

(7 December 2007 – to date)

## **ELECTRONIC COMMUNICATIONS ACT 36 OF 2005**

*(Gazette No. 28743, Notice No.364 dated 18 April 2006. Commencement date: 19 July 2006) [Proc. No. R29, Gazette No. 29044]*

### **REGULATIONS IN RESPECT OF THE CODE OF CONDUCT FOR ELECTRONIC COMMUNICATIONS AND ELECTRONIC COMMUNICATIONS NETWORK SERVICES LICENSEES**

*General Notice 1740 in Government Gazette 30553 dated 7 December 2007. Commencement date: 7 December 2007*

THE INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA HEREBY PRESCRIBES REGULATIONS, IN TERMS OF SECTION 4 READ WITH SECTION 69(1) OF THE ELECTRONIC COMMUNICATIONS ACT, 2005 (NO. 36 OF 2005), IN RESPECT OF A[sic] THE CODE OF CONDUCT FOR ELECTRONIC COMMUNICATIONS AND ELECTRONIC COMMUNICATIONS NETWORK SERVICES LICENSEES

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#### **Table of Contents**

1. DEFINITIONS
2. SCOPE AND APPLICATION OF CODE
3. GENERAL STANDARDS TO BE ADHERED TO BY ELECTRONIC COMMUNICATIONS SERVICES AND ELECTRONIC COMMUNICATIONS NETWORK SERVICES LICENSEES
4. NON COMPLIANCE WITH THE CODE
5. AMENDMENT AND/OR REPEAL

The main objectives of these regulations are to:

1. prescribe guidelines that will set acceptable standard of conduct by licensees in respect of consumers; and
2. protect the rights of consumers in the electronic communications sector;

#### **SCHEDULE**

Prepared by:

## 1. DEFINITIONS

In these regulations any word or expression to which a meaning has been assigned in the Electronic Communications Act, 2005 (Act No. 36 of 2005) has the meaning so assigned and, unless the context indicates otherwise—

**"Act"** means the Electronic Communications Act 2005 (No. 36 of 2005)

**"Authority"** means the Independent Communications Authority of South Africa established by section 3 of the Independent Communications Authority of South Africa Act 2000 (No. 13 of 2000) as amended.

**"Code of Conduct"** ("the Code") means a code of practice, or similar document, intended to safeguard or promote the interests of consumers by regulating the conduct of persons engaged in the supply of goods or services to consumers.

**"consumer"** means a natural person excluding a juristic person, and includes an end-user (as defined in section 2 of the ECA), who uses and/or receives for own use, the services and/or products of a licensed service referred to in Chapter 3 of the Act.

**"ICASA Act"** means the Independent Communications Authority of South Africa Act, No. 13 of 2000.

**"service provider"** means

- a) a juristic person that sells to a consumer electronic communications service(s) and/or product(s) for the consumer's own use.
- b) a network operator;
- c) a juristic person that purchases network services from a network operator to resell these services to the consumer.

**"National Credit Act"** means the National Credit Act, No. 34 of 2005

## 2. SCOPE AND APPLICATION OF CODE

2.1 The Code of Conduct applies to electronic communications service licensees and electronic communications network service licensees.

2.2 The Code of Conduct must form the basis of individual codes of practice to be developed by licensees for their own businesses and outlets.

2.3 The Code must be applied in accordance with relevant legislation and regulations governing such electronic communications service licensees and all electronic communications network service licensees.

### **3. GENERAL STANDARDS TO BE ADHERED TO BY ELECTRONIC COMMUNICATIONS SERVICES AND ELECTRONIC COMMUNICATIONS NETWORK SERVICES LICENSEES**

#### **3.1 Key Commitments**

All Licensees must:

- a) act in a fair, reasonable and responsible manner in all dealings with the consumer;
- b) ensure that all services and products meet the specifications as contained in their licences and all the relevant laws and regulations;
- c) not unfairly discriminate against or between consumers on the basis of race, gender, sex, age, religion, belief, disability, ethnic background or sexual orientation;
- d) display utmost courtesy and care when dealing with consumers;
- e) provide consumers with information regarding services and pricing;
- f) provide consumers with guidance in regard to their customer needs, upon request;
- g) keep consumers' personal information confidential;
- h) advise consumers to refer the complaint to the Authority.

#### **3.2 Publication of the code:**

- a) Licensees must display a copy of "key commitments" section of the Code at its consumer service centres and business outlets and on its website;
- b) Licensees must provide a copy of the Code to any consumer upon request.

#### **3.3 Use of official languages:**

- a) Licensees must provide a printed Code to consumers in English and in at least one (1) or more official languages to consumers

- b) Licensees must provide a copy of the Code to consumers in other official languages upon request.

### 3.4 Consumer Rights:

Licensees must inform consumers about their rights in terms of the services they provide. The rights consumers[sic] include, but are not limited to:

- a) a right to be provided with the required service without unfair discrimination;
- b) a right to choose the service provider of their choice;
- c) a right to receive information in the preferred language;
- d) a right to access and question records and information held by the service provider;
- e) a right to the protection of the consumers' personal data, including the right not to have personal data sold to third parties without permission by the consumer;
- f) a right to port a number in terms of applicable regulations;
- g) a right to lodge a complaint; and
- h) a right to redress.

### 3.5 Provision of information

- a) Licensees must inform / provide consumers with information regarding the broad range of services / products on offer, tariff rates applicable to each service offered, terms and conditions, payment policies, billing, complaints handling procedures and relevant contact details.
- b) Licensees must provide accurate information that is readily accessible and understandable to consumers.

### 3.6 Tariffs

- a) Licensees must publish information on applicable tariffs, fees and terms and conditions for provision of the relevant service.
- b) Licensees must not provide any service for a charge, fee or other compensation, unless the prices for the service and other terms and conditions of the provision of such service have been made known to the public and the Authority by:

- i making such information available for inspection at its offices during business hours;
  - ii providing such details to anyone who requests at no charge;
  - iii. providing such details on its website
  - iv. providing such pricing details within thirty (30) days of commencing a service.
- c) No tariff plan must be offered, presented, marketed or advertised in a manner that may be misleading.

### **3.7 Contract Terms and Conditions**

Licensees must follow the following guiding principles for all their service contracts:

- a) Use plain and understandable language in their contracts;
- b) Ensure that there are clear provisions of the salient points of the service contract, which must include but are not limited to the following:
  - i. Nature of a contract;
  - ii. Minimum duration of a contract;
  - iii. Payment for early termination - i.e. if a contract is terminated prior to the minimum duration;
  - iv. Notice period for termination and
  - v. Manner of notice of termination
- c) Inform the consumer about changes to the terms and conditions of a contract within a fair and reasonable period.
- d) Provide the consumer with a copy of the written terms and conditions immediately or as soon as is reasonably possible, after conclusion of a contract; except where a contract is entered into telephonically, the licensee must provide a copy of the written terms and conditions within 7 (seven) working days after entering into a contract.

### **3.8 Consumer Confidentiality:**

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Licencees must protect the confidentiality of consumer information, and in particular, must -

- a) use the information only for the purpose permitted or required,
- b) report or release that information only to the consumer or prospective consumer,
- c) only release that information to another person:
  - i. when directed by the written instruction of the consumer or prospective consumer, or
  - ii. when directed by an order of a court.
  - iii. during the process of collection of debts owed to the licencees to accredited debt collection agencies.
  - iv. by the licencees' auditors for the purpose of auditing their accounts.
  - v. in terms of any applicable law.

*(Punctuation as given by regulation 3.8 of the Regulations in Government Notice No. 1740. Gazette No. 30553 dated 7 December 2007)*

### **3.9 Charging, Billing, Collection and Credit Practices**

- a) Licencees must clearly communicate billing processes to consumers.
- b) Licencees must provide payment procedures in their bills.
- c) Licencees must inform the prospective consumers at the outset that credit referencing / risk assessment will be applied.
- e) Licencees must provide a simple explanation of how the credit referencing system operates. This information must be provided in accordance with the provisions of the National Credit Act No. 34 of 2005 and any other applicable law and/or regulation

*(Numbering as given by regulation 3.9 of the Regulations in Government Notice No. 1740. Gazette No. 30553 dated 7 December 2007)*

### **3.10 Applicable rules in defining suitable degree of consumer protection regarding billing complaints:**

- a) Where the consumer lodges a billing complaint, the complaint handling process must be guided by the following general principles:
- i. Licensees **must not** disconnect the service of the consumer while the investigation of a disputed portion of a bill is still pending.
  - ii. Licensees **must** reach a determination regarding the billing complaint and communicate it to the complainant within fourteen (14) working days.
  - iii. Licensees **must not** disconnect the service until the Licensee has notified the complainant about the results of their investigation and the final decision on the complaint.
  - iv. Licensees **must not** take adverse collection procedures or assess late charges and/or penalties while the investigation of a disputed billing is still pending.
  - v. Licensees **must not** require the consumer to pay the disputed bill in full pending the investigation of the complaint.
  - vi. Licensees **must** ensure that the consumer is informed well in advance about time for payment and the possibility of disconnection in the case of non-payment within a certain period before they disconnect him/her.

### **3.11 Promotional Marketing, Advertising and Sales Practices:**

- a) Licensees must ensure that all advertising and promotional material is not misleading.
- b) All advertising must comply with the South African Advertising Standards Authority's Code of Conduct and any other applicable Codes that may be developed for the sector.

### **3.12 Applicable remedies in case of defective products:**

- a) Licensees must clearly state, where a product or service is defective, what steps they will take to correct the defect, with the interest of consumers in mind.
- b) Licensees must put in place alternative measures, for the duration when the defective product(s) is taken in for repairs.

### **3.13 Complaints handling, resolution and escalation procedures for customers**

Licensees must prominently display their complaints handling procedures for consumers to note, including the option to refer the complaint to the Authority.

**3.14 Operational/implementation and evaluation arrangements.**

- a) Licensees must ensure that their employees are familiar with the contents of the Code.
- b) Licensees must ensure that consumers are aware of the existence of the Code and the content thereof.
- c) Licensees must prominently display an abridged copy of the Code in their premises so as to make consumers aware of its existence and of their rights.

**4. NON COMPLIANCE WITH THE CODE**

- (1) Failure to comply with the provisions of these regulations is an offence and may on conviction result in the imposition of a penalty in terms of section 17H of the ICASA Act.
- (2) Any complaint regarding contravention or non compliance[*sic*] with the regulations must be lodged with the Authority.

**5. AMENDMENT AND/OR REPEAL**

The Authority may amend and or repeal in part or in its entirety this regulation by notice in the Government Gazette.