



18 May 2014

Independent Communications Authority of South Africa

Attention: Thenjiwe Dube

Per email: tdube@icasa.org.za

ISPA SUBMISSION – DRAFT CODE FOR PEOPLE WITH DISABILITIES REGULATIONS

1. ISPA refers to the Draft Code for People with Disabilities Regulations published as General Notice 254 in Government Gazette 37486 of 28 March 2014 (“the Draft Regulations”) and to the Authority’s invitation to comment thereon, and we set out the ISPA submission below.
2. ISPA recognises the value which access to communications can bring to people with disabilities and supports the intention to revise the existing Regulations.
3. ISPA is not aware of any study into the effectiveness of the 2007 Regulations or any initiative to measure objectively their impact on service provision in South Africa. The Authority has not published any information which it may have gleaned from analysis of the compliance reports which licensees are required to submit to it on an annual basis. It appears, however, that the 2007 Regulations were largely irrelevant in improving access to communications on the part of people with disabilities.
4. ISPA’s submissions are limited to the sections of the regulations relevant to ECS licensees.

National Relay System

5. ISPA is aware that there is a National Relay Service (NRS) in a number of jurisdictions and supports the implementation of an NRS in South Africa.
6. It is not, however, going to come into being through a bare obligation in a set of regulations imposed on all ECS providers. No provision is made for any structure or the funding of the service and it is not an obligation which can be imposed across the board on all ECS licensees.
7. In Australia the NRS is an Australian Government initiative funded by a levy on eligible telecommunications carriers in a manner similar to the funding of the Universal Service and Access

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Fund in South Africa¹. The service is provided at no cost to users. The service is not provided by licensees but through outsourced contracts awarded to two service providers, managed by the Telecommunications Universal Service Management Agency (TUSMA)².

8. In the United States of America funding of relay services is split between the Federal Communications Commission (FCC) which oversees the Interstate Telecommunications Relay Fund and state relay service programs. Services are provided at no cost to users. There is competition in the provision of these services.³
9. It is noteworthy that the national relay system in the USA was implemented through Chapter IV of the Americans with Disabilities Act (ADA)⁴, i.e. enabling legislation creating a detailed legal basis for the development of comprehensive regulations dealing only with the setting up and funding of the service.
10. ISPA is of the view that this is the approach which would need to be adopted in South Africa: there needs to be enabling legislation which establishes the institutional framework and mechanisms empowers the Authority to make regulations relating to the obligations of ECS licensees as participants. ISPA suggests that the Authority make submissions in the course of the ICT Policy Review Process being conducted by the Department of Communications with a view to having such an enabling framework included in the comprehensive ICT legislation which is intended to replace the Electronic Communications Act during 2015.
11. ISPA submits that the provisions in this regard in the Draft Regulations are unfortunately of no value in their current form.

Universal Designed Products and Services

12. This section of the Draft Regulations deals with obligations relating to hearing aid compatibility requirements and visually-impaired or blind aid compatibility requirements for handsets.
13. ISPA submits that the majority of obligations proposed simply are of no application to ECS licensees and that it is not within the power of such licensees to comply with these obligations.
 - 13.1. ECS licensees are generally not manufacturers of end-user equipment, and in any event there is no requirement to have an ECS licence in order to be such a manufacturer.
 - 13.2. ECS licensees are not all providers of end-user equipment, and in any event there is no requirement to have an ECS licence in order to be such provider.
 - 13.3. It follows that the manufacture and distribution or retailing of end-user equipment is not a licensed service and does not fall to be regulated under the ECS or within the jurisdiction of ICASA (other than in the sense of type approval and supplier registration obligations which are not germane to obligations to be imposed on ECS licensees).

¹ <http://relayservice.gov.au/>

² http://www.tusma.gov.au/our_role/the_national_relay_service

³ <http://www.fcc.gov/guides/711-telecommunications-relay-service>

⁴ <http://www.fcc.gov/encyclopedia/title-iv-ada>

14. The provisions in this regard in the Draft Regulations are for this reason misdirected and ISPA suggests that the Authority investigate pursuing the objectives underlying this section through the type approval framework⁵.

General Requirements for Communications and Information Provision to People with Disabilities

15. ISPA wishes to raise the following submissions:

- 15.1. Access to free directory enquiries and emergency services calls should be enabled through the proposed National Relay System and should be part of that process. These matters should also be dealt with in terms of the ICASA Numbering Regulations and the 112 Emergency Centre Regulations respectively.
- 15.2. Certain of the requirements are impractical and incapable of implementation. It cannot, for example, be expected of licensees to have an employee able to speak sign language at every store.

Promotion of Awareness and Compliance

16. ISPA refers to its comments in paragraph 13 above: this obligation rests more properly on the manufacturers and distributors of end-user equipment. ISPA suggests the insertion of the words “where relevant” if it is the intention that this clause apply to those ECS licensees that bundle handsets and other end-user equipment with service offerings.
17. ISPA submits that the Authority itself, in conjunction with stakeholders representing people with disabilities and perhaps through the established Disability Consultative Forum, should play a far greater role in the dissemination of information to both such stakeholders and people with disabilities in general.

Complaints Process for All Categories of Disabilities

18. ISPA submits that it would be preferable to delete this provision in favour of the provisions relating to licensee complaints processes under the Code of Conduct regulations.
19. ISPA does not believe it will necessarily be helpful for representative associations to be individually contacted by hundreds of licensees with copies of their complaints procedures.

General comments

20. ISPA is of the view that the current proposal is unlikely in isolation to facilitate greater access to communications on the part of people with disabilities. While the intention behind the Draft

⁵ Although it is not clear how such an obligation could be effectively imposed on international handset and other end-user equipment manufacturers and distributors. It is also the case that there is already a variety of end-user equipment available to meet the needs of persons with disabilities.

Regulations is commendable, it is ISPA's submission that the substantive provisions of the Draft Regulations are for the most part misdirected or impractical.

21. In part this is due to the failure to recognise that not all ECS licensees are of the same size, provide the same services or market their services in the same way. It is apparent that the primary ECS licensees which the Draft Regulations seeks to regulate are the mobile networks. If this is the case then the Authority should not shy away from being specific as to its intentions.
22. ISPA submits that there needs to be greater intergovernmental co-operation in the design and implementation of a National Relay System. It is not clear to ISPA why this is this not a project being conducted in conjunction with the Department of Women, Children and People with Disabilities (DWCPD)? Why is there not a broader role being played by Government agencies such as the Authority and USAASA in driving a National Relay System, as is done in other jurisdictions with such systems? The proposed approach of seeking to shift bald obligations onto licensees to achieve – without any framework - a national development objective seems ill-conceived and unlikely to achieve anything.
23. Ideally the project should be driven by legislation drafted under the DWCPD in consultation with the Department of Communications which empowers the Authority to make regulations which govern the role of licensees in the system.

Conclusion

24. ISPA extends its appreciation to the Authority for its consideration of this submission.
25. Should the Authority hold oral hearings or workshops, ISPA hereby gives notice of its intention to participate.
