



Independent Communications Authority of South Africa
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REASONS FOR NUMBER PORTABILITY REGULATIONS, 2018

1. INTRODUCTION

- 1.1. Number Portability enables consumers to switch licensees without the need to change their assigned number. The process aims to alleviate the costs commonly associated with the change of a number as well as the administrative requirements i.e. informing customers, relatives and debtors in the change of an assigned number.
- 1.2. The ability to retain the use of an assigned number has become more imperative due to the rapid development of applications and innovations in the telecommunications environment. The role of a number in communications has evolved and as such more applications, some sensitive in nature, are linked to an assigned number i.e. banking authorization and notifications, unlocking online profiles etc.
- 1.3. Number Portability has become more of a fundamental right for consumers. The earliest form of number portability implemented was in 1997 in Singapore, followed by the UK, Hong Kong and the Netherlands in 1999. Recognizing its relevance in the telecommunication environment South Africa's legislation mandated the introduction of number portability in 2005.
- 1.4. There is a significant amount of literature that looks at the effects number portability has had in the telecommunication environment as well as the economy. A common theme across most literatures is that number portability has the potential to benefit consumers and as consequence stimulate competition in the telecommunication environment. As such, notwithstanding submissions made pertaining to the purpose of the new Regulations, the Authority is of the view that these Regulations are consumer driven to protect the ability and the right of consumers.

2. BACKGROUND

2.1. The Independent Communications Authority of South Africa (“the Authority”) was required in terms of section 89 (1) (b) of the Telecommunications Act, 1996 (Act No. 103 of 1996) (“Telecommunications Act”) which had been substituted by section 68(1)(b) of the Electronic Communications Act, 2005 (Act No. 36 of 2005) (“ECA”), to prescribe measures to ensure that number portability is introduced in 2005, including: –

- (i) the creation of a national number portability database; and
- (ii) cost allocation and cost recovery among licensees.

2.2. On 30 September 2005, under the Telecommunications Act, the Authority published the Number Portability Regulations (“the Regulations”).¹

2.3. The Telecommunications Act was repealed in 2005, and a new legislative framework came into effect namely; the ECA.

2.4. In terms of section 68 (1) (b) of the ECA, *“The Authority must make regulations prescribing measures to ensure number portability is introduced, including-*

- (i) the creation of a national number portability database; and*
- (ii) cost allocation and cost recovery among licensees”.*

2.5. In order to align the Regulations with the prevailing legislative requirements and address challenges, if any, in the current number portability framework, the Authority undertook a process of reviewing the Regulations.

3. PROCESS UNDERTAKEN BY THE AUTHORITY

¹ Government Gazette No. 28091 of 2005.

3.1. INQUIRY INTO NUMBER PORTABILITY

- 3.1.1. On 26 August 2016, the Authority published a notice² to conduct an inquiry into number portability for public comments in terms of section 4B (2) of the Independent Communications Authority of South Africa Act, 2000 (Act No.13 of 2000), as amended, ("ICASA Act").
- 3.1.2. The deadline set for the written submissions was 28 October 2016 and the public hearings were held on 17 February 2017.
- 3.1.3. The Authority also published the Number Portability Findings Report on the inquiry on 30 June 2017.³

3.2. DRAFT NUMBER PORTABILITY REGULATIONS

- 3.2.1. On 24 November 2017, the Authority published the draft number portability regulations ("Draft Regulations") for public comments.⁴
- 3.2.2. The Authority received nine (9) written submissions from the following stakeholders:
 - a. Huge Group,
 - b. Cell C Limited,
 - c. Switch Telecom,
 - d. ECN,
 - e. Liquid Telecom,
 - f. Telkom SA Limited,
 - g. MTN (Pty) Ltd,
 - h. Vodacom (Pty) Ltd; and
 - i. ISPA.

² Notice No. 965, Government Gazette No. 40232.

³ Government Gazette No. 40945 of 2017.

⁴ Government Gazette No. 41275 of 2017.

3.2.3. The public hearings on the Draft Regulations were held on 12 March 2018.

3.2.4. The Authority, in consideration of submissions received, both written and oral representations, developed the Number Portability Regulations, 2018 ("new Regulations").

4. STATUS OF THE NUMBER PORTABILITY REGULATIONS, GOVERNMENT GAZETTE NO. 41538 OF 28 MARCH 2018

4.1. The Authority has noted errors about the recently published "Number Portability Regulations, 2018" ("the Regulations")⁵, specifically regulation 14 thereof. According to regulation 14 of the Regulations, the Regulations will be repealed on the date they come into force. Considering the illogical outcome of the aforementioned regulation 14, the Authority, in correcting the error, publish the correct Number Portability Regulations, 2018, including the Reasons document.

4.2. The Number Portability Regulations of 2005, published in Government Gazette No. 28091 of 30 September 2005, remain in force until repealed

5. REASON FOR THE NUMBER PORTABILITY REGULATIONS

5.1 In the ensuing paragraphs, the Authority provides its reasons in relation to the new Regulations.

5.2 Regulation 1: Definitions Winback

5.2.1 Telkom submitted both in their written and the public that although winback was prohibited, it is indirectly in practice. In its submission Telkom indicated that it had observed a spike in port-in reversals which it submits could be attributed to

⁵ Government Gazette No. 41538 of 28 March 2018

winback. Telkom further submitted that in most instances customers refuse to divulge reasons for a port reversal. As such, Telkom deduced that this could be because the customer doesn't want to port anymore or has been approached by the donor operator with a more attractive proposition as such doesn't wish to reveal this to Telkom. However, Telkom also submitted that due to the lack of confirmation it could not be certain of this assertion.

5.2.2 From the submissions received regarding the Draft Regulations, Cell C⁶ and MTN⁷ submit that the definition of winback should be reinstated. Cell C also submits that in its reinstatement it should be subject to a period of one month after a port.

5.2.3 MTN⁸ proposes that its reinstatement be reworded as follows, *"means a donor operator who contacts a subscriber to offer exclusive incentives to entice the subscriber to abort a number port or revert to the donor operator within two months of porting to the recipient operator."* Telkom⁹ also proposed that winback be reinstated but with *"tighter constraints to guard against practices which stifle competition amongst operators."* It proposed a rewording of the definition."

5.2.4 Telkom proposes the following rewording:

a) *"a donor network operator or donor service provider who contacts its existing subscribers, after the subscriber has requested the recipient operator to port out, to offer discounts, free services or other*

⁶ Page 5, Cell C response to ICASA on the proposed amended number portability regulations

⁷ Page 5, MTN's Submission on the draft number portability regulations as published in government gazette 41275 on 24 November 2017

⁸ Page 5, MTN's Submission on the draft number portability regulations as published in government gazette 41275 on 24 November 2017

⁹ Page 11 and 15, Telkom Submission "Draft proposed Number portability regulations published on 24 November 2017

inducements to convince those subscriber(s) to abort the port out to the recipient operator change operators; or

b) *where the subscriber has already ported to the recipient operator to revert back to their original donor operator within the first two months after having requested number portability; but does not include offers made to subscribers in general that do not refer to number portability or the individual subscriber's current or past services."*

5.2.5 In some countries winback is not prohibited and is permitted during a port nor it is not regulated¹⁰ but still reported an uptake in porting by subscribers.

Table 1¹¹

Country	Year NP introduced ¹²	Winback during porting	Mobile ports (as at 31.12.2013 versus the total active numbers)	Fixed ports (as at 31.12.2013 versus the total active numbers)
Finland	2003	Yes	66%	-
Germany	2002	Yes	3.4%	22.5%
Greece	2004	Yes	506 413 (ports in 2011)	622 834 (ports in 2011)
Switzerland	2000	No Regulation	6.4%	11.4%
Norway	2001	Yes	39.3%	-
Hungary	2004	Not Regulated	5.9%	23.2%

¹⁰ Number Portability Implementation in Europe, CEPT/ECC working group Numbering and Networks, March 2014

¹¹ Number Portability Implementation in Europe, CEPT/ECC working group Numbering and Networks, March 2014

¹² The Effects of mobile number portability on consumers in South Africa, Thenjiwe Dube, March 2011

5.2.6 The above figures do not support the view that winback is an obstruction on the consumers' ability to port. The figures may also attest to the assertion that subscribers may still opt to port and choose a licensee that addresses their requirements or needs. By a consumer choosing not to make a choice, in this particular case a choice not to port, that in itself is a choice. It does not infer that the ability to port is obstructed or limited.

5.2.7 In other jurisdictions,¹³ promotions aimed at customer acquisitions through porting are not suppressed and to some extent contributed to the number of subscribers who have opted to port in order to access offerings from other operators i.e. offer of better service, coverage or tariffs. These offerings thus encourage subscribers to take up offerings better suited to them without acquiring new SIMS\numbers.

5.2.8 Considering the above resolve and in that the term "winback" was not incorporated in the body of the regulations the definition of "winback" has thus been removed.

5.3 Regulation 2: Purpose of the regulations

5.3.1 The legislative framework that provides for the introduction and provision of Number Portability as contained in the ECA, namely section 68, prescribes the scope of the envisioned Regulations. In addition to the requirements of section 68(1)(b) of the ECA, section 68(7)(c) and (d) mandates that regulations made in terms of subsection 68(1) to include matters relating to:

“(c) the allocation of responsibility between electronic communications service licensees and electronic communications network service licensees for the

¹³ USA - <https://promo.sprint.com/JoinNow/Register> - offers \$50 visa to subscribers that ports to Sprint
Ireland - <http://www.three.ie/terms-conditions/promotions/three-prepay-port-in-120-sim-only-credit-bonus-promotion-september-2017/> Three Ireland (Hutchison) Limited offered airtime credit to those that ported their numbers

implementation of the numbering plan and number portability to—

- (i) ensure effective functionality;*
 - (ii) ensure access and routing within electronic communications networks; and*
 - (iii) allow licensees to assign numbers to subscribers and transfer numbers when subscribers change services in an efficient manner without unreasonable delay or disruption of service;*
- (d) the protection for consumers including disclosure of consumer rights relating to—*

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

5.3.2 Thus, the Regulations along with the Numbering Plan must address matters pertaining to the responsibilities of electronic communications service (ECS) and electronic communications network service (ECNS) licensees in the numbering plan and number portability framework as well as the rights of consumers.

5.3.3 Several submissions received on the Draft Regulations referred to section 2(f) of the ECA, to the extent that the Regulations must, within its purpose, include matters addressing competition.

5.3.4 Cell C submitted that number portability could be used as a “tool to promote competition in the interest of consumers” and as such proposed that “Promotion of

competition” should be included in the purpose of these regulations. ¹⁴This point was further supported by MTN’s submission that number portability “be perceived as an effective and necessary way to maximise competition and consumer choice of network service providers.” ¹⁵

5.3.5 Other stakeholders also raised matters relating to competition in their submissions, however under different contexts. It should be noted that in line with the objectives of section 68 of the ECA these Regulations are consumer driven.

5.3.6 These Regulations must give effect to Number Portability to ensure and protect the rights to exercise number porting, which is defined in the ECA as follows:

“number portability” means the ability of subscribers to an electronic communications service or persons providing a service pursuant to a licence exemption, to retain their existing numbers without impairment of quality, reliability, or convenience when switching from one electronic communications service licensee to another electronic communications service licensee;”

Section 67 of the ECA is prescriptive on the process the Authority must undertake in the development of regulations that must address competition matters. Section 67(4) of the ECA prescribes that such *“the regulations must, among other things:*

(a) define relevant wholesale and retail markets or market segments;

¹⁴ Page 2 and page 5 of Cell C’s submission on the draft Number Portability Regulations

¹⁵ Page 2 of MTN submission on the draft Number Portability Regulations

- (b) determine whether there is effective competition in those relevant markets and market segments;*
- (c) determine which, if any, licensees have significant market power in those markets and market segments where there is ineffective competition;*
- (d) impose appropriate pro-competitive licence conditions on those licensees having significant market power to remedy the market failure;”*

5.3.7 As such, notwithstanding submissions made pertaining to the purpose of the new Regulations, the Authority is of the view that these Regulations are consumer driven to protect the ability and the right of consumers to switch licensees and the efficient provision of number portability.

5.4 Regulation 4: Application of number portability

- 5.4.1 Most submissions and representations made by stakeholders argued for the inclusion of other National Destination Codes (NDCs) in the porting framework specifically numbers within the 087, 086 and 080 NDCs.
- 5.4.2 Currently only numbers classified for mobile services and geographic services in line with the Numbering Plan Regulations¹⁶ are portable. MTN¹⁷ submitted that the lack of portability of these number places a limitation for customers specifically corporate customers to port.

¹⁶ Government Gazette 39861 published on 24 March 2016.

¹⁷ Page 3, MTN’s Submission on the draft number portability regulations as published in government gazette 41275 on 24 November 2017

5.4.3 Telkom¹⁸ has however, submitted that the attempt by the Authority to subject 080 and 086 numbers to number portability regulatory remedy maybe problematic for the following reasons:

- (a) The scope of the Authority's Inquiry into number portability was limited. Telkom submitted that the Authority's objectives of the inquiry into number portability did not contemplate a market review of the toll-free market or the 086 markets as no markets were defined or reviewed.
- (b) No market review was undertaken for the toll-free service market or the 086-number block range (which assumed that the 086-number block range is a service market).

5.4.4 Telkom¹⁹ submitted that, *"number portability is a regulatory remedy that seeks to promote competition in the absence of sufficient competition in a defined market. That the market review process associated with this remedy in South Africa was pre-empted by the legislator who identified the fixed and mobile service markets in South Africa as lacking sufficient competition. As a result, number portability was legislated into the Telecommunications Act for both mobile services in the mobile service market and geographic (fixed line) services in the public switched telecommunication service market."*

5.4.5 Telkom²⁰ further submitted that, *"the Authority was mandated to introduce number portability for these markets in 2005. The Authority is bound by the processes defined in the ECA, which in this case requires the Authority to first do a market review in which market players are identified, the state of competition*

¹⁸ Page 7, Telkom Submission "Draft proposed Number portability regulations published on 24 November 2017

¹⁹ Page 7, Telkom Submission "Draft proposed Number portability regulations published on 24 November 2017

²⁰ Page 7, Telkom Submission "Draft proposed Number portability regulations published on 24 November 2017

assessed, potential remedies identified and finally it may institute the most appropriate remedies to address the identified problems in that market."

- 5.4.6 Telkom also submitted that *"the Authority is seeking to impose a regulatory remedy without having undertaken the prescribed market review as defined in Chapter 10 of the ECA. "Telkom is of the view that the scope of "number portability" as defined in the ECA does not extend to value added services and therefore, 080 and 086 numbers are beyond the scope of number portability envisaged in the definition of number portability in the ECA, and "the definition of "number portability" applies to electronic communication services licensees and subscribers to these communication services. The definition of "electronic communication service" in essence is a conveyance service over an electronic communications network." Furthermore, that toll-free services and 086 services constitute Value Added Services ("VAS") due to the technical way with which they are activated. As such sought clarity on whether these VAS also constitute electronic communications services since these VAS may not necessarily perform in any conveyance.*
- 5.4.7 To emphasise its point Telkom cites the definition of "value added services" as utilized by the World Trade Organisation ("WTO"). The WTO defines value-added service in telecommunications as: *"Value-added telecommunication services are telecommunications for which suppliers "add value" to the customer's information by enhancing its form or content or by providing for its storage and retrieval".*
- 5.4.8 From the above definition Telkom submitted that its primary business is the conveyance of electronic communication i.e. an electronic communications service, and that the 080 and 086 services do not perform conveyance, but serve as a lookup

function, in support of the primary business of Telkom, namely conveyance from one point to another.

5.4.9 Telkom supports the inclusion of 087 numbers. It submits "*that the exclusion of 087 numbers from porting may in fact compromise customers' freedom to locate to another operator*".

5.4.10 In the consideration for the addition of 080,086 and 087 NDCs in the Number Portability framework, the Authority considered that the exclusion of such numbers from the framework could have adverse effects on the ability to port specifically the ability of corporate subscribers to port as highlighted in the case study below:

Case study: 1

In 2015 a major banking corporation wanted to port all its assigned numbers. However due to the exclusion of 080 and 086 numbers in the number portability framework it could only port its assigned geographic numbers. Its assigned 080 and 086 numbers, which are largely used for marketing purposes and on promotional material, corporate stationery and ATMs could not be ported.

As a result, this meant that the corporation would either:

- a. Surrender its 080 and 086 numbers; or
- b. Retain the services of its current operator along with acquiring the services of a different operator, to service its geographic numbers; or
- c. Abandon its port request.

The first two options were least favored due to the switching costs involved. As a result, the port request was deemed not viable and was thus abandoned.

The above case study depicts the obstructions and limitations placed on predominantly corporate consumers on their ability to port due to the exclusion of 087,086 and 080 numbers from the number portability framework.

As a result, this has inadvertently, to some extent, discriminated such consumers from number portability. There is no technical nor economic feasibility on the exclusion of the abovementioned numbering ranges from the number portability framework.

The scope of electronic communication services to which number portability is applicable

5.4.11 The classification of 080 and 086 numbers as value added services is immaterial to the classification of such numbers as per the Numbering Plan Regulations. The Numbering Plan Regulations defines 080 numbers for toll free services and 086 numbers for inbound services.

5.4.12 Toll Free Services and Inbound services, in line with the Numbering Plan Regulations, fall within the scope of electronic communication services provided by electronic communications service licensees and to which consumers are subscribers of.

5.4.13 In line with the ECA definition of "number portability" the above services fall within the scope of services applicable to number portability. Furthermore, the definition does not place restrictions or limitations on the type of numbers and associated services that can or cannot be subjected to porting.

5.4.14 Number portability as introduced in 2005, in line with the ECA, was broad in its definition in that numbers used to provide electronic communication services and assigned to consumers can be subject to number portability.

5.4.15 Though the regulations have adopted a phased-in approach in so far as numbering ranges that can be subject to number portability, the ECA does not prohibit or place any restrictions on numbering ranges that can be subjected to number portability.

5.4.16 On the aspect of a market review in line section 67 of the ECA, we refer to the earlier comments in paragraph 4.4.6 on the purpose of the Regulations.

5.5 Regulation 5 Number Portability for Geographic Numbers

5.5.1 Most stakeholders submit that regulation 5 (1) of the Draft Regulations excluded the portability of individual geographic numbers. Stakeholders recommended that the scope of geographic number portability should include the portability of individual geographic numbers. Stakeholders also recommended that this can be done by adding a new section or sub-regulation for individual geographic number portability or amending the wording of regulation 5 to reference the portability of individual geographic numbers. Based on the recommendations by the stakeholders, regulation 5 (2) has since been inserted in the new Regulations to include the portability of individual geographic numbers.

5.5.2 Some stakeholders ²¹also requested the Authority make the NDC geographic numbers maps available. The Authority is committed to undertake a process to make maps for the purposes of geographic boundaries in a format that can be publicly accessible.

5.5.3 Telkom also raised concerns over the fragmentation of number blocks. Regulation 5(1)(a) read with regulation 5(1)(b) ensure that the number block(s) assigned to a subscriber is ported as such and no individual numbers can be ported within the assigned block(s).

²¹ Page 5, Cell C's written submission with respect to the Draft Number Portability Regulations

5.6 Regulation 6: Number portability for mobile and non-geographic numbers

- 5.6.1 Most stakeholders support the introduction of non-geographic number portability (080, 086 and 087). Telkom does not support the introduction of 080 and 086 number portability. It must be noted that number portability empowers the subscriber to change a licensee without having to change their number. This resonates with regulation 6(2) of the National Numbering Plan Regulations, published in Government Gazette No. 38961 of 2016, as amended, which states that *“A subscriber to whom a number has been legitimately assigned may enjoy the beneficial use of the number, freely and without hindrance”*.
- 5.6.2 The Authority is empowered by the ECA to ensure number portability is implemented and to which number ranges as the ECA does not prescribe which number ranges must be subjected to porting.
- 5.6.3 Cell C also raised a concern that regulation 6(1)(a) on the Draft Regulations is not adequate to ensure that competition between licensees is promoted and protected as the phrase “work together” is not capable of enforcement and leaves the arrangements between licensees open and subject to abuse.
- 5.6.4 Regulation 6 has since been amended to ensure that number portability for mobile, 080, 086 and 087 numbers is mandatory to all the licensees that have allocated these number ranges and assigned these number ranges to their subscribers.

5.7 Regulation 7: Ordering System Specification

- 5.7.1 Most stakeholders raised concerns over regulation 7(1) as it only referred to one ordering system specification (“OSS”) and recommended that there should be three separate ordering

system specifications because they contain different processes. The OSS will also include all three types of portability which are geographic, non-geographic and mobile number portability. Cell C also recommended that the word “publish” should be amended to “prescribe” as the OSS was not gazetted and suggested that the licensees should be given time to agree amongst themselves.

- 5.7.2 In support of the changes to the number portability framework i.e. inclusion of 086 NDC the Authority will amend the current OSS²² to give effect to incorporate all the changes introduced by the Number portability Regulations.

5.8 Regulation 8: Ported numbers

- 5.8.1 Most stakeholders raised concerns over the requirements of regulations 5(3), 5(4), 6(1)(c), 6(1)(d), 6(2)(c) and 6(2)(d) in the Draft Regulations and they stated that its grossly inadequate to meet any constructive purpose and that it was unnecessary and burdensome as this is currently done by the Number Portability Company. Vodacom also raised concerns over its obligation to protect personal information in accordance with the Protection of Personal Information Act, 2013 (Act No. 4 of 2013) (“POPIA”).
- 5.8.2 Regulation 8 was inserted in the new Regulations to relieve the licensees from this unnecessary burden and ensured that licensees, through a third party or the internet, can provide a functionality that will allow a subscriber to check and confirm if a number has been ported. To ensure compliance with POPIA, the confirmation will only provide the ported status of a number as reflected in regulation 8(2) of the new Regulations.

²² Geographic Number Portability, Government Gazette 33145, Published on 23 April 2010

5.9 Regulation 9 – Routing

- 5.9.1 Vodacom and ECN wanted clarity on why the return of unused numbers or number block by the recipient back to the block operator should be done in writing.
- 5.9.2 The Authority believes that the return of numbers to a block operator must be done in writing for purposes of evidence and record keeping mitigating cases of disputes arising due to numbers or number block's whereabouts.

5.10 Regulation 10 – Cost Recovery and Charging

- 5.10.1 Most stakeholders welcome and support the Authority's intention on regulation 10 of the Draft Regulations for per-subscriber porting fees between licensees to be cost based in that they are largely fixed and reciprocal.
- 5.10.2 Switch disagreed and encouraged the Authority to eliminate per-subscriber porting fees between licensees and contends that this is essential to keeping charges levied to subscribers to a bare minimum.
- 5.10.3 The Authority believes that the provision for per-subscriber is in line with the purpose of these regulations to introduce number portability and ensure that there is cost allocation and cost recovery amongst licensees.
- 5.10.4 The Authority has therefore retained the provision for per-subscriber fees between licensees to be cost based.

5.11 Regulation 11 – Principles for Ported Numbers Services

- 5.11.1 Some stakeholders submitted that regulation 11 (1) of the Draft Regulations will be cumbersome to both licensees and subscribers as it limits porting request to be made in writing

only. This they argue on grounds that many subscribers rely on digital channels such as USSD and keyword SMS as in some instances this might be the most convenient or only option available to them.

5.11.2 Other stakeholders propose that regulation 11 (2) of the Draft Regulations be removed as it will increase the call set up time and the quality of calls to ported numbers.

5.11.3 The Authority considered the proposals and revised both the sub-regulations to reflect that:

5.11.3.1 The request for a port should be a verifiable request as opposed to a written request; and

5.11.3.2 There should be three beeps warning as opposed to a 5 sec warning that would have affected the call set up time.

5.12 Regulation 14 – Commencement

5.12.1 The Authority has noted an error regarding the published Government Gazette No. 41538 of 28 March 2018, specifically regulation 14 thereof. According to the notice, the Number Portability Regulations are to be repealed on the date they come into force. The Authority, in correcting the error, has published the correct Number Portability Regulations, 2018, with this Reasons Document.

5.12.2 The Authority would like to advise that the Number Portability Regulations, 2018 will only come into force after the Authority has concluded the OSS process. The process as outlined in regulation 14 of the new Regulations will be followed.

Schedule A

Functional System Specification ("FSS")

5.13 Regulation 3: Information required for porting

5.13.1 Some stakeholders raised concerns over the information requirements for port requests to include Identity Documents/Cards or Passports and proof of residence. Some stakeholders indicated that these requirements were an unnecessary duplication as these are covered under the Interception Communications and Provision of Communication-Related Information Act, 2002 (Act No.70 of 2002). Vodacom also advised the Authority to consider the POPIA implications of capturing and storing personal documents such as proof of identity and proof of residence. Switch Telecom ²³also recommended that instead of using the account number, the account statement from the donor operator should be used.

5.13.2 In line with the RICA requirements, licensees have a framework for verifying the details of subscribers and as such the requirements envisioned by the Draft numbering plan regulations would have been a duplication. As such the requirements have been removed. However, the Authority has added additional information requirements for both prepaid and post-paid ports for legal entities in the Regulation 3 of Schedule A in the new Regulation.

5.14 Regulation 4: Port Validation

5.14.1 Some stakeholders supported the introduction of ONE-TIME PIN (OTP) to validate mobile number ports but however raised concerns over the introduction of an Interactive Voice Response (IVR) to validate geographic and non-geographic (086, 080 and

²³ Page 4, Switch Telecom's submission in respect of the draft number portability regulations (GG 41275)

087) number ports. Stakeholders raised concerns that the IVR mechanism was impractical to implement as it assumes that the service provided is only voice and that the person answering the IVR might be the nominated account holder as required in Regulation 3 of Schedule A.

5.14.2 Liquid Telecoms in its oral submissions presented that due to the nature of Geographic number ports and by possible inclusion, non-geographic number portability it is highly improbable to have a fraudulent port. This is due to the required physical installation and disconnection of services and access to premises by a consumer.

5.14.3 The validation for geographic ports was withdrawn as the current measures and nature of the port provide sufficient protection to consumers against invalid ports. However, mobile number ports still required an OTP authorization.

5.14.4 As of 2014 there have been incidents of slamming, whereby customers are ported without their knowledge. Such ports have also been identified as a concern in other jurisdictions ²⁴ and as such, some form of authorization is required from a customer before a port can be proceed\completed.

5.14.5 Such Authorizations have been implemented in various form, the most common being:

- a. A clearing house sends the customer an authority to which customer must respond to for the port request to proceed;
or
- b. The Recipient operator sends the Authorization for the customer to confirm that they indeed requested the port;
or

²⁴ BEREK report on best practices to facilitate consumer switching, October 2010

- c. The donor operator ²⁵sends the Authorization to proceed with the port request.

5.14.6 Taking into consideration the nature of invalid ports the Authority did not deem option (b) plausible. As such the new Regulations mandate that the donor operator obtain the required Authorization in the form of an OTP from the customer before it proceeds with the port request.

5.14.7 The required port request stipulates that, should a customer not respond to the port request the request should be declined.

5.14.8 In consideration of a subscriber's ability to respond to a message alerting to an active port request, the Authority considered variable circumstances including that listed in the case study below.

Case study:2

In March of 2018 a complaint was made by a customer who submitted that their number was ported without their consent. In addition to the invalid port there was an attempt to access their banking facility.

Upon investigation it was determined that the recipient operator had indeed sent messages to alert the customer to the port and to confirm the port as was required by the Regulations.

However, due to the nature of the customer's work whereby the customer is not permitted the use of their device during working hours the customer could not and did not respond to the recipient operator's messages.

²⁵ **TELECOM REGULATORY AUTHORITY OF INDIA: Customer guide for availing the facility of Mobile Number Portability**

5.14.9 There are many individuals like the customer in case study 2 who are in environments that require that they have limited access to their devices for certain periods of time. Other notable cases are customers who have travelled abroad and have opted not to have roaming services and thus cannot access their short messaging services (SMS). Such individuals may not be in a position to reply and dispute the alleged port request.

5.14.10 Thus, the Regulations mandate that if a customer does not respond to the OTP the port must be declined. In the instance whereby, the customer indeed requested for the port and did not respond to the authorization OTP they can submit a new request to that effect.

5.15 Regulation 5: Reasons for port rejection

5.15.1 A few stakeholders have raised concerns on the reasons adopted by donor operators to decline port requests specifically the message SP009.

5.15.2 Telkom²⁶ submitted that slight discrepancies in the account verification often result in ports being declined. However, one of the most contentious issues was the restriction to decline a port request based on outstanding fees i.e. early termination fees. The arguments were that Post-Paid subscribers should only be allowed to port once they have settled all outstanding fees including contractually agreed early termination fees.

5.15.3 In most jurisdictions²⁷ contractual obligations such as penalty fees have been cited as one of the most prevalent barriers on the ability to port numbers.

²⁶ Page 27, Telkom Submission “Draft proposed Number portability regulations published on 24 November 2017

²⁷ BEREC report on best practices to facilitate consumer switching, October 2010

5.15.4 In the findings document ²⁸ the Authority cited BEREC's findings that the single biggest obstacle to switching is contractual obligations. BEREC thus proposes as best practice that -

"Conditions and procedures to terminate contracts should not act as a disincentive to switching." This, as sighted, was in line with the EU Universal Service Directive 2002/22/EC, amended in 2009, which, in its Article 30 addresses the issue in the below paragraph: *"6. Without prejudice to any minimum contractual period, Member States shall ensure that conditions and procedures for contract termination do not act as a disincentive against changing service provider."*

5.15.5 Although some countries, when introducing portability, did allow contractual obligations as a reason to reject, including monies owed under an existing contract, the EU has moved away from it and it is now common practice to exclude this as a reason to reject.

5.15.6 As such, although stakeholders raised concerns on ability to decline ports because of amount owing this is not best practice in line with objective of number portability and affects the ability to port, in particular mobile post-paid segment.

5.15.7 As such the Authority upholds the finding that in the event of bad debt or monies outstanding, licensees have other avenues available to them which can be used to recover any penalties and debts due. As such the Authority upholds the exclusion of bad debt as reasons to decline ports. Other means, such as a shared black list and improved collection mechanisms should be exercised rather than to decline the port request.

²⁸ Notice No.483 of 2017 Government Gazette 40945

5.16 Regulation 7: Activation for Ported Numbers

- 5.16.1 Some respondents proposed that draft regulation 6 (2) of the Schedule A be aligned with the Port Validation Process time of 4 hours instead of 1 hour as the donor will not be able to effect porting requests until the subscriber has validated the port in the provided 4 hours. Other respondents proposed that the 1 hour be extended to 8 business hours as the cost of real-time integration to the CRDB is uneconomical for other licensees.
- 5.16.2 ISPA submitted that the 1-hour synchronisation changes to their networks as envisaged in draft regulation 6 (3) of the Schedule A is dependent on the NPC making the updates available which is beyond licensees' control.
- 5.16.3 Telkom requested the Authority to relax its compliance with the draft regulation 6 in its entirety due to technical challenges within its network.
- 5.16.4 The Authority has revised regulation 6 (2) where the 1 hour does not apply to the port validation and confirmation processes.
- 5.16.5 The Authority has retained the wording of regulation 6 (3) of Schedule A S because the synchronisation changes to the networks shall be made at a time agreed between licensees and once that time commences it shall be no longer than 1 hour.
- 5.16.6 The Authority did not accede to the request to relax compliance with the Regulations and will engage the affected licensee to ensure compliance with stipulated provisions..