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**GOVERNMENT NOTICES • GOEWERMENTSKENNISGEWINGS**

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**INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA**

NO. 1259

17 DECEMBER 2015

**EXPLANATORY DOCUMENT REGARDING THE REGULATIONS FOR PREMIUM RATED SERVICES CODE OF CONDUCT****1. OBJECTIVES OF THE REGULATIONS**

- (1) These Regulations has been developed in line with section 69(2) of the Electronic Communications Act of 2014 ("the ECA"), as amended.
- (2) These Regulations has been developed for the provision of premium rated services offered by electronic communication service and electronic communication network service licensees and their third parties service providers, as defined by the ECA.
- (3) The overarching goal of these Regulations is to protect the interest of the public in general and in particular consumers of premium rated services provided within the Republic. The Independent Communications Authority of South Africa ("the Authority") considers that such end-user confidence will also benefit the industry as well as support new and innovative premium rated services emerging from the industry.
- (4) To ensure the protection of the public and consumer interests, these Regulations:
  - (a) Sets out the conduct and ethical norms to be observed by licensees offering premium rated services either directly or by their third party service providers in pursuit of protecting the interest of the public and consumers of premium rated services.
  - (b) These Regulations seeks to ensure fair practices in the provision of premium rated service and uniformity in premium rated service market practices.
- (5) Electronic communication service, electronic communication network service licensees ("licensees"), being either direct or indirect providers of premium rated services, are expected to comply with both the spirit and the letter of these Regulations.
- (6) The Authority would like to emphasise that irrespective of any provisions that may be imposed to licensees, ultimately the public and consumers of premium

rated services also bear a level of responsibility for their own actions and they are to some great extent best placed to protect themselves.

## **2. MIGRATION OF PREMIUM RATED SERVICES**

- (1) All new assignments for premium rated services are to be made on the new designated numbering range. While existing on-going premium rated services will follow migration plan not exceeding six months from the date of publication of the regulations.
- (2) For the avoidance of confusion, services that by their nature both premium rated and Machine related shall be subject to the machine related service migration.
- (3) The objective of this move is to promote tariff and service transparency. A clear distinction using different national destination codes is one form of promoting transparency. In the case of premium rated services it is more imperative as the charge for such services carry a higher tariff than for normal services and in some instances carry inappropriate content for under age end-users.
- (4) The Authority will work with the affected licensees to ensure that there is a smooth and gradual migration with minimal disruption to services. Licensees are encouraged to submit to the Authority their migration plans, as per the template, within fourteen (14) days of the commencement of these regulations.

## **3. PROVISION OF PREMIUM RATED SERVICES (“PRS”)**

- (1) Currently premium rated services are primarily offered on an on-net basis. One of the contributing factors for this, is that unlike normal services where it is the originating licensee that sets the call charge, with premium rated services it is the terminating licensee along with the premium rated service provider that sets the call charge.

- (2) Other contributing factors for the provision of premium rated services on an on-net basis relate to other various measures (i.e. consumer protection measures) that are not needed for calls to non-premium rate numbers such as Opt-in and/or opt-out facilities.
- (3) The current provisioning also contributes towards limiting consumer problems since one licensee is both the originating and terminating licensee and has access to both the callers and the premium rate service providers. This places licensees in a better position to effectively resolve consumer problems.
- (4) However, interconnectivity remains an obligation mandated by section 37 (1) of the Electronic Communications Act of 2005 “the Act”:

*“Subject to section 38, any person licensed in terms of chapter 3 must, on request, interconnect to any other person licensed in terms of this Act and persons providing service pursuant to a licence exemption in accordance with the terms and conditions of an interconnection agreement entered into between the parties, unless such request is unreasonable”*

- (5) Hence within the forum<sup>1</sup> the Authority has engaged with, considerable amount of time was spent deliberating on the technical requirements and regulatory considerations that would enable for the provision of premium rated services on an off-net basis.
- (6) However, a significant amount of views were that interconnectivity of premium rated services may not be economically feasible. The economic feasibility for interconnectivity is one of the conditions put forth by section 37 (3) of the ECA which stipulates that:

*“For the purposes of subsection (1) a request is reasonable where the Authority determines that the requested interconnection –*

*(a) Is technically and economically feasible; and*

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<sup>1</sup> The Industry Numbering Forum was established as per regulation 24 of the Numbering Plan Regulations GG 35737 to develop a code of conduct that would guide for the provision of premium rated services.

*(b) Will promote the efficient use of electronic communications networks and services”*

**(7) The Authority’s take:**

- (a) The objective of this code of conduct is to protect consumers of premium rated services from harmful practices and to set out minimum standards for the provision of premium rated services.
- (b) The Authority considers that a requirement to support interconnection is important in a competitive market with multiple licensees. Interconnection to some regard stimulates competition and importantly allows new entrants to offer connectivity to consumers who want to have premium rate numbers.
- (c) Hence the Authority envisions a separate process to establish the interconnectivity of premium rated services and the model thereof. This will also ensure that the code of conduct is not clouded with inter-operator matters.
- (d) The Authority would like to encourage interest parties to participate and contribute towards this process. The Authority also extends an invitation to interested parties to the Industry Numbering Forum and to the formal consultative process that will inform interconnectivity of premium rated services and model thereof.

- (8) In the provision of the premium rated services, the regulations make and have reference to the following acts:
- (a) Electronic Communications Act of 2005, as amended.
  - (b) Film and Publication Board classification guidelines, as amended.
  - (c) Children's Act of 2005, as amended.
  - (d) Consumer Protection Act of 2008, as amended.
  - (e) Advertising code of practice, as amended.
  - (f) Electronic communications and transaction Act of 2002, as amended.
  - (g) Protection of private information Act of 2003, as amended.
  - (h) Consumer Protections Act of 2008, as amended.