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INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA

NO. 1260 **17 DECEMBER 2015**

DRAFT REGULATIONS ON CODE OF CONDUCT FOR PREMIUM RATED SERVICES

The Independent Communications Authority of South Africa ("ICASA"), hereby publishes the draft regulations in terms of section 4(3)(k) of the Independent Communications Authority of South Africa Act, 2000 (Act No. 13 of 2000), read with sections 4 and 69 of the Electronic Communications Act, 2005 (Act 36 of 2005), as amended.

Katharina Pillay
Acting Chairperson

Interested persons are hereby invited to submit written representations **by no later than 16h30 on 12 February 2016** by post, hand delivery, facsimile transmission or electronic mail (in Microsoft Word) for the attention of:

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1. DEFINITIONS

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

"the Act" means the Electronic Communications Act, 2014 (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 Film 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;

"billing network operator" means a licensee that bills and collects payment from any person for the charges incurred for use of a premium rated service provided by a premium rated service provider over the licensee's electronic communications network;

"Call originator" means a person or device that can initiate communication through the input of a number;

"charge" includes:

(a) the actual collection of payment; and

(b) any act which conveys the impression to a person that he is required or obliged to pay for a service such as the issuance of a bill.

"**Children" means** persons under the age of 18 years as defined in the Children's Act 38 of 2005;

"**Children's services**" are those which, either wholly or in part, are aimed at, or would reasonably be expected to be particularly attractive to children.

"**Electronic communications network**" means any fixed or mobile electronic communications network.

"**End user**" means a subscriber and persons who use the services of a licensed service as referred to in Chapter 3 of the Act;

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

"**Licensee**" means a person to whom a licence has been granted under section 5 of the Act;

"**Media**" means ways in which a large number of people can receive and access information, such as, but not limited to:

(a) television broadcasts;

(b) radio broadcasts;

(c) publications i.e. newspapers, magazines; and

(d) the Internet

"**Premium rated service"** means a service accessible by means of premium rated numbers irrespective of the originating electronic communications network used, whereby the service charged at a higher rate than a standard rate service (nominal rate based on an end-user's billing plan) and in some instances, where a portion of the charge is passed to a premium rated service provider;

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

"**Strong language**" means crude words, threats, 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 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, the extensive conditions must 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 in the 092 National Destination Code (NDC).

4. MIGRATION OF PREMIUM RATED SERVICES

(1) All new premium rated services assignments must be made on the new designated numbering range.

(2) A licensee that is providing premium rated services on other numbering ranges, must report on a bi-monthly basis on progress of the migration (i.e. new activations on new numbering ranges and services still utilizing old ranges).

(3) Example of reporting format as contemplated in sub-regulation (2) above:

Previously assigned Number\ ing range	Description of service	New assigned Number\ ing range	Date of 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 must occur for a period not lasting more than six (6) months from the date these Regulations come into force.

5. PREMIUM RATED SERVICES OFFERED INDIRECTLY LICENSEES

(1) A licensee must encourage third parties providing premium rated services through the use of the licensees' network to comply with the minimum standards set out in these regulations.

6. GENERAL PROVISIONS OF PREMIUM RATED SERVICES

(1) A Licensee that provides a premium rated service by means of a voice call must ensure that there is a clear announcement of the cost of the service per minute/per call at the beginning of the call.

(2) The announcement in terms of subregulation (1) must not be more than five (5) seconds in duration, and must comply with the following format: "Call billed at X rand per minute/or per call".

(3) In the case of premium rated services provided by means of Short Messaging Service\ Multimedia Messaging Service (SMS/MMS) communication, end-users must be made aware of the cost associated with the service and must be given an option to opt-in for the service and for receipt of the content.

(4) End-users of premium rated services prior to these Regulations coming into effect, which were offered by means of SMS\MMS communication must be given an option to opt-out of the service by which they have terminated communication and receipt of the said service.

(5) Prior to providing a premium rated service to any person, a premium rated service provider must disclose to that person the costs, terms and conditions on which the service is provided.

(6) The costs for premium rated services must be clearly conveyed to end-users and potential end-users to enable them to make informed decisions before use of these services occurs.

(7) Premium rated service provided by means of a voice call must not have a false ringing sound (or other 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.

(8) Premium rated services provided by means of a voice call must not be intentionally prolonged or delayed for the purposes of extracting additional revenue from end-users.

(9) A licensees must ensure that premium rated services do 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 for your health; and

(e) encourage or incite any person to engage in dangerous practices.

7. PREMIUM RATED SERVICE NUMBER RE-USE OR MASKING

(1) A premium rated service must 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 must 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 must provide the Authority, on request, with a list of all number blocks or numbers assigned for use for premium rated services together with a detailed description of the premium rated services associated with that number or number block.

(2) A Licensee must make the information in terms of sub-regulation (1) readily accessible to end-users.

9. UNSOLICITED PREMIUM RATED SERVICES

(1) No premium rated service provider must engage in the practice of providing any unsolicited free service to any person which requires such a person to take action to unsubscribe from the service, failing which the person is automatically subscribed and charged for a premium rated service.

(2) A person will be deemed as having been provided with an unsolicited free service so long as such person did not specifically take action to request for that service prior to it being provided.

10. 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 advert, the voice over must stipulate:

(a) confirmation that a service is a subscription service; and

(b) the price and frequency of the billing.

(4) A subscription service with different billing frequencies must not have a subscription mechanism likely to cause a customer to accidentally subscribe to a more frequent service.

(5) Once a customer has subscribed to a subscription service, neither the amount, frequency of the charges or the frequency of the service may be increased without the customer's explicit permission.

(6) Billing for a subscription service must indicate that the service purchased is a subscription service.

(7) Promotions for subscription services must not appear in publications or other media specifically targeted at children.

(8) 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.

11. CONTACT AND DATING SERVICES

(1) Contact and dating services with an ongoing incremental cost, must, at reasonable intervals, inform the customer of any additional costs, and must 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 must take appropriate 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 range of callers to the service.

(5) A premium rated service provider must 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 ensure that explicit confirmation of a user's age is obtained prior to the activation of the service.

12. ADULT SERVICES

(1) A premium rated services intended for adults may only be advertised in media that is intended for persons over 18 years of age.

(2) Any adult service must be clearly indicated as such in any promotional material and advertisements.

(3) A premium rated service provider, in the provision of premium rated services aimed at adults, must take appropriate 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 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) must 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 must not contain references that suggest or imply the involvement/participation of children.

13. 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 Film 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 (24) must clearly articulate that the service will only be provided in terms of an agreement concluded with the person responsible for the account.

(4) A Licensee and their partners in the provision of premium rated services:

(a) and any associated promotional material aimed at children must ensure that its contents do not result in harm to children, exploit their vulnerability.

(b) aimed at children must ensure that they do not contain direct appeals to buy.

(5) A Licensee and their partners in the provision of premium rated services aimed at children must 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 must not encourage excessive use of premium rated services.

14. ADVERTISING AND PROMOTIONAL MATERIALS OF PREMIUM RATED SERVICES

(1) All promotions and advertising of premium rated services must comply with the Advertising Code, of 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) A Licensee and its partners in the provision of premium rated services must take reasonable steps to ensure that promotional material does not reach those for whom the premium rated service may be deemed to inappropriate.

(b) A Licensee and its partners in the provision of premium rated services must 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 must, 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) must 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;

(c) the customer care contact number for the premium rated service.

(f) Premium rated services and any material relating to the service must not:

(i) facilitate nor encourage unlawful behaviour;

(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, must not contain strong language.

(h) Any promotional material for charitable and/or fundraising promotions must:

(i) make clear that network operator fees and administration fees will be deducted from amounts 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 advertising of the premium rated service is employed, 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 promoted in publications or other media which have a long shelf life, a statement must be included in the promotion to the effect that the premium rated given is correct at the date of publication and that date must also be stated.

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

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

(1) EUI consists of all information that a premium rated service provider obtains as a result of an end user's use of a premium rated service provided by the premium rated service provider and includes, but is 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.

(2) 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.

(3) Unless an end user has expressly provided his\her prior consent, a premium rated service provider must 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 2 above.

(4) All other personal information gathered by a premium rated service provider through the provision of its services must be managed in accordance with the Protection of Personal Information Act, 2013 (Act No. 4 of 2013).

16. BILLING OF PREMIUM RATED SERVICES

(1) For the avoidance of doubt, 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) the name of the premium rated service provider;

(b) the name of the premium rated service for which the person is being charged;

(c) the charges incurred by the person for the service for the duration under review. The start and end dates must be stipulated; and

(d) the customer service contact number for the premium rated service.

(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) A billing network operator must not collect payment for any charge which the person charged reasonably believes to be incorrect pending the resolution of the disputed charge.

(5) 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: a notification must be sent to the end-user informing them that they have reached this amount and a communication is required from the end-user, confirming their acceptance of any costs over this amount, prior to any additional costs being billed.

(6) 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.

(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 (16) and (17).

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

17. COMPLAINTS PROCEDURE

(1) A premium rated service provider must have a complaints procedure allowing their end-users to lodge complaints regarding the services provided.

(2) 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.

(3) The customer service contact number must not be a premium rate number as defined by the relevant Numbering Plan Regulations.

(4) A premium rated service provider must ensure that the customer care contact number operates during normal local business hours at a minimum.

(5) A premium rated service provider may, in addition to the customer care contact number, provide other means for end users to reach them, such as via e-mail or fax.

(6) A premium rated service provider must 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.

(7) A Licensee must endeavour to ensure that it investigates and addresses all complaints received regarding premium rated services accessed on its network within fifteen (15) days after receiving it.

(8) If more time is reasonably required to complete the investigation, the premium rated service provider must inform 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.

(9) Failure to rectify the service within the time period contemplated in sub-regulation (7), a licensee must cease and bar access to the service on its network.

(10) A Licensee must advise the originator of the complaint received, the outcome of its investigation and where applicable the action that was taken to rectify the situation.

(11) A premium rated service provider must not collect payment, and must ensure that the relevant billing network operator does not collect payment, from any person who is charged for a premium rated service, where that person notifies the premium rated service provider that he reasonably believes the charge to be incorrect and where there appears to be sufficient grounds for disputing the charge.

(12) In all cases where a reasonably disputed charge is notified to a premium rated service provider 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) checking that the charge is correct based on the premium rated service provider's records; and

(b) verifying the accuracy of its records against the records of the network operator through which the premium rated service was provided.

(13) The premium rated service provider may only collect payment from the person charged after it has duly completed the investigations referred to in sub-regulation (12) and confirms that the charge is correct.

(14) 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.

(15) A premium rated service provider must keep an accurate, full and complete record of all complaints and disputes raised by any person in relation to its premium rated service (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.

(16) 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.

(17) The Authority may, on its own initiative, commence investigation against a relevant licensee where there appears to be a contravention of this Code by such licensee.

(18) 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 this Code.

(19) Any failure by a relevant licensee to comply with the Authority's requests for information, or any destruction, disposal, falsification or concealment of requested documents, constitutes a contravention of this Code.

(20) The fact that the information required by the Authority is subject to an existing confidentiality agreement between the relevant licensee and any other party must not excuse the licensee from providing the information to the Authority in terms of section 4D of the ICASA Act.

(21) A licensee must ensure that all information provided to the Authority, whether in its written response, related representations or any other submissions, are complete, truthful and accurate.

18. TRANSITIONAL ARRANGEMENTS

(1) Agreements concluded before the promulgation of these Regulations must be aligned with the Regulations within one (1) month of the Regulations coming into effect.

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.

This gazette is also available free online at **www.gpwonline.co.za**

IMPORTANT
Information
from Government Printing Works

Dear Valued Customers,

Government Printing Works has implemented rules for completing and submitting the electronic Adobe Forms when you, the customer, submits your notice request.

Please take note of these guidelines when completing your form.

RULES

GPW Business Rules

1. No hand written notices will be accepted for processing, this includes Adobe forms which have been completed by hand.
2. Notices can only be submitted in Adobe electronic form format to the email submission address submit.egazette@gpw.gov.za. This means that any notice submissions not on an Adobe electronic form that are submitted to this mailbox will be **rejected**. National or Provincial gazette notices, where the Z95 or Z95Prov must be an Adobe form but the notice content (body) will be an attachment.
3. Notices brought into GPW by "walk-in" customers on electronic media can only be submitted in Adobe electronic form format. This means that any notice submissions not on an Adobe electronic form that are submitted by the customer on electronic media will be **rejected**. National or Provincial gazette notices, where the Z95 or Z95Prov must be an Adobe form but the notice content (body) will be an attachment.
4. All customers who walk in to GPW that wish to submit a notice that is not on an electronic Adobe form will be routed to the Contact Centre where the customer will be taken through the completion of the form by a GPW representative. Where a customer walks into GPW with a stack of hard copy notices delivered by a messenger on behalf of a newspaper the messenger must be referred back to the sender as the submission does not adhere to the submission rules.
5. All notice submissions that do not comply with point 2 will be charged full price for the notice submission.
6. The current cut-off of all Gazette's remains unchanged for all channels. (Refer to the GPW website for submission deadlines – www.gpwonline.co.za)
7. Incorrectly completed forms and notices submitted in the wrong format will be rejected to the customer to be corrected and resubmitted. Assistance will be available through the Contact Centre should help be required when completing the forms. (012-748 6200 or email info.egazette@gpw.gov.za)
8. All re-submissions by customers will be subject to the above cut-off times.
9. All submissions and re-submissions that miss the cut-off will be rejected to the customer to be submitted with a new publication date.
10. Information on forms will be taken as the primary source of the notice to be published. Any instructions that are on the email body or covering letter that contradicts the notice form content will be ignored.

You are therefore advised that effective from **Monday, 18 May 2015** should you not comply with our new rules of engagement, all notice requests will be rejected by our new system.

Furthermore, the fax number **012- 748 6030** will also be **discontinued** from this date and customers will only be able to submit notice requests through the email address submit.egazette@gpw.gov.za.

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