Internet Service Providers' Association

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Independent Communications Authority of South Africa

Attention: Ms Tumishang Makhafola

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Dear Ms Makhafola

Draft Regulations for a Code of Conduct on Premium Rated Services

1. ISPA refers to the Draft Regulations for a Code of Conduct on Premium Rated Services ("the Draft Code") under section 69(2) of the Electronic Communications Act 36 of 2005 ("the ECA") published as Government Notice 1260 of 2015 on 17 December 2015 as well as the related Explanatory Document.
2. ISPA congratulates the drafters and the Authority on what is a generally sound document that has the potential to advance consumer protection in the market for the provision of premium rated services ("PRS").
3. ISPA agrees with the view expressed in the Explanatory Document that enhancing consumer confidence in PRS will be to the broader benefit of the industry.

Submissions regarding Regulation 16

4. The requirement of 16(2)(a) is impractical to comply with insofar as the definition of "Premium rated service provider" includes "or any other third party".
   4.1. The billing network operator may not be the terminating licensee and therefore will not have visibility as to whom PRS numbers are assigned to by the allocating licensee serving that PRSP and therefore not have the name of the PRSP. It can, however, be reasonably expected to know the licensee to whom the PRS numbers have been allocated by ICASA.
   4.2. This issue can be resolved either by amending the definition of PRSP to only include licensees and not "any other third party" or amending 16(1)(a) to "the name of the licensee to whom the premium rate number has been allocated."
5. The requirement of 16(2)(b) is entirely impractical.

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5.1. The billing network operator cannot be expected to know what services are being provided on each of the premium rate numbers that another licensee is assigning from its allocation on a daily basis and then to amend its billing systems daily.

5.2. This sort of information can be provided on the request of the account holder, and the billing network licensee can then contact its interconnect partners who will, in turn, need to assist in advising of the particulars of the exact service that they have assigned the number to.

6. The requirement of 16(2)(c) compels the attachment of itemised billing to tax invoices while general practise is to make this accessible to clients through a portal or other interface or to provide it on request.

6.1. In practice, what is proposed in 16(2)(c) may be good for individual consumers, however, businesses (particularly larger ones) generally have separation of roles and the person dealing with the tax invoice doesn't necessarily manage the spend of staff members nor wish to be mired in the detail of call spend, particularly if that invoice covers a large number of lines (and potentially also other bundled services such as data, etc.).

6.2. It is imperative that the account holder be able to obtain itemised billing as and when they require, but not necessarily logical that this always be attached to every invoice.

7. The requirement of 16(2)(d) is entirely impractical for the same reasons set out in paragraph 4 above and undesirable for the same reasons as set out in paragraph 5 above.

8. Clause 16(4) may be impractical in instances where the customer has signed a debit order or lodged a dispute on or after the due date.

8.1. It is commonplace to allow collection to continue pending the outcome of a dispute if the disputed amount is less than a defined portion of the total bill (e.g. less than 5%). This also helps avoid defaults on debit orders and cheques and associated bank and administration charges which may exceed the amount in dispute if that amount is a small portion of the total bill.

9. Clauses 16(5) and 16(6) attempt to apply a one-size-fits-all approach and are – in ISPA's view – ill-conceived.

9.1. The amounts specified may be too high for a prepaid individual consumer, yet, impede a corporate with hundreds of staff from using, for example, a premium-rate teleconferencing service.

9.2. The pre-defined amounts ("R200", "R220", etc.) should be removed and replaced with "a specified threshold" and an additional clause should be added stating that the threshold shall be X in respect of individuals and Y in respect of juristic entities, save that the billing network operator may amend the thresholds and notification amounts in accordance with the account holder's instructions.

Submissions in respect of regulation 6

10. We submit that the period of 5 seconds specified in sub-regulation 6(2) may not be sufficient for the contemplated announcement to be provided clearly and suggest that this be extended to a maximum of 10 seconds.

11. ISPA questions whether it is realistic to require that licensees must "ensure" that PRS do not incite violence or constitute hate speech or any of the other categories of conduct set out in sub-regulation 6(9).

    11.1. Licensees are not under any obligation to and cannot monitor the content or vet the content of PRS provided over their networks.

    11.2. The mechanism by which licensees bind their PRSPs to commercial terms and – in future – compliance with a finalised PRS Code, will be the agreement entered into between a licensee and a PRSP.

    11.3. The obligation on the licensee should be to bind its PRSPs contractually to comply with the provisions of the PRS Code and thereby to create effective indirect enforcement.

    11.4. It follows that – at most – a licensee can prohibit this conduct or material in its contracts on pain of termination: it cannot ensure that the PRSP obeys the law and we submit that wording such as "take reasonable steps" are more appropriate than "ensures".

Universal barring of PRS

12. ISPA strongly recommends – in the interests of consumer protection – that licensees be compelled to offer customers the option to both:

    12.1. Bar access to all PRS; and

    12.2. Bar access to all adult services.

13. The mechanism for doing so should be simple and there should be a positive obligation on PRSPs to communicate this to subscribers.

Definition of "Adult services"

14. ISPA submits that the definition of "Adult services" contained in the Draft Code should be broadened to include material which would have been classified as X18 under the Film and Publications Act had it been submitted for classification. This would then bring within the ambit of the Draft Code material provided through a PRS which has – unlawfully – not been submitted to the Film and Publications Board for classification but which would have been classified X18 had it been submitted as required.

15. We note in this regard that the Film and Publications Amendment Bill 2015 – which is currently before Parliament – proposes to insert wording achieving this purpose into subsection 24A(2) of the Film and Publications Act (reflecting the proposed additions and deletions):

    (2) Any person who knowingly broadcasts, distributes, exhibits in public, offers for sale or hire or advertises for exhibition, sale or hire any film, game or a publication referred to in section 16~~(12) of~~

~~this Act~~ which has, except with respect to broadcasters that are subject to regulation by the Independent Communications Authority of South Africa and except with regard to a newspaper, magazine, or advertisement contemplated in section 16(1)-

(a) ~~except with respect to broadcasters that are subject to regulation by the Independent Communications Authority of South Africa and a newspaper contemplated in section 16(1),~~ not been classified by the Board;

(b) been classified as a "refused classification"; or

(c) been classified as "XX" or would have been so classified had it been submitted for classification,

shall be guilty of an offence and liable, upon conviction, to a fine not exceeding R500 000 or to imprisonment for a period not exceeding five years or to both a fine and such imprisonment.

16. A similar amendment is proposed to subsection 24A(3) of the Film and Publications Act:

(3) Any person, not being the holder of a licence to conduct the business of adult premises and, with regard to films and games, not being registered with the Board as a distributor or exhibitor of films or games, and who knowingly broadcasts, distributes, exhibits in public, offers for exhibition, sale or hire or advertises for sale or hire any film, game or a publication which has been classified "X18" or would have been so classified had it been submitted for classification, shall be guilty of an offence and liable, upon conviction, to a fine not exceeding R750 000 or to imprisonment for a period not exceeding five years or to both a fine and such imprisonment.

17. It would be advisable for the Authority to consult with the Film and Publications regarding the adult services and protection of children provisions of the Draft Code.

Interconnectivity of PRS

18. ISPA has noted with interest the discussion in paragraphs 6 and 7 of the Explanatory Document, relating to interconnectivity of PRS.

19. ISPA:

    19.1. Reiterates its view that this is both technically and economically feasible as well as being in the interests of consumers. Economic feasibility is not a function of the fact that allowing access to third parties will erode an incumbent licensees' profit margins.

    19.2. Strongly supports the statement set out in sub-paragraph 7(b): ISPA's members have for years sought access to competitive opportunities related to PRS.

    19.3. Urges the Authority to commence the process contemplated in sub-paragraph 7(c) of the Explanatory Document as soon as possible and to ensure that this process is accommodating of smaller licensees.

Conclusion

20. We trust that the above will prove to be of assistance and look forward to further constructive engagement with the Authority in this regard.

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ISPA REGULATORY ADVISORS