

11 May 2022

Independent Communications Authority of South Africa

Attention: Mr Elias Letlape

Per email: ELetlape@icasa.org.za

Dear Mr Letlape

ISPA 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 sets out below its written submissions.
2. As a general departure point, ISPA extends its appreciation to the Authority for its work in reviewing the Numbering Plan Regulations 2016 as amended ("**the Regulations**").
3. ISPA confirms its willingness to participate in any public hearings convened as part of the finalisation of this process.

Insertion of Regulation 2A

4. The Authority proposes the following insertion:

"2A. Application of these Regulations

These Regulations apply to licensees that have been issued an Individual Electronic Communications Service license (I-ECS) and/or an Individual Electronic Communications Network Service license (I-ECNS) or a Ship Station License holder."

5. In the accompanying explanatory memorandum the Authority notes that this insertion is intended to provide clarity and certainty as to who can apply for numbering resources, taking into account section 5(3)(c) of the ECA which "refers to I-ECS/ECNS [licences] utilising numbers from the national numbering plan".
6. This is an incorrect reading of section 5(3) of the ECA:

5(3) Electronic communications network services, broadcasting services and electronic communications services that require an individual license, include, but are not limited to—

(a) electronic communications networks of provincial and national scope operated for commercial purposes;

(b) commercial broadcasting and public broadcasting of national and provincial scope whether provided free-to-air or by subscription;

(c) **electronic communications services** consisting of voice telephony utilising numbers from the national numbering plan;

(d) ...

(e) such other services as may be prescribed that the Authority finds have significant impact on socio-economic development.

(our emphasis)

6.1. ISPA submits that a proper reading of section 5(3) links use of numbers from the national numbering plan to the holding of an individual electronic communications service (IECS) licence. It does not – as proposed in the new Regulation 2A – refer to individual electronic communications network service (IECNS) utilising such numbering resources.

6.2. This is consistent with the Authority's approach elsewhere in the Draft Amendment Regulations. The proposed Regulation 5(2)(b) for example, explicitly requires only an IECS licence to be provided as supporting documentation in respect of an application for numbering resources.

6.3. ISPA suggests the following amendment:

"2A. Application of these Regulations

These Regulations apply to licensees that have been issued an Individual Electronic Communications Service licence (I-ECS) licence and ~~or an Individual Electronic Communications Network Service licence (I-ECNS)~~ or a Ship Station License holder."

6.4. ISPA wishes to stress that this is not a technical / academic issue: this confusion in prior regulatory documents has resulted in incumbent operators refusing interconnection requests unless the requestor holds an IECNS licence.

Amendment to Regulation 4 – Mandated and harmonised numbers

7. ISPA supports the proposed amendments and the motivation advanced.

Regulation 5 – Allocating and reserving numbers

8. ISPA supports the proposed amendments to the application process and application form. In ISPA's view the proposed amendments are practical and bring certainty to those seeking to apply to the Authority for numbering resources.

9. ISPA suggests that such an approach could be usefully adopted by other ICASA divisions which deal with applications and notifications from licensees.
10. Supporting documentation for application for mobile numbers:
 - 10.1. ISPA is uncertain as to why sub-national mobile roaming agreements entered into with a licensee holding a spectrum licence enabling mobile service provision should not be a sufficient basis for applying for mobile numbers.

New Regulation 6A – Activation, deactivation, and re-assignment / recycling of numbers

11. ISPA is uncertain as to the purpose of the defined term “churn rate” which occurs only in the proposed sub-regulation 6A(1) and is not a specific number audit report metric. If this metric is to be retained ISPA submits that the timeframe over which the churn rate is to be calculated should be specified in order to standardise reporting and optimise the utility of this data.
12. ISPA requests that the Authority in sub-regulation 6A(3) consider stipulating a minimum grace period of a “calendar month” rather than “31 days”. The latter is an irregular period whereas both licensees and consumers are familiar with a calendar month as a notice period.
13. With regards to the proposed sub-regulation 6A(4), ISPA requests that the Authority consider stipulating that an objection lodged by a subscriber must indicate reasonable grounds for the objection. ISPA’s concern is that a number can be assigned but not be utilised for an extended period of time. At a minimum the objection should include an indication of why continued use of the number is required.
14. ISPA’s members generally do not utilise mobile numbers but ISPA nonetheless wishes to register its members’ objection to the proposal that MNOs and others with mobile numbers must collect a subscriber’s biometric data and link this to the mobile number assigned to the subscriber.
 - 14.1. ISPA understands the rationale for this proposal and that there is precedent in other jurisdictions for the proposal.
 - 14.2. ISPA submits, however, that the risks created by requiring MNOs to collect biometric and store subscriber biometric information is substantial.
 - 14.3. There is no indication that the Authority has consulted with the Information Regulator or bodies such as COMRIC and SABRIC in developing this proposal.
 - 14.4. There is no indication that the Authority has considered the initial and ongoing cost of compliance with this requirement for licensees.

14.5. Mexico's highest court ruled in April 2022 that a national registry of mobile phone users – including biometric data – is not a necessary measure in a democracy, since it does not maintain a balance between the need for data in limited circumstances and the right to privacy¹.

14.6. ISPA submits that this proposal should not be persisted with in the current process. Rather the Authority should conduct a regulatory impact assessment to fully understand the implications and unintended consequences of the proposal prior to implementation.

Regulation 11 – Transferring numbers

15. Regulation 11 – incorporating the proposed amendments – contemplates two scenarios, both involving the transfer of an IECS licence:

15.1. Where a licensee transfers its IECS licence it must apply to the Authority for the transfer of numbers allocated under the licence to the entity acquiring the IECS licence if any part of a numbering block is assigned to end-users. If no part of a block of numbers has been assigned to end-users, the block must be returned to the Authority.

15.2. Where a licensee transfers its IECS licence to one party and the numbers allocated under that licence to a third party it must apply to the Authority for the transfer of numbers allocated under the licence to the third party if any part of a numbering block is assigned to end-users. If no part of a block of numbers has been assigned to end-users, the block must be returned to the Authority.

16. ISPA submits that the Authority should allow greater flexibility in the circumstances under which numbers can be transferred from one IECS licensee to another.

16.1. ISPA identifies 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).

16.2. Such a transfer application would be subject to successful application to the Authority in the same manner as other applications for the transfer of numbers. It would include provision of the information and documentation contemplated in the proposed sub-regulation 11(4).

16.3. Further ISPA is aware that the Authority has previously accepted applications of this nature, subject to the provision of all requested information.

¹ See <https://www.euronews.com/next/2022/04/25/mexico-telecoms>

16.4. There is no bar in the ECA to such a transfer and ISPA requests that the Authority accommodate transfers in these circumstances.

17. ISPA requests that the Authority consider providing timelines for the processing of applications for the transfer of numbers as per the proposed amendments to Regulation 5.

Conclusion

18. ISPA trusts that the above is of assistance.