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Dear Madam

Re: Cell C's written submission with respect to the Draft Code for Persons with Disabilities Regulations

1. Cell C would like to thank the Authority for the opportunity to provide written comments on the draft the Draft Code for Persons with Disabilities Regulations as published in *Government Gazette 412 650* on 20 November 2017 ("The Regulations").
2. Cell C looks forward to engaging with the Authority should the Authority have any queries on Cell C's written submission below.
3. Cell C confirms its readiness to participate in any subsequent consultations and oral hearings that might be called by the Authority.

Kind regards

Themba Phiri (Mr)
Executive Head: Regulatory

Cell C'S SUBMISSIONS ON THE REVISED CODE FOR PEOPLE WITH DISABILITIES

1. INTRODUCTION

Cell C would like to thank the Authority for the opportunity to again present its submissions on the revised draft Code for People with Disabilities. For purposes of these submissions, we refer to the draft Code for People with Disabilities as the Regulations and the existing Regulations as the Current Regulations. Cell C is grateful to the Authority for considering Cell C's submission dated 16 May 2014 and the subsequent oral hearing engagement that took place on 10 July 2014.

2. GENERAL COMMENTS ON THE RATIONALE FOR REGULATING

- 2.1. Cell C has noted the content of the Guideline for the Implementation of Regulatory Impact Assessment ("RIA") Process in South Africa (2012) ("Guidelines") which were published by the Presidency, which refer to a RIA as *"an extension of a broader commitment to the quality of government through evidence-based policy making. The advantage of instituting RIA is that RIA adds structure, predictability, and methodological clarity to assessment while also ensuring that the right information is available for decision-making"*.
- 2.2. An initial RIA is recommended in clause 2.3.1 of the Guidelines in 4 instances, which include an intention to make revisions to existing legislation, policies or regulation. An initial RIA may indicate that a full RIA is required. This is the case if regulatory proposals are considered as 'significant' in terms of anticipated implementation costs to government, likely compliance costs to business, the scale of impact to society and the environment, the number of people affected, or the political sensitivity of the proposal. An intention to simply remove redundant provisions or that will only have a minor impact does not require a full RIA¹.
- 2.3. Cell C again submits that it is not clear from the Regulations or the covering note why there was a need to amend or repeal the Current Regulations. No explanation, reasoning or substantiation for the substantial amendments and additions to the Current Regulations has been provided. Cell C accordingly requests motivation for the proposed changes and

¹ Clause 2.3.2 of the Guidelines read with footnote 4, which states "Given the wide range of policy areas where RIA will apply, it is not possible to specify a definition of "significant" which will cover all types of impacts/policy areas. In general, however, significant impacts are those which have substantial and observable effects either on the economy, on a sector of society or on the environment."



believes that this would assist Cell C in the provision of meaningful comments to the Regulations.

- 2.4. Cell C further submits that it is also not clear whether a RIA was conducted prior to the Regulations being published after Cell C's initial recommendation that the Authority should do so. The cost to implement the new obligations imposed in the Regulations will be considerably higher under the proposals for mobile network operators and it is not clear whether these costs have been considered or whether the benefits will justify the costs. A regulatory intervention should be based on explicit evidence that justifies the benefit of such intervention. The cost and market study will also determine the need, applicability and demand for the requirements in the Regulations. For example, in the past, Cell C converted contracts to Braille format at its own cost, but there was no demand for this format. In addition, the proliferation of smart devices (android and iOs) with disability capabilities in the market place must be considered. We say this because the nature and type of regulatory intervention required is influenced by the status of the marketplace in terms of what is currently available and planned for the future with respect to supporting equipment used by persons with disabilities.
- 2.5. The changes proposed in the Regulations have potentially to significantly increase costs for compliance for a licensee like Cell C. Had ICASA conducted an Economic RIA the outcome would have likely not supported the amendments in this form if the benefits do not outweigh the prejudice likely to be suffered by licensees.

3. GENERAL COMMENTS ON THE DRAFT REGULATIONS

- 3.1. The purpose of the Regulations is to repeal the Current Regulations under the Electronic Communications Act, 2005 ("ECA").
- 3.2. Cell C believes that if It is found that there is a need without a doubt for the implementation of these new obligations, Cell C recommends that the Authority seriously consider the use of the Universal Service and Access Fund monies as provided in Section 88 of the ECA for this purpose, failing which Cell C (as the third mobile network operator with a 12% market share) will find it difficult to afford to implement these obligations at all. Subsection 88(1) states:
"The money in the Universal Service and Access Fund must be utilized exclusively for the payment of subsidies –
a) for the assistance of needy persons towards the cost of the provision to, or use by, them of broadcasting, electronic communications network services and electronic communication services."

Cell C notes that the definition of “needy persons” should include people with disabilities.

3.3. Cell C recommends the following ITU proposals that the Authority may consider in ensuring accessibility of services by persons with disabilities:²

- Integrate accessibility into mainstream telecommunication/ICT policies and industry codes of practice as well as through recommendations to relevant government bodies.
- Include accessible service delivery as part of the terms of operators’ licences or introduce other measures to ensure that affordable and accessible handsets and services are provided by operators to persons with disabilities.
- Establish systems for assessing and benchmarking accessibility.
- Hold consultations with persons with disabilities and their organizations to seek inputs on regulations and business practices.
- Provide accessible mobile phones and services through funding from the Universal Service and Access Fund.
- Promote website accessibility with industry and government authorities and ensure that the regulator’s own website is accessible by people with disabilities.
- Promote availability of assistive technologies for mobile devices at affordable rates and in local languages.
- Incentivize service providers to design special tariff schemes and packages to encourage mobile use among persons with disabilities.
- Undertake periodic surveys to gather data on mobile adoption and use by persons with disabilities.
- Encourage international cooperation in this area.

3.4. Cell C does not manufacture end-user devices as a company. However Cell C is aware that Original Equipment Manufacturers (“OEMs”) do and that those with scale participate at ITU forums overseeing matters pertaining to users with a disability. South Africa as a member state of the ITU is also required to participate in these forums. In terms of Resolution 175 (Guadalajara, 2010) on “*Telecommunications/information and communication technology accessibility for persons with disabilities, including are-related disabilities*”, the Plenipotentiary Conference invited Member States and Sector Members:

- a) *to consider developing, within their national legal frameworks, guidelines or other mechanisms to enhance the accessibility, compatibility and usability of*

² Section 8.1 of the Joint ITU Report “Making mobile phones and services accessible for persons with disabilities

A joint report of ITU – The International Telecommunication Union and G3ict – The global initiative for inclusive ICTs August 2012”

telecommunication/ICT services, products and terminals, and to offer support to regional initiatives related to this issue;

- b) to consider introducing appropriate telecommunication/ICT services in order to enable persons with disabilities to utilize these services on an equal basis with others, and to promote international cooperation in this regard;*
- c) to participate actively in accessibility-related activities/studies in ITU-R, ITU-T and ITU-D, including participating actively in the work of the study groups concerned, and to encourage and promote representation by persons with disabilities so as to ensure that their experiences, views and opinions are taken into account;*
- d) to take into account considering c) ii) and d) above, and the benefits of cost affordability for equipment and services for persons with disabilities, including universal design;*
- e) to encourage the international community to make voluntary contributions to the special trust fund set up by ITU to support activities relating to the implementation of this resolution*

In this regard Cell C strongly recommends that the Authority, licensees with the requisite resources and representatives of organizations on behalf of persons with disabilities, actively participate in ITU study groups. This will ensure that accessibility, affordability and universal design needs for persons with disabilities are addressed through ITU Resolutions. This will assist with improved economies of scale to the benefit of the consumer and ensuring that more end-user devices have capabilities addressing the needs of people with disabilities.

- 3.5. There are still a few instances where some provisions in these revised Regulations are vague, impractical to implement and enforce and the Authority has not offered an explanation for the changes. This has made it difficult for Cell C to adequately comment on the Regulations. In other instances, the Regulations duplicate requirements that are currently in place in either regulations or otherwise under the ECA. These instances are highlighted below.

4. SECTION 1: DEFINITIONS

- 4.1. Cell C notes that several of the definitions in the Regulations are new definitions and are not contained in the Current Regulations. It is not clear what the rationale was for the inclusion of these new definitions. Cell C submits that these new definitions do not appear in the ECA and it is not clear what standard these definitions are based on, or what their source is. Accordingly, clarity is requested in this regard and the Authority is requested to present the materials and/or international standards and/or legislation that were used for the definitions.

- 4.2. The definition for “*People with disabilities*” has been changed to “*disability*” in the Regulations without an explanation.

5. PURPOSE OF THE REGULATIONS

In principle Cell C supports the purpose of the Regulations. In this regard Cell C will as practically as possible ensure that persons with disabilities have access to its services using the most efficient and economical means possible in the circumstances.

6. SCOPE OF THE REGULATIONS

- 6.1. Cell C notes that it would be immensely helpful if the Authority consulted with OEMs and software application vendors at all times on matters related to provision of services by operators to persons with disabilities. The role of OEM's and software application vendors cannot be under-estimated in their contributions to making available appropriate subscriber equipment that incorporates software applications that is most suited for use by persons with disabilities.
- 6.2. As the take-up for android/iOs smartphones increase exponentially, software applications targeted for use by persons with disabilities must be encouraged as these phones are ideal for such platforms. This is demonstrated by the following available application for Android:

ANDROID ACCESSIBILITY OVERVIEW

You can customize your Android device using accessibility settings and apps.

Note: Some of these steps work only on Android 7.0 and up. [Learn how to check your Android version.](#)

Get spoken feedback

TalkBack: To interact with your device using touch and spoken feedback, you can [turn on the TalkBack screen reader.](#) TalkBack describes your actions and tells you about alerts and notifications.

Select to Speak: If you want spoken feedback only at certain times, you can turn on [Select to Speak.](#) Select items on your screen to hear them read or described aloud.

Use a switch, keyboard, or mouse

Switch Access: For users with limited mobility, [Switch Access](#) is an alternative to using the touch screen. You can use a switch or keyboard to control your device.

Use voice commands



Voice Access: If using a touch screen is difficult, the [Voice Access app](#) lets you control your device with spoken commands. Use your voice to open apps, navigate, and edit text hands-free. Voice Access is currently in a limited beta release in English only.

Use a braille display

BrailleBack: You can connect a refreshable braille display to your device via Bluetooth. [BrailleBack](#) works with TalkBack for a combined speech and braille experience, allowing you to edit text and interact with your device.

Make your screen easier to see

Android devices have several settings to make your screen easier to see.

Display size and font size: To change the size of items on your screen, adjust the [display size or font size](#)

Magnification gestures: To temporarily zoom or magnify your screen, use [magnification gestures](#)

Contrast and color options: To adjust contrast or colors, use [high-contrast text](#), [color inversion](#) or [color correction](#)

Turn on captions

Captions: You can turn on captions for your device and specify options (language, text, and style) for closed captioning. Learn how to [turn on captions](#).

Design and develop accessible apps

For anyone designing or developing an app, [Accessibility Scanner](#) can help you identify opportunities to improve your app for users. You can also refer to [Android Accessibility developer resources](#).

7. BASIC STANDARDS FOR ELECTRONIC COMMUNICATIONS SERVICES (ECS)

7.1. Universal Designed Products And Services

- 7.1.1. Cell C submits that it is not clear how ECS licensees will be able to “*ensure that electronic communications devices ready for purchase are Universally Designed to cater for needs of people with disabilities*”. This is a vague and broad statement and it is not clear what compliance is expected from ECS licensees or how compliance will be measured.
- 7.1.2. Further, it is not clear what the “*needs*” of persons with disabilities are and which of these needs are expected to be addressed.
- 7.1.3. Cell C recommends that sub-regulation 5(1) of the Regulation be amended to read: “ECS licensees must as practically as possible ensure that there are end-user devices that are available and suitable for the needs of people with disabilities”. We say this because there



is a plethora of devices from various OEM's in the marketplace that support needs for persons with disabilities, depending on what those disabilities are, but some of them are more accessible and more affordable than others.

- 7.1.4. In the Cell C oral submission we noted that since the 2014 draft regulations were published, the availability/choice of these devices have significantly increased in 2017. This is demonstrated in Table A below.

Table A

Category	Samsung	Apple	LG	Sony	Huawei	Nokia	Cell C Brand
Devices available	J5 Prime, J7 Prime A3, A5, A7, S8, S8+, Note 8	SE, 7, 8, X	K10, Q6	L1, XA1 XZ Premium, MZ1	P10 Lite, P10, Mate 10 Pro	5,6,8	Empire E8, Extreme E8
Customisable Display	Accessed via the settings menu and enhanced via downloadable apps						
Alternate Format	Special external equipment may be required for certain disabilities. And accessed via downloadable apps						
Braille	Supported by Bluetooth (on device) and external devices						
Screen Reader	Accessed by downloadable apps						
Voice recognition	Accessed via settings menu and supplemented by downloadable apps						
Automatic responses	Accessed via settings menu, call settings menu or via downloadable apps						
Hands free / One Touch	Supported by headphones provided in the box.						

- 7.1.5. However, we reiterate that Cell C is neither a manufacturer nor primarily a handset or device supplier. Its licences authorize it to build and operate networks and provide electronic communications services, and the Regulation should recognize this.

8. VISUALLY IMPAIRED OR BLIND AID COMPATABILITY REQUIREMENT FOR MOBILE HANDSETS

- 8.1. Cell C notes that additional billing and product information requirements are placed on ECS licensees in terms of the revised Regulation. Furthermore, the alternate format examples presented by the Authority is non-exhaustive and therefore problematic. Additional

requirements, such as including braille on bills, will require additional development and additional costs to the ECS licensees and any third party printing companies contracted by the ECS licensees to provide bills. It is not clear from the Regulations whether ECS licensees will be permitted to charge customers for billing and product information provided in alternative format. Cell C recommends that the billing requirements are made consistent with the Metering and Billing Arrangements as contained in Section 10 of Schedule 3 of the regulations regarding Standard Terms and Conditions for Individual Licences.

- 8.2. Cell C will be able to provide product information in electronic format on its website and at selected stores, but submits that it is not commercially viable, feasible or practical to have product information in alternative formats at all stores, many of which may operate in the informal sector. Therefore Cell C recommends that the Regulation require only that product information and billing information be made available at selected stores or upon request.

9. GENERAL REQUIREMENTS FOR COMMUNICATION AND INFORMATION PROVISION TO PEOPLE WITH DISABILITIES

- 9.1. Cell C recommends that the requirement for directory services be removed as this requirement is prescribed in Section 75 of the ECA.
- 9.2. With regards to the requirements to provide special numbers for emergency services, Cell C is unclear why there is a requirement to have additional special numbers for emergency services. There is currently an obligation on ECS licensees to provide free access to emergency services and persons with disabilities currently do have access to emergency services. Cell C recommends that this requirement be removed as the number "112" is the exclusive national public emergency number in terms of Section 78 of the ECA. Furthermore, the Authority has prescribed "10111" as the police emergency number and 10177 as the ambulance emergency number in the 2016 Numbering Plan Regulations.
- 9.3. Currently Cell C has its own repair centre and walk in customer centres. Where devices are booked in for repair, Cell C could assist customers with a loan phone at the walk-in customer centres. In order to give priority to owners who have a disability, Cell C is in the process of implementing the following instruction at the repair centre:

"If a customer booking in a repair identifies himself or herself as a disabled person, the booking agent needs to make a note of the fact on the Repair Management system (Depot Repair). Upon receipt of the device at the Repair Centre, the job will be prioritized for repair or exchange."

Similarly loan phones are managed and available at retail stores.

- 9.4. Cell C notes that it has been proposed that trained personnel be provided "*in their stores*". It is not clear whether this obligation is limited to the stores that are owned by the ECS licensees or whether it is the intention to extend this obligation to all stores that stock and/or sell the products and services of ECS licensees. Cell C submits that it will not be commercially viable, reasonable or practical to have trained personnel at all stores that stock and/or sell the products and services of ECS licensees as these stores are not owned by the ECS licensees but owned by third parties. Staff will have to be trained on how to communicate with persons with disability, or for an example how to interpret a braille statement, or communicate with a customer that has a speech impairment. This is not feasible at all stores that may sell Cell C services (which include PEP, CNA, Checkers and other supermarkets).
- 9.5. Similarly, Cell C submits that the demonstration of equipment and access to information will have to be limited to Cell C selected stores.

10. PROMOTION OF AWARENESS AND COMPLIANCE

Cell C notes that the Regulations contain a vague statement that licenses should collaborate with organisations and associations representing people with disabilities on awareness programmes. Cell C further notes that this is not an obligation in the Regulations. It is not clear how this obligation will be monitored and this means it will in all likelihood not be capable of implementation or enforcement – rendering it useless.

11. COMPLAINTS PROCESSES FOR ALL CATEGORIES OF DISABILITY

- 11.1. Cell C submits that it already has a fully developed complaints process in respect of the Minimum Standards For End-User and Subscriber Service Charter Regulations. This process is in place to address the needs of all of its customers, including persons with disabilities. It is not clear why a separate complaints process should be developed to specifically address the needs of persons with disabilities. This will only lead to duplication, confusion and additional costs.
- 11.2. If a separate complaints process is required, ECS licensees would need to implement measures to segment its customer base in order to identify customers with disabilities, at a cost, and potentially in contravention of the Protection of Personal Information Act, 2013. In addition, ECS licenses would need to hire additional staff to specifically deal with persons with disabilities. This would lead to an increase in costs and network resources. As we have



set out above in our general comments, the cost benefits analysis to support the imposition of this obligation does not appear to have been undertaken.

- 11.3. Customers with visual impairment are encouraged to use the Cell C call centre for service support. In case of speech or hearing impairments, the customer is encouraged to use written correspondence in its various forms ie. email, letter and text messaging. Every effort is already being made to accommodate persons with disabilities in our customer service interactions.

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