

14 August 2020

**Independent Communications Authority of South Africa**

**Attention: Nditsheni Hangwani**

**Code for Persons with Disability Project Leader**

Per email: [nhangwani@icasa.org.za](mailto:nhangwani@icasa.org.za), cc. [CodeforPwDsCommittee@icasa.org.za](mailto:CodeforPwDsCommittee@icasa.org.za)

Dear Ms Hangwani

**ISPA SUBMISSION – DRAFT CODE FOR PERSONS WITH DISABILITIES REGULATIONS**

1. ISPA refers to the Draft Code for Persons with Disabilities Regulations 2020 published as General Notice 317 in Government Gazette 43418 of 12 June 2020 (“**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 persons with disabilities and supports the intention to revise the existing Regulations.
3. Recent developments with the COVID-19 National Disaster and our increasing reliance on electronic communications for work and socialising make it even more imperative to ensure that South Africa’s digital future is inclusive of persons with disabilities.
4. ISPA is a representative body for Internet Service Providers (ISPs), and its submissions are therefore limited to the sections of the Draft Regulations relevant to electronic communications service (ECS) licensees.
5. ISPA notes that the scope of the Draft Regulations is limited to assisting persons with a long-term or recurring hearing and/or visual impairment.

**Core submission**

6. It is ISPA’s position, for the reasons set out below, that the Authority should not seek to impose obligations on licensees that are not related to the rights granted by that licence. An ECS licence authorises the provision of ECS, not the provision of end-user equipment (which requires no licence).
7. The only obligation on ECS licensees should be that the ECS which are provided must be compatible.

## Basic standards for electronic communication services licensees

### 8. Sub-regulation 5(1):

#### ***Universally Designed Products and Services:***

*(1) An Electronic Communications Service licensee must ensure that all electronic communications devices ready for purchase are Universally Designed to cater for the needs of persons with Disabilities.*

- 8.1. The availability of devices conforming to Universal Design principles is in the first instance beyond the control of ECS licensees.
- 8.2. ECS licensees are generally not manufacturers of end-user equipment. There is no requirement to have an ECS licence to be such a manufacturer.
- 8.3. ECS licensees are not all providers of end-user equipment. There is no requirement to have an ECS licence to be such provider.
- 8.4. It follows that the manufacture, distribution and retailing of end-user equipment is not a licensed service and does not fall to be regulated under the ECA, nor is such regulation within the jurisdiction of ICASA (other than in the sense of type approval and supplier registration obligations).
- 8.5. ISPA submits that the Authority should not impose conditions on licensees when such conditions do not apply to direct competitors in the retail market for end-user equipment.
- 8.6. It is important to note, however, that where there is a demand for specific equipment or software or enhancements to facilitate use by persons with disabilities, this will be met by the market. ISPA members have indicated that they work with customers with such requirements to assist them in finding appropriate solutions.
- 8.7. In the circumstances ISPA:
  - 8.7.1. Requests that the Authority consider pursuing the objectives underlying this section through the type approval / equipment conformity framework to exert pressure on manufacturers in respect of Universal Design.
  - 8.7.2. Submits that ECS licensees cannot comply with the obligation created by this sub-regulation in its current form. In particular, ensuring that all electronic communications devices ready for purchase are Universally Designed is not possible.
  - 8.7.3. Suggests that the objectives of the Draft Regulations would be better served by an obligation on ECS licensees to provide information on available equipment and software

for persons with disabilities and to assist them in the sourcing and supplying of a suitable solution.

9. Sub-regulations 5(2) and 5(3):

9.1. ISPA repeats its submissions in respect of sub-regulation 5(1).

**National Relay System**

10. ISPA submits that there needs to be greater intergovernmental co-operation in the design and implementation of a National Relay System. 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.

11. If the Authority is to continue with the implementation of a National Relay System, then a great deal of further consultation will be required concerning the funding and operation thereof.

**General Requirements for Communications and Information Provision to Persons with Disabilities for individual electronic communications service (IECS) licensees**

12. ISPA wishes to raise the following submissions:

12.1. Requirements to make information available should allow for this to be done online. Very few IECS licensees have a physical retail presence. This is the more the case given the “new normal” of a post-COVID-19 world.

12.2. It should not be required of licensees to do more than make information available. Once information is available online, it can be accessed by persons with disabilities or organisations that work with them.

12.3. Access to free directory enquiries and emergency services calls must be dealt with in terms of the regulatory framework for numbering resources and the 112 Emergency Centre Regulations, respectively.

12.4. Some 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.

- 12.5. ISPA members indicate that they do not experience any demand for the specific types of equipment and services canvassed in Regulation 7. ISPA submits that onerous obligations with substantial cost obligations should not be imposed in the absence of demonstrated demand.

### **Contraventions and penalties**

13. ISPA submits that the sanctions set out in Regulation 10 are wholly inappropriate given the nature of the obligations imposed under the Draft Regulations. It is not clear what factors have been taken into account in determining a sanction based on the licensee's turnover or a maximum fine of five million Rand. Still, in ISPA's view, both the principle and the amount are excessive.

### **Transitional provisions**

14. ISPA welcomes the period of 18 months between finalisation of the Draft Regulations and the enforcement thereof, noting its comments on the National Relay System set out above.

### **General comments**

15. ISPA is of the view that the current proposal is unlikely in isolation to facilitate greater access to communications on the part of persons with disabilities. While the intention behind the Draft Regulations is commendable, it is ISPA's submission that the substantive provisions of the Draft Regulations are for the most part misdirected or impractical.
16. At the same time, ISPA wishes to stress that this does not mean that the requirements of persons with disabilities are not currently being met by equipment manufacturers, platform providers, software providers, ISPs and others.

### **Conclusion**

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