

INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA

NO. 1376

04 NOVEMBER 2016

**REGULATIONS ON CODE OF CONDUCT FOR PREMIUM RATED SERVICES**

The Independent Communications Authority of South Africa ("the Authority/ ICASA"), hereby publishes regulations on Code of Conduct for Premium Rated Services in line with the provisions of section 4(3)(j) of the Independent Communications Authority of South Africa Act No. 13 of 2000 ("the ICASA Act"), read with sections 4 and 69 of the Electronic Communications Act No. 36 of 2000 ("the ECA"), as amended.


Rubben Mohlaloga
Acting Chairperson

1. DEFINITIONS

In these Regulations, unless the context otherwise indicates, a word or expression to which a meaning has been assigned to in the Act, has the meaning so assigned:

“Act” means the Electronic Communications Act, 2005 (Act No.36 of 2005), as amended;

“Adult service” means a service containing material or adult experiences not appropriate for any persons under the age of 18 as classified in terms of the Film and Publication Board’s Classification Guidelines issued in terms of the Films and Publications Act, Act No. 65 of 1996;

“Advertisement” means any direct or indirect visual or oral communication transmitted by any medium, or any representation or reference written, inscribed, recorded, encoded upon or embedded within any medium, by means of which a person seeks to—

- (a) bring to the attention of all or part of the public—
 - (i) the existence or identity of a supplier; or
 - (ii) the existence, nature, availability, properties, advantages or uses of any goods or services that are available for supply, or the conditions on, or prices at, which any goods or services are available for supply.
- (b) promote the supply of any goods or services; or
- (c) promote any cause.

“the Authority” means the Independent Communications Authority of South Africa

“Billing network operator” means a licensee that bills and collects payment from subscribers for the charges incurred as a result of the use of a premium rated service over the licensee’s electronic communications network;

“Charge” means the rate payable by an end-user for the use of a premium rated service;

“Children” means persons under the age of 18 years as defined in the Children’s Act 38 of 2005;

“Children’s services” means services which, either wholly or in part, are aimed at children.

“Double opt-in” means a process defined in these regulations which entails that a premium rated service provider, shall, upon receipt of a subscription request from an end user and before any charges are incurred by that end user send a Short Message Services (SMS) subscription confirmation to the number that initiated the subscription request message at no charge to the end-user. The confirmation SMS must be followed a response from the subscriber either confirming or refuting the request for subscription by responding either YES or NO respectively;

“Electronic Communications Network” means an Electronic Communications Network as defined in the Act;

“End-user” means an End-user as defined in the Act;

“End-User Information” means all information that a premium rated service provider obtains as a result of a use of a premium rated service by an end-user of the premium rated service and includes, but not limited to, information regarding:

- (a) the end-user’s usage patterns (including number of calls, times of calls, duration of calls and parties called);
- (b) the services used by the end-user;
- (c) the end-user’s telephone number and network configuration;
- (d) the end-user’s location information; and
- (e) the end-user’s billing name, address and credit history.

“ICASA Act” means the Independent Communications Authority of South Africa Act, 2000 (Act No. 13 of 2000) as amended;

“Licensee” means a person issued with a licence to provide services in terms of Chapter 3 or to use the radio frequency spectrum in terms of Chapter 5 of this Act;

“Media” means a manner of communication through which a large number of people can receive and access information, which amongst others includes:

- (a) television broadcasts;
- (b) radio broadcasts;
- (c) publications (digital and print) i.e. newspapers, magazines; and
- (d) the Internet.

"Premium rated service" means Premium rated service as defined in the Numbering Plan Regulations GG 39861;

"Premium rated service provider" means a licensee or any other third party that engages in the provision of a premium rated service; and

"Strong language" means crude words, threats, verbal abuse, profanity or language that amounts to prejudice.

2. THE SCOPE AND APPLICATION OF THESE REGULATIONS

- (1) These Regulations sets out the code of conduct for the provision of premium rated services.
- (2) The Regulations apply to all Electronic Communication Service (ECS) and Electronic Communication Network Service (ECNS) licensees.
- (3) If any other legislation provides for conditions for the provision of premium rated services that are more extensive than those set out in these Regulations, such legislation shall prevail.

3. NUMBERING STRUCTURE OF PREMIUM RATED SERVICES

- (1) Premium Rated Services are to be provided within the designated number ranges as specified in the relevant Numbering Plan Regulations.
- (2) In order to promote transparency, Premium Rated Services that consist of adult contents will be provided within the designated number range as specified in the Numbering Plan Regulations.

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4. MIGRATION OF PREMIUM RATED SERVICES

- (1) All new premium rated services assignments shall be made on the new designated numbering ranges.
- (2) Licensees providing premium rated services shall report to the Authority on a quarterly basis, on the progress of the migration.
- (3) Below is an example of a reporting format as contemplated in sub-regulation 4 (2):

Previously assigned Numbering range	Description of service	New assigned Numbering range	Date activation of newly assigned number	Date of deactivation of previously assigned number	comments on migration

- (4) A dual provision of the premium rated service on both the previously assigned number and the new number shall occur for a period not exceeding twelve (12) months from the date these Regulations coming into force.

5. PREMIUM RATED SERVICES OFFERED INDIRECTLY BY LICENSEES

- (1) A licensee must ensure that third parties providing premium rated services through the use of the licensees' network comply with the provisions as set out in these regulations and as such shall be the minimum standards for the provision of such services.

6. GENERAL PROVISIONS OF PREMIUM RATED SERVICES

- (1) Premium rated services provided by means of a voice call shall have a clear announcement on the cost of the service per minute/per call at the beginning of the call.
- (2) The announcement in terms of sub-regulation (1), will be made by the licensee from which the call originates, and shall not be more than ten (10) seconds in duration, and shall comply with the following format: "Call billed at X rand per minute/or per call".

- (3) In case a premium rated service is provided by means of a Short Messaging Service/Multimedia Messaging Service (SMS/MMS) communication, or through an Unstructured Supplementary Service Data (USSD), end-users' shall be sent a notification informing them of the cost and the terms and condition associated with the service upon initiation of the service.
- (4) Subscription premium rated services shall be offered subject to a "double opt-in" process.
- (5) The SMS subscription confirmation message as contained in the double opt-in process shall include:
 - (a) Confirmation that the end-user has been subscribed to the service;
 - (b) The description and name of the service concerned;
 - (c) Contact details of the premium rate service provider;
 - (d) All costs levied against the end-user for using the service; and
 - (e) Details of how to unsubscribe and terminate communication from the service.
- (6) The contact number that a consumer is required to respond to the above confirmation SMS shall not be a premium rated number.
- (7) Consumers of premium rated services offered by means of SMS\MMS communication shall be given an option to opt-out of the service, by which they would have sent an SMS with the word STOP to the number or code provided by the premium rated service provider, effectively terminating communication and receipt of the said service.
- (8) The number or code that a consumer of a premium rated service must send an SMS to terminate communication and receipt of the said service, must not be a premium rated number or code as classified by the Numbering Plan Regulations.
- (9) Prior to the provision of a premium rated service to any end-user, the end-user shall be advised on the costs, terms and conditions to which the service is provided.

- (10) The costs for premium rated services shall be clearly conveyed to end-users and potential end-users to enable them to make informed decisions before the use of these services.
- (11) Premium rated services provided by means of a voice call shall not have a false ringing sound (including no sound at all) at the beginning of the call which might cause an end-user of the service to believe that the call has not yet started.
- (12) Premium rated services provided by means of a voice call shall not be intentionally prolonged or delayed for the purposes of extracting additional revenue from end-users.
- (13) A premium rated service shall not:
 - (a) incite violence or constitute hate speech;
 - (b) contain defamatory statements;
 - (c) cause conflicts among persons, groups or communities for racial, religious, political or any other reasons;
 - (d) encourage the use of materials that are dangerous to an end-user's health; and
 - (e) encourage or incite any person to engage in dangerous practices.
- (14) Licensees shall avail a facility to its subscribers that will enable subscribers to block access to premium rated services by blocking out communication to and from premium rated numbers.

7. PREMIUM RATED SERVICE NUMBER RE-USE OR MASKING

- (1) A premium rated service shall not be replaced on the same number by another premium rated service that might be inappropriate for end-users reasonably expecting the original premium rated service.
- (2) A premium rated service shall not in addition, include an advertisement or prompt an end-user to select an alternative premium rated service.

8. INFORMATION ON PREMIUM RATED SERVICES

- (1) A Licensee shall provide the Authority, on request, a list of all number blocks or numbers assigned for premium rated services together with the name of the service provider and a description of the premium rated services associated with that number or number block.
- (2) A Licensee shall make the information in terms of sub-regulation (1) readily accessible to end-users.

9. SUBSCRIPTION SERVICES

- (1) Promotional material for all subscription premium rated services must prominently and explicitly identify the service as "subscription service", this includes any promotional material where a subscription is required to obtain any portion of a service, facility, or information promoted in that material.
- (2) An advertisement for a content subscription service, which includes examples of the content provided as part of that service, must have at least two (2) examples of the content clearly displayed.
- (3) For a television advertisement, the voice over must stipulate:
 - (a) confirmation that a service is a subscription service; and
 - (b) the price and frequency of the billing.
- (4) Once an end-user has subscribed to a subscription service, neither the amount, frequency of the charges nor the frequency of the service may be increased without the end-user's explicit consent.
- (5) Billing for a subscription service must indicate that the service purchased is a subscription service.
- (6) It is acceptable to use the "@" sign in place of "at" in any activation message, welcome message or similar communication. Similarly, "u" may be used in place of "you", "b" may be used in place of "be", and "r" may be used in place of "are" or other similar terminology.

10. CONTACT AND DATING SERVICES

- (1) Contact and dating services with an ongoing incremental cost, must, at reasonable intervals, inform the end-user of any additional costs, and shall require the end user to actively confirm their continued participation.
- (2) A premium rated service provider of a contact and dating service must warn end-users of the service of the risks involved when contact information is given out to other individuals and must give clear advice on sensible precautions to take when meeting people through such services.
- (3) A premium rated service provider shall take reasonable steps to ensure that end-user information is protected.
- (4) Promotional material for contact and dating services must make clear, any restrictions on the location, gender and age of callers to the service.
- (5) A premium rated service provider shall take reasonable steps to ensure that end-users of contact and dating services are authorised by the bill-payer to use that service.
- (6) A premium rated service provider of contact and dating services must take reasonable steps to ensure that no children use such services.
- (7) A premium rated service provider must take reasonable steps to ensure that confirmation of a user's age is obtained prior to the activation of the service.

11. ADULT SERVICES

- (1) A premium rated service intended for adults may only be advertised in media that is intended for persons over the age of 18 years.
- (2) Any adult service shall be clearly indicated as such in any promotional material and advertisements.
- (3) A premium rated service provider, in the provisioning of premium rated services aimed at adults, must take reasonable steps to ensure that only persons of 18 years of age or older have access to such services.

- (4) A premium rated service provider must take reasonable steps to ensure that confirmation of an end-user's age is obtained prior to the delivery of an adult content service.
- (5) Marketing messages (including commercial messages) shall not be sent to an end-user of an adult service if that end-user has not made use of the service during the preceding three months.
- (6) Adult services that are provisioned as premium rated services shall not contain references that suggest or imply the involvement/participation of children.

12. CHILDREN SERVICES

- (1) A premium rated service provider who provides child-oriented services, including chat-rooms, must ensure that the services and the provision of such services comply with section 24C (2) of the Films and Publication Act of 2008, as amended.
- (2) Promotional material for premium rated services aimed at children's entertainment must include a clear and prominent statement giving the maximum possible cost of the premium rated service (inclusive of VAT).
- (3) A statement in terms of sub-regulation (2) must clearly articulate that the service will only be provided in terms of an agreement concluded with the person responsible for the account.
- (4) Premium rated services:
 - (a) any promotional material aimed at children shall reasonably ensure that its contents do not exploit the children's vulnerability to the extent that it may result in harm to children; and
 - (b) aimed at children must ensure that it does not contain direct appeals to buy.
- (5) Premium rated services aimed at children shall ensure that the service does not encourage children to dial another premium rated number or the same premium rated number again.

- (6) Promotions with regard to premium rated services aimed at children shall not encourage excessive use of premium rated services.

13. ADVERTISING AND PROMOTIONAL MATERIALS OF PREMIUM RATED SERVICES

- (1) All promotions and advertising of premium rated services shall comply with the Advertising Code, as prescribed by the Advertising Standards Authority of South Africa.
- (2) The following provisions relate to all forms of promotions and advertising where the intent is to either directly or indirectly, encourage the use of premium rated services:
 - (a) Premium rated service providers shall take reasonable steps to ensure that promotional material does not reach those for whom the premium rated service may be deemed to be inappropriate.
 - (b) Premium rated service providers shall ensure that the charge for calls to each premium rated services is clearly stated or announced in all promotions.
 - (c) Pricing for premium rated services as depicted in advertisements or promotional material must not contain any hidden costs. Where applicable, pricing for content services must include the cost of the content and indicate any costs that may be associated with receiving that content.
 - (d) Pricing for premium rated services as depicted in advertisements or promotional material must use one of the following generally accepted formats for prices in Rands: "Rx (per second\minute)" or "Rx.xx (per second\minute)".
 - (e) A premium rated service provider shall, in disclosing the prices, terms and conditions required under paragraphs (b) and (c), and in relation to all advertisements relating to its premium rated service, observe the following:
 - (i) shall not provide disclosure or advertisement in a manner that is reasonably likely to confuse or mislead in any way, whether by inaccuracy ambiguity, exaggeration, omission or otherwise:

- (ii) every disclosure and advertisement must state:
 - (a) the description of the premium rated service offered;
 - (b) the name of the premium rated service provider as registered; and
 - (c) the customer care contact number for the premium rated services provider.
- (f) Premium rated services and any material relating to the service shall not:
 - (i) facilitate nor encourage unlawful behaviour; or
 - (ii) contain anything which is in breach of the law or omit anything which the law requires.
- (g) A premium rated service and any material relating to the service, with the exception of adult services, shall not contain strong language.
- (h) Any promotional material for charitable and/or fundraising promotions shall:
 - (i) make clear that network operator fees and administration fees will be deducted from contributions paid;
 - (ii) specify the identity of the beneficiary;
 - (iii) make clear any restrictions or conditions attached to the contribution to be made to the beneficiary; and
 - (iv) specify the date of termination of the promotion.
- (i) In all mediums used where premium rated services are advertised, call charge rates for the premium rated service must be given directly after the premium rated service number.
- (j) In the case of premium rated services that are advertised in publications or other media which have a long shelf life, a statement must be included in the advertisement to the effect that the premium rate given is correct at the date of publication and that date must also be stated.

- (k) A premium rated service provider must engage in honest and fair dealings with their end-users in accordance with the provisions of the Consumer Protection Act, 2008 (Act No. 68 of 2008).

14. END-USER INFORMATION (EUI) OBTAINED BY PREMIUM RATED SERVICE PROVIDERS

- (1) Unless an end-user has expressly provided his\her prior consent, a premium rated service provider must ensure that it does not use his\her EUI for any purpose other than:
- (a) planning, provisioning and billing for the premium rated service requested by the end-user and provided by the premium rated service provider;
 - (b) managing bad debt and preventing fraud related to the provision of premium rated services;
 - (c) facilitating interconnection and inter-operability between premium rated service providers for the provision of premium rated services; and
 - (d) providing assistance to or complying with the requirements of any law enforcement, judicial or other government agencies.
- (2) Unless an end-user has expressly provided his\her prior consent, a premium rated service provider shall not disclose his\her EUI to any third party (including its affiliates) for any purpose whatsoever, unless it falls within any of the purposes stated in the sub-regulations 1 above.
- (3) All other personal information gathered by a premium rated service provider through the provision of its services shall be managed in accordance with the Protection of Personal Information Act, 2013 (Act No. 4 of 2013).

15. BILLING OF PREMIUM RATED SERVICES

- (1) A premium rated service provider must be treated as having charged a person for its premium rated service when a billing network operator issues a bill to such person for the service.
- (2) The billing network licensee who issues a bill to a person for payment for a premium rated service (referred to in this section as the "person

charged”), must ensure that the bill contains the following minimum information:

- (a) Date and time which the premium rate services was dialled, requested or charged (in the case of subscription services);
 - (b) The duration of the call in the case of dialled premium rated services;
 - (c) Destination number, being the premium rated number concerned; and
 - (d) the amount in rands (charge of the premium rated service) per event.
- (3) Notwithstanding the provisions of sub-regulation (2), in the event that a person charged contacts the billing network operator to dispute the charge, the billing network operator must provide reasonable assistance to assist such person to resolve the dispute with the premium rated service provider.
- (4) During any calendar month, if the total cost of any premium rated service exceeds R200 and just before it reaches the amount of R220, for that month: Premium rated service providers shall send a notification to the end-user informing them that they have reached this amount and a response is required from the end-user, confirming their acceptance of any additional costs over this amount, prior to any additional costs being billed.
- (5) During any calendar month, after the first threshold notification, when the total cost of any premium rated service reaches R200, and when it reaches any multiple of R200 thereafter, an additional notification must be sent to the end-user notifying them of the total cost incurred for that service so far.
- (6) The thresholds specified in sub regulation (4) and (5) shall:
- (a) Apply in the absence of a specified threshold by the account holder; and
 - (b) be amended in accordance with the end-user’s instructions.
- (7) A premium rated service provider providing a service must keep a record of the confirmation provided by the end-user or the notifications sent to the customer as contemplated in sub-regulations (5) and (6).

- (8) A premium rated service provider is not liable for any failure to provide a service due to circumstances that are beyond their control. Neither can premium rated service providers charge for service not received by an end-user as per the premium rated service promotion or advertisements.

16. COMPLAINTS PROCEDURE

- (1) A premium rated service provider must have a complaints procedure in place that will enable its end-users to lodge complaints regarding the services provided.
- (2) In the event that an end-user of a premium rate service has dispute or complaint regarding the premium rate service, the end-user should notify and file the complaint with the relevant premium rated service provider prior to approaching its network service provider.
- (3) The customer service contact number that end-users are to use for queries and/or complaints must be a South African number, as per the Numbering Plan Regulations.
- (4) The customer service contact number shall be a toll free number as defined by the relevant Numbering Plan Regulations.
- (5) A premium rated service provider shall ensure that the customer care contact number operates during normal local business hours at a minimum.
- (6) A premium rated service provider must, in addition to the customer care contact number, provide other means for end-users to reach them, such as via e-mail or fax.
- (7) A premium rated service provider shall provide the network licensee with its customer care contact number, e-mail and/or fax for its premium rated service, so as to enable the network operator, to direct end-users to these modes of contact.
- (8) A licensee must ensure that it investigates and addresses all complaints received regarding premium rated services accessed on its network within fifteen (15) working days after receiving it.
- (9) If more time is reasonably required to complete the investigation, the premium rated service provider must inform the complainant of the additional amount of time that will be required for resolution of the matter and in any case, resolve the matter with all reasonable speed.

For the avoidance of doubt, nothing herein must preclude a premium rated service provider from agreeing to resolve disputed charges within a shorter period of time in its contracts with its billing network operator.

- (10) Failure to rectify the service within the time period contemplated in sub-regulation (8), a licensee must cease and bar access to the service on its network.
- (11) A licensee must advise the originator of the complaint received, on the outcome of its investigation and where applicable the action that was taken to rectify the situation.
- (12) In all cases where a dispute arises as a result of a charge and a premium rated service provider is notified by the person charged, whether directly or through its billing network operator, the premium rated service provider must take all necessary action to carry out a full and complete investigation at its own expense on the disputed charge, including but not limited to:
 - (a) Verify that the charge is correct based on the premium rated service provider's records; and
 - (b) verify the accuracy of its records against the records of the network operator through which the premium rated service was provided.
- (13) A premium rated service provider must in relation to a person who pays a charge but who subsequently chooses to dispute the charge, afford such person the period of two (2) months starting from the date of the bill to dispute the charge.
- (14) A premium rated service provider must keep an accurate, and complete record of all complaints and disputes raised by any person in relation to its premium rated service for a period of five years (referred to in this section as the "record of complaints") containing the following information:
 - (a) particulars of the person raising the complaint or dispute;
 - (b) the date and description of the complaint or dispute; and
 - (c) description of the action taken by the premium rated service provider to address the complaint or dispute.
- (15) The Authority reserves the right to inspect and to make copies of the record of complaints at any time and the premium rated service

provider must produce the records to the Authority within 5 days of receipt of the request.

- (16) The Authority may, on its own initiative, commence an investigation against a relevant licensee where there appears to be a contravention of these regulations by such licensee or its third parties.
- (17) The Authority may at any time require a relevant licensee to provide it with any information or documents which it may require for the purposes of investigating a contravention of these regulations.
- (18) Any failure by a licensee to comply with the Authority's requests for information, or any destruction, disposal, falsification or concealment of requested documents, constitutes a contravention of these regulations.
- (19) If the information required by the Authority is subject to an existing confidentiality agreement between the licensee and any other party, such information shall be provided to the Authority in terms of section 4D of the ICASA Act.
- (20) A licensee must ensure that all information provided to the Authority, related representations or any other submissions, is complete, truthful and accurate.

17. TRANSITIONAL ARRANGEMENTS

- (1) Agreements concluded before the promulgation of these Regulations must be aligned with the Regulations within six (6) months of the Regulations coming into effect.

18. CONTRAVENTIONS AND FINES

- (1) A licensee who is found to be non-compliant with these regulations will be subject to:
 - (a) a fine not exceeding R1 500 000, 00 (one million and five hundred thousand Rand); and/or
 - (b) a non-monetary penalty of publication on the non-compliance of the licensees on the Authority's websites.

19. SHORT TITLE AND COMMENCEMENT

- (1) These Regulations are called the **"ICASA code of conduct for premium rated services"** and shall commence on the date of publication in the government gazette.