

The Chairperson
ICASA
164 Katherine Street
Sandton
2146

12 February 2016

Dear Chairperson

NEOTEL SUBMISSION ON THE DRAFT REGULATIONS ON THE CODE OF CONDUCT FOR PREMIUM RATED SERVICES

Please find herewith Neotel's submission on the "Draft Code of Conduct for Premium Rated Services Regulations". The detailed input is attached in Annexure "A".

This submission includes a Microsoft Word and a signed pdf electronic version.

Neotel looks forward to participate in the finalisation of these draft regulations. In this regard, Neotel is at the Authority's disposal for any further engagement and clarity.

Yours sincerely,

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NEOTEL (PROPRIETARY) LIMITED

Per: Dr Tracy Cohen
CHIEF CORPORATE SERVICES OFFICER

Cc: TMakhafola@icasa.org.za
numberingapplications@icasa.org.za

Annexure A

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1. INTRODUCTION

1. Neotel thanks the Independent Communications Authority of South Africa (“the Authority”) for the opportunity to provide comments on the “Draft Regulations on Code of Conduct for Premium Rated Services”, published in Government Gazette No. 395536 on 17 December 2015 (“draft Regulations”).
2. Neotel hereby also wishes to commend the Authority for the consultative and responsive manner of engagement on this critical issue. Neotel believes that the finalisation of these Regulations is overdue and congratulates the Authority on its efforts in this regard.
3. Neotel’s approach to the submission is to make general comments on the draft Regulations followed by detailed comments on specific sections on the same.

2. GENERAL COMMENTS

4. ICASA’s overall objectives should be to ensure that end-users of Premium rated services (“PRS”) will be as assured and safe in using PRS as in engaging with best practice retail services. ICASA considers that such end-user confidence will also benefit industry as new and innovative PRS are developed and made available.
5. *“Additionally it should be ICASA’s aim to provide an efficient and impartial redress mechanism, so that end-users not themselves have to take legal steps to secure such redress. Neotel is of the view and believes that end-users are entitled to have their complaints dealt with fairly and effectively”.*
6. Neotel submits that notwithstanding any provisions that ICASA may enforce on the PRS sector, end-users should further bear a level of responsibility for their own actions and that they themselves are often best placed to protect their usage of electronic communications services.

7. In this submission Neotel raised issues in respect of the following:
 - a. Origination fees
 - b. Porting provisions
 - c. Onward dispute mechanism
 - d. Billing of PRS services that is not in-scope
 - e. Opt-in and Opt-out with PRS service provider
 - f. Turn around time on publishing of PRS numbers on other networks

3. DEFINITIONS (REGULATION 1)

8. Neotel submits that the various definitions must be consistent with the Electronic Communications Act (“the ECA”) and related regulations and should also be reflected throughout the document.

4. GENERAL PROVISIONS OF PRS (REGULATION 6)

9. Regulation 6 makes provision for the announcement of a PRS being dailed. The Regulation is not clear who is responsible for the announcement and the length of the announcement may be a challenge. In this respect Neotel proposes lengthening the announcement to a more reasonable time.
10. Neotel submit that the authority must clarify this section and if the announcement has to be done before the call is answered.

5. PREMIUM RATED SERVICE NUMBER RE-USE OR MASKING (REGULATION 7)

11. Neotel submits that licensees need sufficient time to investigate harmful uses of numbers following prescribed processes.
12. On-net uses of numbers is easy to detect and rectify. However, a significant amount of Neotel’s traffic originate from other networks locally and internationally.

6. INFORMATION ON PREMIUM RATED SERVICES (REGULATION 8)

13. Neotel submits that it is important that the timeframes for reporting cycles be consistent with the various reports and statistics that are submitted to the Authority.
14. Neotel is of the view that information on PRS, with Number Audit data be submitted to the Authority annually thirty (30) days after the financial year end (31 March).
15. Neotel is concerned about the phrasing of Regulations 8(2) suggesting that the information be made readily accessible to end-users. Neotel believes that this should be the responsibility of the PRS provider to whom the end-user has a relationship.

7. BILLING OF PREMIUM RATED SERVICES (REGULATION 16)

16. Neotel believes that this will need to be provided by the Operator enabling the Premium rated service and should be included in the notification to open the number on our network.
17. Neotel is of the view that the current provisions will put an unacceptable requirement for manpower to support billing disputes. Neotel believes that this should be done by the premium rated service provider. Further to this 16(4) stipulates that the originating network may not recover cost pending the outcome of the dispute, but in contrast has to pay the termination fee to the other terminating operator.
18. Neotel further submits that in Regulations 16(5) and 16(6) it should be mandatory on the end-user to request call limits and should not be onerous on network operators to monitor the usage of PRS. The limit of R200 has no basis as the maximum amount and end-user is willing to spend will depend on the usage needs.

8. COMPLIANTS PROCEDURE (REGULATION 17)

19. Neotel submits that any dispute or complaint lodged with the originating network will result in overhead or administration costs on resources.
20. Neotel believes that the Regulations must make provision for an originating cost which the originating network could off-set against the interconnection fees payable to the PRS Provider's terminating network.
21. Subsection 11 indicates that the source for the dispute and withholding of the payment should be the PRS provider who has incentive not to declare, while the originating operator is held at ransom. The amount disputed should be onward disputed from the originating network. The customer will withhold payment out of his own accord and the originating operator will be out of pocket.
22. A customer disputing an invoice post-facto will withhold the payment from the originating network operator at this time. This will put the originating network out of pocket again.
23. In summary the dispute must be done via the originating network to the terminating network and details of the associated disputed amounts and services provided in a supporting document (report) until the payment is received for the services from the customer.
24. Neotel is of the view that the originating network should be entitled to an originating fee to compensate for the additional workload.
25. Lastly this regulation favours the PRS Provider who has a financial benefit in discarding disputes while the originating Network provider has to pay Interconnection fee in 30 days after receipt of invoice. The originating network may not collect until the dispute is resolved meaning that the originating network will finance the PRS provider.

26. Neotel submits that this will lead to smaller players being affected as this will result in cash flow problems and a possible closing down of the small entities.

27. Neotel further suggests a delay payment billing of 90 (ninety) days to the PRS services provider and terminating network.

9. TRANSITIONAL ARRANGEMENT (REGULATION 18)

28. Agreements of this nature between Operators and Service providers take months to conclude and often requires Company Board approvals, which may be a multinational company. On the other hand SMMEs may not have the necessary in-house Legal teams to support negotiations of the T&Cs of this types of agreement. Neotel therefore believes that the timeframe for the alignment of agreements are too short.

29. Neotel submits that the transitional arrangement should be increased to 6 (six) months for alignment to these regulations.

10. PORTING OF PRS NUMBERS

30. The Authority announced that the number portability regulations will be amended through a consultative process which we fully supports the effort and the process on an urgent basis.

31. However, Neotel submits that in the current numbering regulations as well as in these draft Regulations there is no link between the numbering plan and the porting process in the number portability regulations.

32. Neotel believes that this could easily be fixed by including a provision in the draft numbering regulation by declaring that **all numbers are permissible to be ported**.

11. ROUTING OF COMMUNICATIONS TO PRS NUMBERS

33. There are no provisions that stipulate whether or not routing a PRS is mandatory. Neotel seeks clarity in this regard.
34. There are also no provisions for the activation of numbers or number ranges on other operators' networks.
35. Neotel is of the view that routing of communication to numbers assigned to subscribers should be activated on other operators' networks within seventy (72) hours. This is practically possible and can be done effortlessly. This will prevent major delays in bringing into service single numbers and respective number ranges. In this respect, Neotel respectfully submits that the Authority must set out the time-frames within which activation of numbers by other operators must take place.
36. The Authority must further make it clear in the regulations that any failure to adhere to the time-frames is a punishable offence in terms of the final Numbering Plan Regulations.
37. Neotel also suggests that the Authority includes a provision in the regulations for operators to provide contacts of person/s responsible for routing and activation.

12. CONCLUSIONS

38. Considering the importance of all the above-mentioned issues and the impact that may arise, Neotel respectfully requests the Authority to further consult on these regulations.
39. Neotel would like to participate in any hearings that the Authority holds in respect of these draft Regulations.
40. Neotel remains at the Authority's disposal to clarify any issues raised in this submission or to assist in the finalisation of these draft Regulations.