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Ms Tumishang Makhafola
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ICASA

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Dear Madam

DRAFT REGULATIONS ON CODE OF CONDUCT FOR PREMIUM RATED SERVICES, GAZETTE 39536 AND EXPLANATORY DOCUMENT, GAZETTE 39535

1. Cell C would like to thank ICASA for the opportunity to provide written submissions on the draft regulations on the Code of Conduct for Premium Rated Services ("the PRS Code") as published in *Government Gazette Gazette 39536* on 17 December 2015 and accompanying Explanatory Document, *Gazette 39535*.
2. Cell C looks forward to engaging with ICASA should ICASA have any queries on Cell C's written submission.
3. Cell C confirms its readiness to participate in any subsequent hearings that might be called by ICASA.

Yours sincerely


pp. **Zolile Ntukwana**
EXECUTIVE HEAD: REGULATORY AFFAIRS

CELL C RESPONSE

**DRAFT REGULATIONS ON CODE OF CONDUCT FOR PREMIUM RATED SERVICES,
GAZETTE 39536 AND EXPLANATORY DOCUMENT, GAZETTE 39535**

1. During 2015, ICASA published the draft Numbering Plan which included a Short Code Strategy (“SC”), thereafter ICASA published an Erratum that made amendments to provisions relating to both with Machine Related Services (MRS) and SC’s. These processes are incomplete. Subsequently, ICASA has published the Code of Conduct with an Explanatory Note for comment. It is with this background that Cell C will raise several concerns and provide recommendations that may assist ICASA in finalising its regulations. These comments are limited to the PRS Code and not the technical and commercial model for premium rated services (“PRS”).
2. It is Cell C’s understanding that the Code of Conduct is a set of standards that are to govern the marketing and sales practices including transparent arrangements for the subscriber in the use of premium rated services (“PRS Code”). It is therefore concerning to Cell C that that the PRS Code and the Explanatory Note contain provisions that deal with PRS migration, interconnection, and timelines for parallel running of new and existing PRS services. ICASA finds itself in this position in Cell C’s view because the other processes such as finalising the draft Numbering Plan with agreed migration timelines and providing a clear definition of PRS are incomplete. Furthermore, it is unclear to Cell C in which context should Cell C base its comments, the existing Numbering Plan regulations or the draft Numbering Plan regulations. Lastly, there may be an unintended consequence of the publication of the PRS Code in this form, in that the PRS Code may be finalised prior to the draft Numbering Plan regulations and will therefore require amendment once the draft Numbering Plan regulations are finalised. In this regard, Cell C recommends that the consultation on the PRS Code be held in abeyance until the finalisation of the draft Numbering Plan regulations.

3. The PRS Code must only contain matters that deal with marketing and sales practices and the transparent arrangements for the subscriber who accesses PRS. However, the PRS Code purports to go further than this. The PRS Code is unclear on its scope and applicability with respect to voice, SMS/MMS and USSD PRS. The draft Numbering Plan refers to a PRS Code for voice PRS only. However the PRS Code also contains references to SMS/MMS in regulation 6. It must be noted that the existing Numbering Plan regulations are not specific on the type of service. Cell C recommends that ICASA clearly indicate that the PRS Code is applicable to voice PRS only. ICASA will be well aware of the existence of the WASPA Code of Conduct, provided for and authorised in terms of the Electronic Communications and Transactions Act, 2002 (ECT Act). The WASPA Code remains relevant and applicable for SMS/MMS PRS insofar as the use of short codes and premium-rated short codes is concerned. Cell C supports ICASA's proposal to develop a voice PRS Code.

4. The implementation timeline for PRS in the existing Numbering Plan regulations provided for a two-year period for implementation and migration of PRS. The draft Numbering Plan regulations do not specify a timeline for implementation. However, sub-regulation 4(4) of the PRS Code makes reference to parallel running of the numbering for the PRS for six months. As recommended above, any matters related to migration are to be removed from the PRS Code. We say this because the scope of the migration will be determined once the definition of PRS is finalised. This also impacts on the technical readiness of the network. Also note that the duration of any commercial relationship with a PRS provider and licensee must be taken into account. Any deviation from the two year period for implementation must be justified with good reason otherwise ICASA may be considered to be interfering in commercial matters which fall outside its jurisdiction, alternatively even prejudicing the relationship and operations of these parties.

5. Cell C notes with concern that the proposed definition for PRS in the existing Numbering Plan regulation, the draft Numbering Plan regulation and the PRS Code are inconsistent. Cell C recommends the following definition:

“premium rated service” means an electronic communications service accessible by means of premium rated numbers irrespective of the originating electronic communications network used, the use of which attracts a higher charge than the charge for other electronic communications services of the provider”

6. In terms of sub-regulation 6(3), Cell C provides a double opt-in option to the subscriber for recurring/subscription PRS SMS/MMS services. The subscriber is requested to register for the service and thereafter a confirmation SMS to opt-in is sent to the subscriber. The subscriber may opt-out at any time from the service by accessing a USSD self-service portal. This platform resides on the Cell C network and is independent from the third party PRS service provider and it is therefore a direct opt-out option. Once the subscriber initiates this option, he is immediately removed as a subscriber to the PRS. In the circumstances, Cell C believes that sub-regulation 6(4) is onerous and resource-intensive and therefore impractical. Cell C does not understand the reason for such requirement and the timing thereof, given the requirements of regulation 6(3). Cell C recommends the removal of this provision as the subscriber has the option of opting out of the service by using the self USSD self-service portal. If a similar mechanism is not being deployed by other licensees then perhaps regulation 6(3) could be more specific in its requirements.

7. Cell C notes that regulation 14 is a repetition of requirements as contained in the Advertising Standards Authority of South Africa’s, Advertising Code of Practice and the Consumer Protection Act, 2008 (“CPA”) and therefore unnecessary, and again an extension of ICASA’s powers. The Advertising Code of Practice provides for the following:

- a. Honest advertising (clause 2 of Section II)
- b. Truthful presentation (clause 4 of Section II)
- c. Misleading claims (clause 4.2.1 of Section II)
- d. Pricing policy (clause 19 of Section II)
- e. Charitable Causes (clause 4 of section III).

Cell C further notes that regulation 14 deals with promotions, in this regard Cell C believes that this is addressed by, among others, section 36 of the Consumer Protection Act, 2008. Therefore Cell C recommends the removal of all the provisions in regulation 14 except sub-regulation 14 (1) with the following addition:

“ 14(1) All promotions and advertising of premium rated services must comply with requirements as prescribed in the Advertising Standards Authority of South Africa, Advertising Code of Practice and the Consumer Protection Act, 2008”

8. Cell C seeks clarity in terms of sub-regulation 2(3) of the PRS Code wherein ICASA states the following:

“If any other legislation provides for conditions for the provision of premium rated services that are more extensive than those set out in these Regulation, the extensive conditions must prevail”. Since ICASA already knows that these provisions are dealt with in other national legislation or approved Codes (such as the WASPA Code) ICASA ought not to include them in the first place.

9. Currently Cell C provides itemised billing as prescribed in terms of sub-regulation 10(4)(a) and (b) of the Standard Terms and Conditions regulations for Individual Electronic Communication Network Licensees and Individual Electronic Communication Service Licensees under schedule 2. The current bill indicates the ten most expensive destinations visited (by identifier), the ten most frequently used destinations and a usage summary. The latter indicates the MMS Usage, Content Services, Premium SMS, USSD Billing. The bill is further broken down to indicate the date, time, duration, destination number and the amount in rands and cents per event. Cell C recommends that only the term “PRS voice service” be recorded on the bill as a total and each call will be captured as follows: date, time, duration, destination/ number and the amount in Rands and cents per event where the destination/number will be a 090/1/2 PRS band number. This will meet ICASA’s expectation where subscribers will associate the PRS with the 090/1/2 number range. The advantage of this approach is that it will save on the itemised billing costs, use minimum space on the bill and ensure some form of privacy with respect to the subscriber’s behaviour. In the event that there are billing queries, the subscriber may approach Cell C customer care or the customer support of the PRS service provider and request more information. Lastly, Cell C believes that the proportionality in terms of the resources required to effect this change will not necessarily reduce the amount of billing queries. Cell C suggests that to the extent that other licensees are not using a similar mechanism, they should be urged to do so. However, the least burdensome form of regulation is always the most appropriate.

10. Cell C recommends that the complaints procedure as prescribed in the End-user and Subscriber Service Charter regulations be followed when managing subscriber complaints concerning PRS as well. The advantage of such approach is that the complaints will be managed within an existing working and functional process, the same resources that understand the complaints handling process will be utilised and that PRS SMS/MMS subscriber complaints are successfully managed within this framework. There is no need in our view to require yet another mechanism to deal with PRS issues, and ICASA has given no evidence to support the need for this.

11. In summary:

- a. The timing of the PRS Code is inappropriate given the number of other initiatives that are still outstanding and that impact upon the implementation of any such PRS Code;
- b. ICASA will be exceeding its authority if it proposes to regulate matters that are already dealt with in other approved Codes or laws and this can only lead to confusion and disputes; and
- c. ICASA has not given any evidence to suggest that certain additional obligations are proportionate or necessary.