

NOTICE 765 OF 2006**INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA****NOTICE OF INTENTION TO MAKE REGULATIONS IN RESPECT OF
MOBILE HANDSET SUBSIDISATION**

Notice is hereby given that the Independent Communications Authority of South Africa (ICASA) intends making regulations in terms of section 96 read with section 45 of the Telecommunications Act, 1996 (Act No. 103 of 1996).

Interested persons are invited to submit written comments or representations with regard to the proposed mobile handset subsidisation regulations, to be received by not later than 16h00 on 28 July 2006 by post, hand delivery, facsimile transmission and an electronic version in Microsoft Word for the attention of :-

Ms. Nomvuyiso Batyi
c/o ICASA, Private Bag x 1 0002 Sandton, 2 146, or
hand delivered to XCASA, Block A, PinMill Farm, 164 Katherine Street, Sandton, or
faxed to (011) 321- 8536,
emailed to NBaty@icasa.org.za and copy mnkopane@icasa.org.za

**PARIS MASHILE
CHAIRPERSON
ICASA**

SCHEDULE

Definitions

- (1) In these regulations ~~my expression or word~~ to which a meaning has been assigned by the Telecommunications Act, 1996 (Act No, 103 of 1996, as amended, (hereinafter referred to as "the Act"), shall have the same meaning in these regulations, unless the context otherwise indicates:-

"Contract" means an agreement entered into between a post paid subscriber and a service provider in respect to the sale of services on monthly basis;

"Handset subsidy" means a monetary value which is given to a customer during the subscription process which is greater than the cost to the mobile operator or service provider for obtaining the handset;

"Service subsidy" means a monetary value or goods in lieu given to a customer during the subscription process which is greater than the retail price at which the service is charged by the mobile operator or service provider for providing the service;

"Handset provider" means any natural or juristic person that sells handsets to the public;

"Mobile handset" means GSM terminal, including a Community Service Telephone connected via a GSM radio link which may be used by an end user to send and/or receive messages which are to be or have been conveyed by means of the PLMN all of which are duly licensed by the Authority;

"Pre-paid customer" means a customer who pay in advance for the handset, services and usage to the mobile network;

"Post-paid customer" means a customer or subscriber who enters into an agreement with mobile operators or service providers to pay on a monthly basis for the handset, services and usage to the mobile network for a specified period;

“Service provider” means an

- (a) entity that sells to a subscriber the ability to make and receive telephone calls;
- (b) be a network operator ;
- (c) an entity person that buys network services from a network operator and resell these services to subscribers;

“Services” means service consisting of –¹

- (i) the provision of any licensed line;
- (ii) the conveyance of any message by means of such line;
- (iii) the provision of any directory, voice mail, GSM bearer, tele- and supplementary services, or information service provided by those means; *or*
- (iv) the access to emergency organisations by those means,

together with any billing, data processing or other operation which is necessary to provide that service, whether or not the Licensee charges a separate fee for it

Application of these regulations

- (2) These regulations shall be applicable to mobile handsets, pursuant to the Telecommunications Act as amended, as such may be modified from time to time in accordance with the provisions of these regulations.

Consumer Protection Matters

- (3) (1) Advertisements on both pre-paid and post-paid products and/or any other telephony services must clearly reflect each cost component in a manner which does not mislead or confuse the potential customer or contradict the contents of the agreement that is concluded or will potentially be concluded, or any matters related thereto,

¹ Definition as per the licences of the Mobile Operators

- (2) Post-paid customers shall have a range of options to choose from contracts of at least the following duration, a six (6), Twelve (12), eighteen (18) months but not exceeding a twenty four (24) month contract for each of the package made available by a mobile operator or a service provider.
- (3) A potential customer will not be regarded as being in a position to make an informed decision, unless the mobile operator or service provider:
- (a) explains in clear terms and make reasonable efforts to interact with customers in their preferred official languages, and makes available beforehand in writing, the terms and/or conditions and consequences of each product offering to the potential customer;
 - (b) specifically points out to post-paid customers *the* consequences for breach or termination prior to the expiry date of the contract and amounts payable in respect of each breach or termination to the mobile operator or service provider;
 - (c) shall ensure that service providers notify subscribers of the expiry of the contract via sms, email or similar mode of transmission at least 3 times before the contract expires;
 - (d) shall not automatically renew the contract and a customer should have the opportunity to re-negotiate the new terms and conditions of the contract;
 - (e) shall not engage in sim-locking, handset locking and software locking and that any other form of locking a handset is prohibited,
 - (f) clearly states in writing *the* actual costs of the service mobile as well as how the mobile operator or service provider intends to recover or recoup *the* service charges from the customer. The explanation should happen before a customer enters into the sale agreement for a mobile

handset or a pre-paid relationship or post-paid relationship for the provision of the service by the mobile operator or service provider,

- (g) **The print on contracts for customers must be clear, bold, readable and unambiguous and should not be in fine print. This includes, but not limited to issues pertaining to contract activation, contract termination, contract cancellation, contract extension, penalties, dates associated with the contract and all costs associated with the contract.**
 - (h) **Insurance terms and conditions and related matters including insurance costs must be clearly explained to the potential customer. This includes, but not limited to repayments due to losses, damages and unforeseen circumstances as covered in the insurance agreement between parties.**
- (4) **Mobile operators shall ensure that service providers inform subscribers about usage and computation of bundles.**

Contracts between Parties

- (4) (1) **Post-paid customers that have made an informed decision to subscribe to the services offered by mobile operators and service providers, shall enter into separate and distinct agreements for the provision of services, and the provision of a handset, although both agreements may be offered in combination.**
- (2) **The agreement for the provision of a mobile handset or a service shall reveal, the value of any service subsidy and handset subsidy and explain how such costs and charges are computed and any other costs and charges associated thereto.**
- (3) **The agreement for the provision of services shall exclusively deal with the charges of the service including subscription and usage charges, and amongst others, explain the billing**

increments, and the value of any inclusive services and service subsidies, and any other costs or charges associated thereto.

- (4) The agreement for the provision of mobile handsets shall exclusively deal with the cost of the handset; and reveal the value of the mobile handset, and the value of any handset subsidy, and any other costs or charges association thereto.**

Freedom to purchase handsets

- (5) (1) Customers of both post-paid or pre-paid services, shall have the right to use any service or product offering in the market by mobile operators or service providers by using or purchasing any handset available in the market, without having to conclude an agreement for the purchasing of a further mobile handset, or having to accept a mobile handset with such service or product offering.**
- (2) Customers of both post-paid and pre-paid services, shall have the right to purchase any mobile handset of their choice that are available in the market from any mobile operator or service provider or any other mobile handset provider, to be purchased independently or in combination with any service or product offering by mobile operators or service providers, without having to conclude an agreement for the use of the service or product offering.**
- (3) Customers using or purchasing their own mobile handsets must enquire about the technical appropriateness of the use of the mobile handset for the customer's intended purpose.**
- (4) Customers who have their own handset shall be entitled to such lower fees and charges as applicable when compared to customers who have chosen to conclude a service contract and a mobile handset contract combination regardless of the level of a subsidisation of either the mobile handset or service.**
- (5) Mobile operators or service providers shall not penalize customers or potential customers who choose not to purchase mobile handsets in conjunction with service and product**

offerings from the mobile operator or service provider in question.

- (6) **Mobile operators or service providers shall not penalize customers or potential customers who choose not to use the service in conjunction with a mobile handset purchased from the mobile operator or service provider in question.**

Tariffs

- (6) (1) **Tariff filings by licensed operators are maximum tariffs, therefore mobile operators and service providers are allowed to provide discount on such tariffs, no mobile operator or service provider shall enter into arrangements and/or agreements that prohibit discounts to such tariffs.**
- (2) **Mobile operators shall ensure that service providers with respect to billing clearly show used units and unused units on the bill.**