

29 January 2018

Independent Communications Authority of South Africa

Attention: Mr. Lordwill Zwane

Per email: lzwane@icasa.org.za

DRAFT NUMBER PORTABILITY REGULATIONS

1. ISPA refers to the Draft Number Portability Regulations published as General Notice 1309 in Government Gazette 41275 of 24 November 2017 (“the Draft Regulations”) and to the Authority’s invitation to comment thereon.
2. Many of ISPA’s members are providers of voice services and users of numbers drawn from the National Numbering Plan, which compete in the provision of voice services with the incumbent operators and between themselves. ISPA and its members accordingly have a direct interest in the process leading to the finalisation of the Draft Regulations.

General Comments

3. ISPA is in complete support of the introduction of porting for non-geographic number ranges.
4. ISPA requests that all time-limits set out in the Draft Regulations which are expressed in hours to be expressed in “business hours” and for the Authority to consider inserting an appropriate definition.

Definitions

5. ISPA submits that the definition of “customer premises equipment” in the Draft Regulations should be replaced by the definition of “subscriber equipment” as set out in the ECA. Use of the existing definition will avoid potential confusion as these two terms do not always refer to the same things.

Requirement to make available and update a list of ported numbers

6. ISPA refers to draft regulations 5(3) and 5(4); 6(1)(c) and 6(1)(d); and 6(2)(c) and 6(2)(d).
7. ISPA notes that this requirement is being introduced across portable ranges but submits that this is unnecessary given the availability of the public resources made available by the Number Portability Company (NPC). ISPA is uncertain as to whether the NPC would qualify as a “third party” as contemplated in the Draft Regulations.

8. Members submitted that the utility of this requirement for subscribers or other licensees was not clear, and further that it would be preferable to have a single authoritative source as opposed multiple sources which may – over time and for various reasons – conflict with each other.

Warning notification

9. Draft regulation 10(2) refers. ISPA members indicated that the five-second minimum duration for the warning notification to a subscriber that a number has been ported is too long. Members submitted that a five-second notification will amount to an annoyance to subscribers as it significantly extends the call set-up time.
10. ISPA submits that the current regime – which subscribers are accustomed to – should continue to apply.
11. It is also the case that the mandated reductions in call termination rates over the past seven years have reduced the commercial consequences to subscribers of calling a ported number.

Penalties

12. ISPA's members have uniformly indicated that they regard:
 - 12.1. The setting of a minimum penalty per infringement to be unfair given the disparate sizes of licensees in the market;
 - 12.2. The minimum and maximum penalties per infringement specified to be excessive and disproportionate to the harm caused; and
 - 12.3. The uniform application of the specified penalties to all potential offences created under the Draft Regulations as problematic. The net effect is to equate an unjustified refusal to port with a technical offence where a licensee has, for example, failed to respond within 1 hour in respect of deactivations.
13. It is not clear to ISPA how the “per infringement” application of sanctions will work in practice and whether “per infringement” will equate to “per number” or “per port” where a breach of the Regulations impacts upon more than a single number or single port.
14. ISPA submits that the cumulative effect of the above-mentioned issues and the operational risks they create amounts to a significant disincentive to enter into or to continue to participate in the market for the provision of voice services.
15. ISPA accordingly requests that the Authority review the operation of this draft regulation with a view to making its application more nuanced.

Functional specification for number portability

16. The information required to be provided before porting a number from a prepaid subscriber as set out in draft regulation 3(1) contemplates only natural persons. Juristic persons also take out prepaid accounts and this should be accommodated in the final regulations through reference to a registration number or their account number.
17. All ISPA members that responded to the Draft Regulations sought clarity on how numbers (other than mobile numbers) are to be validated by the donor operator by means of an IVR as required by draft regulation 4(2).
18. The grounds for rejection of a port in draft regulation 5(1) should include incorrect provision of any of the information required under draft regulation 4 (including the registration number or account number as set out in point 16 above). ISPA's view is that this information is required to be correctly provided for the purposes of the Regulation of Interception of Communications and Provision of Communication-Related Information Act 70 of 2002 ("RICA") before a service agreement can be entered into with the recipient operator or a SIM activated on the network of the recipient operator.
19. As regards draft regulation 5(1)(g), ISPA notes that the CRDB currently allows for 60 calendar days during which further porting is prohibited.
20. ISPA members requested that the period of 1 hour referred to in draft regulation 6(2) in Schedule A be extended to eight (8) business hours, as the former is not realistic in practice. ISPA notes that the cost to do real-time (SOAP) integration with the CRDB is R10,000 per month, which is a significant amount for smaller competitors in the market.

Conclusion

21. In conclusion, ISPA notes that it is voluntary to be part of the porting process, but the cumulative effect of the obligations and sanctions highlighted above is to disincentivise participation.
22. ISPA extends its appreciation to the Authority for its consideration of these comments, and trusts that it will be of assistance to the Authority in finalising the Draft Regulations.
23. Should the Authority hold oral hearings or workshops, ISPA hereby gives notice of its intention to participate.

Regards,

ISPA Regulatory Advisors