



CORPORATE SERVICES

29 May 2006

Ms Fatima Chohan-Khota
The Chairperson
Portfolio Committee on Justice and Constitutional Development
P O Box 15
CAPE TOWN
8000

Attention: The Secretary to Parliament
Ms P Sibisi

Per e-mail: psibisi@parliament.gov.za

Dear Madam

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

Pick 'n Pay Retailers (Proprietary) Limited ("Pick 'n Pay") welcomes the opportunity to submit its comments on the Regulation of Interception, of Communications and Provision of Communication-related Information Amendment Bill [9-2006] ("RICA"). Pick 'n Pay is committed to fighting crime in South Africa and welcomes the partnership with the South African Authorities in pursuing this goal.

Pick 'n Pay has been privileged to be involved in increasing access to mobile telecommunications in South Africa. We believe that this communications medium has been responsible for growth and employment in all sectors of the economy.

As a national retail chain of stores, Pick 'n Pay acts as an outlet for mobile telephone handsets. Our concern is that the criteria for subscriber registration currently proposed by the Bill are so onerous that they will exclude existing and potential subscribers. This will impact most severely on customers in rural areas, the informal sector of the economy and the unemployed. We feel that these aspects of the Bill are unintended consequences that will be counterproductive to the development of the economy.

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Our concerns relate to the requirement for identity documents, and for a residential and/or business address. Research indicates the following facts:

- **Provision of Identity Documents:**
Of the 48 million people in South Africa, only some 30 million have identity documents.
- **Provision of Business Address:**
South Africa has an adult population of approximately 30,5 million people. The formal sector of the economy employs approximately 8 million people, who would be able to provide proof of a business address. The balance of the adult population is either unemployed or is active in the informal economy, and would thus not be able to provide a business address.
- **Provision of Residential Address:**
Given that South Africa has only 3,4 million street addresses, and 3 million post box addresses, many South African citizens would be unable to provide proof of a residential address. It has been estimated that approximately 15 million people do not have a street address.

Impact of lack of documentation

The most urgent need for economic empowerment and access to communications is experienced by the rural and informal sectors of the population. Yet it is these sectors that are most likely to be denied access to communications because of a lack of identification documents and formal residential/business addresses.

The information to be captured and the level of verification required must be practically attainable, otherwise the legislation will have the unintended consequence of depriving parts of our population from access to mobile communication networks.

Specific Comments on the Amendment Bill

Detail of customer information to be captured

The Bill specifies that among the information to be captured, the full names and identity numbers of subscribers must be obtained, along with residential, business and postal addresses. It is submitted that the amount of information to be captured and the level of verification required is not practical to obtain.

The information has to be captured from a potential customer by the registration officer. The mobile operator data-capture systems are not configured to capture the proposed additional information. At this late stage it is not practical to re-configure the systems. It is important to keep data capture requirements as simple as possible. Overly detailed systems could lead to system and human errors that will negatively impact on data integrity.

Given that not all South Africans have identity documentation, and that many experience delays in obtaining such documentation, it is suggested that other forms of proof of identity be acceptable, such as drivers' licences.

Accordingly, Pick 'n Pay would like to suggest that section 40(2)(c) be amended as follows:

"40(2)(c) the full names, identity number **or other acceptable form of identity**, and **either residential or business or postal addresses** of the person who requests that a SIM-card be activated or a cellular phone be allowed to be used with a SIM-card."

Verification of Address Detail

RICA does not currently require the provision of any documentary proof of address. It is submitted that the amendment requiring documentary proof is unnecessarily onerous and propose that section 40(3)(b) be deleted in its entirety.

In further support of this requested deletion, Pick 'n Pay is concerned about the subjective measure for compliance ("to the satisfaction of the telecommunication service provider"). Should the section be retained, we would appreciate examples of what Parliament contemplates as providing satisfactory proof.

Transfer of SIM Cards and/or Handsets

Service providers will always have a registered customers' handset number ("IMEI"). A SIM card can only be activated if an MSISDN has been allocated by the service provider for use by the customer. In combating fraud, all service providers routinely capture the MSISDN of each and every call that is made on its network, together with the IMEI of the handset that is used to make the particular call.

Accordingly, it is not considered necessary to include a reference to "cellular phone" in section 40(5). It is proposed to amend the clause as follows:

"40(5) Any customer **who has registered in terms of subsection 1** who from the date of commencement of this section sells or in any other manner provides a cellular-phone or SIM-card to a person other than a family member, must..."

Time allowed for registration of historical subscribers

It is submitted that the period allowed for the registration of historical subscribers be reasonably lengthy to afford sufficient time to register the required details. It would be counterproductive to have such a tight time line for registration so as to exclude various subscribers, especially those situated in rural areas, or those currently without identity documents. Further, a broad-based education programme will have to be undertaken to ensure that all South Africans understand the obligation to provide the information required, and sufficient time is required for this.

Experience gained by the Financial Intelligence Centre Act ("FICA") shows that attempts to achieve registration within 12 months were unsuccessful, and it is now anticipated that the FICA process may be completed after the elapse of 39 months. Given that banks have a much closer contractual relationship with their customers, it is considered impractical to allow anything less than 36 months for the registration period under RICA.

In support of this contention, Pick 'n Pay would like the Portfolio Committee to consider the impact on a subscriber who has been disconnected due to a failure to register by the cut-off date:

- A new sim-card would have to be purchased to obtain mobile cellular access again;
- Unspent pre-paid funds would have to be retrieved from the service provider, which would be difficult to achieve without access to a handset; and
- It is possible that the erstwhile subscriber would not be able to regain mobile cellular access due to lack of documentation and/or formal address.

Accordingly, Pick 'n Pay would like to suggest that section 62 (6) of the Amendment Bill be amended as follows:

"6(a) a telecommunication service provider who provides a mobile cellular service must within 12-36 months from the date of commencement of this section...

(c) ... at the expiry of the 12 36 month period referred to in ..."

Conclusion

Together with the service providers, Pick 'n Pay has attempted to be proactive in implementing a subscriber registration solution. However the level of detail is much greater than was anticipated. We are concerned that an unintended consequence of the Bill will be to exclude many previous and/or potential subscribers from the mobile communications networks. Such exclusion will impact negatively on the economy, and on the rights of those living in South Africa.

The amendments suggested above will provide for the registration of MSISDN, together with an identity number, name and a relevant address for each subscriber. It is submitted that this will be sufficient for the intended purpose of the Bill. Pick 'n Pay is committed to co-operating to the fullest extent with the South African Authorities in fighting crime. It is hoped that this submission will assist in creating a productive and workable electronic registration solution.

Yours sincerely

DEBBIE MULLER
LEGAL/COMPLIANCE OFFICER