

Submission to the Independent Communications Authority of
South Africa

**TELKOM'S WRITTEN SUBMISSIONS ON THE DRAFT CODE FOR
PERSONS WITH DISABILITIES REGULATIONS PUBLISHED IN
GOVERNMENT GAZETTE 43418 OF 12 JUNE 2020 AND
GOVERNMENT GAZETTE 43565 OF 28 JULY 2020**

A INTRODUCTION

1. Telkom SA SOC Limited ("**Telkom**") welcomes the opportunity to comment on the Draft Code for Persons with Disabilities Regulations published in Government Gazette no. 43418 of 14 June 2020 and Government Gazette no. 43565 of 28 July 2020 (the "**Draft Code**").
2. Telkom appreciates the efforts by the Independent Communications Authority of South Africa (the "**Authority**") to facilitate access to electronic communications services by people with disabilities.
3. Telkom reiterates its comments made to previous versions of the draft Code for Persons with Disabilities Regulations published by the Authority, including our submission to the draft Regulations on Code for Persons with Disabilities published in Government Gazette 41265 of 20 November 2017 ("**2017 Draft Regulations**"). We further reiterate our responses to correspondence by the Authority with regard to the provision of electronic communications services to persons with disabilities and the development of a national relay service ("**NRS**").

B EXECUTIVE SUMMARY

4. The Draft Code places obligations in respect of universal design requirements for all electronic communications devices on electronic communications services ("**ECS**") licensees. Telkom is of the view that existing mobile devices adequately address the electronic communication needs of persons with disabilities and we thus question the need for an NRS as an optimal system to assist in this regard. Basic handsets can accommodate both audio and text messages, and smartphones can accommodate audio, text, voice and video. This assists both visually and hearing impaired persons. Further, a number of free applications are available for people struggling with disabilities which obviates the need for regulation of electronic communications devices.
5. In light of technological advances and available applications, we therefore caution against specific adaptations to handsets which may necessitate further amendments to regulations in future and unnecessary costs.
6. In addition, ECS licensees (including Telkom) do not manufacture electronic communications devices, but purchase same from manufacturers and make them available for purchase to customers as part of various service offerings. The manufacturers generally subscribe to open, supplier-neutral standards. Should the

Authority wish to regulate technical standards for equipment, it should do so by means of amendments to the Type Approval Regulations and take into account issues relating to interoperability and open standards.

7. Telkom further cautions that the application of universal design requirements to all handsets may result in the exclusive provision of smartphones and the withdrawal from the market of basic handsets which do not meet universal design requirements. It is unclear on which basis *all* devices must meet these requirements where only a percentage of persons require access to universally designed devices and the majority of persons do not require such handsets. There is no indication of the relevant percentage of the population who require handsets which meet universal design requirements.
8. Should the Authority elect to continue with an NRS as proposed, we suggest that the full specifications first be finalised, and that it be explored whether funding can be provided by the Universal Service and Access Fund (“**USAF**”).
9. Alternatively, in the event that the costs to implement, manage and run the NRS is borne by MNOs, we are of the view that it should be shared by each licenced operator calculated according to the ratio of current subscriber market share, and should be adjusted annually.
10. We have also pointed out concerns regarding Complaints Processes for Persons with Disabilities and the provisions of the End User and Subscriber Service Charter (“**EUSSC**”) regarding non-discrimination between users, and propose that the current Draft Code and suggested penalties in the Draft Code be aligned with similar consumer legislation.

C SPECIFIC COMMENTS

Regulation 5(1): Universally Designed Products and Services

11. Telkom notes that the Authority has not amended the proposed provision in the 2017 Draft Regulations which places obligations on ECS licensees in respect of universal design requirements for all electronic communications devices. It is unclear on which basis all devices must meet these requirements as not all persons require access to universally designed devices. The relevant percentage of the population who require such access is also not indicated. The Draft Code may thus lead to the procurement of a large

amount of universally designed products which may then not be in demand, leading to unnecessary and wasted storage costs.

12. Moreover, as pointed out in previous submissions, the primary licensed activity of an ECS licensee is to transmit electronic communications over an electronic communication network. ECS licensees (including Telkom) do not manufacture electronic communications devices, which presumably includes handsets and personal computers, but purchase same from manufacturers and make it available for purchase to customers as part of various service offerings. It is therefore not in a position to adapt ready for purchase devices that it does not manufacture.
13. The term “electronic communications devices” is not defined in the Draft Code, and it is not clear whether this term is similar to “subscriber equipment” as defined in the Electronic Communications Act (“**ECA**”) or only to handsets, as the Draft Code seems to focus on the regulation of handsets. Under the ECA, subscriber equipment is excluded from the definition of “electronic communications network”. Customers have the freedom to choose their subscriber or customer premises equipment, including the type of handsets they purchase.
14. Should the Authority wish to regulate technical standards for equipment, it should do so by means of amendments to the Type Approval Regulations. The Authority prescribes standards for the performance and operation of equipment, aimed at protecting *inter alia* the integrity of the electronic communications network and interoperability. Any person can by electronic communications equipment of their choice and use it on an ECS provider’s network as long as it is type approved and complies with the minimum technical standards.
15. Alignment by South Africa with international standards and standards making bodies such as IEEE should also be taken into account. The South African Bureau of Standards (SABS) and South African National Accreditation System (SANAS) both play crucial roles in ensuring the development and evaluating of standards and should be consulted.
16. Further, licensees cannot prescribe the compatibility standards of devices to manufacturers. Should certain devices be universally designed, accessibility must be built into such devices from the outset. The universal design and purchase of electronic communications devices could be funded from or subsidised by the USAF. In this regard, smartphones could be subsidised which already have built-in voice recognition applications, and can use and understand voice commands, enable text to speech for

reading messages and have on-screen magnifiers, large text options, high-contrast viewing modes and screen-reading software to assist people with disabilities.

17. The proposed regulation would also negatively impact consumer choice. Telkom sells both fixed line and cellular devices of different makes and models at different prices. This is to give consumers a choice which is most affordable and best suited to their needs and means. The provision that licensees must ensure that all electronic communications devices are universally designed may have the result of eroding consumer choice with regard to devices. In this regard, it could lead to the exclusive provision of smartphones and the withdrawal from the market of basic handsets which do not meet universal design requirements.
18. Smartphones are becoming more accessible and affordable to all market segments in South Africa. Many smartphone (3G and 4G) devices are subsidised by the current mobile network operators. Handsets procured by licensees, including Telkom include, amongst others, compatibility requirements for disabilities. Most smartphone mobile devices can cater for four different forms of communication needs: text (sms), photo, audio and video and various apps cater for the specific needs of persons with disabilities. Various apps also allow for videoconferencing where sign language can be accommodated. It is our view that these devices adequately address the electronic communication needs of persons with disabilities.
19. In light of technological advances, the use of applications to cater for persons with disabilities is more practical than prescribing the adaptation of devices. As the regulations are limited to persons with hearing and visual impairments and there are various applications that can assist such persons, it is unclear why it is necessary to regulate electronic communications devices (or attempt to impose obligations on licensees where they are not responsible for the manufacture of these devices) or to develop a complex and costly NRS.
20. In this regard, a number of applications have been developed and are available for people with disabilities. For example, an Accessibility Scanner app can be used to suggest accessibility improvements for Android apps without requiring technical skill. The user can make changes his / herself, e.g. enlarging small touch targets, increasing contrast, and providing content descriptions so that any app can be more easily used by individuals with accessibility needs. A TalkBack screen reader app enables spoken feedback, the control of a device with gestures, and typing with the on-screen braille keyboard. Assistive

Touch and other apps also assist blind and visually impaired users. JABtalk is a free speech communication application designed to help non-verbal children and adults communicate. Live Transcribe is an app that provides free, real-time, speech-to-text transcriptions. It shows speech and sound as text on the screen, and responses can be typed on the screen. Lookout uses computer vision to assist people with low vision or blindness using the phone's camera, to gather information about the world.¹

Regulations 5(2) and 5(3): Hearing Aid Compatibility Requirements for Fixed Line Handsets and Visually Impaired or Blind Aid Compatibility Requirement for Mobile Handsets

21. In light of technological advances and available applications, we caution against specific adaptations to handsets which may necessitate further amendments to regulations in future. Telkom in its submission of September 2019 also queried why hands-free sets and visual signal alerts are prescribed for hearing impaired users. Notwithstanding, the wording was retained without amendment in the current draft regulations.
22. We reiterate that it also depends on the manufacturer whether handsets can be adapted to meet compatibility requirements. We caution that the unintended effect of compatibility requirements as proposed is an increase the cost of handsets to consumers.
23. Further, building capabilities to make product information and billing information available in alternate formats may lead to an unnecessary and unintended increase in the cost of communications.

Regulation 6: National Relay Service (NRS)

24. Telkom has previously expressed its concerns regarding the proposed NRS. The scale and scope of an NRS poses significant challenges to ECS licensees. We note that although the Authority stipulates that the proposed NRS is a video relay system, it does not provide the interoperability requirements and standards pertaining to the relevant end user equipment to be used by persons with disabilities which are connected to this system. As this is a national system involving the networks of all ECS licensees, requirements such as communications assistants, service hours, supplementary services, integrity, encryption, traffic monitoring and related issues around lawful

¹ <https://www.androidauthority.com/best-disabled-apps-and-accessibility-apps-for-android-586626/>.

interception needs to be considered. Clarity is also required as to access by visually impaired persons.

25. The Authority states in the Explanatory Memorandum provided with the Draft Code that only one licensee responded to its enquiry regarding the cost to provide the proposed NRS, yet it states that it has “clearly” determined that it would be feasible to provide this service. In our letter dated 05 December 2019 we responded to the Authority’s request for information on the cost of accessibility services for people with Disabilities and indicated that it is difficult to provide a detailed cost estimate without a full scoping exercise which would entail the model and structure of the NRS, and the interoperability standards pertaining to the end-users equipment. Telkom thus reiterates that a full due diligence and in-depth study is required to assess impact and costs. Should a model be considered in terms of which all operators fund an NRS, we propose that the Authority sets out a detailed commercial model to be developed for an NRS, prior to the commencement of any scoping or planning work.
26. The implementation of a video relay service to augment the envisaged NRS requires a thorough technical assessment as well as trials to test the service, as the choice of platforms, the implementation model and integration possibilities vary widely. It will be necessary to clearly define user requirements as well as how equipment should be distributed to facilitate call distribution and provide redundancy in the event of an outage.
27. The Authority states that the NRS will be accessible using a pc, tablet, smart phone, television interface or videophone. It is not indicated whether persons with disabilities have access to all these devices. While software applications are referenced, it is also unclear how interoperability issues will be addressed where each licensee has its own software application.
28. We further trust that the Authority will make available research supporting the need or preference of the use of a relay service by people with disabilities. The ITU-T report in respect of the workshop on Telecom Relay Services² pointed out that only 25 countries in the world have an official telecom relay service, and those countries have different standards of service. The large financial cost to implement, maintain and operate TRS was also highlighted during this workshop.

² Report of workshop on Telecom Relay Services, WSIS Accessibility Day, 8 April 2019, www.itu.int.

29. It was highlighted at the ITU-T workshop that a regulatory framework needs to address consistent, unified approach in the entire ecosystem to provide services and should address data privacy. It is further necessary to consider third parties involved in the services. The physical intermediary must be well-trained and credible, as in some cases the conversation could be very personal and the intermediary must not get involved or provide a different version to the caller or recipient. It must also be ensured that unified sign language is being used. It must further be considered whether there are enough qualified interpreters, who will be responsible for payment of these interpreters, the necessity of a code of ethics for relay centres and how complaints and inquiries will be dealt with. Funding should be secured for the operational cost.
30. Further concerns include difficulty in using the equipment, the need for an appropriately lit environment and confidentiality issues. Awareness-raising in the use of the relay services is very important for general public to get used to such services, and funding will be required for education and awareness programmes.
31. Telkom is of the view that existing mobile devices, as well as free applications, address the electronic communication needs of persons with disabilities and questions the need for an NRS. Basic handsets can accommodate both audio and text messages, and smartphones can accommodate audio, text, voice and video. This assists both visually and hearing impaired persons, as persons with speech impairment can send text messages to others in a similar way as those with hearing impairments. Captioned telephony, where the screen displays text captions of the conversation during the call in near-real time, may be preferable, pose less privacy issues and captioned telephony apps are available for mobile phones.
32. Telkom proposes that should the Authority continue to support an NRS, it be developed by a third party, who would prescribe and manage the relevant specifications referred to in pages 5-7 of Annexure A. This third-party service provider would develop, update and monitor the system or video platform for people with disabilities. If an application with various functionalities is then made available for use by end-users with disabilities, the users would access the application by means of connectivity provided by their respective operators.
33. Should the costs to implement, manage and run the NRS be allocated to MNOs, an impact study will also be necessary in order to evaluate the financial effect on operators, in particular in light of numerous additional obligations on operators under COVID-related

regulations and directions. Due to the complex nature and high costs to develop, manage and run such a service alignment and collaboration would be essential.

34. Telkom further requests that terminology in paragraph 12.1 of Annexure A be clarified, such as what is meant by “standard telephone numbers” as well as references to the numbers having 11 digits of more where our standard digit length in SA is 10-digits. It is unclear whether other capabilities, such as sms, are also contemplated in respect of the proposed system.

Regulation 7: General Requirements for Communication and Information Provisions and Complaints Process for Persons with Disabilities

35. In terms of the ECA, the Authority may prescribe or impose measures in respect of directory services through licence conditions. Obligations regarding directory services is set out in Telkom’s ECS licence. It is unclear why additional directory obligations are necessary. All persons, including persons with disabilities, have access to directory information through various means, including online directories.
36. Further, discriminating between users by prescribing priority processes for persons with disabilities is likely to cause confusion and will be practically extremely difficult to manage, as it would need to be clear that the customers accessing complaints processes, are persons with disabilities. In terms of the Authority’s Code of Conduct and the End User and Subscriber Service Charter regulations (EUSSC), licensees are not allowed to discriminate between customers in terms of products and services, fault repair or complaints processes, and this needs to be aligned with the provisions of the Draft Code as necessary.
37. Various requirements listed in regulation 7 will lead to additional costs, including the making available of trained customer service staff as well as brochures and awareness campaigns. CPE also contain instructions for use, and an additional obligation on ECS licensees to make available staff to specifically explain the use of equipment to persons with disabilities is unnecessary.
38. It is also unclear why a special emergency number must be provided for persons with disabilities when various emergency numbers have already been assigned and are available to citizens, including 112, 10111 and 10177. It would be more appropriate if the 112-emergency centre could investigate means to assist persons with hearing and visual

disabilities, should this be required. The Authority is also seeking written submissions in relation to the service codes 103, 104, 105, 106, 118, and 139 in seeking a harmonised service code for COVID-19 national emergency services. Any new number declared by the Authority must be aligned with relevant regulations, including the numbering plan regulations, and must be informed by the necessary evidentiary basis. Cell phone networks also have different special sms emergency services for customers who are deaf, hearing-impaired and speech-impaired.

39. Lastly, Telkom already makes available publicly advertising and promotions material through various media channels including on TV, radio, online, on Telkom's website, broadsheets, posters, leaflets, etc. An additional requirement for various printed materials would have the unintended effect of increasing the cost of communications to end-users and may further not be feasible due to space constraints in stores.

Contraventions and Penalties

40. A fine not exceeding R5 000 000 or 10% of the licensee's annual turnover for every day or part therefore is excessive for the type contravention anticipated in these Regulations. Telkom proposes that any penalty be reconsidered in line with penalty provisions in other consumer regulations such as ICASA's Code of Conduct and EUSSC regulations.

Conclusion

41. Telkom welcomes the Authority's intention to accommodate the needs of persons with disabilities with regards to access to electronic communications. However, the Draft Code proposes additional obligations on licensees which in our view, are in certain cases misdirected (such as imposing obligations on licensees regarding the universal design of handsets where manufacturers and not licensees do not manufacture handsets), excessive and unnecessary. Further, due to the failure to clearly indicate the demand for universal handsets, it may lead to the production of handsets for which there is insufficient demand. If all devices are required to be universally designed, it would also limit consumer choice. Should the Authority wish to regulate technical standards for equipment, it must do so by means of amendments to the Type Approval Regulations and take into account issues relating to interoperability and open standards.
42. A variety of free applications are available to meet the needs of persons with disabilities, and smartphones cater for their needs as well. As NRS poses challenges with regard to

the qualifications and management of physical intermediaries as well as interoperability concerns. As access to the NRS necessitates smartphones, it is suggested that funding rather be allocated from the USAF to fund smartphones in light of the technical complexity of an NRS.

43. Should the Authority continue to proposed an NRS, it is suggested that a third party develop and implement same to ensure interoperability and consistent standards. In the event that the costs to implement, manage and run the NRS is not funded by the USAF but borne by MNOs, we are of the view that it should be shared by each licenced operator calculated according to the ratio of current subscriber market share, and should be adjusted annually.
44. An additional emergency number for persons with disabilities is not advised in light of the many existing emergency numbers, as well as dedicated numbers by cellphone networks. Any such number, should same be considered, must further be aligned with the Numbering Plan Regulations.
45. We further propose alignment of the Draft Code with the provisions of relevant consumer legislation as necessary.

We trust you find the above in order. Should there be oral hearings, Telkom would like to express its interest to participate.

End of report