
GENERAL NOTICE

NOTICE 1622 OF 2009



INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA

CODE OF CONDUCT ON THE SALE, LEASE, RENTAL OR SUBSIDISATION OF SUBSCRIBER EQUIPMENT PURSUANT TO CHAPTER 12 OF THE ELECTRONIC COMMUNICATIONS ACT NO. 36 OF 2005 ("THE ACT")

1. The Independent Communications Authority of South Africa ("the Authority") in terms of Section 4(1)(a) and Section 4(3)(j) of the Independent Communications Authority of South Africa Act No. 13 of 2000, ("the ICASA Act") and Section 69 of the Electronic Communications Act (Act no. 36 of 2005) hereby gives notice in terms of Section 4(4) of the Act of its intention to prescribe the code of conduct on the sale, lease, rental or subsidisation of subscriber equipment, including minimum standards for end-user and subscriber service charters in that regard and as contemplated in terms of Sections 69(3), 69(4) and 69(5)(a),(d),(e) and (f) of the Act.
2. Interested persons or organizations are invited to submit written representations or documentation on this draft code of conduct on the sale, lease, rental or subsidisation of subscriber equipment no later than thirty (30) days from the publication of this notice (no extensions will be granted) by post, hand delivery, facsimile transmission, or electronically for the attention of:

Mr. Edmund Mhloti Baloyi
ICASA
Private Bag X10002
Sandton
2146

or Block B
Pinmill Farm
164 Katherine Street
Sandton

Fax: (011) 566 3006
Telephone: (011) 566 3005

- E-mail: mbaloyi@icasa.org.za; cc spantshwa@icasa.org.za, cokie@icasa.org.za,
3. Persons or organizations making any submission or submitting any relevant documents must also indicate whether they would like an opportunity to make oral representation at a hearing to be scheduled, which will not exceed one (1) hour in duration.
 4. All written representations or documentation submitted to the Authority pursuant to this notice will be made available for inspection by interested persons at the Authority's library and copies of such representations will be obtainable on payment of the prescribed fee.
 5. Interested persons or organizations who submit written representations or documentation should indicate, upon submission, whether there is any part thereof which should be treated as confidential. The request and reasons why any part of the representation or documentation should be treated as confidential must be submitted at the same time with the written representation.
 6. At the request of any person who submits written representations pursuant to this notice, the Authority will determine whether such representations or any portion thereof is confidential in terms of section 4D of the ICASA Act. If the request for confidentiality is refused, the person or organisation making the request will be allowed to withdraw such representation or documentation or portion thereof and the Authority will not take it into consideration when making its findings.
 7. The final code of conduct will be published in the Government Gazette.



PARIS MASHILE
CHAIRPERSON

CODE OF CONDUCT ON THE SALE, LEASE, RENTAL OR SUBSIDISATION OF SUBSCRIBER EQUIPMENT

Definitions

1. Unless the context otherwise indicates, any expression or word used in this code of conduct, to which a meaning has been assigned by the Electronic Communications Act, No.36 of 2005, as amended ("the Act"), and/or the Independent Communications Authority of South Africa Act, 13 of 2000, ("the ICASA Act") shall bear the same meaning in this code of conduct. The following words and phrases shall have the meanings ascribed to them below:

"contract" means an agreement entered into between a licensee, or its agent or a reseller, and a subscriber in respect to the sale, lease, rental or subsidisation of subscriber equipment;

"electronic communications provider" means any natural or juristic person that sells, leases, or rents subscriber equipment to members of the public;

"licensee" means any person who has been issued with a licence to provide services in terms of chapter 3 of the Act;

"offering" means any offer made by a licensee, its agent, or any reseller to a subscriber or potential subscriber, including but not limited to an invitation to do business;

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

"post-paid offerings or packages" means offerings linked to deals or contracts or packages where payments are made in arrears;

"pre-paid offerings or packages" means offerings linked to deals or contracts or packages where payments are made in advance;

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

"Subscriber Equipment" means any equipment which may be used by an end user to access electronic communication services, including mobile handsets, portable computers, fixed line telephones, 3G data cards, wireless modems, but excluding electronic payment terminals and two way radios;

"subsidisation" means any incentive, allowance, discount or rebate offered by a licensee, or its agent, or reseller to the end user in relation to the sale, lease, rental or subsidisation of subscriber equipment, and "subsidy" shall be construed accordingly.

Purpose of these Regulations

2. The purpose of these regulations is to:

- (1) prescribe a code of conduct in relation to the sale, lease, rental or subsidisation of subscriber equipment and minimum standards in that regard for end-user and subscriber service charters;
- (2) protect consumers of the services envisaged in Section 69 of the Act.

Applications of these regulations

3. (1) These regulations are applicable to the sale, lease, rental or subsidisation of subscriber equipment offered by a licensee, its agent or any resellers to the extent that they provide services to the public in terms of a contract concluded with a subscriber.
- (2) The obligations imposed upon a licensee, its agent or resellers, in terms of these regulations should not be regarded as relieving them from any obligations imposed upon them in terms of any other law (including regulations or codes of conduct) including but not limited to the obligations relating to the advertisement of retail services and protection of consumers of such services.

Contractual issues

4. (1) Post-paid and pre-paid offerings or packages that are purported to include a subsidy with respect to the sale, lease, rental or subsidization of subscriber equipment must clearly indicate the following -

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- (a) capital cost of the subscriber equipment;
 - (b) the interest charged in respect of the repayment of the capital cost;
 - (c) the subsidy offered and the monetary value of the services offered by the licensee, its agent or a reseller; and
 - (d) distinctly specify any other items charged by the licensee, its agent or reseller in respect of such post-paid or pre-paid offerings or packages.
- (2) Post-paid offerings must indicate clearly in the billing statement and on a monthly basis –
- (a) the outstanding amount of the capital cost payable by the subscriber in respect to the sale, lease, rental or subsidisation of the subscriber equipment ;
 - (b) the number of remaining installments for the settlement of the capital cost and interest in respect of the subscriber equipment;
 - (c) the charges, including penalties payable by a post-paid subscriber for terminating a contract before the expiry date.
- (3) A subscriber intending to enter into a post-paid contract shall be given a choice of the various contractual periods available and be made aware of the full financial implications for each such choice, including the consequences for default and early termination thereof. A licensee, or its agent or reseller must ensure that billing in respect of free and non-free units, capacity or minutes, as the case may be, and other ancillary charges, is transparent and easily understandable by subscribers.
- (4) A licensee, or its agent or reseller must, at least once a month, notify subscribers via short message service "sms" or any other convenient means agreed to between the subscriber and the licensee or its agent or reseller of any unused units, data, capacity or minutes accruing to the subscriber in a particular month including such units, capacity or minutes as may have been accumulated from previous months.