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## GENERAL NOTICE

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### NOTICE 314 OF 2011



### INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA

**Invitation to all electronic communications, electronic communications network, broadcasting and postal services licensees, consumer groups and the general public**

The Independent Communications Authority of South Africa (ICASA) invites all interested parties and stakeholders to participate in a consultative workshop regarding an application for exemption as provided for in Section 5 of the Consumer Protection Act No 68 of 2008 (CPA).

The CPA is an overarching piece of legislation that provides comprehensive protection for consumers across all sectors of the economy. The CPA, however, recognizes the role of sector regulators as well as provincial regulatory authorities in

promoting and protecting consumer rights. To this end, section 5(3) of the CPA provides that:

*"A regulatory authority may apply to the Minister<sup>1</sup> for an industry-wide exemption from one or more provisions of this Act on the grounds that those provisions overlap or duplicate a regulatory scheme administered by that regulatory authority in terms of –*

*(a) any other national legislation...*

The purpose of the workshop therefore is to afford stakeholders an opportunity to present their views with respect to this exemption process. Such views will assist ICASA in applying for exemption to the Minister of Trade and Industry.

The Minister may grant the exemption sought, after receiving advice from the National Consumer Commission (NCC), only to the extent that the relevant regulatory scheme ensures the achievement of the purposes of the CPA and subject to the limits and conditions necessary to ensure the achievement of the purposes of the CPA. Thus, the test to be used in evaluating an exemption application, as envisaged in section 5(4) of the CPA, is whether the sector regulator so-applying, has in place a regulatory framework that protects the interests of consumers to the same or higher standard as the CPA.

Section 2(n) of the Electronic Communications Act, No 36 of 2005 (ECA) mandates ICASA to, among other things, promote the interests of consumers with regard to the price, quality and variety of electronic communications services. Section 69 of the ECA mandates ICASA to prescribe regulations dealing with a Code of Conduct for licensees as well as Subscriber and End-user Service Charter, the latter dealing with quality of

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<sup>1</sup> Minister of Trade and Industry

service issues. Over the years, ICASA has promulgated a number of regulations aimed at achieving the objects of sections 2(n) and 69 of the ECA.

ICASA has assessed the ECA as well as the Postal Services Act and the underlying regulations and has identified areas of possible overlap or duplication. The Minister's response will provide direction into what ICASA's next step should be; whether to amend, repeal or leave some of its regulations as they are.

The following issues are being raised for consideration and discussion with stakeholders in preparation for an exemption application:

#### **1. Contract terms and conditions**

The Regulations in terms of the Code of Conduct for Electronic Communications and Electronic Communications Network Service Licensees (Code of Conduct Regulations)<sup>2</sup> prescribe standards of conduct by licensees with respect to consumer matters. The Code of Conduct deals with, among other things, language used in contracts, consumer rights, provision of information, publication of tariffs, contract terms and conditions, confidentiality of consumer information, charging and billing, promotional marketing and advertising, remedies in respect of defective products as well as complaints handling and resolution.

These matters are addressed under various sections of the CPA. ICASA proposes to remove the following matters from the Code of Conduct and have them regulated in terms of the CPA: Language used in contracts, consumer rights, provision of information, confidentiality of consumer information, promotional marketing and advertising as well as remedies in respect of defective products. By virtue of being a price regulator, amongst other things,

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<sup>2</sup> Government Gazette No. 30553, 7 Dec 2007

ICASA would like to retain jurisdiction over charging and billing matters in the sector as well as complaints handling and resolution of matters it regulates.

Regulation 15 of the ICASA Code of Conduct for Broadcasting Service Licensees<sup>3</sup> deals with competitions and audience participation. Section 36 of the CPA and Clause 11 of the Consumer Protection Act Regulations regulate the conduct of promotional competitions. ICASA proposes that promotional competitions be regulated in terms of the CPA.

## **2. Prepaid vouchers**

Section 63(2) of the CPA provides that

*"A prepaid certificate, card, credit, voucher or similar device contemplated in subsection (1) does not expire until the earlier of –*

- (a) the date on which its full value has been redeemed in exchange for goods or services or future access to services; or*
- (b) three years after the date on which it was issued, or at the end of a longer or extended period agreed by the supplier at any time.*

Section 68 of the ECA mandates ICASA to develop regulations prescribing a numbering plan for the efficient use and allocation of numbers. Part of ensuring efficient use of numbers is that operators need to recycle numbers that remain inactive for a particular period of time, usually 3 months. Holding on to a number that is not in use for three years will have an adverse impact on the efficient and effective allocation of numbers resulting in their early depletion. Numbers are a finite resource that must be managed properly. An unintended consequence of section 63 of the CPA is that electronic communications service licensees would be restricted from recycling inactive prepaid SIM-cards that have credit, with the result that ICASA may run out of numbers earlier than anticipated. ICASA

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<sup>3</sup> Government Gazette No. 32381, 6 July 2009

therefore wishes to apply for exemption from section 63 of the CPA insofar as prepaid SIM-cards are concerned.

### **3. Quality of Service**

The Regulations on the Minimum Standards for End-user and Subscriber Service Charter<sup>4</sup> set out quality of service standards for electronic communications and electronic communications network service licensees. The regulations set minimum standards for performance areas such as network and service availability, average time to install and activate service, connectivity failure rate (including dropped calls), fault clearance rate etc.

Section 54 of the CPA promotes the consumers' right to demand quality of service. The End-user and Subscriber Service Charter Regulations are based on standards set out by the International Telecommunications Union with respect to dropped calls, network availability and service restoration. The End-user and Subscriber Service Charter Regulations require licensees to report bi-annually to the Authority on the prescribed standards. Furthermore, the Authority conducts physical monitoring of the licensees' networks from time to time and undertakes consumer surveys to gauge consumer experience with respect to the standards set. ICASA is of the view that these regulations adequately ensure the achievement of the purposes of the CPA insofar as quality of service is concerned, and proposes that the sector be exempted from section 54 of the CPA.

### **4. Handset subsidies and duration of contracts**

Recently, ICASA undertook a process of promulgating regulations prescribing a Code of Conduct for the sale, lease, rental or subsidization of subscriber equipment as well as the duration of such contracts. During public consultations,

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<sup>4</sup> Government Gazette No. 32431, 24 July 2009.

some members of the industry pointed ICASA to the impending consumer legislation, indicating that these matters will be adequately covered by the new consumer legislation. ICASA took a decision not to proceed with the draft regulations until further notice. In the meantime, such matters will be governed in terms of the CPA and other ICASA regulations where applicable. Therefore, section 14 of the CPA would apply fully to the sector.

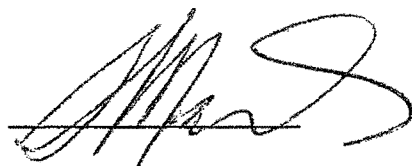
The workshop will focus on the above areas. However, interested parties are encouraged to raise other matters of possible duplication or overlap, not identified by ICASA.

Date: 2 June 2011

Venue: ICASA, Block C Presentation Room

Time: 9h00 – 17h00

Kindly RSVP to Thenjiwe Dube: [tdube@icasa.org.za](mailto:tdube@icasa.org.za) / [gmalebusha@icasa.org.za](mailto:gmalebusha@icasa.org.za) by 27 May 2011, and also indicate your interest should you wish to make a short presentation.



**DR STEPHEN MNCUBE**

**CHAIRPERSON**

**ICASA**

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