



**Vodacom's written submission in response to the Authority's invitation for
comments on the draft Regulations on Code of Conduct for Premium Rated Services
[General Notice 1260, Government Gazette No. 39536 of 17 December 2015]**

INTRODUCTION

Vodacom (Pty) Ltd (“Vodacom”) welcomes the opportunity to comment on the draft Code of Conduct for Premium Rated Services 2015 (“Draft Regulations”) as published by the Independent Communications Authority of South Africa (“the Authority / ICASA”) in Government Gazette No. 39536, Notice Number 1260 of 17 December 2015. The Draft Regulations are intended to protect the interest of the public in general and in particular consumers of premium rated services. The Draft Regulations are intended to apply to all ECS and ECNS licence holders.

Vodacom confirms its willingness to participate in any further consultative processes, which the Authority may undertake in this regard.

Our submission is comprised of two (‘2’) parts:

- Part A: Vodacom’s general comments on the Draft Regulations.
- Part B: Vodacom’s specific comments on the Draft Regulations.

PART A: GENERAL COMMENTS

Vodacom reemphasise its commitment towards protecting the interest of the public in general and in particular consumers of premium rated services provided within the Republic. Our comments should thus be seen in the context of our commitment to the public and customers? to bring about an effective and efficient regulatory dispensation in their best interest.

Vodacom's comments focus on the following themes which should feature pertinently in considering regulations related to premium rated services, more specifically when considering the need for regulations on a code of conduct for premium rated services:

- Least intrusive mechanism to achieve public interest goals.
- Statutory regime for governing premium rated services and its providers
- Objectives of the Numbering Plan Regulations and the justification for a Code of Conduct
- Vodacom's commitment

Least intrusive mechanism to achieve public interest goals.

The rationale for the development of a Regulation on Code of Conduct for Premium Rated Services by the Authority is not entirely clear to Vodacom. More so, in the light of the mature state the industry has reached in subscribing and adhering to self-regulatory measures applicable for the provisioning of premium rated services currently in force. These measures, for example, required that in all instances where a Premium Rated Services Provider intends to offer premium rated services using premium rate service numbers, it is compulsory for them to join Wireless Application Service Providers' Association ('WASPA') before they will be allowed to offer these services. Membership to WASPA involves the adherence to a Code of Conduct applicable to all members (over 250 members).

It is also not clear from the Draft Regulations or from the explanatory note to the Draft Regulations to what extent alternative models, such as self-regulation, have been considered. Vodacom's view is that this should be a critical part of the process which needs to be considered in deciding on the need and content of regulations on a code of conduct for the provisioning of premium rated services.

Vodacom supports the view expressed in the National Integrated ICT Policy Review Report (March 2015) that regulation-making should consider the least intrusive mechanism to achieve

the defined public interest goals. This would include considering appropriate alternative models such as co-regulation and/or self-regulation. By implication this would require the Authority to consider the self-regulatory measures currently in force.

Broadly, Vodacom propose that the Authority work with WASPA to incorporate such minimum standards that could be reasonably required into the WASPA Code of Conduct as an effective means of encouraging compliance and governance without adding additional regulations.

Statutory regime for governing premium rated services and its providers

It would appear that the Authority has decided to develop a regulation on code of conduct for premium rated services, without consulting the industry, more specifically “other interested parties including user organisations” as required by the existing Numbering Plan Regulations GG No 35737 dated 02 Oct 2012.

Vodacom does not support this approach given that other parties, including WASPA and Premium Rated Service Providers would be directly affected by such Draft Regulations. The proposed Draft Regulations could have a material impact on their operations, practices and on existing agreements between Premium Rated Service Providers and WASPA as well as MoUs between licenced entities and WASPA.

Vodacom further more notes that the draft Numbering Plan Regulations GG 38908 dated 26 June 2015, refers to the development of a Code of Conduct related to ‘premium rated services for voice calls’.¹ However, when considering the content of the Draft Regulations, it encompasses more than just premium rated services for voice calls. The rationale for limiting the Code of Conduct to voice call services in the draft Numbering Plan Regulation and then encompassing all premium rated services in the Draft Regulations is not clear.

Whist Vodacom is mindful of the challenges encountered in developing a Code of Conduct in accordance with the requirements of the existing Numbering Plan Regulations GG No 35737 dated 02 Oct 2012, our view is that the Code of Conduct developed and maintained by WASPA should be considered as an appropriate model to regulate premium rated services before an alternative Regulation is developed. This Code of Conduct, currently administrated and updated on a frequent basis by WASPA, brings about an effective means to self-regulation of the industry.

Objectives of the Numbering Plan Regulations and the justification for a Code of Conduct

¹ Numbering Plan Regulations GG No 38908 dated 26 Jun 2015, section 23.2

The objectives of the existing² and draft Numbering Plan Regulations are to:

- Provide for the efficient use and allocation of numbers;
- Provide a scheme of identification to ensure that electronic communications are correctly and efficiently directed to the point of reception for which they are intended;
- Accommodate the varied protocols used and services provided by providers under the Act;
- Provide conditions and the process under which providers may surrender unused numbers to the authority for reallocation.

The existing Numbering Plan Regulations goes further and stipulate that for a number to “be a receiving number for a premium rate number, the premium rated service should be provided in conformance with an applicable industry code of practice”³.

Consequently, having considered these objectives and reference to the requirement of a Code of Conduct in the existing regulations Vodacom does not foresee a requirement for the Authority to develop regulations specifically stemming from the Numbering Plan Regulations.

Notwithstanding, if there remains a need to develop regulations specific to the efficient use and allocation of premium rated service numbers, Vodacom's view is that this could be provided for in the Numbering Plan Regulations. There would be no need for the Authority to develop a separate regulation in this regard.

Vodacom commitment

Vodacom remains committed to protect the interest of the public in general and in particular customers of Premium Rated Service Provided within the Republic. We have therefor signed a MoU with WASPA, which allows WASPA to use the WASPA Code of Conduct to, inter alia, to govern the delivery of premium rated services, including enforcing rules developed for advertising and complaints. Vodacom's view is that the current self-regulatory model is an effective way to achieve public interest goals related to premium rated services.

² Numbering Plan Regulations GG No 35737 dated 02 Oct 2012, section 2 (1)

³ Numbering Plan Regulations GG No 35737 dated 02 Oct 2012, section 25(1)(b)

PART B SPECIFIC COMMENTS

Section 2

Vodacom notes that the scope and application of these regulations is limited to ECS and ECNS licensees. Licensees are in turn obliged to 'encourage'⁴ third parties providing premium rated services to comply with the minimum standards set out in the proposed regulations. Subsequently the contemplated regulations do not provide a means to hold Premium Rated Service Providers directly accountable.

Section 3 and 4

It is Vodacom's view that the regulations listed under sections 3 and 4 i.e. under the headings "Numbering of Structure of Premium Rated Services" and the "Migration of Premium Rated Services" should be included in the contemplated Numbering Plan Regulations and not in this Draft Regulations.

Section 5

Requiring licensees to 'encourage' third parties providing premium rated services is ambiguous. This ambiguity could be used by third parties to circumvent and/or argue against the adherence to the currently enforced self-regulatory model, more specifically the Code of Conduct developed and maintained by WASPA.

Non-adherence to the regulation would carry no sanction or impact, which would defeat the objectives of the regulations as listed in the Explanatory Document regarding the Regulation for Premium Rated Services Code of Conduct. Neither can licensees be held responsible for non-adherence by third party Premium Rated Service Providers, when their actions fall outside the ambit of the EC Act.

Section 6

Whilst Vodacom recognises the right of the Authority to develop codes of conduct applicable to different types of services, such a code of conduct can only relate to services provided by licensees and not those provided by other parties. More so in instances when such a code of conduct aim to set minimum standards as to the content of such services. Vodacom cannot be

⁴ Regulations on Code of Conduct for Premium Rated Services GG No 39536 dated 17 Dec 2015, section 5(1)

held accountable for the way services are delivered by third parties, with specific reference to regulations 6(5) to 6(8), neither for the content of such services as listed under regulations 6(9).

With reference to regulations 6(3) the opt-in requirement is not practical or appropriate for premium rated services that do not follow a subscription model. Services such and SMS competitions, downloads, donations and other once-off services should be exempted from the opt-in requirement.

The wording used in regulations 6(4) is ambiguous. Vodacom interprets this regulation to mean - existing end-users of any premium rated service must receive a once-off opportunity to terminate these services when the new Regulations come into effect, after which communication from the Premium Service Provider to the end-user must cease. On the basis of the preceding interpretation Vodacom can comply where it offers such Wireless Application Services directly.

Section 7

It is Vodacom's view that the regulations 7(1) would fit better within the Numbering Plan Regulations.

Vodacom cannot be held accountable for the content of such services as listed under regulations 7(2). Also refer to Vodacom's comments under Section 6, more specific in relation to the governance of content.

Section 8

Whilst Vodacom would be able to provide the Authority with a list of all number blocks or numbers assigned for use for premium rated services, we would not be able to provide information related to the content of such services. Vodacom is not allowed to intercept⁵ the content of these services and thus would not be able to provide any information related to the content provided by Premium Service Providers.

Providing the information to end-users as contemplated under regulation 8(2) goes beyond what would be required in providing a conduit or bearer service in delivering Premium Rated Services. Such service may not be available to all end-users and the disclosure thereof in contravention

⁵ Regulation of Interception of Communications and Provision of Communication-Related Information Act, GG No. 24286 22 January 2003, Act No. 70, 2002 (RICA Act)

with the agreement between the third party and licensees, and/or they commercial model followed by the respective Premium Rated Services Providers.

Notwithstanding, compliance will only be practical for premium rated services provided using voice and USSD. In the case of SMS and MMS premium rated services WASPs augment 5-digit short codes and long-codes with keywords accommodate a multitude of services on one number. In such cases only high level description of the category of SMS or MMS services could be captured and not the detail content of such services.

Section 9

The governance of unsolicited services is dealt with under the Consumer Protection Act. There is therefore no need to develop separate regulations dealing with the same matter. Also refer to Vodacom's comments under Section 6, more specific in relation to the governance of content.

Section 10, 11, 12, 13, 14 and 15

These regulations govern the content of the premium rated services. Because neither Vodacom nor the Authority is considered to have the right to govern the content of the services these regulations would be unenforceable if retained as part of any final Regulations. Even if either the Authority or Vodacom had the right, Vodacom, as stated before, is not allowed to intercept the content required to ensure compliance with these regulations.

Section 13 and 14

Vodacom notes that the Authority's use of the word "partner" in regulations 13 (4), 13(5) and 14(2)(a). While these regulations have not defined the term "partner", it does suggest that the nature of the relationship between the licensees and third party premium rated service providers is one of shared control and accountability. Vodacom submits that this is not the case, and that Vodacom provides only the conduit to third party Premium Rated Service Providers.

Section 16

With reference to regulation 16(1) it is not clear why only in the instance where a billing network operator issues a 'bill' such premium rated service provider must be treated as having charged a person for its premium rated service. This would effectively exclude all premium rated service offered to prepaid subscribers, where no 'bill' is issued.

Notwithstanding, whilst Vodacom may be able to comply with regulations 16 (2)(a) and 16(2)(c) for subscription services, it will not be able to comply with regulations 16 (2)(b) and 16(2) (d).

Information systems will have to be developed to comply for premium rated services configured for technologies such as IVR, and USSD. Vodacom would not be able to comply for MMS and SMS services that are uniquely identified by adding keywords to numbers. Also refer to Vodacom's comments under Section 8 and 6.

With reference to regulations 16(3), Vodacom already provides reasonable assistance to WASPA to resolve customer complaints.

Only in respect of agreements between WASPA and Vodacom, and WASPA and its members allow for the suspension of payments for any charge, will Vodacom be able to suspend charging a customer. Regulation 16(4) would thus only be enforceable to the extent that there is a vested right to intervene following a dispute between a Premium Rated Service Provider and a customer.

Referring to regulations 16 (5) to (8) collectively, Vodacom highlights that the responsibility for Premium Rated Service usage notifications to end-user, and the associated record keeping reside on Premium Rated Service Providers, and not on licensees.

In practice only the Premium Rated Service Provider will be able to record and monitor all the services used by an end-user given that such an end-user can use multiple licensees to access such services. Furthermore, not all such services are provided via a premium rate number given that a customer is able to access such service via the internet. Notwithstanding, even if it was possible to collectively monitor such spending by a licensee the implementation cost of a system to monitor such spending would be substantial and far more than potential benefit derived.

Vodacom supports measures to inform customers and thus propose the Authority consider alternative models to achieve same e.g. the WASPA Code of Conduct, which already address notifications on cost.

Section 17

Vodacom cannot be held responsible for the compliance with regulations 17(1),(4),(5),(6),(7),(8), (11),(12),(13),(14),(15), and (16), applicable to Premium Rated Service Providers. Vodacom's view is that these regulations likely fall outside the ambit of the Authority's jurisdiction as it goes beyond the regulation of communications services as contemplated in the EC Act.

Vodacom cannot be mandated to cease and bar access to the service on its network, as required by regulation 17(9), as this would likely be in contravention with the rights of the Premium Rated Service Provider. . Such an intervention by a licensee has the potential to cause irreparable harm

to Premium Rated Service Providers that could jeopardise their viability as going concerns. The Authority ought to be mindful that the blocking of one SMS/MMS short code or long code, could translate into blocking a multitude of compliant Premium Rated Service Providers.

Vodacom re-emphasises the need for the Authority to consider alternative self-regulatory measures already in place via the WASPA Code of Conduct to address concerns about customer complaints. This code already provides for a process in dealing with complaints to which Vodacom and other operators have committed its support and co-operation. This enables industry to deal with complaints on a speedy basis to the benefit of consumers. Vodacom remains committed to assist in resolving complaints, which we have been doing effectively in co-operation with WASPA and its members.

It must be further considered that Vodacom is already required to adhere to existing regulations, for example End-User and Subscriber Service Charter Regulations GG No 32431 of 2009, in dealing with customer complaints. Any regulations contemplated by the Authority in dealing with customer complaints should first consider existing regulations covering same. Having to adhere to two sets of regulations on customer complaints would be ambiguous.

Section 18

Although not stipulated, the regulation seems to imply that agreements or other between licensees, WASPA and Premium Rated Service Providers, must be aligned with the contemplated regulations. This will only be enforceable to the extent it relates to regulated communication services offered by Vodacom e.g. providing a conduit, to enable the premium rated service offered through the use of a premium rated service number. This requirement should thus be reviewed, more so in consideration of alternative self-regulatory models already in place.