

26 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 Email: psibisi@parliament.gov.za

Dear Madam

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

Vodacom (Pty) Ltd ("Vodacom") is pleased to herewith submit its comments on the Regulation of Interception of Communications and Provision of Communication-related Information Amendment Bill [9-2006] ("RICA Amendment Bill"), in response to the invitation to comment thereon extended by the honourable members of Parliament. Vodacom also takes this opportunity to confirm that we will be presenting to Parliament on the 30th of May 2006 and we look forward to receiving the programme in due course.

Vodacom has been actively participating in all the discussions and processes regarding RICA and is committed to ensuring that South Africa is a safer place for all its citizens and visitors to our country. We are, however concerned, that the laudable objectives of the RICA Amendment Bill may not be met in the best possible manner and may have unintended negative consequences particularly for the poor, the under-served and those working in the informal sector.

Vodacom's submission will therefore be structured in two parts:

A The Economic Impact of Subscriber Registration

- Mobile has overtaken fixed line penetration and is seen as the technology likely to have the greatest near term impact on economic development.
- There is a very high correlation between teledensity and GDP per capita.

- An extra ten phones per 100 people increase in teledensity, increases GDP growth by 0.6 percentage points.
- Mobile telephony produce significant social and economic empowerment benefits to consumers in both their private capacity and as business users.
- Approximately 15 million people are without street addresses.
- Only 3 million post box addresses in South Africa.
- Estimated 8 million people have business address.
- 30% of pre-paid sales are distributed through 28 000 informal channels.

B Detailed Comments on RICA Amendment Bill

- Capturing of handset information
- Detail of customer information to be captured
- Verification of address detail
- Transfer of SIM cards and/or handsets
- Period of registration for historical subscribers

A THE ECONOMIC IMPACT OF SUBSCRIBER REGISTRATION

"Plenty of evidence suggests that the mobile phone is the technology with the greatest impact on development. A new paper finds that mobile phones raise long-term growth rates, that their impact is twice as big in developing nations as in developed ones, and that an extra ten phones per 100 people in a typical developing country increases GDP growth by 0.6 percentage points." The Economist, 10 March 2005

Mobile access and use generates direct benefits for customers, but is also part of a wider story in terms of the benefits that Information and Communications Technology (ICT)¹ can bring in terms of growth, jobs and new opportunities for individuals and communities.

ICT is increasingly seen as a key enabler of economic growth in developing economies.² The use of ICT by all sectors of the economy has the potential to contribute to growth and employment in South Africa.

Fixed line communications has developed slowly in all markets, taking over a century to reach near universal service levels in developed countries. Where fixed line communications have been relatively under-developed when mobile

¹ ICT comprises computer hardware, computer software, computer services, telecommunications equipment and telecommunications services. Telecommunications generally comprises over 50% of the ICT sector when measured in terms of end user spend.

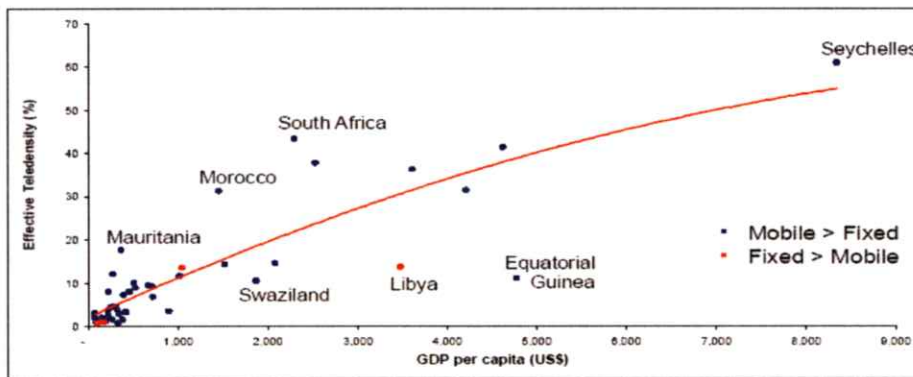
² Regulatory Reform as a Tool for Bridging the Digital Divide, OECD, 2004



services were introduced, fixed communications have been rapidly overtaken, for example in Africa and Eastern Europe. Mobile is increasingly seen as the technology likely to have the greatest near term impact on development.³

The curve below shows the correlation between teledensity (fixed and mobile) and GDP per capita for a number of countries. Notably, South Africa shows significantly higher effective teledensity brought about by mobile market penetration that would be expected for the level of GDP.

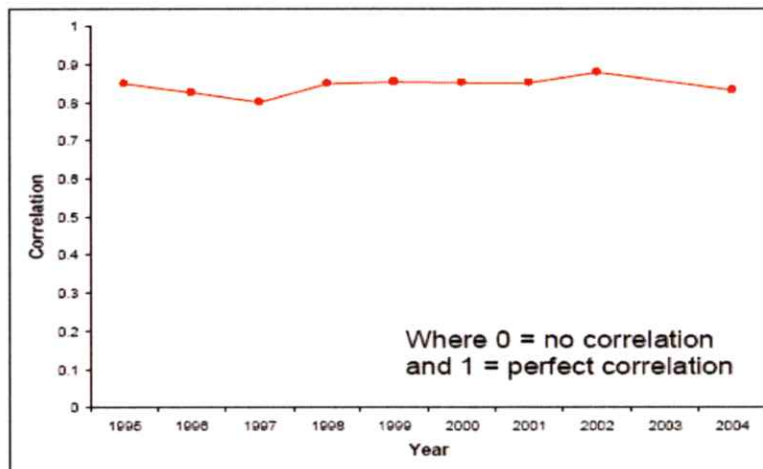
The Jipp Curve: Correlation Between Teledensity and GDP, 2004



Source: IDRC

The curve below, shows a very high correlation between teledensity and GDP per capita over a significant period of time.

The Jipp Curve: Evolution of Correlation, 1995 - 2004



Source: IDRC

A recent paper finds that mobile phones raise long-term growth rates, that their impact is twice as large in developing nations as in developed ones, and

³ Economist, 13 May 2004. http://www.economist.com/displaystory.cfm?story_id=2670587

that an extra ten phones per 100 people in a typical developing country increases GDP growth by 0.6 percentage points.⁴ It is therefore important that South Africa builds on the mobile success story and continues to increase its teledensity levels.

Not only has mobile growth been linked to national income growth in a number of different country studies, but there is also evidence that mobiles have produced significant benefits for small businesses and disadvantaged groups within South Africa. For individual users, use of a mobile phone resulted in savings in travel time and costs, improved job search and improved contact with family and friends. In the case of business users, use of a mobile phone helped save costs, reduced travel time, improved sales (by being in contact with clients all the time) and allowed better deployment of resources.⁵ Indeed for those working in the informal sector, who depend on "piece work", access to a cellular service is fundamentally critical.

In light of the important role that mobile plays in the economy of South Africa, as indicated above, Vodacom requests the Portfolio Committee to consider the potential negative impact that may result from subscriber registration if implemented in the manner provided for in the current Bill.

In terms of our Bill of Rights, everyone is equal before the law and this includes the full and equal enjoyment of all rights and freedoms including the right to receive or impart information. Vodacom's Mobile Cellular Telecommunications Service Licence also prohibits discrimination against any person or class or description of persons in respect of the provision of any mobile cellular service. It is therefore the responsibility of Government and telecommunications service operators alike to ensure that we do not discriminate against the homeless, the unemployed and/or those persons that do not have identity documents or do not have a permanent address by refusing them access to mobile telephony and ultimately deprive them of the basic right to communications and economic participation.

In South Africa, 36% of the population i.e. almost 11 million adults, falls in the Living Standards Measurement ("LSM") 1 – 3 and mainly resides in the rural areas. More than 30% of Vodacom's pre-paid subscriber base also falls within the LSM 1- 3 group.

It is especially the people in the rural areas and informal settlements that are more likely not to have identity documents and often have no residential and/or business addresses that would be verifiable with reference to documentary proof. It must be borne in mind that South Africa only has 3,4

⁴ Waverman et al note in relation to South Africa that while real incomes declined over the period 1980-2003, the regression analysis implies that the income decline would have been 0.3% per annum greater had it not been for the relative success in terms of mobile penetration. "The impact of telecoms on economic growth in developing countries, L Waverman, M Meschi and M Fuss, March 2005

⁵ "Mobile communications in South Africa, Tanzania and Egypt: Results from community and business surveys", J Samuel, N Shah and W Hadingham, March 2005



million street addresses and 3 million post box addresses whilst we have an adult population of 30,5 million. It is estimated that approximately 15 million people in South Africa are without a street address. Only approximately 8 million of the population is employed in the formal sector and will therefore be able to provide any form of proof of business address.

It is the population segment that resides in the rural and informal settlement areas that has the most urgent unmet need for economic empowerment and access to communications. They would therefore most feel the socio and economic impact should their access to mobile phones be restricted either because they cannot obtain a SIM card because they do not have the necessary identity document and/or proof of addresses or because their service has been suspended because they were unable to reach a registration point and/or provide the necessary documentary proof to register before the cut-off date.

More than 30% of Vodacom's pre-paid sales are distributed through approximately 28 000 informal channels i.e hawkers, spaza shops etc. We therefore also have to guard against taking away the livelihood of these traders through the imposition of onerous obligations.

Vodacom therefore urges the Portfolio Committee to ensure that the information to be captured and the level of verification required is practically attainable and not so onerous as to deny the most vulnerable members of our society access to mobile telephone and/or their livelihood. Further, it is requested that the period allowed for the registration of historical subscribers is reasonable and should afford even the most marginalised subscribers the opportunity to register their details.

A very broadly based education programme will have to be undertaken to ensure that all South Africans understand the obligation to provide the information required. Such education will also have to spell out what information can be given if formal information is simply not available to current and would be cellular customers.

B SPECIFIC COMMENTS ON BILL

Vodacom's specific comments on the draft RICA Amendment Bill are as follows:

1. Capturing of Handset Information (IMEI)

The mobile operators have previously made detailed submissions to the Department of Justice and Constitutional Development ("DoJ") regarding the difficulty in implementing a separate registration process in respect of handsets. These arguments are based on the following facts:

- The handset is a device that cannot be used without an active SIM card that enables access to a mobile cellular network (except for emergency calls);
- A SIM card can only be activated if a MSISDN has been allocated for use by the customer; and
- Each mobile operator'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 the mobile operators to perform handset usage queries based on a MSISDN and/or based on an IMEI. The operators' 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.

The mobile operators accordingly confirm 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.

Vodacom therefore propose that section 40(2)(b) be amended, for the sake of clarity, to state the following:

(b) the international mobile equipment identity number (IMEI number), of the cellular phone that is to be used; and

2. Detail of customer information to be captured

In the proposal presented to the Deputy Minister dated 14 November, the mobile operators proposed capturing only the MSISDN and the ID number of the customer. However, based on feedback received from the Deputy Minister and the DoJ, the mobile operators notified the DoJ on 2 February 2006 that we would capture the MSISDN, ID number, first name, surname and a relevant address. The RICA Amendment Bill, however, specifies much more information to be captured including full names, residential address, business address and postal address.

Even if only the identity number were to be captured, it should be noted that there are 48 million South Africans in South Africa, and only some 30 million have identity documents.

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. 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 and not overly elaborate as the proposed use of handsets in the informal sector may lead to both system and human errors that will negatively impact on data integrity.

If the requirement remains to register all the data fields as currently proposed in the RICA Amendment Bill, it would possibly mean that registration will only be possible at the formal distribution channels. This will in turn mean that not only are approximately 28 000 informal distribution channels out of business but also that the subscribers who are located in rural areas, or in areas that are not close to a formal channel will be prejudiced, thus impacting negatively on crucial economic growth in this sector.

Vodacom respectfully submit that the LEA's can, with a view to validation, obtain the full names, addresses etc of a subscriber from the Home Affairs database (or other databases e.g. FICA) if the identity 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. But even then, millions of law abiding South Africans will be refused a telephone service since they simply do not have identity documents.

Vodacom propose that the following amendments be made to accommodate the above concerns:

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

3. Verification of address detail

Vodacom respectfully point out that RICA does not currently require the provision of any documentary proof of address and it is unreasonable to require that this be done in terms of the Amendment Bill.

Vodacom also wishes to raise a concern regarding the introduction of a subjective measurement for compliance i.e. "to the satisfaction of the telecommunication service provider" and request examples of what Parliament believe would constitute such satisfactory proof bearing in mind that the persons living in rural and informal settlements would have the most difficulty in producing such documentary proof. A large proportion of the population do not have a physical and/or postal address and many who do, would not have possession of or access to the requisite documentation to verify such address e.g. utility bills (since they utilise pre-paid electricity or do not have access to services at all). To deny access to communications to

these people will constitute unfair discrimination, and would be unconstitutional.

It would be extremely difficult for the telecommunication service providers to set guidelines as to what would constitute satisfactory proof and to ensure compliance with such guidelines by the independent registration agents.

Vodacom thus requests deletion of section 40(3)(b).

4. Transfer of SIM cards and/or handsets

Given that, as stated in paragraph 1 above, mobile operators will always have a registered customers' handset number (IMEI) on an ongoing basis, we propose that deletion of the reference to "cellular phone" in section 40(5):

(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 --

5. Period of registration for historical customers

Consideration must be given to the fact that on 30 June 2006, the mobile operators 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 resolve these problems before the mobile operators can attend on the registration of historical subscribers. It should also be noted that whilst historical registration must take place, Vodacom would also be attempting to register more than 500 000 new pre-paid subscribers each month.

At this point in time a registration period of period of 12 months is not practical. Vodacom currently has approximately 18 million prepaid subscribers. Assuming that there are 21 working days in a month with 8 registration hours per day, **Vodacom, through its distribution channels, will have to facilitate the capturing and verification of the details of 8 900 customers per hour.** If new subscribers are added to this, this number increases to 9 200 per hour. MTN will be required to capture approximately 4 300 per hour and Cell C 1 200 per hour. *The industry would therefore need to capture and verify 14 400 customers per hour excluding all the new subscribers and all handsets (if a separate registration process is required) and assumes that all registration points will be able to register at full capacity from day one.* This number is the best scenario, since the majority of people are not free to register at any time of the day or week. Their job and home responsibilities simply do not allow this luxury. It is more

likely that registration would peak at over 30 000 per hour, which by any measure is simply not possible.

It is important in this regard to consider the recent experience of the registration of all banking customers in terms of the Financial Intelligence Centre Act ("FICA"). Despite the fact that the banks have much stronger contractual relationships with their clientele and a lower customer base than the mobile operators, they were unsuccessful in registering their customers in the initial 12 month period and various periods of extension based on the risk profile of the customers, were granted. The total 39 months registration period will only lapse at end September 2006. It is also important to note that the banks only verified the identity of the customer with reference to face-to-face validation, but could source other data e.g. addresses, through other means including third party databases e.g. credit bureaus etc.

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 and informal settlement areas which makes up a substantial portion of the pre-paid subscriber base, specifically LSM 1-3 which constitute roughly 30% of mobile subscribers. Vodacom wishes to respectfully point out that this portion of the population do not have easy access to the mainstream media and it will be a challenge to create awareness of the need to register before the cut-off date. Sufficient time must therefore be granted to these subscribers to first of all become aware of the requirement to register and then to allow them sufficient time to obtain the necessary documentation and to get to a registration point before the 12 month cut-off date.

Vodacom requests the Portfolio Committee to also consider the impact on a subscriber who has been disconnected due to their failure to register by the cut off date:

- The cost of obtaining mobile cellular access again (i.e. new SIM card);
- The possibility of being unable to regain mobile cellular access due to the unavailability of the requisite documentation;
- The possibility of being unable to regaining mobile cellular access since the informal distribution channels are no longer in business due to the onerous requirements;
- The difficulty such customers would experience in retrieving their unspent pre-paid funds;
- And of course the negative impact this would have on their employment opportunities.

Vodacom would also again like to request that the Portfolio Committee considers the introduction of a period of review. Subscriber registration for mobile services is something new in South Africa and we do not have the benefit of experience (other than the lessons from FICA registration) to guide us in how best to implement this requirement.

It is for this reason that Vodacom suggest the incorporation of a review period after e.g. 9 months, which will allow the mobile operators, their distribution channels, the LEAs and Parliament an opportunity to learn from experience and make the necessary changes to ensure that the registration process going forward is optimal to achieve the objectives of RICA. This process can be monitored and reviewed by Government to ensure that all mobile operators are working in good faith.

Vodacom suggest that section 62(6) 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

Finally, we wish to re-iterate that Vodacom has been cognisant of the deadline of 30 June 2006, and has therefore been proactive. The development and implementation of the electronic subscriber registration solution is far advanced on the basis of our consultation with the DoJ, as reflected in our submission to the Deputy Minister in November 2005 and on the understanding by the stakeholders that the electronic data capture process' development will proceed in parallel with the legislative amendments with a view to ensuring that the 30 June 2006 deadline is met. Vodacom has also started gathering its subscriber's information and currently have the complete details of 200 000 pre-paid subscribers available in its database, and partial information of 2 million pre-paid customers.

Since we are committed to meeting the objectives of the Act and its efficacy, we need to alert the Portfolio Committee to the fact that the Bill in its current form will require a review of the electronic registration solution as developed which may impact compliance.

We would also like to point out that the mobile operators have planned a joint media campaign to create awareness by consumers of the new requirements which is set to come into force on 30 June 2006.

Please be assured that we are committed to co-operating to the fullest extent with the South African Authorities in fighting crime. We must, however, ensure that our efforts are productive and not counter-productive.

We would like to thank you for the opportunity to provide our written comments, and look forward to presenting our position to the Portfolio Committee on the 30th of May 2006.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'SHAMEEL JOOSUB', written over a circular scribble.

SHAMEEL JOOSUB
MANAGING DIRECTOR