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**Independent Communications Authority of South Africa**

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Dear Mr. Letlape

**NOTICE REGARDING DRAFT AMENDMENT NUMBERING PLAN REGULATIONS, 2016, IN ACCORDANCE WITH CHAPTER 11 OF THE ELECTRONIC COMMUNICATIONS ACT, 2005 (ACT NO. 36 OF 2005)**

1. The draft amendment regulations regarding Numbering Plan Regulations, 2016 (“**the Regulations**”) under Chapter 11 of the Electronic Communications Act, 2005 (no. 36 of 2005), (“**the ECA**”) published for consultation in *Government Gazette 46080* on 23 March 2022 refers.
2. Cell C welcomes the Authority’s invitation to comment on these Regulations. Cell C confirms that it would be participating in the oral hearings when they are convened.
3. It is Cell C’s understanding from the Regulations that the purpose of this exercise is to consult on amendments which are related to providing clarity, enhancing compliance, making the numbering plan more relevant with additional numbering resources, providing for the collection of subscriber biometric data and introducing efficiencies in the application process to accommodate applications that are related to technical numbering resources. Cell C is supportive of this initiative however recommends that all amendments be supported by evidence for the required regulatory interventions and must be prescribed within the framework of the ECA.

4. Cell C will set out its submission below with general, specific comments with recommendations.

Yours sincerely

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**Mr Themba Phiri**

**Executive Head: Regulatory**

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**CELL C WRITTEN COMMENTS ON THE PROPOSED DRAFT AMENDMENT NUMBERING PLAN REGULATIONS, 2016, IN ACCORDANCE WITH CHAPTER 11 OF THE ELECTRONIC COMMUNICATIONS ACT, 2005 (ACT NO. 36 OF 2005)**

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**1. GENERAL COMMENTS**

- 1.1. Cell C would like to thank the Authority for the opportunity to present these written comments and requests the opportunity to both elaborate on the points below as well as to raise further points via oral submission when public hearings are convened on the Regulations.
- 1.2. Cell C recommend that all the proposed amendments contained in the Regulations are done in alignment with Section 68, “*Numbering plans and number portability*” of the ECA.
- 1.3. Due to the lapse of time and to remain relevant, the 2016 Number Plan regulations requires a refresh by amendments to ensure that there is sufficient mobile numbering capacity for future use by the mobile sector. In this regard, Cell C welcomes the opportunity to provide specific comments to the **amendment Numbering Plan Regulations, 2016**. However, this approach may be a short-term solution and the Authority may need to consider looking into expanding the numbering plan through consultation. This is to ensure there is sufficient mobile numbering capacity for the long-term demand.

**2. LEGAL FRAMEWORK**

- 2.1. ICASA has issued the **amendment Numbering Plan Regulations, 2016 in terms of section 68 of the electronic Communications Act, 2005 as amended**. Section 68 of the ECA mandates the Authority to prescribe numbering plan regulations and the issues to be considered are as follows:

**“68. *Numbering plans and number portability***

- (1) *The Authority must make regulations prescribing -*
  - (a) *a numbering plan which must be amended and updated as the Authority considers necessary -*
    - (i) *for efficient use and allocation of numbers; and*
    - (ii) *to accommodate the varied protocols used and services provided by licensees under this Act; and*

- (b) measures to ensure that number portability is introduced, including -
- (i) the creation of a national number portability database; and
  - (ii) cost allocation and cost recovery among licensees.

(2) A numbering plan must consist of a scheme of identification so as to ensure that electronic communications are correctly and efficiently directed to the point of reception for which they are intended.

(3) Subject to subsection (7), the Authority must, in preparing a numbering plan, take account of existing numbering plans or schemes.

(4) The numbering plan contemplated in subsection (1)(a) must be non-discriminatory.

(5) The Authority must maintain and manage a central numbering database system.

(6) Every individual electronic communications service licensee and individual electronic communications network service licensee, as applicable, must submit information on all numbers, including numbers of pre-paid subscribers allocated in terms of its licence, to the Authority.

(7) The regulations made in terms of subsection (1) must include matters relating to -

(a) the fees licensees must pay for the allocation of numbers to recover administration costs;

(b) the conditions under which a licensee may be required to surrender unused numbers to the Authority for reallocation;

(c) the allocation of responsibility between electronic communications service licensees and electronic communications network service licensees for the implementation of the numbering plan and number portability to -

(i) ensure effective functionality;

(ii) ensure access and routing within electronic communications networks; and

(iii) allow licensees to assign numbers to subscribers and transfer numbers when subscribers change services in an efficient manner without unreasonable delay or disruption of service;

(d) the protection for consumers including disclosure of consumer rights relating to -

(i) numbers and number portability; and

(ii) the process and procedures to be followed for resolving subscriber complaints and affording subscribers remedies in the form of discounts and credits when the electronic communications network service licensee or electronic communications services licensee fails to meet its obligations under this section; and

(e) a framework, including a schedule for transforming the numbering plan to a non-geographic numbering system taking into account similar non-geographic numbering plans adopted in other jurisdictions and implementation of electronic numbering, allowing the inter-operation between telephone numbers and the Internet domain name system.”

### 3. SPECIFIC COMMENTS

#### 3.1 Definitions:

3.1.1 s2.6. by the substitution of the definition “mandated number” for the following definition:

*““mandated number” means a receiving number that has been determined to be of national and/or public importance by the Authority.”*

Cell C recommends that the definition of mandated number be amended to include the following:

*“mandated number” means a receiving number that has been **determined through public consultation that is to be** of national and/or public importance **by the Authority.**”*

The reasons for the above amendment are that the ECA prescribes only two national numbers for the Authority to include in regulations. These two numbers are the four (4) -digit government directory information services which is prescribed in terms of section 72 (6) of the ECA and the 112 emergency number prescribed in terms section 78(1) of the ECA. Any other number or short code that the Authority plans to prescribe as a mandated number needs to follow due consultation prior to such determination.

#### 3.2 s3. Insertion of regulation 2A of these Regulations with:

***“2A. Application of these Regulations** These Regulations apply to licensees that have been issued an Individual Electronic Communications Service licence (I-ECS) and/or an Individual Electronic Communications Network Service licence (I-ECNS) \or a Ship Station License holder”*

Cell C supports the inclusion of regulation 2A as this provides certainty as to which category of licensees are eligible to apply for numbering resources. In addition, Cell C supports the insertion of regulation 5(A) in terms of section 5.3 of these Regulations. We say this because this insertion provides certainty where IECNS and IECS licensees who are not assigned access radio frequency are eligible to apply for mobile numbering resources, provided that these licensees must have entered into a signed national roaming agreement with existing IECNS licensee who are in possession of access radio frequency spectrum. The Authority needs to note that Cell C is only eligible to apply for numbering resource in terms of its IECS licence and not both its IECS and IECNS licences.

### 3.3 s4. Substitution of regulation 4 of the Regulations with “4. HARMONISED AND MANDATED NUMBERS

- 3.3.1 Cell C supports the clarity provided for the distinction between harmonised numbers (billable) and mandated numbers (non-billable). However, Cell C recommends that the consultation period of thirty (30) days between the Authority and the affected licensee be amended to one hundred and eighty (180) calendar days or an alternate timeline as agreed between the Authority and the affected licensee. This duration of time will allow the affected licensee make the necessary number change on its network and provide for adequate number change awareness campaigns to its subscribers.
- 3.3.2 Cell C recommends the following amendment to subregulation 4(2) which is supported by Cell C’s comment in section 2.1 above.

*“(2) When harmonising **or mandating** numbers, the Authority must:*

*(i) not less than **one hundred and eighty (180) ~~thirty (30)~~ calendar days or an alternately agreed timeline with affected licensee** before any number is harmonised **or mandated**, consult affected licensee regarding the proposed changes; and*

*(ii) publish a notice in the Gazette stating the numbers that are harmonised **or mandated** and describing the services for which the numbers must be used to receive communication. “*

### 3.4 s5. Amendment of regulation 5 of the Regulations by substitution of :

“5.1. Regulation 5 of the Regulations is hereby amended by the substitution for sub-regulation (2) of the following sub-regulations:

*“(2) The application set out in sub-regulation (1) must be furnished in the format as set out in **Schedule 3** of these Regulations with the following information:*

*a) Proof of payment for the **prescribed fee (Schedule 5)**.*

*b) .....”*

Cell C is not opposed to the Authority introducing a fee structure for the application process and the allocation process of the numbering resource to recover administration cost only. This intention is in line with section 68 (7)(a) of the ECA which requires that when prescribing a numbering plan the Authority must consider “*the fees licensees must pay for the allocation of numbers to recover administration costs.*” However, Cell C recommends that all references to fees in this draft be removed. When the application and allocation fee structure have been finalised by the Authority after consultation with interested parties, thereafter it should be include in an amended numbering plan regulation. The reason we say this is that if these Regulations are published prior to Schedule 5 or Annexure A in terms of regulation 23 are finalised, there would be a regulatory lacuna. This gap is where a licensee after submitting an application will not receive an approval from the Authority as there would be no proof payment of the prescribed fee to be supplied to the Authority.

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### 3.5 s6. Insertion of regulation 6A to the Regulations

The following regulation is hereby inserted in the Regulations, after regulation 6:

**“6A ACTIVATION, DEACTIVATION AND RE-ASSIGNMENT / RECYCLE OF NUMBERS”**

- 3.5.1 Cell C recommends the removal of subsection 6A(1), as it is unclear the context or the benefit of including this sub-regulation on “Churn Rate”. Churn rate is not referred to elsewhere in the Regulations.
- 3.5.2 Cell C supports the requirement to send a quarantine notification to a subscriber prior to his/her MSISDN is recycled in terms of the licensee's churn/quarantine rules and for the subscriber to confirm if the mobile number is in use. Therefore, Cell C recommends the following amendments to section 6A:

~~“(1) Churn rate must be calculated by taking the quantity of numbers that are no longer in service/discontinued accessing or receiving a service and divide by the quantity of numbers activated at the beginning of a given timeframe.~~

(2) Churned **mobile** numbers in terms of **a licensee's churn rules** must be quarantined for a period of 90 **calendar** days before being recycled into the pool of available numbers. **Quarantined means the restriction of subscriber mobile numbers (MSISDN's) for a duration of time where the mobile number is blocked and will not exist on any network elements preventing any communication to and from the mobile number.**

(3) **Thirty one calendar (31) days** ~~p~~**Prior to a mobile number going into activating a quarantined for a period of 90 days of withdrawing numbers from assigned subscribers**, a licensee must notify the affected subscriber of **the intention to quarantine the mobile number the intended withdrawal**. The subscriber must ~~afforded a grace be allowed~~ within ~~the this~~ period of 31 **calendar** days to object to the ~~number withdrawal notice~~ **notification**.

(4) Should a subscriber object to the **notification withdrawal** as per sub regulation (3), the licensee must abandon **the mobile number going into quarantine withdrawal and subsequent deactivation of the number's**.

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3.5.3 In terms of section 6A, the biometrics data requirement, Cell C and other mobile licensees are required to ensure the following:

*“(5) On activation of a mobile number on its network, a licensee must ensure that it collects and link the biometric data of the subscriber to the number.*

*(6) A licensee must ensure that, at all times, it has the current biometric data of an assigned mobile number.*

*(7) Mobile number\’s assigned to a juristic person are exempted from the provisions of sub regulation (5).*

*(8) The biometric data collected in terms of sub regulation (5) must be used for the sole purpose of authentication of a user assigned a mobile number.*

*(9) If a subscriber requests a SIM swap, the Licensee must ensure that the biometric data of the user requesting the SIM swap corresponds with the biometric data associated with the mobile number.*

*(10) If the biometric data does not correspond with the biometric data associated with the mobile number, the SIM swap must be declined”*

3.5.4 Cell C note the intention by the Authority for the introduction of the collection of biometric data linking the subscriber with his/her mobile number. In addition, the verification of the subscriber information when the subscriber requests a SIM Swap with the collected biometric data is logically a correct step.

3.5.5 However, the introduction of the biometric data collection requires a deeper analysis before it is legally gazetted due to a number of factors, amongst others,

3.5.5.1 the enormity and complexity of the scoping the requirement for technical systems integration.

3.5.5.2 Cell C requires more time to properly scope the technical and systems integration required to implement the biometric solution for customers on its network.

3.5.5.3 Cell C further request that the Authority provides the legal basis for introducing the biometrics data collection via a regulation, as opposed to other legal instruments with government legislative provisions, i.e. Amendment to the ECA or Regulation of Interception of Communications Act (RICA).

3.5.5.4 Cell C believes that more time for consultation with all affected stakeholders and interested parties is required. This approach will provide the opportunity to properly determine the technical scope and including the timeframe required for implementation of this requirement.

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3.5.6 The reasons we say that this requirement is enormous and complex are as follows:

3.5.6.1 The impact of the requirement have to be determined throughout commercial value chain and various customer interfacing channels and the associated limitations in terms of roles and responsibilities access to software and hardware, fraud prevention and security.

3.5.6.2 The commercial impact on cost of doing business in order to comply with the regulations if promulgated.

3.5.6.3 The role and appointment of distribution agents in the distribution value chain which include informal sector of the economy such as vendor distributors, and rural based shops, etc.

3.5.6.4 Subscriber limitations (understanding the requirement, physical presence may be required, where and what is required).

3.5.6.5 Determination of whether the Authority has the necessary empowering legislation to mandate licensees to collect the subscriber biometric data information or is the Department of Justice and Constitutional Development under the Regulation of Interception of Communications and Provision of Communication-Related Information Act (“**RICA**”) legislation better placed to mandate such requirement from licensees. If the latter, this requirement should be a priority for the Department of Justice and Constitutional Development when amending RICA.

3.5.6.6 Cell C, other mobile licensees and industry representative bodies like the Communications Risk Information Centre (“**COMRIC**”) can work together to look into the following but not but limited to:

- Privacy laws implications.
  - Technology to collect data;
  - Logistics of capturing data;
  - Cost involved and resources required;
  - Time frame for implementation;
  - Support from Government with access to 3<sup>rd</sup> party verification databases i.e HANIS;
  - Defining what biometric information will be required: Finger Print, Facial recognition, Voice Biometrics
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3.6 s8. Regulation 9 substitution for sub-regulation (1) of the of the following sub regulation:

*“(5)A Licensee must provide a facility that enables subscribers to opt to bar calls from specified numbers on their respective devices.”*

Cell C understand that the barring function is to be enabled on the customer device. From a network level, if mobile numbers are marked for barring all outgoing calls to those elected numbers, then all those numbers will be blocked on a global level. For barring a specific number by a subscriber, the most devices allows for the blocking of such with available software applications such as Smartcall/Hiya or Truecaller which marks certain numbers as Spam and blocks them.

3.7 s10. Amendment to regulation 12 of the Regulations by addition of :

*“...(f) ensure that in the event a caller has opted to use another number for their CLIP, that the number in question must have been either allocated or ported to the originating Licensee, must be a valid, dialable number which uniquely identifies the caller and must not be a number that connects to a Premium Rate Service;*

*(g) ensure that, as the originating Licensee, the correct CLI is generated at call origination and that the correct CLI data is exchanged, where applicable, over points of interconnection;*

*(h) ensure that, as a transit and/or terminating Licensee and where it is technically capable, stop calls with an invalid and/or non-dialable CLI.”*

Cell C has a considered the above proposed amendment, and recommend that in order to curb any possible abuse or unforeseen liabilities due to fraud arising from this addition, the originating licensee and transit licensee must be liable for any costs arising from fraudulent traffic. In addition, the originating licensee and transit licensee must ensure that calls with invalid, non-dialable are blocked, and Cli manipulated numbers are stopped, since this activity carries costs for the terminating licensee.

3.8 s12. Amendment to regulation 15 of the Regulations

Cell C supports the four (4) 05 X National Destination Codes's (“NDC”) expansion to be included in the non-geographic mobile numbering pool. NDC's 050 ,052 ,055 ,059 ,075 ,085 will provide for an additional sixty (60) million mobile numbers that will be available for mobile use.

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### 3.9 s13. Amendment to regulation 16 of the Regulations

*“13.1. by the substitution for sub regulation (3) of the following sub regulation: “(3) A machine related number must have a maximum length of **twelve (12) digits.**”*

It is unclear to Cell C if the Authority has incorrectly referred to machine related number digit length as “twelve (12) digits” instead of “fourteen (14)”. However, if this is not the case, Cell C seeks clarity as to why there is a change in the number of digits as there is no reasons provided by the Authority. The Authority must note that it has assigned 14 digit machine related numbers to some licensees which are currently in use at this time.

### 3.10 s14. Amendment to regulation 17 the Regulations

*“14.1. Regulation 17 of the Regulations is hereby amended by the insertions to sub regulation (4) of the following paragraphs:*

*(k) the service codes 103, 104, 105, 106, 111, 113, 118, 132 and 139 are designated for Special National Emergency Service such as COVID-19 Emergency service number.*

*(l) the service codes contemplated in paragraph (k) must be mandated upon request to a specific national government department/ s for access on-net and off-net for a specified Special National Emergency service.”*

Cell C supports the reservation of short codes for use for national emergencies as declared by government from time to time. However the reservation of nine (9) short codes for this purpose means that the Authority has an expectation that there would be nine (9) different national emergencies at the same time. Therefore Cell C recommends that fewer short codes be reserved for this purpose. Cell C notes that the term “*Special National Emergency service*” is undefined in these Regulations, the existing numbering plan and the ECA. Lastly Cell C recommends that the 132 short code be sanitised before been reserved for this purpose.

### 3.11 s19. Amendment to section 2 of schedule 1 of the Regulations

*“19.1. Section 2 of Schedule 1 of the Regulations is hereby amended by the substitution for subparagraph (iii) with the following:*

*“(iii) Service designated for harmonized services*

**Harmonized Codes**

*S19. Harmonized Codes*

<i>Service</i>	<i>Code</i>
<i>Voicemail deposit &amp; retrieval</i>	<i>134</i>
<i>Customer care\service</i>	<i>135</i>
<i>Prepaid recharge and balance enquiry</i>	<i>136</i>
<i>Account Enquiries</i>	<i>137”</i>

Cell C notes the Authority's proposal to remove the "132" Voicemail retrieval Short Code and combine such service with the "134" Voicemail deposit Short Code. In order for the public to familiarise themselves with this change, Cell C recommends that a six (6) month period be provided for the parallel run and cutover. The technical implementation is not as complex and therefore requires much less time.

3.12 s21. Insertion of schedule 4 of the Regulations 21.1. The following schedules are hereby inserted in the Regulations, after schedule 3: "SCHEDULE 4 NETWORK NUMBER ACTIVATION AND ROUTING FRAMEWORK"

It is Cell C view that the activation, routing and fault resolution procedures for numbering must be completed in accordance with the signed interconnect agreements. If there is a lacuna, this should be addressed under the interconnection agreement between the licensees. Part IV of the 2010 Interconnect Regulations, regulation 15, "*Terms and conditions of interconnection agreements*", section 15 (b)(iii) *Technical scope of the interconnection and section 15(b)(v) "details regarding access to numbers by the parties and"* provides for numbering requirements. By including these requirements in the numbering plan is misplaced and may lead to unintended consequences. The reason we say this is that the interconnection regulations and signed interconnect agreements provides for addressing disputes between interconnecting parties and resolutions including breach notices. It is unclear what procedures are to be followed if a dispute arises or will a licensee be automatically referred to the Complaints and Compliance Committee ("CCC") for a non-compliance determination or the penalties in terms of the numbering plan regulations immediately apply for contravention of the regulations.

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