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**BY FAX**

Mr Paris Mashile

Chairperson

**Independent Communications Authority of South Africa**

Sandton

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cc Dr Tracy Cohen (by email)

Dear Sir

**ISPA SUBMISSION REGARDING THE ADSL REGULATIONS**

We refer to the "Regulations regarding the Provisions of Asymmetrical Digital Subscriber Line (ADSL) services" published in Government Gazette 29141 as General Notice 1112 on 17 August 2006 (hereinafter referred to as "the Regulations"). We note that ICASA has made a public call for input that is relevant to improving the current situation and would like to avail ourselves of this invitation.

ISPA, on behalf of its members, wishes to raise for discussion and resolution the concerns set out below:

1. AD SECTION 1 OF THE REGULATIONS

1.1. ISPA notes that the word "TELKOM" is defined as follows:

*"TELKOM" means TELKOM (Pty) Ltd incorporated in terms of the Companies Act, 61 of 1973."*

1.1.1. This definition is erroneous in that Telkom should in fact be defined as meaning "...TELKOM SA Limited incorporated...".

1.1.2. Insofar as the presence of this erroneous definition could be construed as implying that Telkom SA Limited is not bound by the Regulations we request that the Authority confirm that it will attend to an amendment of the quoted definition as soon as possible so as to avoid further potential delays in the actual implementation of the Regulations. In the

event that the Authority does not agree with the necessity of the proposed amendment it is requested to provide its reasons for such opinion.

## 2. AD SECTION 3.1 OF THE REGULATIONS

*“3.1. Subscribers who enlisted for the ADSL service prior to the introduction of the monthly cap shall have an election to abide by, terminate the contract for the service upon notice to the Telkom, SNO or ISPs or vary the terms and conditions in relation to the monthly cap.”*

2.1. ISPA notes that this provision is only relevant to Telkom and Telkom ADSL resellers providing ADSL services prior to November 1993.

2.2. ISPA would appreciate receiving confirmation from the Authority that its interpretation of this clause is in accordance with that expressed in 2.1 above.

## 3. AD SECTION 3.2 OF THE REGULATIONS

*“3.2. Subscribers that have reached the monthly cap shall be allowed to top-up their monthly cap without the need to purchase a new user account. This provision shall not in anyway be used to prevent subscribers who choose to purchase new accounts once their monthly cap has been reached from doing so, should they wish to do so.”*

3.1. ISPA notes that this section is in conflict with the section 3.4 in that the reference to the “monthly cap” does not distinguish between local and international bandwidth. It is clear from section 3.4 that the monthly cap is not applicable to local bandwidth and we submit that section 3.4 requires amendment to clarify that the monthly cap and the topping-up thereof is only applicable with respect to international bandwidth.

3.2. ISPA suggest the following amendment to section 3.4:

*“3.2. Subscribers that have reached the monthly cap in respect of international bandwidth shall be allowed to top-up ~~their~~ such monthly cap without the need to purchase a new user account. This provision shall not in anyway be used to prevent subscribers who choose to purchase new accounts once their monthly cap in respect of international bandwidth has been reached from doing so, should they wish to do so.”*

3.3. ISPA requests that the Authority provide it with confirmation that it will attend to the amendment of the Regulations in this respect alternatively to provide its reasons should it be of the opinion that such amendment is not necessary.

#### 4. AD SECTION 3.4 OF THE REGULATIONS

*“3.4. Local bandwidth usage shall not be subject to the cap.”*

- 4.1. ISPA supports the principle behind this section and notes that the section does not impose any obligations on ISPs in respect of the pricing of local bandwidth usage.
- 4.2. ISPA notes that a technical redesign is necessitated on the part of Telkom so as to enable ISPs to comply with this section, and it is accordingly currently impossible for its members to so comply.
- 4.3. ISPA notes further that Telkom has made public statements to the effect that “Telkom, as a wholesale provider of Internet connectivity to ISPs does not cap customers as this is a functionality of the ISPs”. This view is at odds with the reality that Telkom, and not ISPs, is in full control of the ADSL infrastructure and is required to engage with ISPs so as to facilitate the implementation of this section. ISPs continue to pay per Gigabyte for local bandwidth as opposed to being able to enter into a flat-fee arrangement.
- 4.4. Clarity is therefore required from the Authority in respect of the status of Telkom’s compliance with section 3.4. As it does not appear that Telkom is in full compliance with this section what steps are being taken by the Authority to ensure such compliance?
- 4.5. Confirmation is required from the Authority that the obligations of ISPs under this section are suspended and/or will not be enforced by the Authority until such time as Telkom has completed the required technical redesign in consultation with ISPs and there is clarity on the manner in which this will be implemented.

#### 5. AD SECTION 3.5 OF THE REGULATIONS

*“3.5. Telkom or SNO shall publish updated information on ADSL-enabled exchanges in the white pages of the telephone directory or electronic directory.”*

- 5.1. ISPA is concerned that the effect of the requirement that Telkom and Neotel (when applicable) are required to publish the required information in the telephone directory is to impose an obligation to publish this information only once a year.
- 5.2. ISPA submits that this interpretation would undermine the intended effect of the section and that, in order for the section to be effective, the information required should be published on at least a quarterly basis as is required of the publication of statistics and Key Performance Indicators in terms of section 6 of the Regulations.
- 5.3. ISPA accordingly suggests the following amendment to this section:

*“3.5. Telkom or SNO shall publish, on at least a quarterly basis, updated information on ADSL-enabled exchanges in the white pages of the telephone directory or electronic directory.”*

5.4. ISPA requests that the Authority provide it with confirmation that it will attend to the amendment of the Regulations in this respect alternatively to provide its reasons should it be of the opinion that such amendment is not necessary.

## **6. AD SECTION 3.6 OF THE REGULATIONS**

*“3.6 Telkom or SNO shall install the ADSL service within thirty (30) working days of receipt of an application if the applicant qualifies and resides within an ADSL-enabled exchange area.”*

6.1. Insofar as the proper implementation of this section is clearly in the interests of its members as also those of the broadband industry and consumers, ISPA requests clarity from the Authority in respect of the status of Telkom's compliance with section 3.6. As it does not appear that Telkom is in full compliance with this section what steps are being taken by the Authority to ensure such compliance?

6.2. ISPA further requests that the Authority provide it with guidance on the possible sanctions which can be applied for non-compliance with this section.

## **7. AD SECTION 4.1 OF THE REGULATIONS**

### ***“4. Throughput speeds***

*4.1. Telkom, SNO and ISPs shall guarantee minimum broadband speeds for the ADSL service in order to ensure that the service does not lose its broadband character.”*

7.1. In the light of Telkom's continued *de facto* control of the ADSL infrastructure it is not possible for ISPs to provide the guarantee required in section 4.1 in the absence of such a guarantee having been provided by Telkom.

7.2. The Authority will no doubt appreciate that ISP compliance with this section is accordingly dependant on compliance therewith by Telkom and, at such stage as it becomes relevant, by Neotel.

7.3. Clarity is therefore required from the Authority in respect of the status of Telkom's compliance with section 4.1. As it does not appear that Telkom's is in full compliance with this section what steps are being taken by the Authority to ensure such compliance?

- 7.4. Confirmation is required from the Authority that the obligations of ISPs under this section are suspended and/or will not be enforced by the Authority until such time as Telkom itself provides published and binding guarantees of the minimum broadband speeds for the ADSL service.
- 7.5. Furthermore ISPA requests clarity from the Authority as to which elements of the access layer will be utilised in the measurement of the minimum broadband service to be guaranteed.
- 7.6. Alternatively the Authority is required to confirm that ISPs which provide internet access but do not provide the local access portion of the ADSL service are by necessary implication exempt from the provisions of section 4.1.

## 8. AD SECTION 5 OF THE REGULATIONS

### ***"5. Port Prioritisation***

*Telkom, SNO and ISPs shall not be allowed to impose port prioritisation on their subscribers."*

- 8.1. ISPA accepts that the intent behind the enactment of this section is to enable consumer choice but would appreciate confirmation that the Authority's interpretation of this clause in no way prevents ISPs from offering consumers a choice between specific packages based on port prioritisation as against other offerings in respect of which there will be no port prioritisation.
- 8.2. ISPA notes that the above interpretation accords with that publicly stated by Telkom, which has stated in correspondence that it regards itself as being in full compliance with this section "as SAIX and TelkomInternet offer both prioritised and unprioritised services to their customers, i.e. [port prioritisation] is not imposed on customers as they have a choice between the two services".

## 9. AD SECTION 6.1. OF THE REGULATIONS

### ***"6. Key Performance Indicators***

*6.1. Telkom, SNO and ISPs shall on a quarterly basis publish on its website the contention ratio as commitment to good business practice."*

- 9.1. While ISPA is supportive of the principle underlying this section we note that it is not possible for ISPs to comply with the section in its current form at this time. This impossibility flows from:
- 9.1.1. Telkom's continued failure to provide details, including contention ratios, relating to its provisioning of the ADSL service; and
  - 9.1.2. ISP's current inability to calculate the access rate at which their end users connect.
- 9.2. Clarity is therefore required from the Authority in respect of the status of Telkom's compliance with section 6.1. As it does not appear that Telkom's is in full compliance with this section what steps are being taken by the Authority to ensure such compliance?
- 9.3. Confirmation is required from the Authority that the obligations of ISPs under this section are suspended and/or will not be enforced by the Authority until such time as Telkom itself publishes and makes available to ISPs the information required.
- 9.4. ISPA further notes the need for clarity on the manner in and network element at which contention ratios will be calculated so as to avoid consumer confusion, and would appreciate guidance as to the interpretation to be adopted by the Authority in this regard. The Authority will no doubt appreciate that the effectiveness of this clause in empowering consumers and promoting competition rests on a uniform approach being adopted or enforced across all providers of broadband internet access.

## 10. AD SECTION 6.2 OF THE REGULATIONS

*"6.2. Telkom, SNO and ISPs shall publish on its website, on a quarterly basis, Key Performance Indicators comprising of at least Packet Losses, Average latency and jitter for the provided ADSL service as a commitment to good business practice."*

- 10.1. ISPA once again wishes to highlight that compliance with the requirements of this section by ISPs is completely dependent on Telkom's compliance therewith. Insofar as ISPs do not have access to the network elements in Telkom's ADSL network they are unable to measure the statistics specified in section 6.2.
- 10.2. ISPA notes that no guidance is given as to measurement standards in respect of Key Performance Indicators; an omission which we submit has the potential to largely negate any benefit which may flow from the publication of these statistics.
- 10.3. ISPA notes further that, in order to ensure effective compliance with this section on the part of ISPs and to give proper context to the statistics to be published, Telkom would need to provide accurate figures in respect of the local and international bandwidth available to the ADSL network
- 10.4. Clarity is therefore required from the Authority in respect of the status of Telkom's compliance with section 6.2 and its willingness to provide to ISPs timeously the information

required in order to allow them to comply with the section. As it does not appear that Telkom's is in full compliance with this section what steps are being taken by the Authority to ensure such compliance?

- 10.5. Confirmation is required from the Authority that the obligations of ISPs under this section are suspended and/or will not be enforced by the Authority until such time as Telkom itself publishes and makes available to ISPs the information required.

## 11. AD SECTION 7.1 OF THE REGULATIONS

### ***"7. 24 Hour ADSL Service reset***

*Telkom, SNO and ISPs shall not periodically reset the ADSL service."*

- 11.1. ISPA wishes to point out that periodic resets are performed by Telkom and not ISPs and that there is a need for Telkom to engage with ISPs so as to align resets with bandwidth measurement on the part of ISPs in a manner acceptable to end users.
- 11.2. ISPA notes that Telkom has stated that "...the SAIX service necessitates periodic resets of Internet services (which are in this instance rendered to ISPs) for accounting purposes as real time accounting is currently not available. Telkom, in collaboration with ISPs, is investigating how to align themselves with this aspect of the Regulations as soon as possible and this will also be discussed with the regulator."
- 11.2.1. ISPA is unaware of any approaches from Telkom in this regard.

## 12. AD SECTION 7.2 OF THE REGULATIONS

*"7.2 Any reset required for the service maintenance shall be done with a prior notification of at least seven (7) days to the subscribers and by notification on the website."*

- 12.1. ISPA submits that, while it is supportive of the principle underlying this section, the wording of the section should be amended to allow for emergency maintenance work. An absolute obligation as raised in the current wording of the section will have the effect of unreasonably delaying emergency and unscheduled maintenance with potentially negative consequences for service provision and quality of service.
- 12.2. ISPA respectfully suggests the following amendment:

*"7.2 Any reset required for the service maintenance shall be done with a prior notification of at least seven (7) days to the subscribers and by notification on the website*

12.2.1. Notwithstanding the above, Telkom, SNO and the ISPs shall not be prevented from carrying out emergency maintenance subject to the giving of the maximum possible notice to subscribers as may be reasonable in the circumstances, including publication of the scheduling of the maintenance on the website.

12.2.2. In the event that prior notice of emergency maintenance or other work cannot be given then Telkom, SNO and the ISPs shall take all reasonable steps to inform subscribers of the emergency maintenance of other work and reset at the earliest possible opportunity.”

### 13. AD SECTION 8 OF THE REGULATIONS

#### **“8 Service Level Agreements**

*Telkom, SNO and the ISPs shall enter into service level agreements with subscribers. Such agreements shall determine among others:’*

- (i) complaint processes and procedures;*
- (ii) dispute resolution mechanisms;*
- (iii) turn around times in effecting repairs;*
- (iv) penalties for failure to effect repairs in time and issues related thereto; and*
- (v) guaranteed minimum downstream data rate for local loop length of a given distance.*

*The Authority may, at the request of any party wishing to conclude a service level agreement contemplated herein, intervene to resolve any dispute in instance where a service level agreement cannot be concluded within sixty (60) days.”*

13.1. Once again it is ISPA’s position that compliance with the fundamental requirement of section 8 on the part of its members is dependent on Telkom and accordingly impossible for ISPs to comply with until such time as the required SLAs are provided by Telkom.

13.2. In order to provide the required SLAs ISPs require Telkom to exhibit a willingness to enter into back-to-back SLAs with respect to their ADSL infrastructure, including the IPC service.

13.3. ISPA confirms that its members will comply with section 8 to the extent that they are able to and with particular regard to sections 8 (i) and (ii), although these will not be set out within the framework of the SLA contemplated in the section.

13.4. The balance of the requirements listed are outside of the control of ISPs.

13.5. Clarity is therefore required from the Authority in respect of the status of Telkom’s compliance with section 8. As it does not appear that Telkom’s is in full compliance with this section what steps are being taken by the Authority to ensure such compliance?

- 13.6. Confirmation is required from the Authority that the obligations of ISPs under this section are suspended and/or will not be enforced by the Authority until such time as Telkom itself complies with section 8 through the offering of the required SLAs.
- 13.7. Alternatively the Authority is required to confirm that ISPs which provide internet access but do not provide the local access portion of the ADSL service are by necessary implication exempt from the provisions of section 8.

ISPA notes in conclusion that there are a number of grammatical and stylistic errors reflected in the Regulations and offers its assistance in the identification and rectification of such errors should the Authority request this.

The Authority will no doubt appreciate the invidious position which the Regulations in the current form place our members in, and ISPA has little alternative but to reserve its rights in respect of any action which the Authority may take to enforce the Regulations in their current form.

The above notwithstanding ISPA remains of the view that the Regulations have the potential to address what it identifies as being fundamental shortcomings relating to the provision of the ADSL service in South Africa and wishes to emphasise its desire to work with the Authority in ensuring that the Regulations play their intended role. Accordingly we look forward to your earliest considered response as to how industry is to proceed to effectively implement the Regulations.

Kindly acknowledge receipt.

Yours faithfully

INTERNET SERVICE PROVIDERS' ASSOCIATION

Per:

ISPA Joint Chairs

Lynne Orrock & Greg Massel