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Dear Mr Zwane

SUBMISSION IN RESPECT OF THE DRAFT NUMBER PORTABILITY REGULATIONS (GG41275)

Switch Telecom thanks the Authority for the opportunity to make submissions in respect of the draft Number Portability Regulations. Since we have already provided background to Switch Telecom's involvement in GNP as part of the "QUESTIONNAIRE: INQUIRY INTO NUMBER PORTABILITY REGULATIONS" process and as we have previously presented to the Authority, we will not re-iterate points previously raised.

Switch Telecom congratulates the Authority for addressing the long-overdue demand for Non-Geographic Number Portability. We welcome the opportunity to offer this to subscribers.

SPECIFIC CLAUSES – MAIN REGULATION

- 1 Clause 5(1), in its current form, restricts Geographic Number Portability to subscribers "who have been assigned a block of ten or more numbers within the same allocated block(s)".
 - 1.1 It cannot possibly be the intent of the Authority to deny all individual subscribers the right to GNP!
 - 1.2 This clause should be reworded to state "Licensees that have been allocated geographic numbers must work together to offer number portability to their subscribers."
 - 1.3 The process of porting one geographic number is identical to the process of porting multiple geographic numbers. Any reference to porting of "blocks" is unnecessary as this was a historic provision that related to Telkom and Neotel manually porting large number blocks prior to the full implementation of GNP in 2010 via the CRDB.

- 2 Clauses 5(3), 5(4), 6(1)(c), 6(1)(d) 6(2)(c) and 6(2)(d) are grossly inadequate to meet any constructive purpose. The public and interested parties cannot practically make use of hundreds of lists, published in different formats and in different places, listing numbers ported-out. To be useful, a single, authoritative list of ported numbers needs to be made available by the entity maintaining the “Central System” listing not just all the ported numbers but, more importantly, which licensees they have been ported to. It is suggested that these clauses be re-worded to state that “Licensees shall, by means of the Central System, makes available, free of charge, via the Internet, a list of ported numbers setting out, in respect of each number, the Licensee currently serving that number. The list shall be updated at least once a day.”
- 3 Clause 8(2) seems unnecessary given that various licensees offer transit services to smaller ones. The effect of this clause may be harmful to smaller licensees that should not need to synchronise their routing against the database, provided that their transit provider(s) do so.
- 4 Clause 8(5) has been split; clause 8(6) should be merged back into 8(5).
- 5 The apportioning of per-customer costs between licensees is cumbersome and adds unnecessary overhead to the cost of porting. All licensees benefit from being recipients in the Number Portability process and the quid-pro-quo is the responsibility of being a Donor too. These administrative costs are largely fixed and largely reciprocal. Switch Telecom strongly encourages the Authority to eliminate per-customer charges between Licensees and contends that this is essential to keeping charges levied to subscribers to a bare minimum. We encourage the rewording to clause 9(3) to state “No per-customer charges shall be levied by Licensees to against other Licensees.”
- 6 Clause 9(6) makes an incorrect cross-reference to clause number 8(5). It is not clear which clause the Authority intended to cross-reference.
- 7 The duration of the warning message in clause 10(2) is absurdly long and conflicts with section 7 of schedule A (“Functional Specification”). A warning message of 5 seconds is excessively long and will only serve to annoy and confuse subscribers into believing that their call is failing to connect. A warning tone should never take longer than a single second.
- 8 It is further noted that a warning tone is entirely unnecessary in instances where the called number is being billed according to the same tariff as a number that has not been ported and, increasingly, in the interests of transparency, licensees are offering tariff plans with identical on-network and off-network tariffs. Switch Telecom strongly urges the Authority to amend clause 10(2) to state a warning tone is only required where the subscriber is being charged a different rate to the rate that would have applied had the number not been ported or where bundled minutes do not apply in the same manner to the number as they would have had it not been ported.

- 8.1 The Authority should be working towards a regime of transparency of tariffs and one where competition is encouraged. Switch Telecom contends that warning tones are of little benefit to help the subscriber understand their tariffs and are, by nature of the fact that they add additional call-connection delay, anti-competitive.
- 8.2 Switch Telecom recommends that, if the Authority is serious about tariff transparency, that it mandates that Licensees may not charge more for a call to a ported number than for a call to the same number had it not been ported; AND, that bundled minutes should apply in respect of numbers that have been ported exactly as they would had the number not been ported.
- 9 Clause 12 is extraordinarily vague and oppressive towards licensees.
- 9.1 It is unjust that the Authority should allow the imposition of such a large fine without setting out the nature of the infringements contemplated and ensuring that the quantum of the fine is proportionate to the harm associated with the infringement.
- 9.2 To allow such a range of discretion to the officer responsible for sentencing without any guidance creates a recipe for inconsistent and unjust enforcement as well as a shroud of distrust by licensees.
- 9.3 The systems involved with Number Portability are NOT conducive to prompt responses. Where, for example, the Authority expects a turnaround time of less than 60 minutes, the CRDB does NOT issue alerts to WebGUI participants. To subject a small licensee to a R300,000 fine over a shortcoming in a system that, by nature of the shareholding and management of the NPC, they have no say in the running of, is of questionable legality.
- 9.4 The Authority must differentiate between deliberate acts of infringement and minor transgressions and must ensure that fines are proportionate. For example, response to a message in 61 minutes instead of the mandated 60 minutes should not possibly carry the same consequence as declining authorisation for a subscriber to port where they are lawfully entitled to port.

SPECIFIC CLAUSES – SCHEDULE A

- 10 Clause 2(2) includes Saturdays, however, in practice, not a single one of the licensees involved in Geographic Number Portability comply with this at present nor operate their Porting Teams on Saturdays. Switch Telecom suggests amending this such that Saturdays only apply in respect of Mobile Number Portability.

- 11 Clause 3(2)(b) states that the request to port should include “an account number from the donor operator.” In practice, this is often captured incorrectly and the recipient operator does not always authenticate that the person requesting the port is the genuine account holder. In the interests of protecting subscribers against unauthorised ports and ensuring that porting is authorised on the first request, Switch Telecom strongly recommends that this be reworded to “copy of an invoice, statement of other document issued by the donor operator clearly setting out the subscriber’s name and account number as per the donor operator’s records.” This will also help speed up the porting process as, if the recipient inputs the account name and number exactly as it appears in the donor’s records, the port can be authenticated in seconds by computer. It will also help the recipient operator authenticate the account holder and will help eliminate issues where, for example, the subscriber has multiple numbers spanning multiple accounts.
- 12 With respect to clause 4(2), it appears that the Authority has proposed this mechanism without giving any thought as to the practicalities of how this would work. While an IVR may, potentially, work for home subscribers who are natural persons, it is entirely inappropriate for business subscribers where the person answering the call is not the contractual account holder. Even within a home environment, a geographic service is often shared by a family. It is extremely problematic that whomever answers the call can authorise porting of numbers, irrespective of whether or not that person is the contracted party. What is the legal standing if, for example, a minor inadvertently authorises the porting of a home number or the receptionist inadvertently authorises the porting of an entire company’s numbers.
- 12.1 Switch Telecom strongly recommends the replacement of this clause with wording along the lines of “Donor operators shall provide an automated mechanism for subscribers to validate geographic number and non-geographic number (with the exception of mobile numbers) ports in a quick and secure manner.”
- 13 Switch Telecom questions the intent of clause 4(3) in the light of clause 4(4). If, per clause 4(3), the subscriber confirms that they did NOT request porting but, per clause 4(4), the donor cannot reject the port request, then the donor is placed in the untenable position of authorising a port that they know to be unauthorised. It seems that either clause 4(4) should be revised to allow rejection of ports where the subscriber confirms, in writing, that they are unauthorised, or, alternatively, clauses 4(3) and 4(4) should both be removed so that donors do not seek confirmation that they are, in any case, not empowered to act on.
- 14 Clause 5(1)(g) refers to a period of “one (1) calendar month” however, the CRDB, in its current form, does not support this unit. To ensure the regulation is harmonised with the technical capabilities of the CRDB, Switch Telecom suggests that this be revised to “30 calendar days.”

- 15 Clause 5(1)(i) should be removed as it makes the assumption that the donor operator knows the address that the subscriber has contracted with the recipient operator. The inclusion of this provision creates both an obligation on the donor to verify something that it cannot verify as well as a loophole in terms of which porting can be repeatedly delayed and rejected by a donor while it insists of documentary evidence of the relationship between the recipient operator and the subscriber. This could severely obstruct porting.
- 15.1 Enforcement of compliance with the regulations is the role of the Authority and not donor operators. To the extent that licensees are expected to police one another, donor operators will act in a manner to prevent and obstruct subscribers from porting out.
- 16 The wording of clause 5(2) does not make sense. Any response detailing a rejection should be “within [...] of **rejecting** the request” and **not** “within [...] of **receiving** the request.” The time period should be “**immediately**”, as the very nature of rejecting a port is such that one should have a valid reason and therefore there should be an obligation to immediately communicate such reason.
- 17 Clauses 5(3) and 5(4) imply that short coded numbers are portable, however, the main regulation does not provide for the porting of such numbers. It is recommended that these clauses be removed as they just create confusion. Alternatively, the main regulation should be amended to specifically address short coded numbers and clarify which such numbers are eligible to be ported.
- 18 Clause 6(2) is overly vague and impractical, particularly in light of the heavy fines associated with non-compliance. The wording should be more specific, e.g. “The donor operator must de-activate numbers that have ported away from its network as soon as possible and within a period of one (1) hour of receiving notice from the Central System that the recipient operator has activated the number on its network.”
- 19 Clause 6(3) does not take into consideration the reality that the NPC currently makes available to most participants daily updates at a time of their own convenience (and not at Network Synchronisation Time). In effect, this clause leaves all but a few of the largest participants non-compliant and it would be extremely difficult for them to comply given that only the largest participants have any say in the running of the NPC and its service offering. Switch Telecom proposes either the deletion of this clause or rewording such that synchronisation shall be completed within one (1) hour of the Central System making such updates available to the network operator.
- 20 Clause 8 does nothing to address the situation of subscribers losing services (particularly ADSL) that they were not aware that they were going to lose. Recipient operators are doing their utmost to ensure that subscribers are aware that they will lose ancillary services, however, this is not always visible to the recipient operator (e.g. we’ve had subscribers port within 60 days of Telkom activating ADSL on their line so the ADSL didn’t appear on their tax invoice yet and we therefore didn’t warn them that they would lose the ADSL as we weren’t aware that they had ADSL).

GENERAL REMARKS

Switch Telecom notes that the Authority avoided dealing with the role of the Number Portability Company within the porting process. The draft regulation places obligations on licensees that, from a practical perspective, can only be effectively complied with by the NPC itself. While the Authority seems to take the position that it can place the obligations on licensees and, in turn, licensees must compel the NPC to act as required to facilitate such compliance, the reality is that only some licensees are shareholders in the NPC and have influence on its activities, reporting, fees and fee structure. While the term “Central System” is defined, we were unable to find references to it. We do query scenarios where obligations have to, from a practical perspective, be connected back to the “Central System.” It is particularly problematic that licensees that have no control of the NPC are, for example, measured in terms of turnaround times of response to the “recipient operator” rather than response to the “Central System.”

The undertone to many clauses of the draft regulation is that the Authority doesn’t recognise the NPC and its role in the porting process. The Authority should either recognise it and make the appropriate references to the “Central System” or take actions to overhaul the porting system to one that doesn’t make use of a “Central System.” But to hold licensees accountable for the actions of an entity that they have no management control over and that the Authority itself is declining to regulate, is unfair.

It is disappointing that, despite extensive input given during both the questionnaire process and the hearings, that the Authority has done so little to effect small practical changes to optimise the porting process. Basic suggestions that we proposed such as imposing automation requirements on licensees processing higher volumes of ports seem to have been overlooked as have common-sense suggestions such as requiring the specification of subscribers within the port request by ID number or registration number where possible (and only by name where they don’t have an ID or registration) to facilitate automatic computer-based port approval/rejection.

Switch Telecom believes that there is an opportunity to vastly improve the porting process and turnaround times. The approach of threatening arbitrary fines for unspecified infringements is unlikely to result in greater compliance, faster processing of ports or a better subscriber experience. Rather, obligations to automate various parts of the porting process – particularly on those licensees processing large volumes – would radically reduce the turnaround time, decrease the volume of human error and/or inaction, and make it significantly more difficult to engage in discretionary acts of obstruction to the porting process.

In closure, Switch Telecom thanks the Authority for the opportunity to provide input and requests that the Authority invite us to participate in any further processes relating to Number Portability. We also look forward to implementing the new Number Portability Regulations and, in particular, offering Non-Geographic Number Portability as soon as possible.

Yours faithfully



Gregory Massel