
ANNEXURE A

REASONS DOCUMENT



INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA

REASONS DOCUMENT ON THE AMENDMENT OF THE NUMBER PLAN REGULATIONS, 2016

APRIL 2023

1. Background

- 1.1. The Independent Communications Authority of South Africa ("the Authority") hereby acknowledges and thanks all stakeholders who have participated in the process aimed at amending the Number Plan Regulations, 2016 (the "Regulations").
- 1.2. On 23 March 2022 the Authority published the draft amendment Regulations for public input. At the deadline for written submissions and comments on 11 May 2022, the Authority had received a number of comments and submissions from stakeholders including members of society to the draft amendment Regulations, submitters are summarised as follows:
 - a) amaBhungane Centre for Investigative Journalism ("amaBhungane");
 - b) Arthur G B Lewis;
 - c) Cell C Limited;
 - d) Chris Schutte;
 - e) Eleanor Duvel;
 - f) Fish Hoek Valley Ratepayers and Residents Association ("FHVRRRA");
 - g) Frances Smith;
 - h) Internet Service Providers' Association of South Africa ("ISPA");
 - i) John Brice Belgrove;
 - j) Marietjie Cloete;
 - k) Mary Anne Finaly;
 - l) Media Monitoring Africa ("MMA");
 - m) Mobile Telephone Networks (Pty) Ltd ("MTN");
 - n) Next Generation Network Telecommunications (Pty) Ltd ("NGN");
 - o) Reunert Limited (t/a ECN);
 - p) Right 2 Know;
 - q) Telkom SA SOC Ltd ("Telkom");
 - r) Vodacom (Pty) Ltd ("Vodacom");

The Authority also received 11 697 recorded comments from the public sent through the 'DearSouthAfrica' online platform.

- 1.3. The Authority held public hearing on 23 and 24 June 2022. The following stakeholders, from the above list, participated in the public hearings:
 - a) amaBhungane;
 - b) ISPA;
 - c) John Brice Belgrove
 - d) MMA;
 - e) MTN;
 - f) Telkom; and
 - g) Vodacom

- 1.4. During the public hearings the above stakeholders were provided with an opportunity to make supplementary submissions in response to specific aspects of their written submissions. Supplementary submissions, as per the specified deadline, were submitted on 05 July 2022.

2. Introduction

- 2.1. The Reasons Document sets out the reasons for decisions of the Authority on the amendment of the Number Plan Regulations, published on 26 March 2016 in Government Gazette 39861 ("2016 Regulations") and the Number Plan Regulations, as amended published on 15 April 2020, in Government Gazette Number 43230 ("2020 Regulations").

- 2.2. The Authority's reason for amending the Regulations was to, amongst others:
 - a) refine existing provisions including some definitions that required further clarification and certainty for implementation and compliance as well as to align the terms with current practices;
 - b) release additional number capacity;
 - c) refine existing provisions and supplement them for the promotion of efficient use and management of number resources;
 - d) refine existing provisions to provide clarity and ease regarding the number

application process;

- e) refine existing provisions and supplement them for the promotion and protection of the rights of subscribers as they pertain to the use of their assigned numbers; and
- f) refine existing provisions and supplement them to align with best practice.

2.3. In developing this Reasons Document, the Authority has considered all the written submissions, oral submissions made during the public hearings and supplementary submissions. When developing the Reasons Document it was not possible for the Authority to incorporate all views; the Reasons Document thus highlights main issues put forward by the stakeholders. The Authority is charged with the obligation to formulate regulatory policy independently, in terms of what it deems to be in the broader public interest. The principles underpinning the public interest are laid out in section 2 (b) of the ICASA Act, 2000 (Act No. 13 of 2000), as amended.

3. Amendment of regulation 1 of the Regulations

3.1. "bulk Short Message Service (SMS)/ MultiMedia Service (MMS)"

3.1.1. Telkom has submitted that the Authority is flawed in its grouping of bulk Short Message Service (SMS)/ MultiMedia Service (MMS) into Machine Related Services (MRS). Telkom argues that there is no difference between the definition proposed and the existing traditional SMS\MMS. Telkom recommends that the Authority "*aborts its attempt at defining "bulk SMS/MMS" in relation to the numbering plan, as it serves no practical reason to mix SMS/MMS services with telemetry services used for IoT or M2M applications.*"¹

Decision

3.1.2. The Authority submits that there are some differences between what the public generally accepts and understands to be SMS\MMS and the bulk SMS\MMS as per the proposed definition. The two fundamental

¹ Telkom Submission Draft Amendment to the Numbering Plan Regulations 2016 (11 May 2022) 12

differences arise from:

- 3.1.2.1. The manner in which communication of the two originate or is initiated; and
 - 3.1.2.2. The requirement for the latter to have security tagging which includes adding an additional 4 digits to the number length.
- 3.1.3. The two differences gave a necessity for:
- 3.1.3.1. transparency – that the public needed to understand this type of service in that this service was not necessarily an individual sending a SMS\MMS from their mobile device and to which they could respond;
 - 3.1.3.2. recognising the need for a longer length number as opposed to the regulated 10-digit national number structure.
- 3.1.4. The Authority also had to consider the strain on numbers that were released for the provision for mobile services which were the numbers primarily used to provide the service in question.
- 3.1.5. The Authority opted not to provide this service with its own designated number range but rather to group A2P (bulk SMS\MMS), P2A and M2M services into MRS. This, the Authority cited, was to promote efficient and effective management of numbering resources.
- 3.1.6. In consideration of Telkom’s arguments, the Authority is of the view that there remains a need to distinguish this service in the interest of transparency and has thus decided to retain the definition.

3.2. ***“caller line identification (CLI)”***

- 3.2.1. ECN submits that substituted definition does not afford the calling party the opportunity to choose one provider for inbound services and another provider for outbound services.
- 3.2.2. MTN proposed alternative wording to the proposed amendment of the definition to further strengthen the provision.

Decision

- 3.2.3. The intention of the Authority in amending the definition was to provide further clarity and strengthen the wording of the definition. ECN's submission proposes a substantively new provision that would require further investigation to determine a case and merit for inclusion of such a provision.
- 3.2.4. The Authority is of the view that number portability which now includes the porting of 080 and 086 numbers provides the public with a choice in terms of service providers.
- 3.2.5. The Authority agrees with MTN's proposed alternative wording and it is thus adopted.

3.3. "churn rate"

- 3.3.1. Telkom proposed alternative wording to the proposed amendment of the definition as it submits that the proposed definition does not properly define the denominator.
- 3.3.2. Telkom submits that *"The denominator should be all the active numbers on the licensee's network at the start of the timeframe over which the churn rate is to be determined."*

Decision

- 3.3.3. The definition as contained in the draft Regulations omitted a description of the denominator in calculating the churn rate.
- 3.3.4. The Authority agrees with Telkom's proposed alternative wording, as the proposed alternative wording provided a comprehensive description that will assist licensees to uniformly and accurately calculate the churn rate; hence, it is thus adopted.

3.4. "dialable number"

- 3.4.1. MTN proposed alternative wording to the proposed amendment of the

definition to further strengthen the provision.

- 3.4.2. ECN submits that it is of the view that the only difference between the definition "Dialable Number" versus "Assigned Number" is that a Dialable number needs to be (i) active and (ii) that the definition of Dialable number specifically addresses which licensee assigns the number. ECN seeks clarification on the assumption that an "Assigned Number" would mean a number simply reserved until activated.

Decision

- 3.4.3. The Authority agrees with MTN's proposed alternative wording and it is thus adopted.
- 3.4.4. The Authority does not agree with ECN's presumption in that it is inconceivable that a Licensee would issue an end user with a number and not activate it. This would be an inefficient management of the number resource.
- 3.4.5. There is little to no difference between the two terms except for context in the which the two terms would have been used. A dialable number, by implication, has been assigned and an assigned number must be dialable.

3.5. "machine related service"

- 3.5.1. Telkom submits that the "*proposed definition does not explicitly state that voice services may not be provided when using the MRS number ranges.*"². Telkom further submits that "*the proposed definition be amended to bring greater clarity to this issue and to avoid an opportunistic interpretation where numbers designated for MRS are used for voice services.*"³
- 3.5.2. Telkom submits that if MRS are used to provide voice services this would

² Telkom (11 May 2022) 13

³ Telkom (11 May 2022) 13

have a bearing on interconnection agreements. Telkom proposes that in order to avoid that situation, that the following wording be added to the definition:

“for the avoidance of doubt, the primary use of MRS numbers will be for telemetry data communication only, with only ancillary emergency voice services allowed”.

- 3.5.3. MTN proposed alternative wording to the amendment of the definition of MRS with the deletion of the phrase “limited human contact”. MTN is of the view that the phrase is subjective and could lead to ambiguity.

Decision

- 3.5.4. In terms of the first part of Telkom’s proposal, as per par 3.5.1 above, MRS includes A2P, P2A and M2M application. Telkom’s proposal to limit MRS for telemetry data communication only would essentially be limiting MRS to M2M application. The Authority finds that this proposal to be not in alignment with the Authority’s objective as it pertains to the scope for MRS which is that the service i.e. MRS should be inclusive of A2P, P2A and M2M uses.
- 3.5.5. In terms of the second part of Telkom’s proposal – to limit the use of voice service in MRS. The Authority finds merit in this proposal and rationale.
- 3.5.6. The Authority is of the view that the definition provides for exclusion of traditional voice communication and limits users MRS resource to data orientated communication. It should be noted that MRS is meant for the transmission of communication in wireless or wired systems to (a) communicate with other devices or machines with little or no intervention by a person; and (b) communication originating from a device or machine to a person and vice versa.
- 3.5.7. The Authority agrees with MTN’s proposal of the deletion of the phrase “limited human contact”. In the absence of defining what constitutes “limited human contact” the term is open to interpretation and can be

subjectively applied, the proposal for its deletion is thus adopted.

3.6. "mandated number"

- 3.6.1. Cell C recommends that the definition be amended to include an aspect of public consultation. Cell C submits that the ECA provides recognition for only two codes, namely a number for government directory services and the national public emergency number in terms of sections 72 (6) and 78 (1) of the ECA respectively.
- 3.6.2. Cell C submits that *"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."*⁴
- 3.6.3. Telkom's submission on the definition concerned is dealt with in five parts, namely:
- 3.6.3.1. The inclusion of the term "receiving number" in the definition presents a challenge. A "receiving number", in terms of the 2016 Regulations⁵, can only be construed to be a 10-digit number that relays the destination of the communication. As such, 086, 080 and short codes *"act as intermediary number, which route to a look up table where the destination / receiving number is obtained where the communication is to be received"*⁶. Thus, a mandated number *"can thus only be a 10-digit number, which is either a geographic number, a mobile service number or an 087 number."*⁷
- 3.6.3.2. Telkom submits that the proposed definition is void of the routing obligation that the current definition stipulates. This thus renders a mandated number the same as any other number.

⁴ 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) (11 May 2022).

⁵ Number Plan Regulations GG 39861, 2016.

⁶ Telkom (11 May 2022) 14.

⁷ Telkom (11 May 2022) 14.

- 3.6.3.3. Telkom submits that a mandated number *“requires an agency which will handle calls and provide services behind the number.”*⁸
- 3.6.3.4. Telkom submits that a mandated number must be a number that is reachable from any network and should thus be routed across points of interconnection between operators. This is possible with 10-digit numbers.
- 3.6.3.5. Lastly Telkom proposes that all the codes that have been mandated in the 2016 Regulations and the 2020 Regulations⁹ be harmonised instead of mandated, namely: 112, 1020, 116 and 17737.

Decision

- 3.6.4. The Authority is of the view that the inclusion of aspects relating to “public consultation” in the actual definition are misplaced as they speak to a process that the Authority should undertake when mandating a number.
- 3.6.5. The Authority has, however, considered Cell C’s proposal under section 5 of this Reasons document.
- 3.6.6. The arguments advanced by Telkom regarding the inclusion of the term “receiving number” in the definition of “mandated number” have merit in consideration of the existing definition for “receiving number”. Thus, the proposed definition for “mandated number” may be inconsistent with the ECA wherein the codes 1020 and 112 are mandated. The Authority has thus revised the definition in line with the ECA by deletion of the term “receiving number” in the definition.
- 3.6.7. In relation to the absence of routing obligations in the definition, The Authority agrees that mandated numbers must include aspects relating to routing obligations. Thus, matters relating to processes and

⁸ Telkom (11 May 2022) 14.

⁹ Number Plan Regulations GG 43230, 2020.

obligations with regards to mandated numbers are stipulated and provided for in terms of regulation 4.

- 3.6.8. Telkom's proposal that all the codes that have been mandated in the 2016 Regulations and the 2020 Regulations be harmonised instead of mandated, particularly: 112, 1020 and 116 is inconsistent with section 78(1) the ECA and the resolution¹⁰ adopted by South Africa in relation to the code 116.
- 3.6.9. The Authority is not detached from the complexities and technicalities highlighted by Telkom relating to the routing aspects of mandating codes i.e. mapping of numbers. Regulation 4 provides that the process of mandating numbers including mandating short codes will be subject to consultations.
- 3.6.10. The Authority is of the view that it would be premature to ventilate all the technicalities at this stage as they would have to be viewed and assessed on a case-by-case basis as and when the Authority embarks on a consultation process when it gives an intention to mandate a number or code.

3.7. "migration"

- 3.7.1. Telkom submitted an alternative wording to the proposed definition.

Decision

- 3.7.2. The Authority is of the view that the alternative wording to the definition provides for specific scenarios with which migration can occur including considerations to minimize disruption to existing users of the numbering resources that are affected by the intended migration. The Authority hence agreed with Telkom's proposal, and it is thus adopted.

3.8. "Mobile Network Code"

- 3.8.1. Telkom submitted an alternative wording to the proposed definition.

¹⁰ Numbering Plan Amendment Regulations GG43230, 2020 "Reasons Document", section 1

Decision

- 3.8.2. The Authority agrees with Telkom's proposal, as it similarly aligns itself with the ITU definition for MNC. Similarly, the proposed definition in the draft at best describes the concept and did not necessarily define it. Thus, in the interest of a universally accepted definition for MNC the proposal is thus adopted. ...

3.9. "Valid Number"

- 3.9.1. Vodacom submits that the proposed definition is not clear on whether the "valid number" definition references a called number, be it international or national. Vodacom proposed that the definition be expanded to indicate "valid called number" instead of "valid number" only.

Decision

- 3.9.2. The Regulations have not defined the term "called number" but have defined the term "receiving number" in terms of the 2016 Regulations.
- 3.9.3. The Authority is of the view that the term "valid number" does not apply exclusively to a receiving number, but also applies to an originating number for local calls. This Authority has, therefore, decided to retain the definition as is.

3.10. "short code"

- 3.10.1. Vodacom submits that if it is the intention of the Authority to create clarity and alignment with current practices then the proposed definition does not consider current practices regarding the length of short codes. Vodacom submits that there are codes that do not conform to the proposed confinements of 3 to 6 digits in length.
- 3.10.2. Vodacom proposes that the definition as contained in 2016 Regulations

be retained.

Decision

3.10.3. The Authority opted to retain the definition as per the 2016 Regulations which in essence depicts that a short code is a non-geographic number which has the length less than the national number length of ten (10) digits.

4. Insertion of Regulation 2A in the Regulations

4.1. ISPA submits that the proposed insertion does not align with the provisions and interpretation of section 5 (3)(c) of the ECA in that only ECS licensees are eligible for numbers from the number plan.

4.2. 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."*¹¹

4.3. ISPA recommends that the Authority delete reference to an individual electronic communications network service (IECNS) license.

4.4. Cell C and Telkom submitted that only I-ECS license is required for eligibility for numbers from the national number plan. Telkom, however, accepts that *"these regulations could also apply to individual ECNS licensees for purposes other than the application of numbers, for example the application of codes i.e. SPC"* ¹²

Decision

4.5. In terms of section 5 (3)(c) of the ECA, an I-ECS license is required for eligibility of numbers from the number plan. However, this does not extend or apply to access or network codes i.e. Mobile Network Codes (MNC).

4.6. In relation to network codes i.e. MNC the Authority is guided by ITU recommendation E.212 ¹³in the management and assignment of MNCs. In terms

¹¹ ISPA submissions: Draft Amendments to the Number Plan Regulations (11 May 2022).

¹² Telkom (11 May 2022).

¹³ Rec. ITU-T E.212 (2016)/Amd.1 (07/2018).

of the criteria for the assignment of an MNC:

*"The applicant requesting the numbering resource must affirm that it has overall responsibility, or a contract with the entity that has overall responsibility, for the management, operation, and maintenance of the **network** that will utilize the requested resource."* **[own emphasis]**

- 4.7. Regulation 2A thus provides clarity as to which licence will be applicable for which number resource.

5. Substitution of regulation 4 of the Regulations

- 5.1. Cell C submits that when mandating or harmonising numbers, the Authority must give due consideration to a consultation process with Licensees. 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.
- 5.2. MTN submits that it finds the proposed sub-regulation 3 to be ambiguous and could easily be misinterpreted. MTN proposes that the Authority should make it clear that no Licensee should transit a mandated number to another licensee unless agreed between licensees under commercial agreements.
- 5.3. Vodacom submits that aspects relating to mandate charge-free calls in its current form would be challenging. Vodacom submits that *"the regulation creates the potential for abuse and significant revenue loss"*. It recommends that the Authority *"set out the specific circumstances and conditions under which it will mandate a particular number as charge-free and consult licensees in terms of appropriate and effective abuse control measures prior to implementation."*¹⁴
- 5.4. Similarly, Telkom does not support the proposed sub-regulation 4 in its current form, wherein it stipulates that a caller may not be charged for calls to a mandated number. Telkom submits that, due to the implication thereof, the Authority's decision to mandate a number should be preceded by a regulatory impact assessment (RIA) and market study.
- 5.5. Lastly, Telkom submits that the Authority makes provision for negotiation of a

¹⁴ Vodacom's Submission on ICASA Draft Amendments to Numbering Plan Regulations of 2016, Gazette 46080 of 23 March 2022. (11 May 2022).

commercial call origination rate, like one for toll-free calls.

Decision

- 5.6. The Authority agrees with Cell C's proposal with regards to the incorporation of aspects relating to public consultation and extended period, and it is thus adopted.
- 5.7. The objective of the provision is to ensure that communication to mandated numbers is routed irrespective of the origination of the communication, these are numbers that the Authority is of the view are critical to the public. Thus, the Authority is of the view that in this regard the provision is clear and unambiguous.
- 5.8. In relation to aspects raised by Vodacom and Telkom on the charge for calls to mandated numbers. The Authority has resolved to retain sub-regulation (5) as is. The objective of the above sub-regulation is to ensure access to services being provided by means of mandated numbers or codes. The Authority is of the view that the provision as is, protects access of callers to such services.
- 5.9. Telkom's proposal for the Authority to conduct a RIA and market study before it can mandate a number may not always be practical considering the nature of a mandated number.
- 5.10. In the past two years the Authority has mandated two numbers, namely Child helpline number and the COVID helpline number. The Child Helpline number was mandated and implemented as a resolution adopted by the Southern African Development Community (SADC) through their respective Ministers of Telecommunication. While the COVID helpline number was mandated in response to the COVID pandemic that plagued the country thus necessitating a need for the helpline.
- 5.11. In both cited circumstances a RIA and market study would not have been practical.
- 5.12. It is also evident in the cited examples wherein the Authority has mandated numbers that such a decision is not taken on a whim nor lightly. It is also evident that such a decision is subject to public consultation and similarly scrutiny.

6. Amendment of regulation 5 of the Regulations

- 6.1. In relation to supporting documentation for application for mobile numbers, ISPA submits that it remains unclear as to why sub-national mobile roaming agreements should not be a sufficient basis for applying for mobile numbers.
- 6.2. NGN submits that regulation 5A requires licensees to show the percentage of utilization in their application, however, the provision does not state within which period the numbers must be assigned to customers. NGN recommends that the period of assigning allocated numbers should be left within the "reasonable discretion" of the licensee.
- 6.3. NGN further recommends that licensees should be permitted to apply for numbers to be assigned to customers over a period of 36 months.
- 6.4. Telkom submits that it does not support the proposed sub regulation 5(5). Telkom submits that a radio frequency spectrum licence is service neutral and rather recommends that the requirement for the allocation of mobile numbers be premised on the applicant's proof of approval (by the Authority) of an assignment of an MNC.
- 6.5. Vodacom recommends that the Authority specify IMT spectrum licenses as being required when applying for mobile numbers.
- 6.6. Similarly, Telkom recommends that a Mobile Virtual Network Operator (MVNO) agreement replace the requirement for a roaming agreement.

Decision

- 6.7. Roaming agreements are commercial in nature and fall outside the scope and scrutiny of the Authority, and in most instances the Authority does not have sight of such agreements. The Authority has noted that in such instances licensees will cite "*confidentiality and trade secrets*" and the Authority at times does not get confirmation of the final signed agreements. The Authority, does at all times, have sight of issued spectrum licences.
- 6.8. Due to the constraints in meeting demands on the mobile services, the Authority is of the view that to manage the resource more efficiently allocations will be confined to licensees that have IMT spectrum licences.

- 6.9. This however does not prevent those that enter in roaming agreements from entering in this space as they can similarly obtain sub allocations from the respective licensee.
- 6.10. In terms of NGN's submission, it should be noted that in terms of regulation 10(1) of the 2016 Regulations, Licensees are required to assign their allocated numbers within one year after the date of allocation.
- 6.11. The Authority must ensure that numbers are managed effectively and efficiently and as such has over the years introduced regulatory interventions to support this objective.
- 6.12. Notwithstanding the challenges that Licensees may experience in the roll out of their services this alone is not sufficient grounds to advocate for underutilization of allocated numbers.
- 6.13. The Authority is of the view that the current requirement to assign numbers within year of allocation and the calculations to enforce utilization are adequate to promote the objective of the Regulations in so far as effectiveness and efficiency is concerned.
- 6.14. In relation to Telkom's submission that the allocation of numbers must be subject to an applicant having been assigned an MNC by the Authority, in terms of the criteria for the assignment of a MNC as per ITU rec 212 is that:
- "The applicant requesting the numbering resource must affirm that it has overall responsibility, or a contract with the entity that has overall responsibility, for the management, operation, and maintenance of the network that will utilize the requested resource."*
- The above requirements can be achieved by an applicant providing the relevant spectrum licence or agreement.
- 6.15. Thus, whether an applicant applies for mobile numbers of a MNC the requirement for a spectrum licence is inevitable.

7. Insertion of regulation 6A to the Regulations

- 7.1. As per sub regulation 6A (2) Telkom proposes that the Authority include the definition for the term "churned numbers" as used in the Regulations and has

similarly provided proposed text for the definition.

- 7.2. Telkom further submits that the increase for its quarantine period from 14 to 90 days will adversely affect its pool of number resources. It submits that at its current churn rate of 100 000 numbers per day it will require an addition 7,5 million numbers to supplement its pool.
- 7.3. ECN highlighted the inconsistency of sub regulation 6A (2) with that of regulation 9 (7) of the Number Portability Regulations 15. The Number Portability Regulations require a quarantine period of 1 month from date donor acknowledged receipt of the returned numbers while sub regulation 6A (2) proposes a quarantine period of 90 days.
- 7.4. With regards to an objection by a subscriber to the intended withdrawal of their assigned number the following submissions were made:
 - 7.4.1. ISPA recommended that a subscriber along with the objection provide reasonable grounds for the objection. This view was shared by NGN.
 - 7.4.2. MTN has proposed that in order for a subscriber to object to the notice of intended withdrawal, the subscriber must perform a revenue generating activity.

Decision

- 7.5. The Authority has aligned the quarantine period to the one stipulated in the Number Portability Regulations i.e. (one) 1 month for consistency. This will also serve to allay the concerns raised by Telkom regarding a longer quarantine period.
- 7.6. One of the objectives of the Regulations is to advance efficient use of number resources. As such, the Authority is of the view that the arguments raised by MTN have merit and has thus adopted the proposal by MTN to require that a subscriber perform a revenue generating activity and not by a mere objection, confirming its intention that it still intends to make use of the number.
- 7.7. On the same principle the Authority has revised and reduced the total time period to issue a notice of intent to withdraw an assigned mobile number and the period to object.

¹⁵ Number Portability Regulation GG 41949, 2018

- 7.8. Mobile numbers remain the most utilized and in demand numbers from the number plan. As such, lengthy periods of inactivity and the non-use of numbers, further exacerbate the constraints of the congested number resource.

8. Insertion of regulation 6A to the Regulations: subscriber's biometric data

- 8.1. The majority of submissions from the public focused on the proposal for the collection of biometric data of a subscriber in order to authenticate the subscriber to their assigned mobile numbers as found in the definition and in terms of regulations 6A (5) to 6A (10).
- 8.2. The draft amendment Regulations had proposed that licensees:
- 8.2.1. Collect biometric data of subscribers to whom they have assigned mobile numbers;
 - 8.2.2. Link the biometric data to the subscriber number;
 - 8.2.3. Utilize the biometric data to confirm identity to "reactivate" an assigned number in the event of a SIM swap; and
 - 8.2.4. Subject to confirmation of identity by means of biometric data, decline "reactivation" of the assigned number.
- 8.3. Submissions from the public, through the "Dear South Africa" platform, raised several concerns with the above proposal grouped into 2 main points, namely:
- 8.3.1. Subscriber rights in terms of the Constitution¹⁶ and POPI Act¹⁷; and
 - 8.3.2. Security of the collected data.
- 8.4. There were some comments from the public that favoured the proposals of regulation 6A (5) to 6A (10), such as Cell C, noting that it is logically the correct step. However, Cell C is of the view that an assessment analysing the enormity and complexity in scoping the requirement for technical systems integration required to implement the biometric solution for its customers on its networks must be concluded first before the gazetting of the regulation and a transitional period before the implementation of the regulation.

¹⁶ Constitution of the Republic of South Africa, 1996, s 14(d).

¹⁷ Protection of Personal Information Act No. 4 of 2013, s 26(a).

- 8.5. Cell C further raised concerns on ICASA legislative power to introduce the biometric requirement instead of in the ECA or the RICA Act (headed by the Department of Justice and Constitutional Development). MTN also held the same view in terms of not being clear on ICASA's legislative empowerment to introduce the biometric requirement.
- 8.6. ECN proposed that the definition of biometric data be revised as the current definition does not necessarily define "Biometrics data" but rather "Biometrics".
- 8.7. Vodacom submissions were that due to the scale and cost implication of the biometric requirement an iterative consultation process must be held before the imposition of the regulation. Vodacom also submitted that it wishes to alert the Authority to a potential risk in the proposed regulations, as it allows MSISDN's to be allocated under juristic entities which belong to individuals who may not want their personal biometric information captured, and proposed that the biometric data of an authorised person or persons of a juristic body still be required before the activation of a SIM card. Vodacom raised concerns around the practicality of having the current biometric data registered for every SIM card as it may not be able to collect such information for persons who are already on their network. MTN shared the same concern in regard to the latter.
- 8.8. MTN submissions were that the inclusion of behaviour characteristics within the definition of biometric data is impermissibly vague and overly intrusive and proposed a new definition for biometric data. MTN proposed that the wording of regulation 6A (8) as follows, "the biometric data collected in terms of sub regulation (5) must be used **strictly in accordance with the provisions of the Protection of Personal Information Act No.4 of 2013.**" This is to expand the use of biometric data as it already uses biometric data for several purposes such as when processing SIM swops, contract upgrades and identity of Mobile Money (in line with FICA).
- 8.9. Other comments received were to the effect that the Authority refine the definition of biometric data and restrict it to fingerprints as opposed to other form sets of biometric data such as facial or retina recognition.
- 8.10. Some comments from the public, having noted the objective and intention of the above proposal offered less "invasive" alternatives such as:

- a) Requesting the subscribers for a key phrase (password) before they can request a SIM swap or require an Identification Document to be displayed before the SIM swap can be done;
 - b) Impose a fine on Licensees for performing fraudulent SIM swaps; and
 - c) Requiring that Licensees and phone manufacturers take a more active role in securing the mobile service ecosystem.
- 8.11. MMA proposed the following alternatives as less invasive means, noting that only 8% of countries prescribe the collection of biometric data and implored ICASA to consider the approach of the other 92% jurisdictions:
- 8.11.1. Tokenization;
 - 8.11.2. Digital ID; and
 - 8.11.3. The Know-Your-Customer (KYC) processes.
- 8.12. MMA further submitted that the imposition of the biometric requirement fell outside of ICASA's scope and mandate as it is not tasked with crime prevention and raised concern on ICASA's silence on the safeguarding of collected biometric information in terms of data protection laws (i.e. POPI Act).
- 8.13. MMA submitted that ICASA should conduct a human rights impact assessment that assesses all feasible options with a focus on potential implications for the right to privacy.
- 8.14. ISPA submission is that it does not support the proposed regulations because the collection of biometric data and its storage by MNOs will be a substantial risk. ISPA cited that there was no consultation with Information Regulator or bodies such as COMRIC and SABRIC, or an assessment of the initial and ongoing cost of compliance by the Authority. ISPA make example of the Mexico judgement and proposes that a regulatory impact assessment be conducted by the Authority to fully understand the implications and unintended consequences.
- 8.15. Public comments were also received about how the collection of biometric data is will enforced in the informal sector.

- 8.16. Right2know campaign has stated in its submission¹⁸ that, the element the Authority is seeking to address is confined to a specific subset of subscribers and the banking industry, as such *"it would be fairer (as well as safer) if the burden of assigning trusted status to certain SIMs falls on the banks and their customers"* as opposed to placing it to Licensees and subscribers in general.
- 8.17. Right2know campaign further proposed that in the event of a SIM swap, *"a bank customer would have to present the new SIM to the bank so that their telephone number was now associated, in the bank's records, with the IMEI number of that SIM"*.
- 8.18. The above is not an exhaustive list but a comprehensive thematic collection of comments and submissions the Authority has received in response to the biometric proposal in question. Most of those submissions and comments will be addressed in the ensuing discussions wherein the Authority will elaborate on its decision on the matter.

Decision

- 8.19. **Statistics according to the South African Banking Risk Information Centre (SABRIC) annual statistic publication 2020**
- 8.19.1. According to the SABRIC annual statistics report of 2020, social engineering (phishing, vishing and smishing) continue to be the primary methods applied when targeting victims across digital channels.
- 8.19.2. During 2020 there was a significant increase in the Bank App fraud due to cell phone snatching. There was an increase in the number of cases involving sim swap reported at 26.11% (2 684) as compared to 8% (855) in 2019.
- 8.19.3. Mobile banking
- i. The report cited that mobile banking fraud accounted for 59.7% of digital banking crime as reported to SABRIC in 2020. Furthermore, it accounted for 14.8% of the gross loss.
 - ii. Sim swap was reported in 92.7% of mobile banking fraud

¹⁸ Right 2 Know Campaign submission to ICASA, 11 May 2022.

incidents. The report cited that ability of criminals to carry out sim swaps may account for the significant increase in incidents (67.6%) and gross loss of (62.1%).

8.19.4. Online banking

- i. This accounted for the smallest portion of incidents of digital banking fraud at 11.1% but a higher portion in gross loss at 45.1%.
- ii. Vishing was reported to have increased in this channel. It involves criminals calling a potential victim purporting to be from a bank and convincing them to compromise their details. At times it is used as a last resolve after obtaining the victims details to get them to provide a verification token (OTP/RVN).

8.19.5. Based on the statistics provided for digital banking crimes, sim swap appears to be a method used the most by criminals to advance and perpetuate such crimes.

8.19.6. It was clear to the Authority that based on above stats and engagements the Authority has had with SABRIC that this issue i.e. the lack of authenticating a subscriber to their assigned mobile number, is a of concern and has been exploited by criminal elements.

8.20. Rationale for intervention

8.20.1. In the explanatory note¹⁹, the Authority cited the following as rationale for the proposal in question:

"...Over a period, the Authority has been presented with concerns wherein mobile numbers have been hijacked either through a porting and/or SIM swap transaction.

(c) The hijacking of mobile numbers is a small but integral part of a wider form of fraud where sensitive data is diverted or comes in the control of criminal elements.

(d) The Authority is of the view that the association of mobile numbers with the biometric data of a subscriber will assist to curb the hijacking of assigned subscriber mobile numbers. There are several jurisdictions that

¹⁹ Explanatory Note of the amendments Government Gazette No. 46080, pg 37.

have linked mobile numbers with biometric data of subscribers thus this form of authentication is in practice and is a possible remedy to ensure."

8.20.2. The above was in conjunction with Authority view to also explore other sectors within the Republic in terms of what authentication mechanisms have such sectors deployed to protect the relationship between the subscriber/customer and their services or alternatively their access to those services.

8.21. Use of Biometric data

8.21.1. In terms of the Protection of Personal Information Act, 2013 (Act No. 4 of 2013) hence forth referred to a "POPIA", biometric data falls within the scope of "special personal information".

8.21.2. Section 26 of POPIA places a prohibition on the collection and processing of special personal information. In terms of section 26 (a):

"26. A responsible party may, subject to section 27, not process personal information concerning—

(a) the religious or philosophical beliefs, race or ethnic origin, trade union membership, political persuasion, health or sex life or biometric information of a data subject; or..."

8.21.3. The above prohibition is subject to the qualifications of section 27 of POPIA. In terms of section 27, biometric data, special personal information, can be collected and processed if, amongst others:

8.21.3.1. processing is carried out with the consent of a data subject;
and

8.21.3.2. processing is necessary for the establishment, exercise or defence of a right or obligation in law.

8.21.4. The above has been the case in the various sectors within the Republic where biometric data i.e. fingerprints is collected and processed, including in the telecommunication sector.

8.21.5. During public consultation, licensees confirmed to the use of biometric data as a means of confirming a subscriber to the assigned mobile number albeit to a specific segment of subscribers and this is done

with the consent of subscribers in line with POPIA.

8.21.6. The proposed provision would extend this level of protection to all subscribers and just a specific segment i.e. post-paid subscribers.

8.22. Alternatives

8.22.1. MMA proposed alternatives to the Authority proposal, namely:

8.22.1.1. Tokenization

- a) Asset tokenization;
- b) Front-end tokenization; and
- c) Back-end tokenization

8.22.1.2. Tokenization requires consumers to be tech savvy. The majority of South Africans can connect to the internet but there also exist a large portion of South Africans especially in the rural areas who are still not able to access the internet due to a series of issues that still require intervention. Furthermore, front-end tokenization is user driven the requirement for users to be digitally literate and technically capable of both understanding why they would need a token and how to create one online. This could easily lead to a digital divide regarding privacy protection.

8.22.1.3. Digital ID

8.22.1.3.1. Digital ID is the equivalent of a personal identification or authorization card that's stored on a device like a phone or tablet rather than as a physical document.

8.22.1.3.2. The roll out of Digital IDs is handled by the Department of Home Affairs ("DOH"). The DOH will begin the roll out in March 2024 but we do not know how long it will take to get the entire country using digital IDs. Since we do not know how long the process will take this will hinder with the implementation of the Regulations.

8.22.1.4. The Know-Your-Customer (KYC) processes.

8.22.1.4.1. The KYC process are standards used in the investment and financial services industry to verify customers and know their risk and financial profiles. There are numerous issues that are being faced by companies who have implemented KYC namely: High onboarding costs, low conversion rates, lengthy onboarding processes, Poor record keeping, an inability to spot a change in circumstances and wasting time and money on false positives. Due to all the cons that come with complying with KYC it makes it a non-viable route to be taken by the Authority.

8.23. Legislative mandate

8.23.1. In terms of Section 2 (n) of the Electronic Communications Act, 2005 (Act No. 36 of 2005) ("ECA"):

"The primary object of this Act is to provide for the regulation of electronic communications in the Republic in the public interest and for that purpose to promote the interests of consumers with regard to the price, quality and the variety of electronic communications services; ..."

8.23.2. Section 4 (1) of the ECA states that:

"The Authority may make regulations with regard to any matter which in terms of this Act or the related legislation must or may be prescribed, governed or determined by regulation."

8.23.3. Furthermore, section 68 (1)(a)(i) of the ECA states:

"The Authority must make regulations prescribing— a numbering plan which must be amended and updated as the Authority considers necessary— for efficient use and allocation of numbers ..."

8.23.4. Section 68, read with sections 4, of the ECA empowers the Authority to make numbering plan regulations. It is Authority's view and interpretation of the ECA, taking into consideration the context and the text of section 68 of the ECA, that the provisions do not prevent

the Authority from implementing biometric requirements in the regulations, especially if one also reads the provisions of sections 4 and 68 of the ECA with section 2 (n) thereof, which provides that one of ICASA's principal objective is to promote the interests of consumers with regard to the price, quality and the variety of electronic communications services.

- 8.23.5. Section 68 (7) of the ECA demonstrates that the matters which the Authority may make regulations of on the Numbering Plan is not exhaustive. It states, "*The regulations made in terms of subsection (1) **must include** matters relating to ...*" [own emphasis] Therefore, although no reference is made to biometric data, it is neither excluded, especially if one considers the provisions of section 4, read with section 2 (n) of the ECA. As the list contained in sec 68 (7) of the ECA is not exhaustive, biometric data will thus not fall outside of the scope that may be included in regulating number resources.
- 8.23.6. However, the Authority is cognisant of the prohibitions of section 26 as well as the qualifying provisions of section 27 of the POPIA as they pertain to the processing of biometric information of a data subjects.
- 8.23.7. It is thus the view of the Authority that it can require licensees to link biometric data to a mobile number of a licensee's existing and new subscribers subject to the subscribers' consent.
- 8.23.8. The Authority has thus revised the wording as contained in draft Regulations to incorporate the requirement of consent from a subscriber and make it explicit. The Authority also noting that subscribers may opt not to provide consent, this alone should not be grounds to deprive subscribers of services.
- 8.23.9. Licensees should advice subscribers of the associated risks in the event the subscriber opts not to provide consent this is to afford the subscriber the opportunity to arrive at an informed decision.
- 8.24. The Authority has considered the submissions wherein stakeholders have raised concerns regarding the technicalities and logistics associated with the implementation of the biometric provisions.
- 8.25. The Authority has decided to defer the implementation of the biometric

provision in order to further consult with stakeholders on the technicalities and logistics for relative ease transition towards the implementation of the biometric provisions.

9. Amendment to regulation 11 of the Regulations

- 9.1. ISPA submits that the Authority “*should allow greater flexibility in the circumstances under which numbers can be transferred from one IECS licensee to another.*”²⁰.
- 9.2. ISPA recommends that the Authority consider scenarios in which IECS licensee seeks to transfer its allocated number resources to another IECS licensee without necessarily transferring or disposing of its IECS licence i.e. where that entity is selling its voice business. ISPA submits that 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.
- 9.3. Lastly ISPA recommends that the Authority consider providing timelines for the processing of applications for the transfer of numbers.
- 9.4. Telkom and MTN submits that schedule 3 does not make provision for the application of transfer of numbers. They recommend an amendment to schedule 3 to cater for the transfer of numbers.

Decision

- 9.5. The Authority allocates numbers in line with the license issued to that entity. The Authority recognises that in the instance of a transfer or surrender of a licence in terms of the ECA and the Processes and Procedure Regulations²¹ there similarly should be a transfer of the allocated number resources.
- 9.6. The proposal by ISPA seeks to recommend that the Authority transfer numbers based on a commercial agreement between two licensees. There are two points that arise out of this proposal:

²⁰ ISPA submissions: Draft Amendments to the Number Plan Regulations (11 May 2022) 4

²¹ Licensing Processes and Procedures Regulations GG 33293, 2010, as amended.

- 9.6.1. The Authority does have oversight of this arrangement to ensure that subscriber concerns and rights are protected as are the requirements in the case of a surrender or transfer done in terms of the ECA and Process and Procedure Regulations; and
- 9.6.2. The proposal runs the risk of contravening regulation 6 (3)(d) of the 2016 Regulations which states that numbers may not be traded.
- 9.7. The Authority has opted to align the transfer of numbers with the licensing processes of the Authority.
- 9.8. Schedule 3 has been amended to incorporate aspects relating to the transfer for number resources.
- 9.9. In terms ISPA's submission regarding timelines, the timelines stipulated in regulations 5(3) and 5(5) similarly also apply to applications for the transfer of number resources. As such the Authority is of the view that this application type does not require different timelines as those stipulated in regulation 5(3) and 5(5) nor has ISPA provided a compelling argument as to why this type of application should have different timelines.

10. Amendment to regulation 12 of the Regulations

- 10.1. MTN has made several proposed amendments to the wordings of regulation 12 to strengthen the provisions.

Decision

- 10.2. The Authority is agreement with the proposals, and they are thus adopted except for the use of the term "authentic" in regulation 12 (1)(g). The Authority is of the view that the term is ambiguous and open to interpretation. The Authority recognises the difficulty in settling for the appropriate term that would not be open to interpretation. The Authority is of the view that, based on the options of preferred terms, the use of the term "correct" is appropriate.

11. Amendment to regulation 17 of the Regulations

- 11.1. Cell C submits concerns regarding the reservation of nine (9) short codes. Cell C submits that it is inconceivable that the Authority would require the use of nine (9) different special national emergency codes at the same time.
- 11.2. Cell C recommends that fewer short codes be reserved for this purpose. Cell C further recommends that the Authority define the term "Special National Emergency service" as it is not defined in these Regulations, the 2016 and 2020 Number Plan Regulations and the ECA.
- 11.3. Telkom submitted that the short code 107 was dropped from the Numbering Plan Regulations, 2016 without the Authority inviting comments on its removal. This short code remains in use by 9 municipalities as their local emergency service number. Telkom therefore kindly requests the Authority to harmonise this short code for municipality emergency services.

Decision

- 11.4. The objective is not that the Authority foresees the need of 9 national emergency numbers at the same time, but this proposal creates:
- 11.4.1. options so that the same numbers are not used every time thereby possibly creating confusion among the public; and
- 11.4.2. room for "sanitizing" codes once they have been used for a service.
- 11.5. In response to Telkom's submission on the use of the code 107 the following is submitted:
- 11.5.1. The code 107 was mandated in terms of the National Emergency Telephone Service Act, 1993 (Act No. 43 of 1993) (the "NETS Act"). The NETS Act established 107 as the primary emergency telephone number to be used for emergency services by local authorities.

11.5.2. In terms of section 1(2) of the NETS Act:

"The Minister may by notice in the Gazette declare any person who or institution or body which, in the opinion of the Minister, is capable of performing the 1-0-7 service, to be a local authority for the purposes of this Act."

11.5.3. As such, for institutions, bodies or persons to provide a 1-0-7 service, they or it had to be granted permission and be recognised as a local authority by the Minister – the Minister of Local Government.

11.5.4. In 2001, the Telecommunications Amendment Act, 2001 (Act No.64 of 2001) (the "Amendment Act") introduced the following changes:

- i. It inserted a new chapter namely - Chapter X "Emergency Centres" which declared the code 112 as the exclusive national public emergency number and established 112 Emergency centres under the Minister of Communications. These provisions were later transposed to the ECA (sections 76, 77,78 and 79); and
- ii. Repealed the entire NETS Act, 1993, wherein the code 107 was legislated.

11.5.5. The Number Plan Regulations 22 recognised the code 107 as a harmonised number for emergency call services and continued to do so in the draft Number plan Regulations of 2015 ²³. This was in addition to the recognition of the code in the 112 Emergency Regulations ²⁴as a temporary emergency code subject to the implementation of the 112 emergency call centres in line with section 76(1) of the ECA.

11.5.6. In 2015, the Authority received a submission from Telkom²⁵ on the draft Number plan Regulations of 2015 in which it recommended the

²² Notice no. 568 of 2012, Government Gazette 35737.

²³ Notice no. 600 of 2015, Government Gazette 38908.

²⁴ Notice no. 517 of 2008, Government Gazette 31230.

²⁵ Telkom submission on THE DRAFT "2015 NUMBER PLAN REGULATIONS" (7 August 2015) 27.

following:

“Telkom kindly requests the Authority to differentiate between 112 and 107 emergency call services. Presently both 112 and 107 are designated for emergency call services. However, Telkom’s understanding that these two emergency numbers serve different types of emergency services.

- *112 is used for mobile emergency call services*
- *107 is used for municipal emergency call services.”*

11.5.7. The Authority considered Telkom’s recommendation and found that:

11.5.7.1. There was clear uncertainty and misunderstanding regarding the use and status of the codes 107 and 112; and

11.5.7.2. Telkom’s recommendation was inconsistent with the ECA.

11.6. To remedy the uncertainty and misunderstanding regarding the use and status of the codes 107 and 112, the Authority decided to:

11.6.1. Align the 2016 Regulations with section 78(1) of the ECA in recognition of the code 112 as the exclusive national public emergency number; and

11.6.2. Retained the code 107 in the 112 Emergency Regulations as a temporary emergency code in consideration of local authorities that had implemented the code 107, in terms of the NETS Act, subject to the implementation of the 112 emergency call centres in terms of section 76(1) of the ECA.

11.7. The premise of Telkom’s submission stems in its recommendation as per par 11.13. The Authority maintains the view that Telkom’s recommendation is inconsistent with the ECA.

12. Amendment to regulation 21 of the Regulations

12.1. Telkom submits that it is not in agreement with the classification of numbers for MRS as numbers that can also be used for PRS. Telkom recommend deletion of MRS in regulation 21 (1) (a).

Decision

12.2. The Authority has considered Telkom's submission and finds merit in the arguments advanced thus MRS has been deleted under consideration as being used for premium rated services.

12.3. The Authority found that the deletion further supports the objective of transparency on the use of numbers to public.

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