



**MTN'S RESPONSE TO THE NOTICE OF ICASA'S INTENTION TO PRESCRIBE  
REGULATIONS IN RELATION TO THE CODE OF CONDUCT FOR PEOPLE WITH  
DISABILITIES AS PUBLISHED IN GOVERNMENT GAZETTE NO 317 OF 2020 DATED 3  
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## 1. Introduction

Mobile Telephone Networks Proprietary Limited ("**MTN**") welcomes the opportunity to make comments to the Independent Communications Authority of South Africa ("**the Authority**") on the Draft Code of Conduct for Persons with Disabilities ("**the Draft Code**").

At MTN we believe *everyone* deserves the benefits of a modern, connected life. We aspire to lead the delivery of a bold, new digital world to *all* our customers. As such, we fully support the Authority's initiatives aimed at providing accessible electronic communication services to persons with disabilities.

The purpose of MTN's submissions on the Draft Code is to set out MTN's concerns regarding the interpretation and practical application of the principle of universal design, as well as the implications of implementing the solutions set out in the Draft Code.

MTN's submission is structured as follows:

1. General Comments; and
2. MTN's specific comments on the Draft Code.

## 2. General Comments

- 2.1 The Draft Code defines universal design as the design of products, environments, programmes and services usable by all people, to the greatest extent possible, without the need for adaptation or specialised design. The definition aligns to the UN Convention of the Rights of Persons with Disabilities and Optional Protocol.<sup>1</sup> MTNs understanding of the principle of universal design is that it entails the provision of electronic communication products and services that are inherently flexible and useable by everyone, including persons with disabilities.
- 2.2 The UN definition implies that it may not always be possible for one product to address the needs of the entire population without the need for adaptation. We believe that products and services must be designed in such a way that users can adjust functionality so that the products and services are useable by people with a wide range of disabilities. To achieve this, the Authority must prescribe universal design as a requirement for type approval in terms of Chapter 6 of the Electronic Communications Act ("ECA").<sup>2</sup>
- 2.3 Mandatory blanket regulatory requirements may not be the appropriate solution given that licensees procure devices from Original Equipment Manufacturers ("OEM's") and cannot be held directly responsible in the event that all devices do not meet the principles of universal design. A more practical approach would be to ensure that the entire value chain complies with the principle of universal design. This can be achieved through the implementation of standards and best practice (including type approval).

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<sup>1</sup> <https://www.un.org/disabilities/documents/convention/convoptprot-e.pdf>

<sup>2</sup> Act No. 36 of 2005

- 2.4 Since the promulgation of the 2007 Code of Conduct for Persons with Disabilities, there have been many advances in technology including multiple disability accessibility features. MTN offers a wide range of smartphones of which the majority have accessibility features to assist people with disabilities. For example, the latest smartphones on the market use haptic technology, which provide tactile feedback allowing the user to feel what is on the screen. Apple introduced haptic feedback with the launch of the iPhone 6s and states on its website that the iPhone is compatible with more than 70 braille displays.<sup>3</sup> Other features available on smartphones are screen readers, settings for users with low vision such as magnification and contrast settings, some phones recognise gestures, users can invert colours and set to grey scale (easier to view than colours), text-to-speech, speech-to-text and hearing aid compatibility.<sup>4</sup>
- 2.5 According to a report by Data Portal, DIGITAL 2020: SOUTH AFRICA, internet penetration in South Africa is at 62% of the population.<sup>5</sup> Thirty-two percent (32%) of our customers use either basic phones or feature phones, which have technological limitations and do not address all accessibility requirements. The cost of smartphones is a barrier to inclusive access.<sup>6</sup>
- 2.6 To bridge this divide, MTN introduced the “MTN Smart S” smart-feature phone which is a hybrid device with a physical keypad. The device looks like a traditional feature phone; however, it supports limited smart applications such as WhatsApp, YouTube, Facebook, etc.
- 2.7 MTN understands the limitations encountered by persons who have hearing or speech disabilities in accessing electronic communication services as well as the intention behind a video national relay system. However, setting up a national relay system will be costly, and it is not clear if an NRS will benefit all customers. For the NRS to be viable, operators would need to recover the cost of the service from the consumer.

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<sup>3</sup> [www.apple.com](http://www.apple.com).

### 3. Specific Comments

#### 3.1 Definitions

The Draft Regulations define "Universally Designed" as follows:

*"Universally Designed" means the design of products, environments, programmes and services usable by all people, to the greatest extent possible, without the need for adaptation or specialised design;*

The proposed definition appears to align with the UN Convention of the Rights of Persons with Disabilities and Optional Protocol, but it is incomplete. MTN proposes that the definition be amended to align with the UN by the addition of the words in bold and underlined.

*"Universal design" means the design of products, environments, programmes and services to be usable by all people, to the greatest extent possible, without the need for adaptation or specialized design. **"Universal design" shall not exclude assistive devices for particular groups of persons with disabilities where this is needed.***

#### 3.2 Universal Designed Products and Services

Regulation 5(1) states: *"An ECS licensee must ensure that all electronic communications devices ready for purchase are Universally Designed to cater for the needs of persons with disabilities."*

As per paragraph 2 above, MTN submits that it is not feasible to require ECS licensees to ensure that **all** devices meet the requirements for universal design. This provision is impractical and will be difficult to enforce since MTN relies on OEM's for the supply of devices.

MTN proposes that 5(1) be amended as follows:

*"An ECS licensee must ensure that **it procures and makes available for purchase as part of its product offering** ~~all~~ electronic communications devices ~~ready for purchase~~ **that** are Universally Designed to cater for the needs of persons with disabilities."*

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<sup>4</sup> The list is not comprehensive, and functionality may differ between manufacturers.

<sup>5</sup> <https://datareportal.com/reports/digital-2020-south-africa>

<sup>6</sup> Import duties on smartphones were increased by SARS. The import duties should be revised to make smartphones more accessible.

In addition, as set out in paragraph 2.2, MTN proposes that Universal Design be included in the type approval process by OEM's.

### **3.3 Hearing Aid Compatibility Requirements for Fixed Line Handsets**

Regulation 5(2) states: *"An ECS licensee must ensure that all its fixed line telephones being offered to the public have hearing aid compatibility. Some of the requirements and features to be included are as follows..."*

This provision only caters for the persons with hearing disabilities and consequently creates the impression that fixed line services are used by persons with hearing disabilities only.

MTN proposes the renaming of the section to *"Universal Design Requirements for Fixed Line Handsets"* and include requirements that cater for other disabilities, such as big button phones, or high contrast large number keys, or voice-controlled calling, etc.

MTN proposes the deletion of 5(2) and the substitution of the following introductory statement:

***"An ECS licensee must ensure that it procures and makes available for purchase, as part of its product offering, fixed line telephones that are Universally Designed to cater for the needs of persons with disabilities. Some of the requirements and features to be included are as follows...."***

### **3.4 Visually impaired or Blind Aid Compatibility Requirement for Mobile Handsets**

Regulation 5(3)(a) to (f) sets out the requirements for visual assistive technology in respect of mobile handsets.

This requirement caters for visually impaired end-users only. This creates the impression that mobile handset usage is exclusive to people with visual impairments

MTN proposes the renaming of the section to *"Universal Design Requirements for Mobile Handsets"* and include requirements that cater for other disabilities.

MTN proposes the deletion of 5(3) and the substitution of the following introductory statement:

***"An ECS licensee must ensure that it procures and makes available for purchase, as part of its product offering, mobile handsets that are Universally Designed to cater for the needs of persons with disabilities. Some of the requirements and features to be included are as follows...."***

Regulation 5(3)(b) provides:

***"Alternate formats – An Electronic Communications Service licensee must make provision for product information and billing in alternate formats (Braille, large print, electronic (plain text or HTML, audio format etc.) upon request, and ensure that this information is easily accessible on the operators' website."***

Currently regulation 5(3)(B) appears to apply to mobile handsets only. The provision of product and billing information in alternate formats should be applied across all electronic communications services regardless of the device type.

### **3.5 National Relay System (NRS)**

Regulation 5(4) of the Draft Code establishes the obligation on ECS licensees to provide an NRS which translates voice to text and vice-versa, on calls made by persons who are deaf or have a hearing or speech impairment. As per previous submissions made by MTN, this is not necessary as most mobile phones already have voice to text and text to voice capability. It is not clear why the Authority would impose an obligation on licensees to provide a service that already exists.

In addition, the implementation of an NRS will result in an increase in the cost to communicate. This may affect the desirability and consequently the commercial viability of the service.

MTN submits that the cost of the services will have to be recovered from the end-users or alternatively, it should be recoverable utilising the Universal Service and Access Fund ("USAF"). All licensees are obliged to contribute 0.2% of their annual



turnover derived from the provision of licensed services as a contribution to the USAF as set out in the USAF Regulations, 2011.

Section 82 of the Electronic Communications Act (“ECA”)<sup>7</sup> sets out the functions of the Agency which include the duty to encourage, facilitate and offer guidance in respect of any scheme to provide universal access or universal service. The monies contributed to the Fund may be used for the payment of subsidies for the assistance of needy persons towards the cost of the provision to, or the use by them of broadcasting, electronic communications network services and electronic communications services.<sup>8</sup>

On the 11<sup>th</sup> of November 2019, Councillor Gongxeka-Seopa sent an information request to licensees requesting information on the cost of accessibility services for people with disabilities. The request dealt specifically with the cost of implementing an NRS and called for suggestions from licensees on how costs should be allocated. MTN pointed out that the accessibility features already exist and provided examples. Furthermore, MTN proposed that if the Authority persisted with an NRS system, the USAF should be used to fund it.

MTN understood this exercise to be a form of Regulatory Impact Assessment. To date the Authority has not responded to MTN’s submissions or issued any form of report based on the information and suggestions provided by licensees. It is imperative that the Authority consider the information submitted by licensees and provide reasons as to how the Authority evaluated the submissions that informed these Draft Regulations, particularly since so many of the accessibility features proposed by the Authority currently exist. The reasons document appended to the Draft Regulations makes no reference to the information request, nor does it evaluate past submissions on previous versions of the Draft Regulations. MTN acknowledges the inclusion of a functional specification for the NRS. There are a number of aspects of the functional specifications that require clarity.

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<sup>7</sup> Act 36 of 2005 (as amended).

<sup>8</sup> Section 88(1) of Act 36 of 2005.

Service Allocation – *“The end user must be able to access VRS services”*. It is not practical or possible for end users to have access to all VRS services if they do not possess a compatible device.

1.6 (b) does not seem to flow suggesting that some wording may be missing. The second sentence in subsection (b) states the following:

*“To the extent that an emergency call centre has access to such information from a non-PWD caller, the same information must be conveyed about a PWD who connects to the emergency services through a relay service conversion at low bit rates (based on the use of dated equipment or network access at the user end), the following basic minimum performance goals must apply:...”*

It is not clear what subsection 1.6(b) is trying to convey. MTN suggests that the subsection be clarified.

MTN assumes that the basic minimum performance goals set out in 1.6(b) relate to video call quality. CIF resolution would also be dependent on the user’s camera quality. Furthermore, the user will need a 3G or LTE compatible phone with video capability.

- *“20 – 30 frames per second at CIF resolution and a max 0.4seconds delay, accepting occasional blur less than that corresponding to QCIF during medium motion.*
- *Sound synchronisation better than 100ms.*
- *End-to-end delay (latency) must be below 0.4s. must “*

The word “must” at the end of the section quoted above seems to be out of place. MTN proposes that “must” be deleted”.

1.10 – Call Handover. MTN seeks clarity with respect to which providers are being referred to. MTN assumes that calls should be transferable between emergency providers such as police or ambulance providers.

1.14 – Standards. It appears as if the functional specification is based on the ITU F.930 (03/2018) Telecommunication Standardization Sector. This specific standard

should be referenced, or any amendments and updates thereto as opposed to only referencing the standard in a footnote.

1.16 - User Applications. The only way to practically deliver NRS over a mobile network is to do so by deploying an application. The service would require minimum speed of 128kbps (very basic) and would require 3G but preferably 4G technology. High resolution and no jitter will ensure an optimal user experience. Users of feature phones will be excluded from participating in the NRS and will need to rely on accessibility features on their phones.

As an alternative, MTN proposes that the USAF be utilised to provide appropriate devices to qualifying individuals

### **3.6 General Requirements for Communication and Information Provision to Persons with Disabilities for Individual Electronic Communication Service ("I-ECS") Licensees**

#### **Access to Emergency Services**

MTN submits that the existing emergency services number 112 (as per Numbering Regulations) can be utilised for this purpose. In order to provide for a special number dedicated to persons with disabilities, requires an amendment of the Numbering Regulations.

To align the provision with the principle of Universal Design, MTN submits the following amendment to sub regulation 7(2):

***"Emergency services: ECS licensees should provide alternate means for people with disabilities to access 112 emergency services. For example, the ability to access 112 via SMS as opposed to calling in and speaking to an operator ~~a special number for emergency services by including functionalities for persons with disabilities.~~***

### **3.7 Compliance Reporting**

MTN proposes that the reporting template for the Code on People with Disabilities set out in the Compliance Procedure Manual Regulations, Government Gazette No.

34863 dated 15 December 2011 should be amended to cater for the new compliance reporting requirements set out in the Draft Code.

### 3.8 Contraventions and Penalties

Regulation 4 of the ECA sets out the Authority's powers to make regulations pertaining to any matter which in terms of this Act or the related legislation must or may be prescribed, governed or determined by regulation.

Regulation 4 (3) further provides that the Authority may declare a contravention of that regulation to be an offence, provided that any such regulation must specify the penalty that may be imposed in respect of such contravention considering section 17H of the Independent Communications Authority of South Africa Act 13 of 2000 (ICASA Act).

In terms of the ICASA Act, the Authority may impose a fine not exceeding the greater of R5 000 000 or 10 % of the person or licensee's annual turnover for every day or part thereof during which the offence continued, in the case of an offence contemplated in section 17H(3)(b), namely: providing a service without a licence or registering as required by this Act or the underlying statutes or fails to obtain the prior written permission of the Authority before transferring a licence. This is one **only** instance in which the Authority can impose a fine of R5 000 000 or 10 % of the person or licensee's annual turnover. The proposed fine is *ultra vires*. MTN proposes that the Authority impose a penalty of not more than R5 000 000.