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## GENERAL NOTICE

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### NOTICE 751 OF 2008

INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA

REGULATIONS ON HANDSET SUBSIDY

INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA

I, **Paris Mashile** Chairperson of the Independent Communications Authority of South Africa publish these regulations made in terms of sections 4 and section 69 (1) of the Electronic Communications Act, 2005 (Act No 36. of 2005)



**PARIS MASHILE**  
**CHAIRPERSON**  
**ICASA**

## SCHEDULE 1

### Definitions

1. Unless the context otherwise indicates, any expression or word in these Regulations, to which a meaning has been assigned by the Electronic Communications Act, 2005 (Act No.36 of 2005) (hereinafter referred to as "the Act"), and the Independent Communications Authority of South Africa Act, 13 of 2000, as amended ("the ICASA Act") has the same meaning in these Regulations.

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

"**contract**" means an agreement entered into between a licensee, its agent or reseller, and a subscriber;

"**handset**" means any terminal, including a community service telephone connected via a radio link which may be used by an end user to access electronic communication services;

"**handset provider**" means any natural or juristic person that sells handsets to members of the public;

"**handset subsidy**" means any monetary value which is given directly or indirectly to a subscriber during the subscription process which is greater than the real cost of the handset to a licensee, its agent or reseller for obtaining the handset;

"**pre-paid customers**" mean subscribers that pay in advance for retail services;

"**post-paid customers**" means any subscriber who enters into a contract with a licensee, its agent or reseller to pay on a monthly basis for the handset, services, any element thereof, and/or usage of the network for a specified period;

### Applications of these regulations

2. (1) The regulations are applicable to handset subsidy offered by a licensee, its agent and/or reseller, in terms of a contract concluded with a subscriber.
- (2) The obligations imposed upon a licensee, its agents or resellers, in terms of the regulations will not relieve them from such other obligations that are imposed upon them in terms of any other law or code of conduct, including but not limited to the obligations relating to the advertisement of retail services and protection of consumers of such services.

### Consumer issues

3. (1) Post-paid and pre-paid offerings or packages that include handset subsidies must clearly indicate the subsidy and the monetary value of the services, offered by a licensee, its agent or a reseller.
- (2) Post-paid offerings must indicate clearly and on a monthly basis -
  - (a) the remaining installments for the handset subsidy; and
  - (b) the charges, including penalties payable by a post-paid customer for terminating a contract before the expiry of the agreed contract period.
- (3) Such a penalty must be proportional to the remaining contract term and the remaining level of the handset subsidy. Other penalties that accrue through the agency agreement between a licensee, its agent or reseller and another party shall not be imposed upon, transmitted to or incurred by the subscriber.
- (4) A post-paid contract may be concluded for periods ranging from 6 (six), 12(twelve), or 18 (eighteen) months but not more than 24 (twenty-four) months, and:
- (5) the subscriber must confirm in writing the acceptance of the contract period;

- (a) the subscriber is made aware of the consequences of the breach of the contract referred to in the preceding paragraph, and accepts in writing to be bound by those consequences.
- (6) A licensee, its agent or reseller must ensure that billing in respect of free and non-free minutes is transparent and easily understandable by subscribers.
  - (7) A licensee, its agent or reseller must, at least once a month, notify subscribers via sms or any other convenient means of any unused minutes accruing to the end user on a monthly basis.
  - (8) There must be no charges payable for a renewal or upgrade of a contract by a post-paid subscriber, when a subscriber is entitled to make the renewal or upgrade.
  - (9) In respect of retail services, a licensee, its agents or resellers must not charge for a connection fee.
  - (10) A potential subscriber will not be regarded as being in a position to make an informed decision, unless a licensee, its agent or reseller:
    - (a) explains in clear detail and makes reasonable efforts to interact with the subscriber in the subscriber's preferred official language, and makes available in writing, the terms and conditions and consequences of each offering to the potential subscriber;
    - (b) specifically points out to a post-paid subscriber the consequences arising from a breach or early termination of the contract by such a subscriber, and penalties payable in respect of such a breach or early termination;
    - (c) clearly states in writing the actual charges or penalty in respect of the services and/or handset, and how the licensee, its agent or reseller intends to recoup them from the post-paid subscriber, in the event of a breach or early termination of the contract. A written statement to this effect should be made to the subscriber before a contract is concluded with the licensee, its agent or reseller.

- (d) Licensee, its agent or reseller must ensure that a post-paid subscriber is notified in writing of the expiry or termination of the contract, at least one (1) month before the expiry of the contract.
- (e) The notification referred to in paragraph 10 above must be done by means of sms, e-mail or in any other written form.
- (f) A contract must not be automatically renewed. Post-paid subscribers must be given the opportunity to re-negotiate new terms and conditions before the expiry of a contract. Where a contract is to be renewed, a post-paid subscriber must be entitled to negotiate new terms and conditions upon which a contract is to be renewed, including the duration of the new contract.
- (g) A licensee, its agent or reseller must clearly state in writing the actual charges of services, as well as how a licensee, its agent or reseller intends to recover or recoup service charges from the subscriber. The explanation should be given to the customer before a post-paid or pre-paid relationship is established.

#### **Freedom to purchase a handset**

- 4. (1) Subscribers must have the option to use retail services or product offerings in the market offered by a licensee, its agent or reseller in conjunction with any handset available in the market provided that such a handset is type approved by the Authority.
- (2) Subscribers must not conclude an agreement for the acquisition of a further handset from the licensee, its agent or reseller unless such a handset is technically not possible to use in relation to the services or product in question other than the handset offered by the licensee, its agent or reseller
- (3) Both post-paid and pre-paid subscribers have the option to purchase any handset, independently of, or in combination with product offerings or the use of any element of the service that are available in the market from a vendor approved by the Authority.
- (4) A licensee, its agent or reseller must not make it a prerequisite for the provision of any element of the service that a customer must acquire a handset offered by such a licensee, its agent or reseller,

unless it is technically not possible to provide to such a subscriber the element of the service required by him or her without such a handset.

- (5) A licensee, its agent or reseller shall not penalize or prejudice a subscriber for choosing not to use a handset offered to him or her by the licensee, its agent or reseller together with the services or product offerings required by the customer.
- (6) Subscribers using or purchasing their own handsets are entitled to inquire about the technical appropriateness of the use of the handset for the subscriber's intended purpose

### **Tariffs**

5. Tariffs lodged with the Authority constitute maximum charges which a licensee, its agent or reseller may levy in respect of the service. Accordingly, a licensee, its agent or resellers must be entitled to offer discounts to subscribers on such tariffs. A licensee, its agent or reseller must not enter into a contract, with a subscriber, that prohibits discounts on tariffs.

### **Offences and Penalties**

6. (1) A reseller or person who is exempted from a licence in terms of section 6 of the ECA who intentionally or negligently contravenes or fails to comply with these regulations, is guilty of an offence and is, on conviction by a court of law, subject to a fine not exceeding R15 000.
- (2) Any subscriber who is aggrieved by the failure of a licensee or its agent to comply with these regulations may lodge a complaint with the Authority for investigation and if appropriate, adjudication by the Complaints Compliance Committee in terms of section 17B and C of the ICASA Act and the imposition of a sanction by Council in terms of section 17E of the ICASA Act.

### **7. Date of Commencement**

Unless otherwise prescribed, these regulations will become effective two (2) months from the date upon which they are published.

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