attributes of the products and services offered by licensees. Consequently, if regulations were promulgated by the Authority that did purport to regulate the attributes of the products and services offered by licensees, such regulations would be ultra vires and unlawful.<sup>13</sup>

3.3.11 Vodacom submits that in draft regulations 8A (6) – 8A(10), the Authority proposes to regulate the roll-over and transfer of bundles and unused portions of bundles and that the Authority records in the Explanatory Memorandum that it seeks to prescribe minimum standards on how voice, SMS and data are rolled over and transferred, however, the Authority is not empowered to do so.

3.3.12 Vodacom indicates that there is no express provision in section 69(5) that gives the Authority the power to compel licensees to roll-over and transfer unused bundles and by dictating that a bundle must be transferred or rolled over at the end of a particular validity period, the draft regulations seek to prescribe the attributes of the bundle products to be offered.<sup>14</sup>

3.3.13 Vodacom understands this proposal to relate to addressing concerns related to the expiration of unused data. However, Vodacom submits that the proposal in these regulations does not accord with the stated aims of the Act, which are *inter alia* to promote the interests of consumers with regard to the price, quality and the variety of electronic communications services variety whilst refraining from undue interference in the commercial activities of licensees (sections 2(n) and 2(y) of the ECA). Not only is the draft regulation ultra vires for this reason too, but it also undermines the consumer's right to free choice and her right to optimise her spend.<sup>15</sup>

3.3.14 Cell C argues that certain proposed amendments in the draft regulations exceed the powers of ICASA as set out in the Electronic Communications Act (ECA). Specifically, they believe the Authority is interfering with the

<sup>13</sup> Vodacom Initial Submission 2024 Page 11 Para 32

<sup>14</sup> Vodacom Initial Submission 2024 Page 12 Para 39

<sup>15</sup> Vodacom Initial Submission 2024 Page 26 Para 74

contractual relationship between licensees and end-users, which they argue is beyond ICASA's mandate. Cell C points out that sections 69(5) and 2(y) of the ECA do not grant ICASA the authority to dictate the products and services licensees can offer or the terms of those products and services.<sup>16</sup>

- 3.3.15 Rain submits that some of the proposed amendments are inconsistent with these regulatory objectives of Section 2 of the of the Electronic Communications Act 36 of 2005 ("ECA").<sup>17</sup>
- 3.3.16 SACF is of the view that ICASA would be better placed to establish the principle to enable its envisaged outcome and promote innovation and competition among licensees. They are of the opinion that this will likely result in the development of products and services that would address a multiplicity of consumer needs and preferences which ultimately reduces the cost to communicate.<sup>18</sup>
- 3.3.17 Their submission is that the current amendments appear to attempt to standardise various elements of service provision, including the rollover of voice and SMS'. The SACF cautions ICASA of this approach as it seems to unintentionally thwart innovation and competition.<sup>19</sup>

#### **3.4 The Authority's decision**

- 3.4.1 **Sec 69(5)(f) of the ECA empowers the Authority to develop minimum standards on any matter of concern to end-users and subscribers.**
- 3.4.2 **Section 69 (5)(d) and (f) of the ECA goes on to provide that the minimum standards an end-user and subscriber service charter may address include, amongst other things: (i) subscriber charging, billing, collection and credit practices; and (ii) any other matter of concern to end-users and subscribers.**
- 3.4.3 **Thus, it is clear from the wording of the above provisions that the list of matters which the end-user and subscriber service charter**

<sup>16</sup> Cell C Initial Submission 2024 Page 3 Para 8

<sup>17</sup> Rain Initial Submission 2024 Page 2 Para 1.4

<sup>18</sup> South African Communications Forum (SACF) Initial Submission 2024 Page 2 Para 7

<sup>19</sup> South African Communications Forum (SACF) Initial Submission 2024 Page 2 Para 7

may address is not conclusive as it relates to different type of services and extends to any matter of concern to end-users and subscribers. This would arguably include the minimum standards in relation to the validity period of unused data or data services which could fall under section 69 (5) (f) of the ECA

- 3.4.4 In fact, the Authority has already developed such minimum standards which are found in the current End User and Subscriber Service Charter Regulations 2016 as amended. As such, the Authority is empowered to amend such minimum standards contained in such Regulations after having consulted with the public.
- 3.4.5 The Authority has further complied with the criteria as contained in section 6 (2)(f)(ii) (aa) to (dd) of PAJA which amongst others is to provide the purpose for which the action to amend is taken, the empowering legislation giving rise to such power, the information before the Authority received through written and oral representation and lastly providing reasons for the decision taken.
- 3.4.6 Section 69(5) prescribes matters which the end-user and subscriber service charter may address, which include but are not limited to (i) any other matter of concern to end-users and subscribers. Therefore, such provision allows the Authority, having also followed the criteria as set out under section 6 (2)(f)(ii) (aa) to (dd) of PAJA to make such amendments it deems rationally appropriate for the protection of consumer.
- 3.4.7 The Authority is of the view that South Africa still consists of consumers who still make use of voice and SMS bundles as a means of communication; therefore, such subscribers require same level of protection under this amendment which would include rollover of also voice and SMS bundles.

### **3.5 Consumer related matters**

#### Submission received

3.5.1 Vodacom submits that the Authority has not, in its Explanatory Memorandum, explained why it believes the current market is failing to deliver appropriate outcomes for customers, beyond, for example, referring to the need to, "cater for ongoing consumer demand for bundles that do not expire prematurely" and that, "there remains strong consumer resistance to the 'loss' of unused data".<sup>20</sup>

3.5.2 Vodacom argues that the omission undermines the rationale for the proposed amendments and that all regulatory measures, regardless of the legal basis on which they are imposed should be proportionate (i.e., they should incur the least cost and apply the least intrusive measure necessary to address the perceived mischief) and be transparent (i.e., clearly articulated and easily understandable to all parties).

3.5.3 Vodacom notes, from the Explanatory Note published with the proposed amendments, that the amendments are the result of concerns raised by various stakeholders including consumer groups and social media campaigns, which related to data expiry rules; High OOB rates and rules; and OOB voice and SMS, as the rationale provided by the Authority to prescribe this minimum standard. However, what is not clear for Vodacom is that these issues arise from consumer concerns.<sup>21</sup>

3.5.4 Amandla.mobi underscores the necessity of regulatory amendments to protect consumer rights, particularly those of low-income individuals. They argue that mobile networks have historically evaded the spirit of previous regulations, leading to consumer exploitation through practices such as high out-of-bundle rates and inadequate rollover provisions for short-term bundles.<sup>22</sup>

3.5.5 Amandla.mobi highlights the potential legal deficiencies in the enforcement of current regulations and calls for more stringent oversight to ensure

<sup>20</sup> Vodacom Initial Submission 2024 Page 3 Para 7

<sup>21</sup> Vodacom Initial Submission 2024 Page 2&3 Para 5&6

<sup>22</sup> <https://amandla.mobi/data-must-fall-timeline/>

compliance, thereby emphasising the legal responsibility of ICASA to protect consumer interests.<sup>23</sup>

3.5.6 ISPA's expressed the view that the proposed amendments represent a reasonable compromise between consumer protection and commercial flexibility.<sup>24</sup> For this reason, ISPA submits that the approach taken to bundle roll-over, order of bundle expiry and transfer of bundles is generally supported.

### **3.6 The Authority's decision**

- 3.6.1 The intervention by the Authority to cater for loss of unused bundles is a direct demonstration of the existing regulatory gap which resulted from some of the conditions attached to the roll-over and transfer provisions set by licensees.**
- 3.6.2 Such conditions place an extra burden on consumers to spend more money to extend the validity periods or to replace the expired bundles by prohibiting them from deriving the full benefits of their purchased bundles, thus undermining the spirit of the Regulation.**
- 3.6.3 The Authority is of the view that licensees historically evaded the spirit of the Regulations, leading to consumer exploitation through practices such as high out-of-bundle rates and inadequate roll-over provisions for bundles, and thus these amendments will ensure uniformity and enable oversight by the Authority to safeguard the interest of consumers.**
- 3.6.4 Furthermore, these amendments were necessitated by general concerns raised by various stakeholders, including consumer groups (which represent consumers) and social media campaigns (e.g. Data Must Fall<sup>25</sup> and Amandla.mobi campaign<sup>26</sup>). These stakeholders represent consumers concerns with regard to data expiry rules, high out-of-bundle rates and rules, and out-of-**

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<sup>23</sup> Amandla. Mobi Initial Submission 2024 Page 5 Para 2

<sup>24</sup> ISPA Initial Submission 2024 Page 1 Para 4

<sup>25</sup> [https://act.amandla.mobi/campaigns/dmf\\_covid-19](https://act.amandla.mobi/campaigns/dmf_covid-19)

<sup>26</sup> <https://amandla.mobi/data-must-fall-timeline/>

**bundle voice and Short Messaging Service ("SMS") rules currently applied by licensees.**

### **3.7 Competition matters**

#### Submission received

- 3.7.1 MTN raises a competition law argument to dispel the legality of the Proposed Amendment, stating that they encourage anti-competitive behaviour in that the retail market for mobile services in South Africa is characterised by several players who must compete on both price and product factors. Non-price factors include factors such as quality of service, product variety, differentiation of products with value-added services or other consumer benefits. Competition on price and non-price factors is necessary as the South African market contains consumers with disparate resources and therefore various, unique requirements and preferences.<sup>27</sup>
- 3.7.2 The SACF wished to bring to the attention of ICASA the provisions of section 2, that seeks to promote amongst others connectivity to all, innovation, competition and prohibits the undue interference in the commercial activities of licensees.
- 3.7.3 The SACF advocates for ICASA to create an enabling framework which encourages innovation and competition which would result in products and services that are affordable.<sup>28</sup>
- 3.7.4 SACF notes that the previous iterations of the End-User and Subscriber Service Charter have been based on consumer usage trends and the critical importance of data, however, the current amendments focus on voice and SMS services even though consumer trends indicate that the usage of the services is declining.<sup>29</sup>

### **3.8 The Authority's decision**

- 3.8.1 **The Authority is cognizant not to stifle competition, hence it has implemented a light-touch regulatory approach by merely prescribing minimum standards and setting parameters within**

<sup>27</sup> MTN Initial Submission 2024 Page 22-27 Para 5.33 - 5.48.

<sup>28</sup> South African Communications Forum (SACF) Initial Submission 2024 Page3 Para 9

<sup>29</sup> South African Communications Forum (SACF) Initial Submission 2024 Page3 Para 10

which licensees may compete without interfering with competition relating to differentiation of products and offerings.

- 3.8.2 **The Authority is of the view that South Africa still consists of consumers who still make use of voice and SMS bundles as a means of communication; therefore, such subscribers require protection under this amendment.**
- 3.8.3 **Furthermore, the new definition of bundles is inclusive of all bundled products or services offered i.e. voice, SMS and data therefore such provisions pertaining to roll- over and transfer must be applicable to all of them.**

### **3.9 Amendment to Definitions**

Submissions received.

- 3.9.1 MTN submits that the current definitions of "long-term bundle", "medium-term bundle" and "short-term bundle" are unclear<sup>30</sup>.
- 3.9.2 MTN states that this definition does not expressly include 7-day bundles, which means that bundles up to and including 6 days would be short-term bundles. Thus, MTN proposes rewording as follows:

*"Short-term bundle" means a bundle valid for less than or equal to seven (7) days from activation.*
- 3.9.3 MTN proposes the word "between" on the "Medium-term bundle" be replaced with the word "from" because accordance with rules of grammar, "between" is not inclusive of the endpoints in a range whereas "from" includes the endpoints in a range. This means that bundles from 8 to 29 days would be medium-term bundles.
- 3.9.4 MTN proposes that the Authority revise the definitions as follows:

*"Long-term bundle" means a bundle valid for more than or equal to thirty (30) days from activation.*

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<sup>30</sup> MTN Initial Submission 2024 Page 8 Para 3.

3.9.5 Cell C notes that the term "service bundle" is not clearly defined, leading to potential ambiguities. This lack of definition could result in varied interpretations and compliance challenges for licensees.<sup>31</sup>

3.9.6 Vodacom submits that the definitions seeking to distinguish short-term, medium-term, and long-term bundles are unhelpful, as they contain an obvious error or suffer from imprecise drafting. The following difficulties arise with these three definitions:

3.9.7 A short-term bundle is defined as a bundle valid for less than 7 (seven days) and so it appears that a 7-day bundle is excluded from being a short-term bundle. This is because a 7-day bundle is not valid for less than 7 days.

3.9.8 A medium bundle is a bundle that is valid "between seven (7) to thirty (30) days" (i.e. a bundle with a validity period greater than 7 days). This means that a medium-term bundle does not include 7-day bundles. It is not clear if it is intended to include 30-day bundles.

3.9.9 Further, because a long-term bundle is defined as a bundle valid for more than 30 days, a 30-day bundle is not a long-term bundle either.

3.9.10 On the text, therefore, draft regulation 1 in its current form does not regulate a 7-day bundle and may not regulate a 30-day bundle.<sup>32</sup>

3.9.11 Vodacom proposes that the Authority adopt the following definitions:

*"A short-term bundle should be "a bundle valid for 7 days or less from activation."*

*"A medium-term bundle should be "a bundle valid for more than 7 days but less than 30 days from activation."*

*"A long-term bundle should be "a bundle valid for 30 days or more."*

3.9.12 Vodacom submits that this approach is reasonable and sensible because A 7-day bundle is on its face a short-term bundle. 7-day bundles make

<sup>31</sup> Cell C Initial Submission 2024 Page 5 Para 23

<sup>32</sup> Vodacom Initial Submission 2024 Page 16 Para 47.4

up a proportion of the bundles purchased by Vodacom's low-income customer base.<sup>33</sup>

3.9.13 Vodacom requests confirmation from the Authority that "promotional bundles," as defined in draft regulation 1, are intended to be excluded from roll over as they are from transfer. In paragraph 4.1.5 of the Explanatory Memorandum, it is clear that the Authority intended to draw a distinction between standard bundles and promotional bundles and to clarify how they should be treated in respect of roll-over and transfer.<sup>34</sup>

3.9.14 Amandla.mobi has noted no explicit challenges to definitions within the draft amendments.

3.9.15 CAP Agrees and supports all definitions proposed.

3.9.16 "*Activation*" – ISPA submits that 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.

3.9.17 "*Day*" - The proposed definition of Day does not make sense within the context of sub-regulation 5(1).

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

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

3.9.20 "*Promotional bundle*" - ISPA submits that this definition is overly broad. In a literal interpretation, this includes any bundle offered to the market – whether promotional or otherwise. However, in ISPA's view, there is no practical difference between the definitions of bundle and promotional bundle.

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

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<sup>33</sup> Vodacom Initial Submission 2024 Page 17 Para 51

<sup>34</sup> Vodacom Initial Submission 2024 Page 30 Para 86

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

3.9.23 South African Communication Forum submit that the current definitions of "long-term bundle", "medium-term bundle" and "short-term bundle" are unclear in that the proposed amendments state that a short-term bundle means a bundle valid for less than seven (7) days from activation. This definition does not expressly include 7-day bundles which means that bundles up to and including 6 days are short term bundles.<sup>35</sup>

3.9.24 A medium-term bundle means a bundle valid between seven to 30 days from activation. In accordance with rules of grammar, "between" is not inclusive of the endpoints in a particular range whereas "from" includes the endpoints in a range. This means that bundles of 8 to 29 days are medium term bundles.<sup>36</sup>

3.9.25 A long-term bundle means a bundle valid for more than thirty days from activation. Similarly, to the definition of short-term bundle, this definition is not expressly inclusive of 30-day bundles which means bundles from 31 days and above are long-term bundles.<sup>37</sup>

3.9.26 SACF Proposes that the Authority revise the definitions as follows:

"Long-term bundle" means a bundle valid for equal to or more than thirty (30) days from activation.<sup>38</sup>

"Short-term bundle" means a bundle valid for equal to or less than seven (7) days from activation.<sup>39</sup>

"Medium-term bundle" means a bundle valid for more than 7 days but less than 30 days from activation.<sup>40</sup>

3.9.27 Telkom makes the following proposals to short term, medium term and long-term bundles:

<sup>35</sup> South African Communications Forum (SACF) Initial Submission 2024 Page 7 Para. b- i

<sup>36</sup> South African Communications Forum (SACF) Initial Submission 2024 Page 7Para. b- ii

<sup>37</sup> South African Communications Forum (SACF) Initial Submission 2024 Page 7 Para b -iii

<sup>38</sup> South African Communications Forum (SACF) Initial Submission 2024 Page 7 Para d - i

<sup>39</sup> South African Communications Forum (SACF) Initial Submission 2024 Page 8 Para. d- ii

<sup>40</sup> South African Communications Forum (SACF) Initial Submission 2024 Page 8 Para. e

"Short-term bundle be changed to "Short-term bundle means a bundle valid for seven (7) days or less from activation."<sup>41</sup>

"Medium-term bundle be changed to "Medium-term bundle means a bundle valid for more than seven (7) days and up to thirty (30) days from activation." This change is consequential as 7-day bundles should be excluded in the definition of "Short-term bundle".<sup>42</sup>

- 3.9.28 Telkom notes that the proposed definition of a "Promotional Bundle" refers to "...any bundle offer made available to end-users for a period, ..." and then lists examples of what may be included under a Promotional Bundle. In section 4.1.5 of the explanatory memorandum, the Authority states that its intention with the definition of a Promotional Bundle is to distinguish between standard bundles and promotional bundles and to clarify the applicability of bundle roll-over and transfer.
- 3.9.29 Given that the Authority states that Promotional Bundles are not limited to those listed, and that there is no time limit imposed on Promotional Bundles, Telkom is concerned that the current definition of a Promotional Bundle may obfuscate, rather than clarify, what is meant by a Promotional Bundle. It therefore suggests that a maximum time-period be placed on a Promotional Bundles, irrespective of what is included in the Promotional Bundle and that this time period be limited to 12 months or less.<sup>43</sup>
- 3.9.30 Telkom suggests definition of "OTT" be inserted in the list of definitions.

### **3.10 The Authority's decision**

- 3.10.1 **The Authority, based on the comments received during the consultation period, resolved to remove the classification of categories relating to "Short term", "Medium term" and "Long term" bundles including OTT services in these Regulations in order to avoid any unintended confusion. To this effect the Authority has resolved to subject all bundles longer than 7 days to roll-over.**

<sup>41</sup> Telkom Initial Submission 2024 Page 3 Para 9

<sup>42</sup> Telkom Initial Submission 2024 Page 4 Para 9 bullet 4

<sup>43</sup> Telkom Initial Submission 2024 Page 4 Para 9 bullet 5

- 3.10.2 **For the purpose of these Regulations "Activation" as it relates to a bundle should be distinguished from the "Service Activation" as referenced in Regulation 9(5), which relates to Quality of Service.**
- 3.10.3 **The Authority upon engaging with the written submissions decided to remove the definition of both "day" and "hour" in these Regulations to avoid any confusion regarding their application in relation to the Act and these Regulations**
- 3.10.4 **The Authority wishes to clarify and confirm that promotional bundles, as distinguished from standard purchased bundles, are excluded from any form of roll-over or transfer.**
- 3.10.5 **The Authority does not wish to prescribe the services offered by the licensee to the customer and wishes to leave the determination of promotional bundle to the licensee as this are free or bonus bundles in nature and therefore the licensees can use such as a form of differentiation of product offerings.**

### **3.11 Amendment to regulation 8A (1), (2), (3) & (4)**

#### Bundle depletion notification & Out-of-Bundle Charges

##### Submission received

- 3.11.1 SACF submits that the proposed amendments in section 8A (2) (3) amount to regulatory overreach.<sup>44</sup>
- 3.11.2 SACF submits that it is imperative to note that consumer needs are varied. According to SACF, the current amendment is not workable because voice and SMS' service would have to be terminated instantly and not at the end of a session.<sup>45</sup>
- 3.11.3 SACF further stated that the current Draft Regulations create a significant barrier to accessing essential communications services for those who can least afford it. The stakeholder further stated that citizens are unable to utilize the remaining data before it expires, resulting in wasted resources and limited access to critical information and services.

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<sup>44</sup> South African Communications Forum (SACF) Initial Submission 2024 Page 4 Para 14.3

<sup>45</sup> South African Communications Forum (SACF) Initial submission 2024 Page 3 Para. 11

3.11.4 SACF notes that the obligations contained in the Regulations on licencees only applied to data usage and they are unaware of the basis for including voice calls. They submit that ICASA should retain the current approach of only making the requirements set out in regulation 8A (2) and (3) applicable to data services.<sup>46</sup>

3.11.5 SACF submits that several of the provisions are overly prescriptive and seem to standardize services to a level that will potentially reduce competition and innovation. SACF submits that periods of validity, rollover, expiry of bundles and transfer of bundles are innovations that contribute to competition, which benefit the consumer.<sup>47</sup>

3.11.6 Vodacom requires a substitution of 8A (2) and (3) which indicates that "At all times a Licensee must ensure that end-users are provided with the option to: (a) opt out of usage depletion notifications; (b) buy additional bundles via the USSD platform, push notification, or any other appropriate means; and (c) opt in to or opt out of out-of-bundle usage charges."

3.11.7 In respect of draft regulation 8A(2)(c), Vodacom understands that the intention of the Authority here is to provide end-users with the option to accept or reject OOB usage charges for voice, SMS and OTT services. Vodacom does not object to the regulation but wishes the Authority to confirm that flexibility will be permitted in implementing draft regulation 8A(2)(c), particularly where the draft regulation is silent on what "at all times" means.<sup>48</sup>

3.11.8 In respect of draft regulation 8A (3), Vodacom understands that the Authority seeks to prevent bill shock on the part of the end-user by prohibiting any OOB charges upon depletion of a bundle, until the end-user purchases a new bundle or otherwise opts in.

3.11.9 Vodacom provides that it has several measures in place, such as usage depletion notifications and soft locks, to mitigate against the risk of bill shock. Vodacom provides its customers the means to manage and view

<sup>46</sup> South African Communications Forum (SACF) Initial submission 2024 Page 2 Para.4

<sup>47</sup> South African Communications Forum (SACF) Initial Submission 2024 Page 4 Para 14 -14.1

<sup>48</sup> Vodacom Initial Submission 2024 Page 20 Para 59

their spend during the month. A customer can set/manage their own limit at a per-bearer (voice, SMS, or data) level.<sup>49</sup>

3.11.10 Vodacom is of the view that the Authority should encourage licensees to implement measures that notify end-users of their usage depletions and use communication methods to limit bill shock without compelling the termination of service. Less drastic and invasive measures which are available, are preferable, such as:

3.11.10.1 Reminders to customers about the Voice Limit Lock functionality and how it works to prevent bill shock.

3.11.10.2 Implement an in-call whisper to notify customers that the bundle is near depletion and on depletion OOB rates will apply.

3.11.10.3 Notify customers through smart notifications and prompt customers to buy a bundle.

3.11.11 Telkom does not envision that the opt-out of usage depletion notifications proposed amendment will benefit consumers in any way. On the contrary, Telkom submits that the proposed amendment will only serve to increase the costs incurred by licensees as they will be forced to adjust their systems at a significant cost to accommodate the proposed amendment. Implementing the proposed amendment will effectively require additional development, which will only serve to increase the costs of communication.

3.11.12 Telkom submits that by opting out of receiving depletion notifications, end-users will have no sight of their usage until it has been depleted.<sup>50</sup> Telkom supports the proposed wording in sub-regulation 8(A)(2)(b) to buy additional bundles via the USSD platform, push notification, or any other appropriate means, since it benefits consumers by expanding their options.

3.11.13 Telkom submits that the opt-in to or opt-out of out-of-bundle usage charges is impractical for voice calls but appropriate for data bundles. Telkom uses a spend limit to manage out-of-bundle/minute usage for voice<sup>51</sup>.

<sup>49</sup> Vodacom Initial Submission 2024 Page 21 Para 64

<sup>50</sup> Telkom Initial Submission 2024 Page 5 Para 12, 13 & 14

<sup>51</sup> Telkom Initial Submission 2024 Page 6 Para 18

3.11.14 Telkom is not opposed to the proposed wording in sub-regulation 8A(3) since it enables end-users to manage their spend.

3.11.15 CAP supports the sequence of bundle depletion on a first-in-first-out basis, in that older bundles should be depleted first before the newly purchased bundles are depleted.

3.11.16 ISPA submit that the proposed amendment is sensible and is supported.

3.11.17 Telkom supports the proposed wording in sub-regulation 8A (4) & (5).

### **3.12 The Authority's decision**

3.12.1 **The Authority is of the view that having the depletion notifications at the required intervals will ensure that consumers are aware of their usage. Furthermore, the Authority is of the view that it remains the responsibility of consumers to ensure that they have sufficient bundles to complete their transactions. Therefore, this measure of depletion notifications, coupled with the responsibility of the consumer, is deemed sufficient to avoid any concern on the termination of services.**

3.12.2 **The Authority is amenable to Vodacom's proposal that the Authority should encourage licensees to implement measures that notify end-users of their usage depletions and use communication methods to limit bill shock, however, should the end-user not respond positively to those less intrusive measures by either purchasing new bundles or opting into out of bundle charges, then the services must be terminated.**

3.12.3 **The Authority has considered the submissions made by licensees, however, in the 2019 regulations such flexibility was provided for under regulation 8B (2) wherein licensees had the discretion upon depletion of services where an end user has not made an election to be charged out of bundle chargers nor purchased new services to either terminate the service or to continue providing the end-user with services in bundle rate.**

3.12.4 **The Authority has noticed various complaints of bill-shock resulting from such flexibility, hence the Authority has decided**

that where a consumer does not react to the less intrusive measures put in place by licensees and also does not react positively by purchasing new bundles then the services must be terminated to avoid any unintended bill shock. This is further evident and demonstrated under prepaid services wherein if a consumer does not react to notifications of the depletion of their bundle allocations, the service automatically terminates.

- 3.12.5 The provision of opting out of receiving depletion notifications currently exists in the 2019 amendment EUSSC Regulations, therefore, the Authority does not see how the retention of such a provision in these Regulations will have any cost implication for the adjustment of the licensee's systems and increase the cost to communicate.
- 3.12.6 The Authority has considered these concerns against its statutory obligation to promote the interests of end users, including affordability and quality of service, in terms of section 2(n) of the ECA. While the Authority acknowledges the potential cost burden, it is of the view that the regulatory intervention is necessary and proportionate, having regard to lessening the burden to consumers who would otherwise not wish to receive such notifications.
- 3.12.7 Furthermore, this provision is imperative as it provides consumers with the freedom to choose whether to receive such notifications or not. Also, the Authority is mindful of the fact that consumers who purchases multiple bundles may be inundated with multiple depletion notification for each bundle purchased at various intervals which can be an annoying, therefore the end-user must be provided with an option to opt out of receiving such notifications should they so wish.
- 3.12.8 The Authority is of the view that the earliest expiry first out rule will ensure longevity of the bundles purchased, as it will ensure that bundles with the earliest validity period are depleted first, as opposed to the depletion of the bundles which were purchased

first as outlined in the current EUSSC 2016 regulations as amended.

### **3.13 Amendment to regulation 8A (5) & (6)**

#### **Roll-over of bundles**

##### Submissions received

3.13.1 MTN does not support the proposal relating to roll over and are of the view that it is not sustainable.<sup>52</sup>

3.13.2 MTN proposes that it is appropriate to regulate voice and SMS differently and are of the view that the differentiation does not produce a gap in regulation but rather ensures that each service receives the appropriate level of regulation.<sup>53</sup>

3.13.3 Further, MTN submits that there is no evidence of harm to consumer welfare or market failure to warrant the application of the out-of-bundle opt in, or any of the other data specific provisions, to voice and SMS services. MTN is of the view that this renders the Proposed Amendments unreasonable and irrational regulation. Further, the effects of the proposed sub-regulation are not proportional to the benefit sought.<sup>54</sup>

3.13.4 MTN submits that the Authority has not demonstrated that, currently, and after the last two amendments to the Charter, end-users still experience a high loss of unused services. Therefore, the purpose of the Proposed Amendment in respect of rollover rules has not been established.

3.13.5 MTN further submits that network planning would be impacted by the proposed rollover rules and capacity would need to be increased to cater for expected increases in traffic over time caused by the extended expiry of bundles, and in order to mitigate against under-utilisation of capacity. According to MTN, this further drives up prices for end-users in respect of those services by disincentivising aggressively discounted limited use/time bundles and personalised bundles.<sup>55</sup>

<sup>52</sup> MTN Initial Submission 2024 Page 9 Para 3.5

<sup>53</sup> MTN Initial Submission 2024 Page 13 Para 4.10.1

<sup>54</sup> MTN Initial Submission 2024 Page 13 Para 4.10.2

<sup>55</sup> MTN Initial Submission 2024 Page 21 Para 5.31

3.13.6 The limited consumer benefit, if any, that would be derived from the implementation of the Proposed Amendments to roll over rules cannot be balanced against the significant adverse impact on consumer welfare and the substantial additional costs, systems development and network impact that would be faced by licensees to give effect to the Proposed Amendments.<sup>56</sup>

3.13.7 MTN submits that the Proposed Amendments in respect of roll-over rules remove several elements of non-price competition, including product differentiation, and leave licensees to compete only on price.<sup>57</sup>

3.13.8 Vodacom submits that if the Authority wishes to introduce roll-over protection in the interests of consumers who are concerned that they may buy more than is required in the chosen period, the service charter may require licensees to describe and provide more transparency on the roll-over options available on their different products. Those customers who want the protection of roll-over may then have that option available and can compare the roll-over options offered by different MNOs.<sup>58</sup>

3.13.9 Vodacom submits that the solution does not however lie in prescribing a blanket measure that imposes rollover on all products and denies consumers a fixed validity period product at a cheaper price.

3.13.10 Vodacom submits that, should the Authority require roll-over to be available, some flexibility should be permitted to provide consumers with a choice to implement roll-over (or not) and in distinguishing products to which roll-over applies or does not apply. Roll-over options can be implemented in different ways, depending on the systems available within the operator to support such activity.

3.13.11 Furthermore, if the Authority requires service charters to address roll-over, the determination of how and when roll-over options are provided should be left to each licensee to consult and determine the best formulation based on the feedback it receives, its experience, technical knowledge, and engagement with its customers.

<sup>56</sup> MTN Initial Submission 2024 Page 22 Para 5.32

<sup>57</sup> MTN Initial Submission 2024 Page 27 Para 5.48

<sup>58</sup> Vodacom Initial Submission 2024 Page 28 Para 83

3.13.12 Vodacom emphasizes that roll-over should be an area in which operators compete. Differences in roll-over policies across operators are consistent with a competitive market in which roll-over is a parameter of competition.

3.13.13 Vodacom argues that Authority would effectively be removing roll-over as a parameter of competition, reducing the incentives of operators to innovate on roll-over as a means of further differentiating their product offerings from rivals. This is detrimental to consumer choice and welfare.<sup>59</sup>

3.13.14 In Cell C's view, the proposal that medium and long-term bundles must be rolled over automatically and at no additional cost to the consumer will have significant detrimental unintended consequences to Licensees, consumers and competition. Cell C argues that this effectively prescribes the contractual terms for roll-overs, which they believe exceeds ICASA's regulatory powers and interferes with commercial activities of the licensees.<sup>60</sup>

3.13.15 "If Cell C's subscribers use more than the estimated capacity in any given month (which will likely be the case if all medium and long-term bundles are automatically rolled over at no additional cost to the consumer), Cell C will have to pay penalties to its service providers. The cost of penalties for capacity over-usage is significant. Accordingly, in Cell C's view, the proposed amendments will have a particularly detrimental effect on smaller players in the market (such as Cell C), who lease capacity on infrastructure, an effect which is not applicable to bigger players in the market. The detrimental effect on smaller players within the market could potentially impede their ability to effectively compete in the market."

3.13.16 This regulation can be viewed as a force majeure event—an unforeseeable circumstance that should be covered under the force majeure clause in Cell C's contracts with its service providers. As such, Cell C should engage with its service providers to address this issue under the force majeure provisions, thereby mitigating the impact of these regulatory amendments on its operations and ensuring fair competition within the market.

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<sup>59</sup> Vodacom Initial Submission 2024 Page 29 Para 85

<sup>60</sup> Cell C Initial Submission 2024 Page 8 Para 31 & 32

3.13.17 Amandla.mobi strongly supports the rollover of bundles but criticizes the exclusion of short-term bundles (less than seven days). They argue that low-income consumers, who rely heavily on these short-term bundles, are disproportionately affected by their exclusion from rollover provisions.

3.13.18 The organization proposes that short-term bundles should also benefit from rollover to ensure equitable treatment and protect vulnerable consumers from losing unused data due to expiration.<sup>61</sup>

3.13.19 Consumer Advisory Panel fully agrees and supports that the rollovers must occur without any action by the end user and at no cost to the end-user.

3.13.20 Consumer Advisory Panel submits that the principles of bundle roll-overs must be equitably applied to all services (that is voice, SMS and data).

3.13.21 SAFC submits that regulation 8A (6) and (7) amount to undue interference in the commercial activities of licensees.<sup>62</sup>

3.13.22 SAFC explains that Licensees see roll-over provisions in their service offerings as competitive differentiators, and by regulating roll-overs to 50% for medium-term bundles and 25% for long-term bundles, the Authority is removing any possibility that consumers could have had for a more beneficial deal.

3.13.23 This would be the case even if the Authority added the words "at least" in front of the 50% and 25% roll-overs for medium- and long-term bundles, respectively. The setting of minimum requirements leads to a homogenization of products and services and may stifle rather than promote competition and the SACF proposes that the requirement be deleted.<sup>63</sup>

3.13.24 SACF pointed out a confusion caused by the wording in sections 8A(6) and (7). It is not clear whether the roll-over in the second month would amount to the original 50/25% applicable in the first month, or whether

<sup>61</sup> Amandla. Mobi Initial Submission 2024 Page 6 Para 3

<sup>62</sup> South African Communications Forum (SACF) Initial Submission 2024 Page 5 Para 16

<sup>63</sup> South African Communications Forum (SACF) Initial Submission 2024 Page 6 Para 16(i)

it would apply to 50/25% of the amount already rolled over in the first month.<sup>64</sup>

3.13.25 Rain would like to propose that the current wording in regulation 8B of the End-User Regulations, which requires licensees to provide customers with an option to roll-over or transfer data, be maintained. The operator agrees that licensees should not be allowed to require that end-users purchase new bundles to exercise their right to choose to roll-over unused data.<sup>65</sup>

3.13.26 Telkom is concerned that the Authority has included 7-day bundles in its definition of medium-term bundles and requests that the Authority exclude such from the definition of medium-term bundles for the reasons explained.<sup>66</sup>

3.13.27 Telkom is concerned that the sub-regulation, as it is currently drafted, does not refer specifically to data purchased by the end-user. Telkom therefore submits that the sub-regulation be amended as follows "A Licensee must, in the case of medium-term bundles, at the end of the validity period, roll-over 50% of any unused bundle purchased from the licensee by the end-user for an equivalent validity period" (emphasis added)<sup>67</sup>.

3.13.28 Telkom submits that implementing the rolling-over twice and the percentage roll-over capabilities will require additional system development at additional cost to the licensees. This will result in Telkom having to increase the prices of the affected products to the disadvantage of end-users. The implementation will also add additional complexity and confusion for end-users.<sup>68</sup> Telkom does not support the proposed amendment and submits that the current regulation is well understood and appreciated by end-users. Telkom submits that unused bundle usage be rolled over only once (as per the current regulation pertaining to roll-over).

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<sup>64</sup> South African Communications Forum (SACF) Initial Submission 2024 Page 6 Para 16(iii)

<sup>65</sup> Rain Initial Submission 2024 Page 3 Para 2.7

<sup>66</sup> Telkom Initial Submission 2024 Page 7 Para 27,28&29

<sup>67</sup> Telkom Initial Submission 2024 Page 8 Para 30

<sup>68</sup> Telkom Initial Submission 2024 Page8 Para 31,32&33

3.13.29 In addition to commenting on the draft EUSSC Regulations, Telkom would like to draw to the Authority's attention to a possible misalignment between the draft EUSSC Regulations and the proposals contained in the draft Numbering Plan Fourth Amendment Regulations, 2023 (GG 49329 notice 2039, published on 21 September 2023) ("Draft Numbering Plan Regulations").

3.13.30 Telkom requests that the Authority ensure alignment between the two sets of regulations. For example, sub-regulation 6A(3) in the draft Numbering Plan Regulations reads as follows: "Upon thirty (30) consecutive calendar days in which an end-user has not initiated a revenue generating activity, a licensee must notify the end-user of the intended withdrawal. The end-user must be afforded a grace period of thirty (30) consecutive calendar days to object to the withdrawal notice by means of a revenue generating activity."

3.13.31 ACT is concerned that sub-regulations 8A (6) and (7) is nullifying any potential for competition and innovative and differentiated products that licensees might have offered to consumers and by imposing this requirement, the Authority is effectively putting a limit on what consumers could possibly receive.

### **3.14 The Authority's Decision**

3.14.1 **The Authority is of the view that there is a regulatory gap in that although consumers are not automatically defaulted into out-of-bundle charges as required by the 2018 regulations, they are still continuously billed at an in bundle rate as opposed to having their services terminated, and despite them not having made any election or consented to such charges.**

3.14.2 **Therefore, the immediate termination of services ensures that the usage and control are fully vested in the hands of the end-user to ensure that they can account for what they have used and what they are paying for.**

**The Authority acknowledges the concerns raised by licensees regarding network planning and capacity constraints. However, the Authority is of the view that such considerations do not affect the validity of the proposed bundles. Modern electronic**

communications networks are expected to be dimensioned with sufficient flexibility, redundancy, and excess capacity to accommodate varying levels of consumer demand.

- 3.14.3 The Authority is not prohibiting product differentiation by placing parameters. The Authority is of the view that the roll-over rules have always been in place, and the only addition to these amendments is to ensure uniformity of certain bundle plans to ensure longevity and prevent loss of data through expiry.
- 3.14.4 The Authority is not impeding competition or precluding operators from competing, hence the Authority left the smaller denomination of bundles unaffected by these amendments in order to ensure a balance of both consumers and licensee's interests. Furthermore, the exclusion of smaller denomination bundles is as a result of such bundles being the main or dominant bundles purchased by end users hence the authority has left them unaffected by the amendments.
- 3.14.5 Secondly, the Authority has applied a light-touch regulatory approach to ensure that licensees are still able to compete on such bundles within the prescribed parameters. The Authority has just set a baseline or minimum standard of how roll-over must take place, and licensees can dictate from there how they improve or innovate from such a baseline.
- 3.14.6 The Authority has decided to exclude smaller denominations of bundles from the rollover requirement based on feedback from licensees indicating that most South Africans purchase these types of bundles. Including them could lead to unintended consequences, such as making these low-cost bundles economically unviable for operators. This, in turn, may result in a loss of product differentiation and reduced competition in the small-bundle segment of the market Committee can adopt if accepted.
- 3.14.7 Furthermore, such bundles are mainly bought for a specific purpose like hourly bundle, whereby one purchases such for a

specific short-term usage therefore differentiation needs to be allowed in such a bundle range.

3.14.8 The Authority has further decided to remove the percentage roll-over requirement and make provision for an automatic roll-over of all bundles above 7 days at the end of the validity period of such bundle subject to the conditions set in regulation 8A (6).

3.14.9 To clarify what is meant by "the same terms and conditions applicable to the original bundle" if an end-user purchases any bundle over 7 days, the licensee is required to roll-over the remainder of the unused bundle to an equivalent period placed on the original purchased bundle.

3.14.10 The process of roll-over is already implemented by all licensees although differently, therefore the Authority does not see how implementing roll-over to an additional roll over equivalent to the validity period of the bundle purchased would require any system development as currently service providers are able to roll-over bundle more than the prescribed period at a cost to consumers.

3.14.11 Furthermore, there is no confusion to the customer that will be created as per regulation 8(A)(5) no action would be required from end-users to implement such roll-over.

3.14.12 On the issue of potential misalignment between draft EUSSC Regulations and the proposals contained in the draft Numbering Plan Fourth Amendment Regulations,2023 (GG 49329 notice 2039, published on 21 September 2023) ("Draft Numbering Plan Regulations"), The Authority has aligned the roll-over provisions in this Regulations to the Numbering Plan Regulations.

### **3.15 Amendment to regulation 8A (7) & (8)**

#### **Transfer of bundles**

##### **Submissions received**

3.15.1 MTN submits that the transfer rules remove the ability of licensees to exercise their expertise and experience in a flexible way to respond to

changes in consumer requirements and market dynamics in general by prescribing the specific way data transfer must occur.<sup>69</sup>

3.15.2 Sub-regulations 8A (9) and (10) amount to undue interference in the contractual terms governing the provisions of services to end-users by licensees.

3.15.3 MTN submits that to give effect to unlimited data transfer, a fundamental change to the existing information systems of licensees is required and this would also require extensive development and costs.<sup>70</sup>

3.15.4 Further, MTN submits that from a network perspective, the effective planning and management of networks is imperative to ensuring efficiencies in the cost of provisioning services.<sup>71</sup>

3.15.5 MTN submits that the value-added service rules which limit the number of persons to whom transfer can be made, as well as further data transfer protects MTN's network and consumer welfare against abuse and fraudulent activities.<sup>72</sup>

3.15.6 Unlimited data transfer would render the continued provision of heavily discounted personalised and otherwise differentiated products a large commercial risk.<sup>73</sup>

3.15.7 The extension of the transfer rule to voice and SMS is not appropriate, MTN submits that there is in fact no substantial harm or market failure which exists that necessitates the imposition of regulation which would have significant unintended and adverse effects.<sup>74</sup>

3.15.8 Vodacom submits and requires for the substitution 8A (9) and (10) relating to bundle transfer. Vodacom further submits that these provisions are not in the interests of end-users either as they increase the risk of arbitrage significantly and severely restrict a licensee's ability to provide different services. This exposes many end-users to a potential increase in the price of services.

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<sup>69</sup> MTN Initial Submission 2024 Page 29 Para 6.4

<sup>70</sup> MTN Initial Submission 2024 Page 31 Para 6.10

<sup>71</sup> MTN Initial Submission 2024 Page 31 Para 6.11

<sup>72</sup> MTN Initial Submission 2024 Page 34 Para 6.25

<sup>73</sup> MTN Initial Submission 2024 Page 35 Para 6.28

<sup>74</sup> MTN Initial Submission 2024 Page 35 Para 6.29

3.15.9 Vodacom submits that should the Authority require transfers to be available, this cannot be compulsory, and flexibility in implementing it and in distinguishing products to which it applies or does not apply should be left to the licensees. The Authority can only prescribe that transparency of the terms and conditions is required if a transfer is provided.<sup>75</sup>

3.15.10 Vodacom argues that Licensees must be allowed to place legitimate limitations on data transfers so that the effect of transfer options can be properly managed. To do otherwise would significantly undermine the licensee's ability to price differentiate and hence deprive consumers of the benefits of such price differentiation, i.e. consumers would no longer benefit from services which are tailored to their specific needs.

3.15.11 If data from a large bundle which has been specifically designed for and sold to a "heavy" user can be transferred to a mobile customer who only demands a small amount of data and the number of such transfers is unrestricted, it would result in arbitrage and would undermine Vodacom's ability to offer large data packages at a low unit cost.

3.15.12 The proposed regulations would strip Vodacom (and other operators) of the ability to properly manage transfer options to prevent arbitrage between tariff offers. Consequently, many of the existing services on the market (FWA, MBB, URL-specific bundles, personalized bundles, etc.) would be negatively impacted, as any differentiation in price between these services could lead to arbitrage.<sup>76</sup>

3.15.13 Vodacom argues that further issues on the network could arise compromising experience for other customers. For example, if a customer who purchases a regional/geographic Just 4 Your Town bundle at a discounted price because of spare capacity in that specific area is allowed to transfer that bundle to a customer outside that area, it would firstly defeat the purpose of the promotion and, if done in volume, would impact the experience of customers in the area where the bundle has been transferred to as that area would have reduced capacity.

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<sup>75</sup> Vodacom Initial Submission 2024 Page 32 Para 92

<sup>76</sup> Vodacom Initial Submission 2024 Page 36 Para 103

3.15.14 Finally, Vodacom urges the Authority to consider the full ramifications of arbitrage on the end-user, particularly the low-income users. Faced with arbitrage, mobile operators will have little choice but to drastically reduce the range of tariffs they offer, with all of an operator's products converging to substantially more uniform rates (unit prices per GB, per minute and per SMS).<sup>77</sup>

3.15.15 Cell C argues this is another instance of ICASA overstepping its authority by dictating contractual terms between licensees and end-users.

3.15.16 Cell C submits that the proposed amendments are likely to lead to competitive arbitrage. In circumstances where end-users are entitled to transfer bundles (an unlimited number of times) across different services, to other end-users on the same network, and potentially charge a higher or lower price than the price charged by the Licensees, a secondary market will be created.

3.15.17 Such secondary market will be unregulated and immune to the Authority's and the Licensees' control and oversight. The ability on the part of Licensees to develop and implement terms and conditions in relation to the transfer of bundles is (and has been) essential to mitigate against potential abuse and fraud associated therewith.<sup>78</sup>

3.15.18 Cell C submission supports the regulation allowing consumers to transfer bundles or portions thereof, viewing it as a positive step towards consumer empowerment and flexibility. They see this as particularly beneficial for low-income consumers, who may need to share data resources within their communities.

3.15.19 Consumer Advisory Panel submits that the transfer of bundles must not be limited to specific service types including uncapped, free, or promotional bundles both on the on net and off net scenarios.<sup>79</sup>

3.15.20 ISPA submits that a time-based service – e.g. where internet access is made available for a fixed period without usage restrictions – is effectively

<sup>77</sup> Vodacom Initial Submission 2024 Page 38 Para 110

<sup>78</sup> Cell C Initial Submission 2024 Page 11 Para 45, 46, 47 & 48

<sup>79</sup> CAP Initial Submission 2024 Page 4 Para 4.1.2 "H"

a time-limited uncapped service and will not be subject to the rules regarding data transfers.<sup>80</sup>

3.15.21 Regarding section 8A (9) and (10) SACF submitted that allowing transfers of bundles in the way proposed would create a dilution of bundles and pricing and an unregulated secondary market.

3.15.22 Furthermore, Licensees already provide for the transfer of certain bundles, but these are subject to reasonable terms and conditions that regulates abuse. Regulating transfers as proposed may not only have but could ultimately result in no differentiating rates being offered at all.<sup>81</sup>

3.15.23 The ability to transfer bundles should be done on commercial terms, and that the proposals set out in regulations 8A (6), (7), (9) and (10) could only ever be implemented after a Chapter 10 process.<sup>82</sup>

3.15.24 Rain also suggests that the end users be provided 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.<sup>83</sup>

3.15.25 Telkom provides its end-users with several options to transfer data amongst each other. However, transferring of data to other electronic communications services, like voice and SMS is not supported due to the complexity associated with implementation and value conversion. This will only result in increasing the cost of providing electronic communications services with no real benefit to end-users.

3.15.26 Telkom does not support the extension of transfer to any other service types besides data.<sup>84</sup>

3.15.27 Furthermore, Telkom is of the view that the requirement that licensees allow unlimited transfers undermines the provisions of the Electronic Communications Act and other relevant legislation, such as the Regulation of Interception of Communications and Provision of Communication Related Information Act 70 of 2002, as it will enable non-

<sup>80</sup> ISPA Initial Submission 2024 Page 4 Para 16

<sup>81</sup> South African Communications Forum (SACF) submission document 2024 page 6 Para 16 "vi" & "vii"

<sup>82</sup> South African Communications Forum (SACF) submission document 2024par 16(v)-(ix)

<sup>83</sup> Rain Initial Submission 2024 Page 5 Clause 3.2

<sup>84</sup> Telkom Initial Submission 2024 Page 9 Para38&39

licensees to sell and transfer data unchecked. In addition, it poses a huge risk to mobile operators in terms of non-licensees being able to buy in bulk and engage in arbitrage, which undermines the business models of licensees.<sup>85</sup>

3.15.28 ACT submit that the stipulations outlined in sub-regulations 8A (9) and (10) will ultimately have a detrimental impact on consumers. They indicate that by obliging licensees to transfer bundles or portions thereof and to allow for unlimited transfer of bundles, the Authority is increasing costs for licensees and removing any incentive for licensees to create differentiated products, tariffs and promotions with the result that ultimately all bundles will be offered at the same rate, with consumers losing out. Furthermore, ACT underscore the fact that by imposing unlimited transfer, ICASA is attempting to regulate pricing despite lacking the powers to do so.

### **3.16 The Authority's Decision**

3.16.1 **These regulations do not seek to fix prices, impose tariff ceilings, or control competition directly, as would require a Chapter 10 process. Rather, the Authority has taken care to exclude smaller denomination bundles, promotional, uncapped, and personalised bundles from the mandatory transfer regime to preserve licensees' ability to differentiate their offerings and to ensure compliance with the principles of proportionality and non-intrusion into commercial discretion.**

**In terms of section 69(5)(f), the Authority has developed minimum standards for the protection of end-users, including the promotion of their interests with regard to quality and the variety of electronic communications services as prescribed in the objects of the ECA (section 2 (n)).**

**To address the concern by licensees, the Authority has considered the limitation on transfer and has put a provision that the bundles transferred are subjected to the same terms and conditions as per the original bundles.**

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<sup>85</sup> Telkom Initial Submission 2024 Pag10 Para 41

3.16.2 The Authority needs to consider the rights of the consumer to share their bundles which are about to expire without any impediment. The Authority cannot allow consumers to lose their data as a result of the current expiry rules in play which limits roll-over and further place additional restrictions on the capabilities of consumers to share their purchased data through transfer to ensure full usage and enjoyment.

The Authority has clarified in the draft regulations which bundles are prohibited from being transferred to address the licensee's concerns regarding the commercial risk and arbitrage outlined. For e.g. one cannot transfer promotional/bonus bundles and can only transfer standard purchased bundles and such is balanced with the need for consumers who would want to make multiple transfer on a non-commercial non resale purpose to be able to have the latitude of transferring their bundles.

3.16.3 The Authority wishes to clarify that transfer is only limited to like for like products in relation to bundle transfer and that no cross transfer for example from voice to data bundles.

3.16.4 The Authority after consideration of the submissions by licensees regarding the possible extensive system development by licensees is of the view that licensees have in place systems which are dynamic in nature and expandable of which will not require procurement of new systems and will require minor changes to accommodate and give effect to the changes required.

### **3.17 Amendment to regulation 8A (9)**

#### Submissions received

3.17.1 Vodacom notes that where a disturbance or incident has occurred, Vodacom will not always be aware of what has transpired. The customer must therefore log the issue with Vodacom and Vodacom will investigate, validate, and then re-allocate a new bundle.

3.17.2 However, certain occurrences do not attract responsibility on the part of Vodacom. As per the definition of "fault" in the regulations, incidents that fall outside of Vodacom's control such as outages, criminality and vandalism cannot be directly attributed to the licensee and require no action by the respective licensee.<sup>86</sup>

3.17.3 CAP agrees and supports the extension of bundles when the fault of the inability to use bundles is not on the part of the end user, but that of the licensee.<sup>87</sup>

3.17.4 CAP appreciates and supports the Authority's retention of the provision for compensation to end-users who are unable to utilize bundle services due to the fault of the licensee.<sup>88</sup>

### **3.18 The Authority's Decision**

**3.18.1 The Authority concurs that disturbances need to be reported to the Licensees to enable them to attend to such faults.**

**3.18.2 The Authority confirms that those issues where fault cannot be directly attributed to the Licensee, the Licensee will not be expected to provide rebate in the form of a validity period extension.**

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### **SUBMISSIONS RECEIVED PERSUANT FOLLOW-UP QUESTIONS POST THE PUBLIC HEARINGS ON END-USER AND SUBSCRIBER SERVICE CHARTER REGULATIONS**

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### **3.19 Question by the Authority**

3.19.1 It was noted that the Authority seeks to set a floor of minimum standards governing roll-over of unused bundle balances, and that licensees disagree with the proposals set out in the draft regulations. Can you propose how the Authority might better regulate the rollover provisions so as to set a minimum standard that provides reasonable certainty to consumers who continue to complain about the loss of unused balances

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<sup>86</sup> Vodacom Initial Submission 2024 Page 41 Para 120

<sup>87</sup> CAP Initial Submission 2024 Page 5 Para 4.1.2 "G"

<sup>88</sup> CAP Initial Submission 2024 Page 4 Para 4.1.2 "K"

within the various bundle types and categories? In other words, how can the Authority provide for a minimum standard in respect of bundle rollover without being unnecessarily prescriptive?

Submissions received

13.9.1.1 Vodacom proposes that the service charter may require licensees to describe and provide more transparency on the validity/expiry period of bundles and the roll-over options available on their different products. Those customers who want the protection of roll-over may then have that option available and can compare the roll-over options offered by different licensees, bearing in mind that roll-over options can be implemented in different ways, depending on the systems available within the licensee to support such activity. The solution does not, however, lie in prescribing a blanket measure that imposes roll-over obligations on all products and denies consumers a fixed validity period product at a cheaper price.<sup>89</sup>

13.9.1.2 Vodacom refers to section 69(3) of the ECA, that it does not empower the Authority to regulate the attributes of products and services offered by a licensee in the market. Rather that, the Authority should not publish regulations that prescribes or directly and indirectly influence how products are priced doing so will be ultra vires<sup>90</sup>.

13.9.1.3 Vodacom submits that the Regulations should not contain "data expiry rules" such as those proposed for roll-over, as there is no express provision in section 69(5) that gives the Authority the power to compel licensees to roll-over unused bundles<sup>91</sup>.

13.9.1.4 Vodacom notes that section 69(5) provides that a service charter may address matters which "include but are not limited to" those listed in section 69(5)(a)-(e). But section 69(5), and more specifically subsection (f), does not provide the Authority with an unfettered discretion to make regulations regarding any matter

<sup>89</sup> Vodacom Supplementary Submission 2024 Page 1 Para 4.

<sup>90</sup> Vodacom Supplementary Submission 2024 Page 1 Para 1.

<sup>91</sup> Vodacom Supplementary Submission 2024 Page 1 Para 1,

which it may want to regulate. Section 69(5)(f) must be read holistically and not in isolation. The matters set out in section 69(5)(a) – (e) makes up a distinct category or type of matters i.e. they relate to how Vodacom relates to and engages the end-user in conducting its business<sup>92</sup>.

13.9.1.5 Vodacom submits that concerns raised could have been addressed by consumer campaigns and education, not through draft regulations. Regulatory intervention must be less invasive than the one proposed by the Authority<sup>93</sup>.

13.9.1.6 Vodacom maintains, as per its submissions of April 2024 and as explained above, that on a proper interpretation of section 69, the Authority cannot prescribe how roll-over options should be implemented.

13.9.1.7 Cell C recommends that licensees are provided with commercial latitude and space to impose reasonable prices, terms and conditions applicable to the rollover or unused bundles. Cell C submits that any rollover of unused bundles should take place at the election of the consumer (not automatically) and subject to reasonable and transparent prices, terms and conditions determined by the licensee. In this manner the consumer will be able to make an election best suited to them<sup>94</sup>

13.9.1.8 Cell C further indicates that where such terms and conditions, prices imposed by the licensee on the rollover of unused bundles are unfair, unreasonable or excessive there are other alternative avenues which can be pursued such as filing a complaint with the Competition Commission of South Africa<sup>95</sup>.

13.9.1.9 MTN proposes that an example of a minimum standards would be a requirement that operators offer mechanisms to end-users which empower them to mitigate against the loss of unused data. This enables operators to produce innovative solutions and allows

<sup>92</sup> Vodacom Supplementary Submission 2024 Page 1 Para 2.

<sup>93</sup> Vodacom Supplementary Submission 2024 Page 1 Para 3.

<sup>94</sup> Cell C Supplementary Submission 2024 Page 3 Para 11.2.

<sup>95</sup> Cell C Supplementary Submission 2024 Page 3 Para 11.3.

end-users to exercise their discretion as to which mechanism, if any, they prefer to use.<sup>96</sup>

13.9.1.10 Further, MTN submits that the current wording of the regulations is sufficiently generic and adequately allows for bundle roll over without limiting the ability of operators to determine for themselves the best way to comply with the regulations.<sup>97</sup>

13.9.1.11 To address the rollover of unused data bundles, ICASA can establish minimum standards that protect consumers without being overly restrictive. "Minimum standards" under section 69 of the ECA provide the lowest criteria licensees must meet to ensure fair service delivery without dictating exact service structures. Setting such standards allows operators to develop flexible solutions that empower consumers to manage unused data, fostering service innovation and choice.

13.9.1.12 MTN argues that ICASA's draft regulations are already flexible enough to support competition among operators, who can offer different rollover options. Mandating uniform rollover rules would harm competition, reducing consumer choice and potentially driving prices up as operators absorb associated costs. Automatic, free rollover for all unused data is challenging due to the inherent costs, and enforcing such a standard could lead to price increases.

13.9.1.13 MTN indicated that ICASA should define a basic framework for rollover options that addresses consumer concerns without enforcing uniformity, preserving operators' ability to innovate and compete.

13.9.1.14 Telkom does not agree that a minimum roll-over requirement for unused bundles should be set by the Authority.<sup>98</sup>

13.9.1.15 Telkom further opposes setting minimum standards for the roll-over of unused data bundles, arguing that it would amount to prescribing contractual terms for licensees and hinder competition. According to Telkom, such regulation would prevent

<sup>96</sup> MTN Supplementary Submission 2024 Page 5 Para 2.1.4.

<sup>97</sup> MTN Supplementary Submission 2024 Page 5 Para 2.1.8.

<sup>98</sup> Telkom Supplementary Submission 2024 Page 1 Para 3

differentiation in validity periods and pricing strategies, reducing consumer choice and innovation. Telkom believes this would undermine competition, stifle innovation, and contradict objectives of the Electronic Communications Act, such as promoting competition and ensuring diverse service offerings.

13.9.1.16 Telkom highlights its own approach of automatic two-month roll-over for monthly data bundles (excluding promotions) as evidence that licensees are already addressing consumer needs and evolving their offerings. Therefore, Telkom contends that regulatory intervention is unnecessary and would negatively impact market flexibility and consumer benefits.

13.9.1.17 ACT proposes that the Authority must make use of Social and Economic Impact Assessments ("SEIAs") to determine what the introduction of additional regulations aims to address and whether they are proportional to the identified market or social failure before enacting such regulations.

13.9.1.18 ACT accordingly submit that there are no minimum standards that should be imposed in respect of bundle roll-over. The most practical and least intrusive intervention to support consumers would be a general requirement to notify consumers prior to the expiry of the bundles.<sup>99</sup>

### **3.20 The Authority's Decision**

3.20.1 **Section 69(5)(f) of the ECA prescribes matters which an end-user and subscriber service charter may address includes but not limited to any other matter of concern to end-users and subscribers which can include how roll-over rules are implemented, and which aligns with the intent and structure of s69—i.e., enhancing consumer empowerment, fairness, and service usability.**

3.20.2 **After considering the submissions made by the Licensees, the Authority's view that bundles that are 7 days or less should be excluded from roll-over provision because those bundles are mostly purchased by low-income users. The unused bundles above 7 days**

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<sup>99</sup> ACT Supplementary Submission 2024 Page 2 Para 4.

**should at least be rolled over once to the same terms and conditions applicable to the original bundle. The roll over of the bundles which are 7 days and less are left to the discretion of the Licensees.**

3.20.3 **The Authority is of the view that consumer education as raised by licensees including transparency mechanisms that empower end-users to mitigate against the loss of unused bundles is welcomed by the Authority, however such alone is not sufficient to provide the required protection to end-users and a more stringent approach in the form of Regulatory intervention is required.**

3.20.4 **Furthermore, the roll-over provisions prescribed in these Regulations do not prohibit Licensees from providing additional roll-over as they deem appropriate to compete. Therefore, the provisions prescribed by the Authority do not prevent the licensees from competing.**

### **3.21 Question by the Authority**

3.21.1 It was noted that the Authority seeks to set clear minimum guidelines allowing consumers to transfer an acceptable proportion of a bundle from one SIM card to another, and that licensees disagree with the proposals set out in the draft regulations (for varying reasons including concerns over possible arbitrage and secondary markets). Please propose how the Authority might better regulate these provisions so as to set a minimum standard that will enable users to enjoy an acceptable level of bundle transfer. In other words, how can the Authority provide for a minimum standard in respect of bundle transfer without being unreasonably prescriptive?

#### Submissions received

3.21.1.1 Vodacom proposes that the Authority can only require and prescribe that the terms and conditions be transparent to the extent that transfer options are provided.<sup>100</sup>

3.21.1.2 Vodacom provides that the Draft Regulations seek to prescribe the attributes of the products to be offered, which powers are not

<sup>100</sup> Vodacom Supplementary Submission 2024 Page 3 Para 8.

conferred on the Authority in terms of section 69(3). There is no express provision in section 69(5) that gives the Authority the power to compel licensees to transfer the unused portions of bundles<sup>101</sup>.

3.21.1.3 Vodacom further indicates that should the Authority require a transfer option to be available, this option cannot be compulsory (for the same reasons discussed above in relation to roll-over) and flexibility in implementing transfer options, as well as in determining the products to which the transfer option apply or do not apply, should be left to the licensees. It is Vodacom's submission that the Authority can only require and prescribe that the terms and conditions be transparent to the extent that transfer options are provided<sup>102</sup>.

3.21.1.4 Should the Authority require transfer options to be available, Vodacom makes the following proposals without prejudice to its rights, which remain reserved, and without conceding that the proposals can be lawfully imposed by the Authority.<sup>103</sup>

*"8A (9) —A Licensee must provide an end-user with the option to transfer a portion of an unused data bundle covering a reasonable range of its product offers to an end-user utilising the services of the same Licensee, for their personal use. The transfer is subject to the same terms and conditions and must occur on the same payment basis. Short term bundles, FWA services, pre-paid LTE, MBB, promotional and free offers, geographically limited and personalised offers are excluded from transfer.*

*8A (10) —A bundle that has been transferred need not be transferred again or rolled over."*

3.21.1.5 This proposal allows end-users to select (new) offers which allow transfer from a reasonable range of product offers (with the exclusions indicated below).

<sup>101</sup> Vodacom Supplementary Submission 2024 Page 3 Para 7.

<sup>102</sup> Vodacom Supplementary Submission 2024 Page 3 Par 8.

<sup>103</sup> Vodacom Supplementary Submission 2024 Page 3 Par 9.

3.21.1.6 Telkom argues that by seeking to set industry bundle transfer rules as a minimum service requirement, the Authority will make it more difficult for Telkom to distinguish itself and to compete effectively as a small operator. This will ultimately stifle competition within the market.<sup>104</sup>

3.21.1.7 Telkom opposes the Authority's proposal to prescribe minimum requirements for unlimited and unrestricted bundle transfers, arguing that such regulation would be overly prescriptive and could lead to the creation of an unregulated secondary reseller market, potentially resulting in consumer abuse and end-user dissatisfaction. Telkom highlights that unrestricted transferability could lead to risks such as fraud or misrepresentation by non-licensees, ultimately damaging its brand and increasing complaints.

3.21.1.8 Telkom asserts that its existing service offerings already provide sufficient flexibility for end-users to share and transfer data within its network, with daily and monthly limits in place to mitigate risks. It notes that these limits have been well-received by users and help differentiate its offerings in a competitive market. Telkom believes that industry-wide minimum transfer rules would hinder its ability to innovate, compete as a smaller operator, and balance consumer needs with network integrity and security concerns.

3.21.1.9 MTN submits that the current wording of the regulations is sufficiently generic and adequately allows for bundle transfer without limiting the ability of operators to determine for themselves the best way to comply with the regulations and implement measures which protect their networks and customers from abuse.<sup>105</sup>

3.21.1.10 To set a minimum standard for bundle transfer, ICASA should allow flexibility for operators to protect their networks and consumers from abuse while supporting consumers' right to

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<sup>104</sup> Telkom Supplementary Submission 2024 Page 3 Para 4.

<sup>105</sup> MTN Supplementary Submission 2024 Page 9 Para 2.2.2.

transfer a reasonable amount of data. Currently, operators face risks like arbitrage, where individuals misuse transfer options to resell data, creating an unregulated secondary market. MTN reports instances of misuse, including excessive data sharing between a single SIM and hundreds of others, which led MTN to set up monitoring systems and limit transfers to typical end-user behaviour.

- 3.21.1.11 To mitigate abuse, MTN has restricted data transfer on certain promotional or discounted bundles and tracks unusual transfer patterns. Unlimited transfer options without limitations risk increasing prices as operators absorb the cost and adjust to prevent arbitrage.
- 3.21.1.12 MTN submits that ICASA can establish a framework that ensures consumers can transfer data responsibly without compromising operators' ability to manage risks and prevent the development of unregulated resale markets, ultimately safeguarding consumer welfare.
- 3.21.1.13 In Cell C's view, the Authority could consider withdrawing the current proposed amendments on bundle transfers.
- 3.21.1.14 Cell C is of the view that the only way that bundle transfers should ever happen, should be at the initiative of a licensee.<sup>106</sup>

### **3.22 The Authority's decision.**

- 3.22.1 **The Authority had previously after consideration of the submissions by licensee left the decision to both roll-over and transfer in the hands of the licensees through their terms and conditions including business rules, which has led to the various in which licensees have been implementing such provisions.**
- 3.22.2 **To address this, the Authority as empowered by section 69(5)(f) of the ECA has now established uniform requirements in the Regulations to ensure that all end-users have access to a consistent**

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<sup>106</sup> ACT Supplementary Submission 2024 Page 3.

**baseline of protections and service entitlements, regardless of the licensee they use this includes the issue of transfer.**

3.22.3 **The transfer provisions as stipulated does not in any way seek to interfere with licensee's contractual agreements with their end-users nor seek to regulate pricing or tariffs on products offered by licensees. However, set uniform requirements are put in place just to ensure proportionality and reasonableness to the harm identified as a result of loss of bundles.**

3.22.4 **Furthermore, it is the responsibility of the licensees to provide the necessary consumer education to avoid such unintended consequences in relation to transfer as opposed to restricting genuine consumer transfer of bundles.**

### **3.23 Question from the Authority**

3.23.1 It was proposed that regulation 5(1) be aligned with the reduced tariff notification period in the Standard Terms and Conditions Regulations from seven (7) days to five (5) days. Please indicate whether you agree or disagree with the proposed amendment.

#### Submissions received

3.23.1.1 Vodacom,<sup>107</sup> Cell C,<sup>108</sup> Telkom,<sup>109</sup> MTN,<sup>110</sup> Act<sup>111</sup> and Amandla.Mobi<sup>112</sup> agree with the proposed amendment.

3.23.1.2 Further, Cell C recommends that the Authority consider filing of all tariffs at least one (1) business day prior to the provision of the said tariffs as opposed to seven (7) business days.<sup>113</sup>

<sup>107</sup> Vodacom Supplementary Submission 2024 Page 4 Para 12.

<sup>108</sup> Cell C Supplementary Submission 2024 Page 5 Para 13.1.

<sup>109</sup> Telkom Supplementary Submission 2024 Page 3.

<sup>110</sup> MTN Supplementary Submission 2024 Page 11 Para 2.3.1.

<sup>111</sup> Act Supplementary Submission 2024 Page Page 3.

<sup>112</sup> Amandla.mobi Supplementary Submission 2024 Page Page 1.

<sup>113</sup> Cell C Supplementary Submission 2024 Page 5 Para 13.2

### **The Authority 's decision**

**The Authority after consideration of the submission received agrees to align the reduced tariff notification period as per the Standard Terms and Conditions Regulations from seven (7) days to five (5) days as per regulation 5(1) as amended.**

#### **3.24 Question from the Authority**

3.24.1 It was mentioned that implementing the Draft Amendment Regulations would be costly. If the Draft Amendment Regulations were to be promulgated as is, how long would it take licensees to implement the provisions? Please provide realistic timelines and cost estimates required to implement the provisions of the Draft Amendment Regulations.

### **The Authority's decision**

**The Authority after consideration of the submissions received has resolved to grant a transitional period of 12 months from the date of publication in the gazette to effect such changes in order to enable and allow the market to speedily benefit from such changes and further to that, the Authority is of the view that any longer period would render the changes redundant and loose effect.**

#### **3.25 Question by the Authority**

3.25.1 Concerns were raised during the public hearings regarding the need to protect consumers by ensuring longevity of their bundle purchases. How can the Authority address these concerns through regulations?

#### Submissions received

3.25.1.1 Vodacom is of the view that the notion of "longevity of bundles" is irreconcilable with the Authority's own definition of a bundle as set out in the Draft Regulations, i.e., "Bundle" means a set amount of data, voice minutes, SMSs, OTT services, or a

combination thereof, valid for a specific period of time, sold for a single price for the set of services included in the bundle; ".<sup>114</sup>

3.25.1.2 Vodacom also offers service units with no expiry, i.e., OOB. Customers can choose the bundle validity period that match their specific needs best, alternatively they can opt for OOB purchases as and when required<sup>115</sup>.

3.25.1.3 Cell C recommends that the Authority and industry participants conduct frequent and robust public awareness campaigns through various mediums to address the longevity of bundles.<sup>116</sup>

3.25.1.4 It is Telkom's submission that the longevity of bundles does not need to be addressed by the Authority through regulations.<sup>117</sup>

3.25.1.5 Telkom argues that the longevity of data bundles should be left to the commercial discretion of each licensee rather than being regulated by the Authority. They note that Telkom already offers bundles with or without a roll-over option, with price differences based on validity. Prescribing longevity periods would restrict licensee differentiation, stifle competition, reduce consumer choice, and potentially hinder innovation.

3.25.1.6 Telkom emphasizes that shorter validity bundles are more cost-effective due to accurate forecasting of demand, benefiting consumers through lower prices. Extending validity periods would impair forecasting and potentially raise costs or reduce service quality, ultimately harming consumers.

3.25.1.7 MTN suggests that what might be more useful is greater transparency which promotes consumer awareness around the mechanisms which are at their disposal.<sup>118</sup>

3.25.1.8 MTN suggests that consumer concerns about bundle expiration could be addressed by enhancing transparency and consumer awareness rather than through additional regulation. MTN notes

<sup>114</sup> Vodacom Supplementary Submission 2024 Page 10 Para 46.

<sup>115</sup> Vodacom Supplementary Submission 2024 Page 10 Para 47.

<sup>116</sup> Cell C Supplementary Submission 2024 Page 6 Paragraph 15.1.

<sup>117</sup> Telkom Supplementary Submission 2024 Page 4 Para 7.

<sup>118</sup> MTN Supplementary Submission 2024 Page 14 Para 2.5.3.

that operators already provide various mechanisms for managing bundle usage, which differ across providers and promote competition. These existing tools allow consumers to manage their data efficiently while supporting sustainable business practices.

3.25.1.9 MTN however, highlights the absence of a regulatory impact assessment, which could clarify consumer engagement levels and awareness of these tools. MTN proposes that instead of imposing new requirements, the Authority could focus on increasing transparency to better inform consumers about available options for managing their bundles.

3.25.1.10 ACT proposes that the Authority should conduct the SEIA process before enacting any regulations. It is the ACTs considered view that there is no intervention that the Authority would be able to responsibly impose to ensure the longevity of bundle purchases without increasing the costs to communicate, which would have a detrimental impact on the industry and consumers.<sup>119</sup>

3.25.1.11 Amandla.Mobi submits that Low-income consumers are not getting the benefit of using their bundles to the fullest. It could not be clearer that consumers are furious that mobile networks have bypassed or used loopholes so as not to follow the regulations. Mobile networks claim ICASA is going too far, but consumers believe ICASA is not going far enough. Consumers have been waiting over 5 years for mobile networks to be forced to follow the spirit of the regulations.<sup>120</sup>

### **3.26 Question by the Authority**

3.26.1 The current applicable regulations make provisions for licensees to provide an option to consumers for both roll-over and transfer. Kindly advise how the Authority should respond to differential implementation of this provision in a way that circumvents the spirit of the regulation? For example, in some cases conditional selling is attached to roll-over in that customers are required to purchase another of equivalent value in order to roll-over unexpired data; in

<sup>119</sup> ACT Supplementary Submission 2024 Page 4.

<sup>120</sup> Amandla.mobi Supplementary Submission 2024 Page 2.

other cases, they are required to purchase what are called data extenders - in both cases increasing the cost burden on customers.

#### Submissions received

3.26.1.1 Telkom emphasizes that it has not imposed additional rules or product purchase requirements for data transfer or roll-over, beyond setting daily and monthly thresholds. It requests that the Authority do not base industry standards on Telkom's commercial decisions, as this could reduce its competitive advantage and stifle innovation. Telkom aims to keep its transfer and roll-over rules simple and market-friendly, advocating that such decisions should remain at the discretion of individual licensees.

3.26.1.2 Vodacom and other operators set out in their submissions, roll-over and transfer should be an area in which licensees compete.<sup>121</sup>

3.26.1.3 Vodacom states that where licensees are free to adjust their approach to roll-over or transfer to best suit customers' preferences, end-users are empowered to select the product (and licensee) that meets their needs best.<sup>122</sup>

3.26.1.4 However, the effect of the Draft Regulations would be to impose a uniform product with certain attributes across the whole market reducing the incentives of licensees to innovate as a means of further differentiating their product offerings from rivals. This is detrimental to consumer choice and welfare.<sup>123</sup>

#### **3.27 Cell C specific question**

3.27.1 Cell C complain about messaging overload regarding bundle depletion notifications. Can Cell C propose how this section might be adjusted to as to minimize messaging overload whilst at the same time keeping consumers informed as to the status of their bundle balances?

<sup>121</sup> Vodacom Supplementary Submission 2024 Page 10 Para 49.

<sup>122</sup> Vodacom Supplementary Submission 2024 Page 11 Para 50.

<sup>123</sup> Vodacom Supplementary Submission 2024 Page 11 Para 51.

Submissions received

3.27.1.1 The End User and Subscriber Service Charter Regulations currently provides that licensees are required to conduct consumer education and awareness campaigns at least 4 times per annum by:

- 3.27.1.1.1 Educating end-users on the use of smartphones;
- 3.27.1.1.2 Educating end-users on how to use data ;
- 3.27.1.1.3 Educating end-user on broad range of applications user terms, product and services offered; and
- 3.27.1.1.4 Educating end-users on cybersecurity and on the protection of personal information.

**3.28 Cell C specific question**

3.28.1.1 Please explain the technical problems or issues that will be experienced by the operator if bundles are transferred from one area to the other in terms of characteristics / features of the source bundle and their implications for network planning or capacity.

Submissions received

3.28.1.2 Cell C submits that such requirement is unnecessary and technically complex to implement and should not be in the Draft Regulations.<sup>124</sup>

**3.29 Vodacom specific question**

3.29.1.1 The current applicable regulations make provision for licensees to provide an option to consumers for both roll-over and transfer. Kindly advise how the Authority should respond to differential implementation of this provision in a way that circumvent the spirit of the regulation? For example, in some cases conditional selling is attached to rollover in that customers are required to purchase another of equivalent value in order to roll over unexpired data; in other cases, they are required to purchase

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<sup>124</sup> Vodacom Supplementary Submission 2024 Page 8 Para 17.1.

what are called data extenders - in both cases increasing the cost burden on customers.

Submissions received

3.29.1.2 Vodacom submits that the effect of the Draft Regulations would be to impose a uniform product with certain attributes across the whole market, reducing the incentives of licensees to innovate as a means of further differentiating their product offerings from rivals. This is detrimental to consumer choice and welfare.<sup>125</sup> Further, Vodacom submits that the regulations should rather enable licensees to implement roll-over and transfer through different offerings to promote competition between them.<sup>126</sup>

**3.30 Vodacom specific question**

3.30.1.1 On the geographically restricted ("Just for your town") bundles, where someone purchases a bundle designed applicable to one geographic location, and then travels to a different location where such a bundle is not available, is Vodacom saying that its network capacity is insufficient for the utilization of such a bundle in a different location? How does this differ from the normal scenario and where a customer purchases a bundle in one geographic location and then uses it in another?

3.30.1.2 Further to the above question, the draft regulations provide that any bundle portion that is transferred retains the terms and conditions of the original bundle. This would surely include geographic restrictions ("Just for your town"). Does this not then alleviate Vodacom's concern with possible capacity overload? Can Vodacom suggest how the wording of the regulations can be improved to make this clear?

Submissions received

3.30.1.3 Vodacom advises that ICASA's question appears to misinterpret Just 4 U Town ("J4U Town") bundles and how these bundles work.

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<sup>125</sup> Vodacom Supplementary Submission 2024 Page 11 Para 51.

<sup>126</sup> Vodacom Supplementary Submission 2024 Page 11 Para 52.

Vodacom explains that for the avoidance of doubt, these are bundles which are offered under the J4U programme and which are targeted at consumers in areas which have a high proportion of low income and economically vulnerable customers. Once a bundle has been purchased it can be used by the recipient in exactly the same way as an open market bundle. However, if these bundles become transferable to other more affluent consumers residing in urban areas, currently paying a higher price, the rationale for offering them will be lost.<sup>127</sup>

### 3.31 ACT specific questions

3.31.1.1 Does the exclusion by the Authority of short-term smaller denomination bundles not cater for the promotion of competition, innovation and differentiation within the prescribed segment of bundles?

#### Submissions received

3.31.1.2 ACT proposes that the Authority should engage consumers on this question. Further to that, ACT expresses the view that operators should be able to compete freely across all bundle types in to provide consumers with choice and competitive offerings.<sup>128</sup>

### 3.32 Telkom specific question

3.32.1.1 Telkom provides its end-users with several options to transfer data. Can Telkom explain the reasons why it does not support the transfer of bundle features when it comes to other service types (e.g. voice)?

#### Submissions received

3.32.1.2 Telkom supports data and airtime transfers but does not see the value in regulating the transfer of other service types, such as voice, SMS, or MMS. It provides ample voice minutes and promotional bundles that include voice but believes the focus

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<sup>127</sup> Vodacom Supplementary Submission 2024 Page 11 Para 53.

<sup>128</sup> ACT Supplementary Submission 2024 Page 4 Para 1.

should be on ensuring data availability and affordability, especially in the context of the 4IR digital era, where data plays a crucial role in access to jobs, education and, other essential services. Telkom argues that imposing additional obligations on voice and SMS services would not benefit end-users and would incur unnecessary costs

### **3.33 Telkom specific question**

3.31.1 Telkom expresses concern about the expiry and OOB provisions in the Draft Regulations. Can you propose how these provisions might be reformulated so as to minimize the unintended outcomes you allege?

#### Submissions received

3.31.1.1 Telkom believes that it has already implemented sufficient measures to protect end-users from bill shock and address concerns about data expiry. Users are not charged out-of-bundle unless they opt in.