

1 July 2022

Independent Communications Authority of South Africa

Attention: Mr Elias Letlape

Per email: ELetlape@icasa.org.za

Dear Mr Letlape

ISPA SUPPLEMENTARY SUBMISSIONS: DRAFT AMENDMENTS TO THE NUMBER PLAN REGULATIONS

1. The Internet Service Providers' Association of South Africa (ISPA) refers to the Draft Amendment Numbering Plan Regulations published in Government Gazette 46080 on 23 March 2022 ("**the Draft Amendment Regulations**") and the public hearings convened by the Authority on 23 and 24 June 2022.
2. ISPA has set out below responses to questions raised by the ICASA panel during the course of ISPA's presentation on 23 June 2022.

Scope of application of the Numbering Plan Regulations

3. In its written submission, ISPA noted that the proposed regulation 2A referred to IECS and IECNS licences and requested that the Authority clarify that an IECS licence is required to obtain numbering resources. The basis for this request was that some incumbent operators resist interconnection requests on the basis that the interconnection seeker does not have an IECNS licence.
 - 3.1. ISPA's notes reflect that the Authority accepts that numbers (and interconnection) are linked to IECS licences but noted that there were codes like MNCs which were granted at an ECNS level.
 - 3.2. The position of the incumbents regarding licensing required for interconnection as contemplated in Chapter 7 of the ECA was confirmed in the chat facility during the public hearings.
 - 3.3. The Authority questioned whether it would be preferable for the Draft Amendment Regulations to be more specific about where an IECS or an IECNS licence was required for access to resources under the Numbering Plan Regulations?
 - 3.4. ISPA acknowledges that a nuanced approach is required and requests that the Authority be specific about the licensing requirements as it has proposed.

Transfer of numbering resources

4. ISPA made a written submission that the Authority should allow greater flexibility in the circumstances under which numbers can be transferred from one IECS licensee to another. ISPA identified

circumstances under which an entity holding an IECS licensee may wish to transfer its number resources to another IECS licensee without seeking to transfer or dispose of its IECS licence. This would be the case, for example, where that entity is selling its voice business as a going concern (but still requires its IECS licence to provide national Internet access services).

- 4.1. ISPA submits that it is not proposing that numbers or categories of numbers be tradable, noting that this is prohibited.
- 4.2. The Authority will recognise however, that it is a common transaction for licensees to trade in their customer base and that this does not necessarily require the sale of the IECS licence in terms of which such base was acquired.
- 4.3. The numbers assigned to the subscribers of the seller are an essential element of the transaction but not the subject matter of the transaction.
- 4.4. ISPA emphasises that any transfer of this nature would be subject to the prior approval of the Authority to be obtained through making application under the amended Numbering Plan Regulations. The Authority's control over numbering resources would therefore not be diminished and it would retain full transparency over the allocation of numbers.
- 4.5. ISPA submits further that providing for the transfer of numbers in this manner is in the interests of subscribers and aligned with the conditions of allocation of numbers in that it promotes unhindered use of numbering resources by subscribers.

Criteria for obtaining mobile numbers

5. ISPA noted the extensive debate undertaken during the public hearings relating to eligibility to apply for and receive an allocation of mobile numbers.
 - 5.1. ISPA reiterates that provision should be made for sub-national operators to obtain mobile numbers – assuming such operators have met all other requirements – based on the licensing framework created in Chapter 3 of the ECA and which contemplates IECS licences being awarded for the provision of services of provincial scope.
 - 5.2. ISPA submits that the Authority should be cautious in being too restrictive with regard to access to mobile numbers, notwithstanding the relative scarcity of this resource. Submissions made as part of this process indicate clearly that the incumbent mobile network operators believe they would benefit from a more restrictive position which would give only the holders of spectrum licences that enable mobility the right to apply for these numbers.

- 5.2.1. In ISPA's view the focus should be on the nature of the service provided rather than the possession of a specific licence. If, factually, a service falling within the definition of a mobile service is being provided, then that provider should have access to mobile numbers.
- 5.2.2. Requiring an applicant to hold a spectrum licence bears the danger of restricting the development of the mobile virtual network operator (MVNO) market in South Africa. The more restrictive approach proposed would mean that entities wanting to become full MVNOs (such as Lyca Mobile) would not be able to obtain mobile numbers (even though they indisputably providing mobile services). The net result is that MVNOs would be restricted to the "branded reseller" model, i.e. lower down the value chain and more profitable for the host MNO.
- 5.2.3. ISPA submits that this would be a highly undesirable outcome, noting in particular that the Authority has just imposed obligations on successful parties at the March 2022 spectrum auction to establish MVNOs.

5.3. It was further the Authority's stated intention in drafting this provision in the Draft Amendment Regulations to clarify the current position rather than establishing a new threshold.

Conclusion

- 6. ISPA trusts that the above is of assistance and extends its appreciation to a very well-prepared panel for a constructive public hearing.

Regards

ISPA Regulatory Advisors

For ISPA