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GENERAL NOTICE

NOTICE 811 OF 2010

REGULATIONS IN TERMS OF SECTIONS 4 AND 42 OF THE ELECTRON COMMUNICATIONS ACT OF 2005 (Act No 36 of 2005) WITH RESPECT TO CARRIER PRESELECTION REGULATIONS

I, Dr. Stephen Mncube, Chairperson of the Independent Communications Authority of South Africa ("ICASA") hereby confirms that the above regulations were approved by the Independent Communications Authority of South Africa under section 4 read with section 42(1) of the Electronic Communications Act, 2005 (Act No. 36 of 2005).


DR. STEPHEN MNCUBE
CHAIRMAN

Date: 10/08/2010

SCHEDULE

1. Definitions

In these regulations, any word or expression to which a meaning is assigned in the Act, shall have the same meaning, unless the context indicates otherwise -

'Act' means the Electronic Communications Act, 2005 (Act No. 36 of 2005);

'access code' means the numbers used as prefixes to other numbers to access electronic communications services;

'call origination' means the service of originating calls on a network for completion either on the same or different network;

'carrier pre-selection code' means an Access Code added by the subscriber or their subscriber equipment under CPS Phase 1;

'CPS phase 1' means the process whereby a subscriber to one ECS Licensee may access the services of another ECS Licensee on a call-by-call basis by adding an Access Code to the front of a dialled number;

'ECS' means Electronic Communications Services;

'ECNS' means Electronic Communications Network Services;

'eligible number' means a number that has been assigned to a subscriber to make outgoing voice mobile and fixed calls;

'providing ECNS licensee' means an electronic communications network service licensee that is required in terms of regulation 4 to make the necessary electronic communications facilities available for the implementation and proper functioning of carrier pre-selection using CPS Phase 1;

'providing ECS licensee' means an electronic communications service licensee that is required in terms of regulations 4 to provide its subscribers with access to the electronic communications services of another electronic communications service licensee;

'requesting ECNS licensee' means an electronic communications network service licensee that requests a network service from another electronic communications network service licensee;

'requesting ECS licensee' means an electronic communications service licensee that is required in terms of regulation 4 to request service for the subscribers of another electronic communications service licensee;

2. Purpose of these regulations

The purpose of these regulations is to:

1. Establish a carrier pre-selection framework in terms of which subscribers to an electronic communications service licensee can access the electronic communications services of another ECS licensee;
2. Establish which ECNS licensees must make the necessary electronic communications facilities available for the implementation and proper functioning of carrier pre-selection; and
3. Define the electronic communication services subject to carrier pre-selection.

3. CPS Phase 1: The electronic services subject to carrier pre-selection

- (1) The following electronic communications services are defined as subject to CPS Phase 1 and will be known as CPS Phase 1 services:
 - (a) All outgoing voice calls by subscribers under a pre-pay or post-pay arrangement;

4 Framework

- (1) All ECS licensees may offer calls via CPS Phase 1 and act as requesting ECS Licensees for CPS Phase 1 regardless of the type of licence;
- (2) All ECNS licensees may carry calls via CPS Phase 1 and act as requesting ECNS Licensees for CPS Phase 1 regardless of the type of licence;;
- (3) ECS licensees that offer calls via CPS Phase 1 may choose which destinations they wish to offer calls to;
- (4) All ECS licensees must act as providing ECS licensees and co-operate where necessary to permit the provision of CPS phase 1 in an efficient and non-discriminatory manner, and without undue delay provided that such ECS licensees:-
 - (a) provide outgoing fixed and mobile switched telephony services to subscribers, and
 - (b) serve subscribers directly through either:

- (i) their own access facilities or
- (ii) the access facilities of an ECNS licensee,

(5) All ECNS licensees must make the necessary electronic communications facilities available for the implementation and proper functioning of carrier pre-selection and thereby act as Providing ECNS licensees in support of Providing ECS licensees.

5. Establishment

- (1) All providing parties for CPS phase 1 must establish CPS phase 1 within
 - (a) Two (2) months of the coming into force of these regulations for calls from eligible numbers in the geographic number ranges or number ranges allocated for similar services in the future, and
 - (b) Two (2) months of the coming into force of these regulations for calls from eligible numbers in the mobile ranges or number ranges allocated for similar services in the future, subject to four (4) months from the first order being allowed for the initial establishment, of receiving a request in writing for the establishment of such a facility from a requesting party.
- (2) These time limits must run in parallel with any time limit for the establishment of interconnection. The establishment of CPS phase 1 is not required to be earlier than the establishment of the interconnection needed for the transfer of the calls from the providing party to the requesting party.
- (3) The facilities required for CPS phase 1 include:-
 - (a) the establishment of interconnection for call origination; and
 - (b) the means to interpret access codes and route calls to the relevant interconnection points.

6. Charges

- (1) The charges payable between the requesting party and the providing party for CPS phase 1 must enable the provision of CPS phase 1 in an efficient, quality and reliability and non-discriminatory manner.
- (2) In order to ensure efficiency, the charging arrangements must include compensation payable by the providing party to the requesting party for failure to provide CPS phase 1 in the manner required by this regulation.

- (3) Each providing ECS licensee that provides CPS phase 1 must bear its own set-up costs; and
 - (a) The providing party must not charge subscribers for calls that are handled by CPS Phase 1 but may charge the requesting party.

7. Routing

- (1) Where a carrier selection code assigned in accordance with the national numbering plan to identify another ECS licensee is prefixed to the called party number on the subscriber side of the network termination point, the providing party must route the call to a point of interconnection agreed to with the receiving party identified by the carrier selection code. The providing ECS licensee must not charge the subscriber for the call.
- (2) Where no digits are prefixed to the called party number, or where any code prefixed is not assigned in accordance with the national numbering plan, or where the carrier selection code identifies the providing ECS licensee, the providing party is responsible for the routing of the call and the providing party may charge the subscriber accordingly.

8. Service and other requirements

- (1) A providing party must not discriminate in terms of the quality and reliability of call handling between calls made with an access code and calls made without an access code.
- (2) A providing party must not discriminate in terms of fault repair and network upgrades between subscribers that use CPS phase 1 and subscribers that do not use CPS phase 1.
- (3) All providing ECS licensees must report to the Authority at the end of each quarter, the duration from the instant of a valid order being received by the providing ECS licensee to the instant when the CPS phase 1 facility is available for operational traffic.
- (4) The Authority may publish the performance figures either individually or in a form designed to facilitate a comparison of different licensees. Nothing prevents licensees from publishing their own performance figures.
- (5) The Authority may maintain and publish on the Internet a list of the ECS licensees that are offering services using CPS phase 1 and their contact details including links to their websites. ECS licensees may request to have their details added or amended as necessary.
- (6) Providing parties must design their systems so that they are able to support all requests under CPS Phase 1.

PART III

10. Contraventions and Penalties

- (1) Upon a determination of non-compliance of the regulations by the Complaint and Compliance Committee in terms of these regulations, the Authority may impose a fine not exceeding:
- (a) 1 million rand (R1 000 000.00) for contravention of regulations 5 (1), 8 (1) and (2) ;
 - (b) Five hundred thousand rand (R500 000.00) for contravention of all regulations not specified in regulations 11 (1) (a) above;

11. Short title and commencement

These regulations are called the **CARRIER PRE-SELECTION REGULATIONS, 2010** and will come into force on the date of publication in the Government Gazette.

12. Repeal of the regulations

The Carrier Pre-Selection regulations published in Government Gazette Number 975 dated 24 June 2005 are hereby repealed.

REASONS DOCUMENT WITH RESPECT TO CARRIER PRE-SELECTION REGULATIONS, 2010

SECTION A: INTRODUCTION AND BACKGROUND

1. INTRODUCTION

- 1.1 Carrier pre-selection is an important mechanism of affording choice to consumers.
- 1.2 The Authority undertook various consultative sessions with interested parties on the regulatory process.
- 1.3 On 24 November 2008¹ and 24 December 2008², the Independent Communications Authority of South Africa ("the Authority") published the draft carrier pre-selection regulations and invited interested parties to make written representations on the draft regulations.
- 1.4 The Authority convened public hearings on 18 and 19 February 2009.
- 1.5 It became clear during the public hearings that interested parties did not agree with the Authority's published draft regulations. Consequently, on 25 February 2009, the Authority held a workshop on the draft regulations and invited interested parties to participate therein.
- 1.6 After the workshop, some interested parties still had reservations with the draft regulations, with specific reference to the inclusion of mobile services being subjected to CPS.

¹ Government Gazette No. 31640

² Government Gazette No 31756

2. LEGISLATIVE FRAMEWORK

2.1 The Authority is empowered to make regulations defining the electronic communications services subject to carrier pre-selection in terms of section 42 (1) of the Electronic Communications Act No. 36 of 2005 ("ECA").

2.2 In order to discharge the above functions, the Council of the Authority established a committee in terms of section 17 of the ICASA Act. The functions of the committee were amongst others to: develop the draft and final carrier pre-selection regulations undertake the consultative process and make recommendations to Council on the proposed regulations.

3. PURPOSE

3.1 The purpose of this document is to provide stakeholders with a rationale for the contents of carrier pre-selection regulations.

3.2 This reasons document is developed in a question and answer format.

SECTION B

4. Rationale for the CPS Regulations 2010

The Authority is publishing this reasons document with a view to provide clarity on the basis of the regulations.

5. What is the purpose of the CPS Regulations?

The purpose is to afford consumers who may have only a limited choice of access operator increased choice in the provision of outgoing calls.

6. How will the CPS Regulations help the consumers in South Africa?

Increased choice should lead to lower prices and better quality of service.

7. Is this a new Regulation?

No, It is preceded by the carrier pre-selection Regulations of 2005 (Notice 975 of 2005). However these regulations were not implemented because there were few operators that could take advantage of them. The situation has changed significantly since the issuance of numerous I-ECNS Licences by the Authority.

8. Definition of electronic communication service?

- 8.1 Section 42 of the ECA empowers the Authority to make regulations defining the electronic communications services subject to CPS.
- 8.2 South Africa has chosen a converged licensing framework. In this framework, licenses are issued horizontally for electronic communications, network and broadcasting services as well as frequency spectrum.

While the Authority issues licenses horizontally the services that are received by consumers are similar to the services that were licensed activities in the erstwhile Telecommunications Act and Broadcasting Act, namely: Fixed, Mobile, Voice over IP, Broadcasting (TV and radio).

The Electronic Communications Act defines "The electronic communication services" as follows: "any service provided to the public, sections of the public, the State, or the subscribers to such services, which consists wholly or mainly of the conveyance by any means of electronic communications over an electronic communications network, but excludes broadcasting services.

It follows from the above definition that services that are offered to members of the public for purposes of electronic communications are those that are peculiar to a telecommunications environment, namely (Fixed, Mobile, and Voice over IP).

Mobile and fixed services are widely used in South Africa. Voice over IP is, on the other hand, not widely used due to low levels of internet usage in the country and limited access to cheaper bandwidth for consumers.

For the purpose of CPS, the Authority focused mainly on mobile and fixed services for reasons advanced above.

9. Carrier pre-selection as a competition remedy

Some licensees have stated during public hearings and through written representations that before the Authority could make regulations on carrier pre-selection, it needed to conduct a Chapter 10 process. One of the reasons cited was that carrier pre-selection is a competition remedy that is imposed to address market failure.

The Authority has considered these concerns and wishes to point out that section 42 does not require it to follow a Chapter 10 process.

10. What is CPS Phase 1?

10.1 CPS enables consumers who are existing subscribers to an operator that provides them with access network to select a different operator to handle their calls.

10.2 CPS Phase 1 is normally known as call-by-call carrier selection. It is the simplest form of carrier selection where the carrier selection code or prefix is added on the customer side of the network termination point and identifies the selected party.

10.3 There are three main methods of adding the prefix:

- The caller dials the prefix in front of the number
- The subscriber is provided with an auto dialler, which is fitted between their telephone and the access operator's socket. The caller dials normally and the auto dialler adds the prefix automatically. The auto dialler would normally be provided by the requesting operator.
- Business subscribers arrange for the prefix to be added automatically by their private switch or PBX.

11. Why is the term CPS Phase 1 used instead of "Carrier selection"?

This is the result of the way in which the Act is worded in Section 42 of the Act. Furthermore the new regulations use the same terminology as the CPS Regulations of 2005.

12. Please explain the difference between "requesting", "providing", "selected", "access" etc

12.1 The explanation of the terminology depends on the activity under consideration.

12.2 Consider for example a fixed subscriber with an account with Telkom. This operator provides the exchange line to the subscriber's home or office. In order to use CPS the subscriber also establishes a subscription with another operator "XYZ" which has a direct interconnection with Telkom.

12.3 Telkom is the "direct" or access operator, and XYZ is the "indirect" or CPS operator.

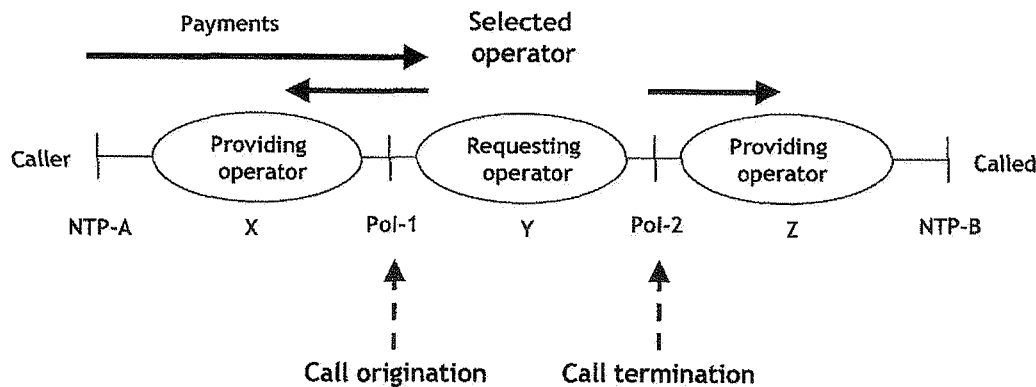
- 12.4 When XYZ established interconnection with Telkom, XYZ was the “requesting” operator and Telkom was the “providing” operator with respect to the establishment of interconnection and CPS.
- 12.5 Under CPS Phase 1, when the subscriber dials the prefix that indicates that he wishes to have a call handled by XYZ, XYZ is the “selected” operator with respect to the call.
- 12.6 Thus Telkom is variously called “access”, “direct”, “providing”.
- 12.7 XYZ is variously called “indirect”, “CPS”, “requesting”, “selected”.
- 12.8 For another subscriber at a different location where XYZ provides direct access the roles could be reversed. Thus the choice of words depends on the context.

13. Does the CPS or indirect operator need a direct interconnection with access operator?

- 13.1 Yes, but the point of interconnection does not have to be local.
- 13.2 For example, an indirect operator with a network node in Johannesburg can interconnect in Johannesburg to Telkom and use this point of interconnection to collect calls from Telkom subscribers located in Cape Town.
- 13.3 However, an indirect operator with a network node only in Johannesburg cannot collect calls from subscribers to a small local company in a suburb of Cape Town unless it establishes interconnection with that company in Cape Town and this means extending its network to Cape Town, probably using leased lines.

14. Who does the subscriber pay for calls that use CPS 2?

- 14.1 In order to use CPS 2, the subscriber must open an account with the preferred operator and that operator must have an interconnection agreement with the subscriber’s access operator.
- 14.2 The selected operator may have to pay another operator for call termination if the call ends on another network. This may be the same as the network where the call started.



15. Can a subscriber have accounts with more than one other operator under CPS Phase 1?

Yes, this is possible and so subscribers can choose one operator for calls to say France and another for calls to say the UK depending on which is cheaper.

16. Will call routings become less “efficient”?

This is a possibility depending on network efficiencies. However the benefits of increased customer choice should outweigh these likely inefficiencies.

17. Which ECS Licensees must support CPS Phase 1?

17.1 All ECS Licensees are required by the CPS Regulations to support Phase 1 provided that they:

- provide voice fixed and mobile outgoing switched telephony services
- serve subscribers directly through either
 - (i) their own access facilities or
 - (ii) the access facilities of an ECNS licensee, and

17.2 However, in practice, operators who wish to handle calls using CPS will have to establish direct interconnection with the providing operators and this will incur costs. Thus in practice, operators without access network may receive no requests to provide CPS if they do not have a sufficient number of subscribers to make the establishment of the necessary interconnection commercially attractive.

17.3 Following the comments and arguments put forward at the hearing and the subsequent informal workshop, the Authority has removed the thresholds below which the requirements to support CPS does not apply, although the Authority reserves the right to review its position regarding such thresholds.

18. How much will it cost to support CPS Phase 1?

Provided that the switches of the providing operator can already handle the number lengths, it should be necessary only for the access operator to load new routing data into its switches to route calls that are prefixed with the carrier selection code to the indirect operator. Thus the costs should be low.

19. How can providing operators recover any set-up costs for CPS Phase 1?

They can recover the setup costs through their normal retail charges since the existence of the CPS Phase 1 option will be of potential benefit to their subscribers.

They can recover the costs of interconnection for CPS calls from the requesting operator.

20. How will the regulations affect very small companies?

They will create opportunities for offering calls under CPS Phase 1.

Small companies with access networks may not be affected if other operators don't request CPS Phase 1 from them.

21. Will providers of VoIP services have to support CPS?

Not if the VoIP service is accessed on the public Internet because with Internet access the subscriber already has unlimited choice of VoIP providers. The subscriber also has a choice of other providers via CPS Phase 1 using their conventional telephone provider.

22. Do the regulations apply to pre-pay as well as post-pay subscribers?

Yes. Pre-pay subscribers are included because of the size and importance of the pre-pay market in South Africa. Pre-pay subscribers do not pay a subscription fee to the access operator, as a result the charges for call origination for prepay may be higher than for post-pay to reflect the equivalent of a subscription.

23. How will callers from mobiles use the service?

They will dial the prefix in front of the called number, in national form only, e.g. "ABCD011 566 3643" rather than "ABCD+2711 566 3643".

Mobile users should be able to enter numbers with prefixes into their address books. They may wish to have two entries for each person:

- one with the prefix for use in South Africa, and
- another without the prefix for use when roaming internationally.

24. Will CPS Phase 1 be possible for calls from a mobile operator that uses national roaming, such as Cell C?

Yes, this should be possible since the calls will be routed from the visited operator to the Cell C switch. This switch will then handle the call in the same way that it handles calls that originated on Cell C's radio access network.

25. Will calls using CPS Phase 1 always be cheaper than normal retail calls using the access operator?

No, it depends on the tariffs offered by the CPS operator and this is a commercial matter. For example local calls and some calls from mobiles may be more expensive but the caller is not obliged to dial the prefix and use the CPS operator. The caller should choose whether or not to dial the prefix depending on the tariff offered.

26. Do CPS operators have to offer all calls?

No. They may decide on a commercial basis not to offer certain types of calls such as local calls. In this case they are expected to play an announcement to the caller such as "Sorry we do not offer calls to this number - please redial without the prefix".

27. What happens if mobile operators offer services via carrier selection and are CPS operators?

Mobile operator X may offer calls via CPS Phase 1 to subscribers on fixed networks and on other mobile networks. The caller will dial the prefix for Operator X and Operator X will handle the call and charge its published tariff for CPS Phase 1 calls to the number dialled.

28. How are mobile on-net discounts affected?

Operator X may be a mobile operator and may offer on-net discounts to its directly connected mobile subscribers.

Operator X may charge the same tariff for calls that it collects by CPS Phase 1 or may offer a different tariff.

Operator X may offer lower tariffs to numbers that it can terminate itself (eg an on-net discount) but this discount does not have to be the same as the tariff offered to its direct mobile subscribers.

Example

I am a subscriber on mobile operator A, i.e. I have a SIM from operator A
I am also a subscriber on fixed operator F.
I also have a SIM or CPS subscription with an operator B who is also a mobile operator

Example 1: I want to call a number on network A

I have the following options:

1. Use my mobile on A without a prefix and pay A's normal mobile tariff with an on-net discount
2. Use my mobile on A with a prefix for B and pay B's tariff for reaching A (Call goes A-B-A) - Option 1 may be cheaper
3. Use my fixed phone on F without a prefix and pay F's normal fixed to mobile tariff
4. Use my fixed phone on F with a prefix for B and pay B's normal fixed to mobile tariff

Example 2: I want to call a number on network B

I have the following options:

1. Use my mobile on A without a prefix and pay A's normal mobile tariff without an on-net discount
2. Use my mobile on A with a prefix for B and pay B's tariff which may include an on-net discount (Call goes A-B)
3. Use my fixed phone on F without a prefix and pay F's normal fixed to mobile tariff
4. Use my fixed phone on F with a prefix for B and pay B's tariff which may include an on-net discount (Call goes F-B)

29. What is the distinction between ECS Licensees and ECNS Licensees?

29.1 ECS Licensees can offer retail services only to subscribers.

29.2 ECNS Licensees can run transmission facilities only.

29.3 The Act is not totally explicit about what equipment can be run by an ECS Licensee at a specific location (i.e. at a node). Because of this uncertainty, the Regulations use the term "Party" without making a precise distinction between the role of the ECS Licensee and its associated ECNS Licensee. In practice this should not be a problem since there are many ECNS Licensees now.

30. Why do the Regulations not include limitations on the charges for CPS Phase 1?

Charge limits can be applied only after a Chapter 10 process as a remedy for those having significant market power and lack of competition.

31. Will the charges for call termination and call origination be regulated in future?

The Authority has conducted a market review of wholesale call termination and draft regulations were published. The regulations envisage the introduction of a price control obligation as a remedy for licensees with significant market power.

32. Can ECS and ECNS Licensees charge whatever they like for the provision of CPS Phase 1?

Under these regulations there are no specific charge limits for the provision of CPS Phase 1 and no limits for call origination. There is however a general requirement for the operators to provide CPS Phase 1 in an efficient and non-discriminatory manner and this applies to charging as well as to other aspects. The Authority has conducted a market review of wholesale call termination and which may lead to the regulation of call termination charges for licensees who are found to have significant market power.

33. Why do the Regulations not include detailed requirements on CPS Phase 2?

CPS Phase 2 is more expensive for an indirect operator to establish. CPS Phase 1 will provide many of the benefits of CPS, so CPS Phase 2 may not add much. Furthermore, until there is a balance between retail charges and wholesale call termination charges that is more favourable for the provision of national calls, CPS Phase 1 should be sufficient to enable wider choice especially in international calls.

The Authority will review the need for detailed regulations on CPS Phase 2 when the balance between retail charges and wholesale charges is more favourable for the provision of national calls.

In the longer term the Authority considers that there may be a need to introduce wholesale line rental as a remedy for significant market power in calls from fixed numbers, but will only do this if a market analysis proves that it is necessary. Wholesale Line Rental will use the same technology for routing calls as CPS Phase 2.

34. Introduction of CPS Phase 2

When the Authority considers that the margins between wholesale and retail charges are such as to make services that include national calls under CPS phase 2 both commercially attractive on average to requesting parties and beneficial to eligible subscribers, the Authority must assess whether or not there is value in extending these regulations to require the provision of CPS Phase 2 and may extend these regulations accordingly.

35. How long will be the prefixes used for CPS and how will they be allocated?

The prefixes will have four (4) digits creating up to 1 000 codes.

36. How will CPS interact with number portability?

There is no interaction. A call under CPS Phase 1 has a prefix added to the called party number on the subscriber side of the network termination point. This prefix is used to route the call to the switch of the selected operator. At this switch the CPS prefix is removed. The selected operator, or a subsequent operator in the call path, may then undertake an All Call Query look up and add a number portability prefix, but the two will never be present at the same point in the call.

37. Is the Authority planning other further actions affecting CPS?

The Authority is planning to:

- Finalise regulations in respect to call termination.
- Undertake cost modelling as a basis for future charge limits set as a remedy resulting from the above.
- If there are findings of significant market power in future market reviews, consider requirements for the support of wholesale line rental and mobile virtual network operators as possible remedies.
- Review the effectiveness of the regulations after they have been in force for three (3) years

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