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Ref: 201801/07/19

29 January 2018

**Mr Lordwill Zwane**  
Independent Communications Authority of South Africa (ICASA)  
Blocks A, B, C & D  
Pinmill Farm  
164 Katherine Street  
Sandton  
2196

Via email: Lzwane@icasa.org.za

Dear Sir,

**RE: SUBMISSION IN RELATION TO THE DRAFT NUMBER PORTABILITY REGULATIONS**

1. Mobile Telecommunications Networks ("MTN") would like to thank the Independent Communications Authority of South Africa ("ICASA") for the opportunity to make submission on the draft Number Portability Regulations as published in Government Gazette 41275 on 24 November 2017, in terms of section 68 read with section 4 of the Electronic Communication Act No. 36 of 2005.
2. MTN submission is subdivided into two sections: 'general comments' and 'specific comments', and is herewith submitted.
3. MTN is willing to participate in any public hearings that ICASA may wish to hold in this regard.

Yours Faithfully

A handwritten signature in black ink, appearing to read 'Geoff Blake', written over a white background.

Geoff Blake

Senior Manager: Technical Regulation & Mandated Provisioning  
MTN (Pty) Ltd

*Directors: MJ Harper (Chairman), MJ Bosman, SA Fokie, GB Makhaya, GN Motsa, CWN Molope, PD Norman, SS Ntsele, LW Phalalse, J Schulte-Bockum, R Shuter.*  
*Company Secretary: SB Mtshali*  
**Reg. No. 1993/001436/07**  
**VAT Reg. 4630140434**



**MTN'S SUBMISSION ON THE DRAFT NUMBER  
PORTABILITY REGULATIONS AS PUBLISHED IN  
GOVERNMENT GAZETTE 41275 ON 24 NOVEMBER  
2017**

**29 January 2018**

## **1. INTRODUCTION**

On the 24<sup>th</sup> November 2017, (by way of Notice Number 1309 of 2017) in Government Gazette No: 41275, ICASA (“the Authority”) published draft number portability regulations.

MTN welcomes the publication of the draft number portability regulations. We believe that this is an appropriate regulatory framework that underscores the use of number portability in South Africa. However, the draft regulations can be enhanced to provide for a more comprehensive framework which underpins our competitive environment. Mobile services are tightly interwoven into our identity as individuals, mobile numbers are conveyed to our friends, families and business associates, we have them emblazoned on signage and printed on business cards. Mobile Number Portability (MNP) is often perceived as an effective and necessary way to maximise competition and consumer choice of network service providers.

The Authority, in response to consumer demands for greater competition, released the Number Portability regulations in September 2005. These regulations provided consumers with greater choice of networks while retaining their numbers, however at the time of publication these regulations were limited to mobile numbers which were later enhanced to include geographic numbers, with the proposed changes the regulations will include other non-geographic numbers for porting, while providing greater protection to consumers from unscrupulous practices.

MTN confirms its willingness to participate in any oral hearings which may be scheduled in regard to the draft regulations.

MTN's comments will consist of general comments and specific comments.

## **2. GENERAL COMMENTS**

The use of porting to facilitate fraud appears to have arisen over the past few years and this can be categorised as unauthorised ports or illegal ports. MTN first became aware of illegal porting in late 2012 due to an increase in customer complaints. The validation of prepaid porting is limited to (caller line identification) CLI validation, this results in large volumes of prepaid porting requests to be uncontested. As the prevalence of porting complaints grew, MTN referred a dispute to the Complaints and Compliance Committee (CCC) of ICASA on 31 October 2013, in terms of section 17B(a)(ii) of the Independent Communications Authority of

South Africa Act 3 of 2000 (“the ICASA Act”). The CCC made a determination over a year later in November 2014. The CCC acknowledged the potential for customers to be inconvenienced and prejudiced by such behaviour. Consequently, MTN is supportive of the change in process, which allows for confirmation by the customer to the donor operator to be incorporated in order to safeguard end-users from this nefarious activity. MTN is of the opinion that this will protect the consumers and is in line with the primary objective of the ECA, i.e. provide for regulation in the public interest.

In addition, the current regulations, first published more than a decade ago limited number portability to certain categories of numbers. MTN supports the Authority's proposal that the incorporation of the following number ranges 080, 086 and 087 form part of the larger number portability pool.

The inclusion of these number ranges will provide corporate citizens greater choice in network and service providers and stimulate competition within a market which has been devoid of any material level of competition. It has been our experience that the inability to port these numbers has severely hampered the level of competition within this market.

MTN notes the omission of port reversals from the draft regulations, MTN submits that the requirement to cater for port reversals is still relevant in the current environment and should be included in the draft regulations as it is currently contained with the Code of Conduct as developed from sub-regulation 7(9) of Government Gazette Notice Number 28091.

Section 6 of the Code of Conduct describes Port Reversals as follows;

*The recipient side or donor side, on request from the subscriber, shall be entitled to contact the donor side or recipient side to obtain agreement to reverse a port. The port can only be reversed subject to agreement between the recipient side and the donor side.*

*A port can only be reversed up to 2 months after the date the number was ported.*

*Where the donor side and recipient side have agreed to reverse a port. Such reversal shall take place as soon as practically possible after request from the subscriber has been made and subject to the times applicable to the port reversal process as detailed in the Regulation.*

MTN submits that the only necessary change is to align the time frame of port reversals (currently two months) to align with the new time frame as proposed in section 5(g) of the draft regulations which reduces the time period allowed for subscribers to request ports to one (1) month.

### 3. SPECIFIC COMMENTS

#### Definitions:

- MTN notes that the term “Licensee” has been used extensively in the draft regulations but has been omitted in the definition. MTN therefore recommends that “Licensee” be defined as follows:

“Licensee” as defined in the section 1 of the Electronic Communications Act No.36 of 2005 (the Act).

- MTN notes with concern the omission of the definition of “winback” in the draft regulations which is clearly defined in the current regulations. MTN is of the view that the definition of “winback” remains relevant and therefore proposes the inclusion of a revised definition of “winback” that considers other revised definitions as follows:

“winback” means a donor operator who contacts a subscriber to offer exclusive incentives to entice the subscriber to abort a number port or revert to the donor operator within two months of porting to the recipient operator.

- MTN further notes that the definition of “ordering system specification” refers to “recipient service provider” and “donor service provider” which have both been omitted in the definitions and are not mentioned anywhere else in the draft regulations.

#### Purpose of these regulations:

MTN proposes the amendment of regulation 2(4) of the draft regulations by the replacement of the phrase “that they provide” for “the provision of”.

#### Scope of these regulations

*These regulations apply to all licensees with number allocations classified under these regulations.*

MTN proposes that in every new allocation made by the Authority, it should categorically state that the entity must conform and adhere to the number portability regulations, currently conditions of allocations only refer to numbering regulations and audits.

## **Application of Number Portability**

MTN fully supports the inclusion of the 080, 086 and 087 numbers into the realm of number portability as stated in section 4(1)(b) of the draft regulations. MTN is of the opinion that the inclusion of these non-geographic numbers will further enhance the competition within this market.

### **Number portability for geographic numbers**

MTN notes that regulation 5 of the draft regulations addresses the porting of blocks of geographic numbers but omits the porting of individual geographic numbers. Although this functionality is already in existence the omission creates uncertainty with regards to individual geographic numbers and therefore MTN suggests that individual geographic numbers should be provided for also.

### **Number portability for non-geographic numbers**

MTN suggests that a timeframe should be proposed to implement the ability to port 080, 086 and 087 numbers. Currently section 4(1)(b) of the draft regulations mandates the inclusion of these non-geographic numbers into the broader porting pool, however, as the inclusion and support of these numbers may require some development on operators networks it is suggested that a definitive timeframe be included in the final regulations in order to remove any ambiguity.

## **Ordering System Specification**

MTN notes that certain provisions contained within the draft regulations would have an immediate impact, resulting in a conflict to the current ordering system specification (OSS). Although MTN welcomes the review of the OSS, the Authority should create a mechanism to ensure that the pieces of regulation are in line with each other while the OSS is being re-developed. For example, the welcomed introduction of an one time pin (OTP), valid for a four (4) hour period is articulated in these regulations, the current OSS only allows for a 1 hour time period for a donor operator to reply to the CRDB on a port request. Consequently, it is necessary to align the regulations, functional specification and OSS as soon as possible but

as a minimum, state that until the OSS is amended the new timeframe is to be adopted immediately on date of publication of these regulations. Without clarification on this matter, and making the regulations consistent, operators run the risk of being in breach of 6(1)(b) and 7(1) of these regulations or incurring violations as per the current OSS causing unlimited disputes.

### **Routing**

Sub-paragraph 2 of section 8 should be expanded to include the frequency of updating, storing and receiving the local copy of its database. MTN suggests that this should be updated daily to avoid mismatches which may result in incorrect routing.

Sub-paragraph 3 of section 8 requires greater clarity regarding what is entailed in writing, i.e. Must a recipient operator send a report to the block owner with a list of inactive numbers being returned, furthermore what should be the frequency of this report?

MTN further suggests that in this instance the term donor operator refers to the block owner to whom the Authority originally assigned the number, as customers who have performed multiple ports during the lifetime of their subscription may have had multiple donors and the number should not be returned to the last donor but rather the first donor

Sub paragraph 5 and 6 of section 8, these paragraphs should be merged into a single statement. Additionally, the suggestion that following three (3) months inactivity on a recipient's network, followed by a further three (3) months of quarantine on the (original) donors network is an inefficient and ineffective use of limited numbering resources. MTN proposes that the quarantine period on the original donor network be reduced to one (1) month.

### **Cost recovery and charging**

Sub paragraphs (1), (2), (4), (5) and (6) of section 9 are already in place and MTN welcomes the reinforcement of these conditions. MTN has always championed the freedom of choice by the customer and has never charged porting fees to end-users.

### **Principles for ported numbering services**

It is not clear what the sub-regulations 10(2) seeks to remedy. It should be noted that the inclusion of a 5 second warning being applied will as a consequence have a delay in the call set up. Although the draft regulations caters for this as a reasonable delay, the draft functional specification under Section 7 Quality Services for porting states that:

*“the call set up time for a call to a ported number shall not be increased when compared to the set up time for a call, on the same network, to a non-ported number.”*

MTN suggests that the need for notification is no longer valid. Number portability has been in existence for more than a decade and in that period a notification to a calling party through 3 beeps has been well established to indicate that a number has ported from one operator to another.

MTN notes that there has been an oversight in relation to the provision for “**winback**” in the draft regulations. It is MTN’s view that the oversight will have unintentional consequences given that the draft regulations intends to repeal the existing regulations in totality as indicated in Section 14 of the draft regulations. MTN therefore proposes the addition of sub-regulation 10(3) in the draft regulations which states that:

“A donor operator shall not engage in winback” as defined in the definitions.

## **SCHEDULE A            FUNCTIONAL SPECIFICATION FOR NUMBER PORTABILITY**

MTN welcomes the streamlining of the functional specification by combining the functional specifications for mobile number portability and functional specifications for geographic number portability.

### **Scope for porting**

Section 1 of Schedule A states that number portability applies to all licensees that have been allocated portable geographic and non-geographic numbers. MTN supports this inclusion of the broader scope of licensees in the number portability framework. MTN further suggests that this requirement be included within the provisions of any number allocation issued by the Authority.

### **Porting Procedure**



MTN supports a recipient led number porting process. We are pleased that the Authority has articulated the importance that the porting process is initiated when a subscriber submits a porting requests to the recipient operator.

MTN has seen a surge in unauthorised ports that were not requested by the subscriber, consequently MTN welcomes the Authority's proposal in introducing a OTP to verify that subscribers have indeed requested a port to be initiated.

MTN submits that there is merit in providing a standard message that all networks operators use when an OTP is sent. This would provide conformity with number portability messaging within the sector and provide transparency to the end-user.

The alignment of the porting times i.e. Monday to Friday 09H00 to 17H00 and 09H00 to 13H00 on Saturdays excluding Sundays and public holidays to standard retail business hours is supported.

Sub-paragraph 3 and 4 of section 2 of the functional specification detailing the mandated requirements to inform potential subscribers of the impact is welcomed, however MTN suggests that the Authority include that this obligation on the recipient operator does not remove the right of the donor operator to notify the customer of the same. It is imperative that in exercising this right, that the donor operator does not attempt to dissuade or influence the customers right to port.

### **Information required for porting**

MTN supports the Authority in relation to the information required from a customer to initiate a porting request as detailed in section 3 of the functional specification.

### **Porting Validation Process**

The introduction of a port validation process is welcomed by MTN. MTN believes that this process is instrumental in combating slamming of customers which has over the past few years has resulted in the increasing number of cases of unauthorised ports.

The practice of unauthorised ports has become so prevalent that it has resulted in MTN raising a complaint with the CCC in terms of section 17B(a)(ii) of the ICASA Act as far back as October 2013. In the judgement, the CCC found that such behaviour would result in prejudice and inconvenience to those customers who had their numbers ported without their permission. It

was also widely acknowledged by other operators that this behaviour was unacceptable and in breach of regulations.

MTN is of the opinion that the proposed method to validate a port request would not make the porting process more challenging or cumbersome, and that the additional time required to validate a port request is reasonable in order to protect consumers from this porting behaviour.

MTN re-iterates that we fully support the Authority's proposal for the introduction of a one-time pin (OTP) valid for a four-hour period in order to validate a number porting request.

### **Reasons for port rejection**

MTN suggests that an additional reason is added in line with the Authority proposal of an OTP i.e. that there is a specific reason (reject code) for when a subscriber has not confirmed the validation of a port through the use of the OTP. The Authority should not link this with point *(h) of the reasons for port rejection i.e. any other reason agreed to by the Authority and notified to the operators in writing; because this may lead to confusion.*

Therefore, to avoid any vagueness as to why a port has been validly rejected, MTN suggests the following inclusion of an additional point to be included in the list of reasons for port rejection.

*(j) Subscriber rejected/ failed to respond to validation request.*

### **Activation for ported numbers**

In order to remove any ambiguity from the draft regulations and associated functional specification, MTN is of the view that the need for a donor operator to respond to requests from a recipient operator within an hour excluded the OTP requirement introduced in Section 4(1) of the port validation process, which caters for a four (4) hour validity period. Thus, MTN suggests that the requirement within this section where an operator responds to a request should cater for and include the time provisions introduced with the adoption of the OTP.

As it relates to network operators synchronising changes to their networks, the current format catering for network synchronisation time (NST) ensures that this process is done at a time of low network traffic. However, due to the requirement to allow for activation of new subscribers on the recipient's networks prior to the deactivation of the same subscribers from the donor's network, currently this process is done within 2.5 hours, specifically between the hours of

19h30 and 22h00, the proposal to reduce the time to one hour would have a minimal positive impact. The reason for this is firstly this is already done in low network traffic periods and secondly the subscriber is effectively activated first on the operator of choice prior to deactivation. The proposal therefore does not benefit the subscriber in any way as their availability to service is uninterrupted.

### **Quality service for porting**

While MTN agrees that a ported number should not receive any form of degraded service compared to a non-porting number, the introduction of a five (5) second warning will by its very duration have a detrimental impact to the call set up time. As mentioned above under the section Principles for porting services, MTN suggests that the established three (3) beeps be retained.

### **Subscriber's service profile**

MTN welcomes this inclusion in the draft regulations to avoid unwelcome customer soliciting behaviour from competitors.

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