



25 May 2006

The Chairperson  
Portfolio Committee on Justice and Constitutional Development  
P O Box 15  
Cape Town  
8000

Attention: Ms P Sibisi  
Secretary: Portfolio Committee on Justice and Constitutional  
Development

Email: [psibisi@parliament.gov.za](mailto:psibisi@parliament.gov.za)

Dear Madam

**Re: The Regulation of Interception and Provision of Communications-related Information Act Amendment Bill [9-2006]**

We refer to the Regulation of Interception and Provision of Communications related Information Act Amendment Bill (“the Amendment Bill”) and the invitation to comment on this Bill extended to us by the Parliamentary Portfolio Committee of Justice (“the Committee”).

MTN takes this opportunity to submit its comments and its proposals on the changes that should be effected to the Amendment Bill as tabled in Parliament by the Department of Justice and Constitutional Development (DoJ).. We also confirm that MTN will participate in the oral hearings on the Amendment Bill which have been scheduled for 30 May 2006.

MTN’s comments and proposal are as follows:

**1. Capturing information regarding MSISDN as opposed to SIM card**

A customer of a mobile telecommunication service provider is identified by a unique identification number (MSISDN). This number is the crucial identifier allocated by a mobile telecommunication service provider to a customer and

enables a customer to make and receive calls. Without this number a customer cannot access the network at all.

A SIM card, on the other hand, is the security token that connects the handset to the network. SIM cards are routinely exchanged or swapped, but the MSISDN remains the same. Through the MSISDN, the attached SIM card is capable of being identified at any point in time. It is therefore essential to specify that the **customer information associated with the use of a MSISDN, as opposed to a SIM card**, is captured.

In line with the above, it is proposed that, for the sake of clarity, section 40 be amended to read as follows:

- (1) A telecommunications service provider who provides a mobile cellular service shall not –
  - a. activate a SIM-card; or
  - b. allow the use of any cellular phone,on its telecommunications system unless the particulars of the ~~SIM-card~~ **MSISDN associated with the SIM card** or cellular phone are recorded and stored in the manner provided for in subsection (2).
  
- (2) From the date of commencement of this section a telecommunications service provider must, subject to subsection (4), at own cost implement a process to record and store, and must record and store –
  - (a) the mobile subscriber integrated service digital network number (MSISDN number) of the SIM-card that is to be activated **in terms of subsection (1)**.

## 2. Capturing of Handset Information (IMEI)

MTN, together with the other mobile operators have previously made detailed submissions to the DoJ regarding the difficulty in implementing a separate registration process in respect of handsets. MTN does not support the registration of handsets for the following reasons:

- (1) The handset is a device that cannot be used without an active SIM card that enables access to a mobile cellular network. Furthermore, a SIM card can only be activated if a MSISDN has been allocated for use by the customer,

and most importantly

- (2) MTN 's fraud management system captures the MSISDN of each and every call that is made on its network together with the IMEI (the handset registration number) of the handset that is used to make the particular call. This allows MTN to perform handset usage queries based on a MSISDN and/or based on an IMEI which

information is currently available to the Law Enforcement Agencies (LEA'S) relevant law enforcement agencies if so required. MTN's fraud management systems capture all IMEIs' that have been used by a particular MSISDN and all the MSISDNs' that have been used to make calls on a particular handset.

MTN accordingly confirms that in line with the requirements of section 40(2) (b) the registration of an MSISDN would by association result in the capturing of the IMEI of any cellular phone used with that MSISDN.

We would therefore propose that section 40(2) (b) be amended to state the following:

(b) the international mobile equipment identity number (IMEI number), of the cellular phone that is <del>to be</del> used; and
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### 3. Detail of customer information to be captured

In the proposal presented to the Deputy Minister dated 14 November, MTN and the other mobile operators proposed the capturing of the MSISDN and the ID number of the customer. Responding to feedback received from the DoJ, we advised them in a letter dated 2 February 2006 - a copy of which is attached to this submission as Annexure "A" - that we would capture the MSISDN, ID number, first name, surname and a relevant address. The Amendment Bill, however, specifies much more information to be captured including full names, residential address, business address and postal address.

Consideration must be given to the fact that the information has to be captured whilst the customer is standing in front of the registration officer. The mobile operator data-capture systems, particularly in the informal sector that accounts for approximately 30% of pre-paid sales, are not configured to capture the proposed additional information. Unfortunately, at this late stage it is not practical to re-configure the systems to cater all the additional information. It is important to keep data capture requirements as simple as possible and not overly elaborate as the proposed use of handsets for subscriber registration in the informal sector may lead to both system and human errors that will negatively impact on data integrity.

The technology already developed specifically in terms of RICA has limitations that restrict the level of data that is required in terms of the Amendment Bill. If the requirement to register all the data fields as currently proposed in the Amendment Bill remains, it would mean that registration will only be possible at the formal distribution channels. This will in turn mean that the subscribers who are located in rural areas, or in areas that are not close to a formal channel will be prejudiced, and in this way government's telecommunications universal access policy would be severely compromised.

We respectfully submit that the LEA's can, with a view to validation, obtain the full names of a subscriber from the Home Affairs database if the ID number is known. The capture of the first name and surname, as proposed, would provide an added level of validation. It is accordingly proposed that only the first name, surname and ID number of a subscriber be captured. Further that only a single address relevant to the customer be captured. Additional data can be obtained by the LEAs with reference to other sources of data such as Home Affairs and from financial institutions in terms of Final Intelligence Centre Act (FICA).

We propose that the following amendments be made to accommodate our concerns:

40(2)(c)	the full names <b>first and last name</b> , identity number, and <b>either a</b> residential, or business, <del>and</del> <b>or</b> postal address of the person who requests that a SIM-card be activated or a cellular phone be allowed to be used with a SIM-card
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#### 4. Transfer of SIM cards and/or handsets

Given that as stated in paragraph 2 above, MTN will always have a registered customer's handset number (IMEI), we propose that deletion of the reference to "cellular phone" in s40(5):

(3)	Any customer who from the date of commencement of this section sells or in any other manner provides a <del>cellular phone or</del> SIM-card to a person other than a family member, must --
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We also understand that the focus is on tracing the initial owner who will be the locus of any investigation into the chain of events for a transfer of ownership. The Amendment Bill now introduces a hybrid paper-based/electronic registration process in cases of transfer of ownership. We still stand by our view that any paper based approach to registration of subscribers is neither practical nor manageable in the digital age.

The Amendment Bill further places the obligation on the person transferring ownership to provide the details of such transfer to the telecommunications service provider. We are concerned that this may create a situation which could lead to fraudulent transfers since any person can claim that s/he transferred his/her SIM card to another person by mere reference to details he or she has written down.

#### 5. Period of registration for historical customers

Consideration must be given to the fact that on 30 June 2006, MTN would not have deployed the full contingency of registration points and registration officers. Furthermore, any new procedure will have its teething problems and

the existing registration points will not be operating at full capacity. It is therefore critical that sufficient time is provided in which to effectively resolve these problems so that MTN can attend to the registration of subscribers.

At this point in time a registration period of 12 months is not practical. Assuming that there are approximately 25 million active MSISDNs in the market, and given the fact that there is 21 working days in a month with 10 registration hours per day, MTN will have to facilitate the capturing and verification of the details of 9 920 customers per hour. This excludes all the new subscribers and assumes that we will be able to register at full capacity from day one.

It is respectfully submitted that the provision of a 12 month registration period will have a discriminatory impact on the customers that reside in the rural areas which makes up a substantial portion of the pre-paid subscriber base, specifically Lifestyle Standards Measurement (LSM) 1-3 which constitute roughly 30% of mobile subscribers. In our proposal to the Deputy Minister we re-iterated the need to ensure that subscriber registration does not hamper the achievement of universal access. We therefore submit that the Committee should give consideration to extending the twelve (12) month registration period as contemplated in the Amendment Bill.

## **Conclusion**

MTN has already taken proactive measures that has led to significant advances in its development and implementation of the electronic subscriber registration solution following the consultations between the DoJ and the mobile operators (as reflected in our submission to the Deputy Minister in November 2005) . The investments that we made for the development and implementation of our electronic subscriber solutions was based on MTN's understanding that electronic data capture process will proceed in parallel with the process of amending the Regulation of Interception

MTN's supports the objects of RICA and its objectives. All of the concerns that we are raising should be seen as a means of ensuring that we develop a piece of legislation that is both workable and practical. In this vein we want to point out that if the Amendment Bill is not reviewed by the committee, the electronic registration solution which MTN has already developed will have to reconfigured. This may result in inordinate delays by the mobile operators so far as the compliance with RICA may be concerned.

Yours sincerely,

Nkateko Nyoka  
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MTN (Pty) Ltd