

# Wireless Application Service Providers' Association

## Code of Conduct

Version 12.32

[Codecom discussion document]

2013-03-14

Additional notes since 12.31 are indicated in orange.

### **1. Introduction**

This document is a code of practice governing the members of the South African Wireless Application Service Providers' Association (WASPA). It is binding on all members and contains accepted procedures to be followed in the event of a complaint lodged against any WASPA member.

#### **1.1. About WASPA**

WASPA is an independent, non-profit organisation representing the interests of organisations providing mobile application services in South Africa. The Association aims to provide a neutral forum for members to address issues of common interest and interact with industry stakeholders, network operators and government bodies. WASPA aims to ensure that end-users receive world-class services and industry participants earn a fair return on their investments. The association was founded in August 2004.

Membership of WASPA is voluntary. Voting members are required to have an existing business relationship with one or more of the network operators. All members are required to accept the WASPA Code of Conduct and related procedures as binding.

#### **1.2. Objectives of the Code of Conduct**

The primary objective of the WASPA Code of Conduct is to ensure that members of the public can use mobile services with confidence, assured that they will be provided with accurate information about all services and the pricing associated with those services. The Code aims to equip customers and consumers with a mechanism for addressing any concerns or complaints relating to services provided by WASPA members, and a framework for impartial, fair and consistent evaluation and response to any complaints made.

The Code of Conduct also sets standards for advertising mobile application services, and includes a framework for the provision of adult services, to ensure adequate protection of children from potentially harmful content.

#### **1.3. Revisions to the Code of Conduct**

In order to ensure that this Code of Conduct remains relevant in the face of constantly evolving technology, the provisions of the Code are reviewed regularly. The latest version of the WASPA Code of Conduct is always available on the organisation's web site, <http://www.waspa.org.za>.

#### **1.4. Scope of the Code**

Unless otherwise specified, this Code of Conduct applies to all wireless application services accessed by a customer in South Africa, transmitted by a wireless application service provider and carried by a South African network operator.

Where the Code addresses services provided by members, it applies only to wireless application services provided by a WASP, and not to other types of services that the member may provide.

## 1.5. Existing agreements with operators

As well as complying with this Code, WASPA members must also comply with any existing contracts and agreements they have with network operators.

## 1.6. Applicability of the Code to non-members

Some companies may be required to comply with the WASPA code by virtue of a contract with one or more network operators and/or a contract with one or more voting WASPA members. In such cases, all clauses in the Code of Conduct and the *WASPA Advertising Rules* that are binding on WASPA members shall be deemed to be binding on those companies, irrespective of whether or not those companies are members of WASPA.

## 1.7. Disclaimer

The members of WASPA, the WASPA Management Committee, all other WASPA Committees, the WASPA Secretariat, WASPA's employees and contractors, and Independent Adjudicators shall not be held liable for any consequences that may arise from the implementation of this Code of Conduct or for the failure to implement the Code. This Code of Conduct does not constitute legal advice, nor is it warranted as legal advice. All members are strongly advised to seek proper legal counsel.

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## 2. Definitions

The terms below have the following meaning throughout this document:

2.1. An "**adult service**" is any service where the content or product is of a clearly sexual nature, or any service for which the associated promotional material is of a clearly sexual nature, or indicates directly, or implies that the service is of a sexual nature.

2.2. An "**adult content service**" is any service for the provision of content which has been classified as suitable only for persons 18 years or older by an appropriate body (such as the Film and Publications Board), or content reasonably likely to be so classified.

2.3. An "**adjudicator**" is a person, independent of any member, who is appointed to review formal complaints.

2.4. A "**beneficiary**" is a charity or organisation benefiting from a charitable promotion.

2.5. A "**charitable promotion**" is any promotion which has a primary goal of benefiting a registered charitable organisation.

2.6. A "**child**" refers to a natural person under 18 years of age.

2.7. "**Children's services**" are those which, either wholly or in part, are aimed at, or would reasonably be expected to be particularly attractive to children.

2.8. A "**commercial message**" is a message sent by SMS or MMS or similar protocol for commercial purposes. (See also "direct marketing message" below.)

### Andrew Kruger wrote:

I would like to propose the following changes to the COC:

Include USSD Push in the definition of a commercial message:

2.8. A "commercial message" is a message sent by SMS, MMS, USSD Push or similar protocol for commercial purposes. (See also "direct marketing message" below.)

2.13. A "direct marketing message" is a commercial message sent by SMS, MMS, USSD Push or similar protocol that is designed to promote the sale or demand of goods or services whether or not it invites or solicits a response from a recipient.

We would also need to look at the opt-out mechanisms & identifier of the message originator.

**Leon Perلمان commented:**

Good suggestion, Andre.

"USSD Push" then would also need to be placed in the WCOC "Definitions" clause.

2.9. A "**competition service**" is any competition or game with prizes or entry mechanism into a draw. Where an auction or a reverse auction has the characteristics of a competition service, it is considered to be a competition service.

2.10. A "**contact and dating**" service is any service intended to enable people previously unacquainted with each other to make initial contact and arrange to meet in person.

2.11. A "**content subscription service**" includes any subscription service providing or offering access to content including, by way of example only and not limitation: sound clips, ring tones, wallpapers, images, videos, games, text or MMS content or information. This includes any subscription service which describes itself as a "club" or which otherwise allows access to content to subscribers, at a cost which includes both a subscription element and a per content item element. Services which are not considered to be content subscription services include: dating services, chat services, location-based services, GSM terminal device services, corporate application services, reminder services, synchronisation applications, corporate communications applications, VOIP, etc.

2.12. A "**customer**" is a user of a mobile cellular telecommunications service that has indicated a willingness to access or utilise a service provided by a wireless application service provider.

2.13. A "**direct marketing message**" is a commercial message sent by SMS or MMS or similar protocol that is designed to promote the sale or demand of goods or services whether or not it invites or solicits a response from a recipient.

**Ilonka Gray wrote:**

Please can we look at implementing a gambling definition at our next AGM.

We are seeing "Gambling creative executions" that are being used as a marketing hook into either a sub service, or a competition leading into a sub service.

Gambling services should display an 18+, and without a definition, we cannot enforce this.

Possible definition: " the activity or practice of playing at a game of chance for money or other stakes."

2.14. An "**information provider**" is any person on whose behalf a wireless application service provider may provide a service, and includes message originators.

2.15. A "**keyword**" is any word used in an SMS or MMS sent by a customer to request a service.

2.16. A "**member**" is a member in good standing of WASPA.

2.17. A "**message originator**" is the entity sending a commercial message and can be any person with a commercial arrangement with a WASP to send commercial messages, or a WASP directly.

2.18. A "**network operator**" is a mobile cellular telecommunication service provider, or any other category of telecommunication service provider as determined by WASPA's Management Committee.

2.19. A "**notification service**" is any service where there are ongoing charges for the service that are not individually authorised by the customer, but which are not subscription services, because the billing is not repeated/regular.

2.20. The "**originating number**" is the number allocated to the WASP by the network operator from which a commercial message is sent.

2.21. A "**person**" means any natural or legal person.

2.22. A "**premium-rated service**" is any service charged at a higher rate than the standard rate set by the network operator for that particular service.

2.23. "**Secretariat**" refers to the persons employed by WASPA to handle the administration of the organisation, including the handling of Code of Conduct complaints.

2.24. "**Spam**" means unsolicited commercial communications, including unsolicited commercial messages as referred to in clause 5.2.1.

2.25. A "**subscription service**" is any service for which a customer is billed on a repeated, regular basis without necessarily confirming each individual transaction.

2.26. "**WASPA template agreement**", refers to a template agreement between a WASP/aggregator and an information provider client as made available to WASPA's members.

2.27. "**WASPA web site**" refers to the Internet web site located at <http://www.waspa.org.za>.

2.28. A "**wireless application service provider**" is any person engaged in the provision of a mobile service, including premium-rated services, who signs a WASP contract with a network operator for bearer services enabling the provision of such services.

### **3. General provisions**

#### **3.1. Professional and lawful conduct**

3.1.1. Members will at all times conduct themselves in a professional manner in their dealings with the public, customers, other wireless application service providers and WASPA.

3.1.2. Members are committed to lawful conduct at all times.

#### **3.2. Freedom of expression**

3.2.1. WASPA and its members respect the constitutional right to freedom of speech and expression.

#### **3.3. Service levels**

3.3.1. Members will not offer or promise services that they are unable to provide.

3.3.2. Services must not be unreasonably prolonged or delayed.

3.3.3. A member is not liable for any failure to provide a service due to circumstances beyond that member's control.

#### **3.4. Intellectual property**

3.4.1. Members will respect the intellectual property rights of their clients and other parties and will not knowingly infringe such rights.

#### **3.5. Content control**

3.5.1. Members must not knowingly transmit or publish illegal content.

3.5.2. If a member becomes aware of illegal content under that member's control, the member must, immediately suspend access to that content. Where required to do so by law, the member must report the illegal content to the relevant enforcement authority.

3.5.3. Members must co-operate with any content orders lawfully issued by enforcement authorities.

### **3.6. Data protection**

3.6.1. Members will take all reasonable measures to prevent unauthorised or unlawful access to, interception of, or interference with any data.

### **3.7. Decency**

3.7.1. Members will not provide any services or promotional material that:

- (a) contains a visual presentation of explicit violent sexual conduct, bestiality, incest or rape or extreme violence which constitutes incitement to cause harm;
- (b) results in any unreasonable invasion of privacy;
- (c) induces an unacceptable sense of fear or anxiety;
- (d) encourages or incites any person to engage in dangerous practices or to use harmful substances;
- (e) induces or promote racial disharmony;
- (f) causes grave or widespread offence; or
- (g) debases, degrade or demeans.

### **3.8. Number re-use**

3.8.1. A service must not be replaced on the same number by another service that might give offence to or might be inappropriate for customers reasonably expecting the original service.

### **3.9. Information providers**

3.9.1. Members must bind any information provider with whom they contract for the provision of services to ensure that none of the services contravene the Code of Conduct or the Advertising Rules.

3.9.2. Where any information provider that is not a WASPA member conducts any activity governed by the provisions of this Code, and makes use of the facilities of a WASPA member to do so, that member must ensure that the information provider is made fully aware of all relevant provisions of the Code and the member shall remain responsible and liable for any breach of the Code resulting from the actions or omissions of any such information provider

3.9.3. Notwithstanding clause 3.9.2, where an information provider makes use of a member's facilities for the sending of spam or fails to comply with the provisions of 5.1.11, the member shall not be liable for any such breach unless the member failed to take the reasonable measures contemplated and provided for in 5.3.1.

3.9.4. A WASPA member shall, by obtaining the information provider's signature on the WASPA template agreement, be deemed to have taken all reasonable steps to ensure that the information provider is fully aware of the terms of the WASPA Code of Conduct and this shall be considered as a mitigating factor for the WASPA member when determining the extent of any possible liability for the breach of the provisions of the WASPA Code of Conduct as a result of any act or omission by the information provider.

3.9.5. The member may suspend or terminate the services of any information provider that provides a service in contravention of this Code of Conduct.

3.9.6. The member must act in accordance with the WASPA complaints and appeal process and if appropriate, suspend or terminate the services of any information provider.

### **3.10. Nominated representatives**

3.10.1. Each member must supply WASPA with contact information (including at least a telephone number and an email address) for a primary and a secondary Code of Conduct representative.

3.10.2. Should the nominated representatives change, or the contact information for the representatives change, the member must notify WASPA of the changes.

### **3.11. Provision of numbering information**

3.11.1. WASPA members shall provide WASPA, on request, with a list of all short codes, long codes and alphanumeric identifiers assigned for use with that member's services or the services of any of the member's information providers.

#### **Secretariat request:**

3.11.2. For testing purposes, WASPA members shall provide WASPA, on request, with a list of all WASP services operated by that member or by any of that member's information providers, and instructions for opting in to those services.

### **3.12. Employee awareness**

3.12.1. Members must ensure that any relevant employees are made aware of this Code of Conduct and the requirements and procedures associated therewith.

### **3.13. Alterations**

3.13.1. WASPA reserves the right to make alterations to this Code of Conduct from time to time, following due consultation with members.

3.13.2. WASPA will notify its members and network operators of any alteration to the Code of Conduct.

3.13.3. Any alterations to the Code of Conduct are binding on all members. The current Code of Conduct will always be available on the WASPA web site.

3.13.4. WASPA reserves the right to immediately amend or alter this Code of Conduct if directed to do so by a court of law.

### **3.14. WASPA identity**

3.14.1. Members will abide by any rules and regulations governing the use of any WASPA brand, logo, seal or other identifying mark.

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## **4. Customer relations**

### **4.1. Provision of information to customers**

4.1.1. Members must have honest and fair dealings with their customers. In particular, pricing information for services must be clearly and accurately conveyed to customers and potential customers.

4.1.2. Members must not knowingly disseminate information that is false or deceptive, or that is likely to mislead by inaccuracy, ambiguity, exaggeration or omission.

4.1.3. Each member must provide their full contact details on the member's web site, including the registered company name, telephone and fax numbers, e-mail address and physical address.

4.1.4. Members must make the terms and conditions of any of their services available to customers and potential customers, on request.

4.1.5. Terms and conditions of members' services may not contain clauses that contradict the requirements of the WASPA Code of Conduct.

4.1.6. Where a customer is asked to confirm that they have read the terms and conditions of a service by means of a tick-box, this may not be ticked by default, but must require the customer to specifically click on the box to tick it.

4.1.7. Members must have a complaints procedure allowing their customers to lodge complaints regarding the services provided. Members must acknowledge receipt of complaints expeditiously, and must respond to any complaints within a reasonable period of time.

4.1.8. Customer support must be easily available, and must not be limited to a medium that the customer is unlikely to have access to (for example, support should not be limited to email if a significant number of customers do not have access to email).

4.1.9. Any telephonic support must be provided via a South African telephone number and must function effectively. Should the member be unable to provide immediate support, a customer should be provided with the ability to leave a message. Support numbers may not forward to full voice mailboxes.

**Ilonka Gray wrote:**

The Code reads:

4.1.9. Any telephonic support must be provided via a South African telephone number and must function effectively. Should the member be unable to provide **immediate support**, a customer should be provided with the ability to leave a message. Support numbers may not forward to full voice mailboxes.

Following a call centre test result across many wasps call centres, it has become clear that speaking to an operator (or leaving a message) is often being placed under telephone menu options that are not necessarily appropriate. i.e. Press 2 to unsubscribe

There will be instances when a customer wants to speak to a consultant, but not necessarily unsubscribe.

The menu options cause customers having to go from one menu option to another, and EVENTUALLY getting to the option of speaking to a consultant (or leaving a message). It is frustrating and time-consuming to, potentially, an already irate customer.

I would like to suggest a Code change that reads something like this:

4.1.10 The option of speaking to a Call centre consultant (or leaving a message for a call centre consultant) must be listed in the top level menu.

4.1.10. Customer support may not be provided via premium rated numbers, and may only be provided via standard-rate or VAS-rate numbers.

4.1.11. Members undertake to inform their wireless application service customers that they are bound by this Code of Conduct. Members also undertake to make these customers aware of the WASPA complaints procedure and the mechanism for making a complaint, should any customer wish to do so.

4.1.12. Members' web sites must include a link to the WASPA web site and/or this Code of Conduct.

## **4.2. Privacy and confidentiality**

4.2.1. WASPA and its members must respect the constitutional right of consumers to personal privacy and privacy of communications.

4.2.2. Members must respect the confidentiality of customers' personal information and will not sell or distribute such information to any other party without the explicit consent of the customer, except where required to do so by law.

### **4.3. Refunds**

4.3.1. Any refunds provided by members to customers must be provided in a form acceptable to the customer. Refunds must be either in South African Rands or air-time useable on a South African mobile network.

4.3.2. Refunds must not cause the customer to incur any bank charges, or alternatively must compensate the customer for any bank charges incurred.

4.3.3. Refunds must not be unreasonably delayed.

## **5. Commercial and bulk messages**

### **5.1. Sending of commercial messages**

5.1.1. All commercial messages must contain a valid originating number and/or the name or identifier of the message originator.

5.1.2. Any message originator must have a facility to allow the recipient to remove his or herself from the message originator's direct marketing database, so as not to receive any further direct marketing messages from that message originator.

5.1.3. For commercial messages, a recipient should be able to stop receiving messages from any service by replying with the word 'STOP'. If a reply could pertain to multiple services, either all services should be terminated, or the recipient should be given a choice of service to terminate. The reply 'STOP' procedure should be made clear to the recipient at the start of any messaging service, for example by including "reply STOP to opt out" in the first message sent. If it is not technically feasible for the recipient to reply to a specific message then clear instructions for unsubscribing must be included in the body of that message.

5.1.4. For commercial messages, a message recipient must be able to opt out at the lowest tariffed rate available (with the exception of reverse billed rates). If replying 'STOP' as set out in 5.1.3 will result in a charge greater than the lowest tariffed rate available, then instructions for the lowest tariffed rate opt-out must be included in every message sent to the customer.

5.1.5. The reply "STOP" or alternative opt-out procedure must be included in all direct marketing communications. A "STOP" reply in this instance will refer to all direct marketing communications from the message originator.

5.1.6. Non-commercial bulk SMS services (such as newsletters) must have a functional opt-out procedure consistent with that described in clause 5.1.3.

5.1.7. Notwithstanding clauses 5.1.3 and 5.1.6, members are not obliged to honour an opt out request for communications that are necessary for the conclusion or performance of a contract to which the recipient is a party.

5.1.8. Notwithstanding clauses 5.1.3 and 5.1.6, members are not obliged to honour an opt out request for communications required by law.

5.1.9. Once a recipient has opted out from a service, a message confirming the opt-out should be sent to that recipient. This message must reference the specific service that the recipient has opted-out from, and may not be a premium rated message.

5.1.10. Where the words 'END', 'CANCEL', 'UNSUBSCRIBE' or 'QUIT' are used in place of 'STOP' in an opt-out request, the service provider must honour the opt-out request as if the word 'STOP' had been used.



5.1.11. Upon request of the recipient of a direct marketing message, the message originator must, within a reasonable period of time, identify the source from which the recipient's personal information was obtained, and provide proof that the organisation supplying the originator with the recipient's contact information has the recipient's explicit consent to do so.

5.1.12. Direct marketing messages may not be sent on Sundays, public holidays, on Saturdays before 09:00 or after 13:00, or on all other days between 20:00 and 08:00, unless expressly agreed to in writing by the recipient.

## **5.2. Identification of spam**

5.2.1. Any direct marketing message is considered unsolicited (and hence spam) unless:

- (a) the recipient has requested the message;
- (b) the message recipient has a prior commercial relationship with the message originator and has been given a reasonable opportunity to object to direct marketing communications
  - (i) at the time when the information was collected; and
  - (ii) on the occasion of each communication with the recipient; or
- (c) the organisation supplying the originator with the recipient's contact information has the recipient's explicit consent to do so.

5.2.2. Any commercial message is considered unsolicited after a valid opt-out request.

5.2.3. WASPA, in conjunction with the network operators, will provide a mechanism for consumers to determine which message originator or wireless application service provider sent any unsolicited commercial message.

## **5.3. Prevention of spam**

5.3.1. Members will not send or promote the sending of spam and will take reasonable measures to ensure that their facilities are not used by others for this purpose.

5.3.2. Members will provide a mechanism for dealing expeditiously with complaints about spam originating from their networks.

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## **6. Advertising and pricing**

### **6.1. WASPA advertising rules**

6.1.1. In addition to the provisions listed below all members are bound by the *WASPA Advertising Rules*, published as a separate document.

6.1.2. The latest version of the *WASPA Advertising Rules* will always be available on the WASPA web site.

6.1.3. In the case of any conflict between the *WASPA Advertising Rules* and the WASPA Code of Conduct, the Code of Conduct takes priority over the *Advertising Rules*.

### **6.2. Pricing of services**

6.2.1. All advertised prices must include VAT.

6.2.2. All advertisements for services must include the full retail price of that service.

6.2.3. Pricing must not contain any hidden costs. Where applicable, pricing for content services must include the cost of the content and indicate any bearer costs that may be associated with downloading, browsing or receiving that content.

**Charles Stretch wrote:**

The networks are now offering Toll Free / Reverse billed short codes. R0 cost to the person sending the SMS.

What info must we include on the advertising material?

i.e. (Standard SMS rates apply, or R1 per SMS)

Would these cost be. (No cost per SMS or Free SMS apply) ?

6.2.4. Pricing contained in an advertisement must not be misleading.

6.2.5. If multiple communications are required to obtain content, then the advertised price must include the cost for all communications required for that transaction. A clear indication must always be given that more premium messages are required.

**Ilonka Gray wrote:**

I would like to suggest the following clause is included in the WASPA COC:

6.2.5 Third Party advertisers must make the cost of SMS access (standard or premium rated) clearly visible in all advertisements. The price must be displayed, in a clearly legible format, adjacent to the shortcode in all instances. Only placing the cost of SMS access in the Terms and Conditions is not permitted.

(Or something like that)

6.2.6. The price for a premium rated service must be easily and clearly visible in all advertisements. The price must appear with all instances of the premium number display.

6.2.7. Unless otherwise specified in the advertising guidelines, the name of the WASP or the information provider providing the service must appear in all advertisements for premium rated services.

6.2.8. For menu-driven services such as USSD, the price for the service must be clearly stated at the top of the first page. Any additional costs associated with specific menu selections must be clearly indicated.

6.2.9. Pricing on any promotional material must use one of the following generally accepted formats for prices in Rands: "Rx" or "Rx.xx".

6.2.10. During any calendar month, if the total cost of any service exceeds R200 for that month:

(a) Where the WASP is in control of the billing (e.g. an OBS), a notification must be sent to the customer that they have reached this limit and a communication is required from the customer, confirming acceptance of any costs over this amount, prior to any additional costs being billed.

(b) Where the WASP is not in control of the billing (e.g. the customer sends an SMS to a premium rated number), the member must send a notification to the customer once they have reached this limit.

6.2.11. During any calendar month, after the first threshold notification, when the total cost of any service reaches R400, and when it reaches any multiple of R200 thereafter, an additional notification must be sent to the customer notifying them of the total cost incurred for that service so far.

6.2.12. The member providing the service must keep a record of the confirmation provided by the customer (for 6.2.10 (a)) or the notification sent to the customer (for 6.2.10 (b)).

6.2.13. For any transaction initiated via WAP, USSD, web-browsing, a link in an MMS or by an application:

- (a) If the transaction is billed at R10 or more, the member initiating this transaction must obtain specific confirmation from the customer and keep a record of such confirmation.
- (b) If the transaction is billed at less than R10, the price for the transaction must be clearly indicated as part of, or immediately next to, the link or option that will initiate the transaction and must be visible on the same screen as the link.
- (c) If the transaction is to initiate a subscription service, then the price and frequency of the service must be included directly in the text of the WAP link or immediately adjacent to it and must be visible on the same screen as the link.

6.2.14. A customer may enter into a contract with a WASPA member to opt-out of the reminders specified in clauses 6.2.10 and 6.2.11 for a specified service provided that:

- (a) Any such contract between the service provider and the customer is clear and easily understood.
- (b) The provisions in the contract which deal with opting out from reminders must be obvious to the customer and not hidden in the general terms and conditions or otherwise.
- (c) The contract contains a description of the service provided, the duration for which the service will be provided, the frequency and amount of any billing, and information on the mechanism the customer can use to terminate the service.
- (d) A copy of the contract is retained by the service provider.
- (e) A copy of the contract is made available to WASPA in the case of any dispute.
- (f) The contract must provide the customer with the ability to request the resumption of the reminders specified in clause 6.2.10 and 6.2.11.
- (g) This contract cannot be concluded via WAP, USSD, SMS or a web page.
- (h) This contract must be legal, must not be against public policy and must not limit the consumer's rights under any law.

### **6.3. General provisions**

6.3.1. For services such as MMS, that have specific handset requirements, advertisements must make it clear that the customer needs to have a compatible handset that has been correctly configured to use that service.

6.3.2. For services which are likely to have a shelf-life of three months or more, a statement must be included in any advertisement that the information given is correct as at the date of publication, and that date must also be stated.

6.3.3. Promotional material must not be of a nature that unduly encourages unauthorised calls or use of services.

6.3.4. All advertising promoting content that is available on specific handsets only, must display "compatible handsets only" clearly and explicitly. For television advertising this warning must be placed prominently and not only in the terms and conditions for the entire duration of the commercial.

6.3.5. Content that is promoted in marketing campaigns, must be the same content that is delivered to or available to be retrieved by the customer's handset.

### **6.4. Use of a short code as a brand**

6.4.1. Where a short code is used as a brand, there is no requirement to display pricing information next to the short code, provided there is no directly associated call to action.

6.4.2. Where a short code is used as a brand and there is an associated call to action, the standard requirements for the display of pricing information are required, as set out in the Advertising Rules.

### **6.5. Use of the word "free"**

6.5.1. The keyword "free" or words with the same or similar meaning (in any language) may not be used for any service unless that service has no associated charges whatsoever, excluding network bearer charges.

6.5.2. Marketing material may not require that a customer join (or rejoin) a subscription service to redeem “credits”, “points” or other benefits of a loyalty program that the customer has already been awarded.

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## **7. Children’s services**

### **7.1. Parental permission**

7.1.1. The terms and conditions for children’s services must indicate that the service should only be used with the permission of the child’s parent or guardian.

7.1.2. The terms and conditions for children’s services must indicate that the service should only be used with the agreement of the person responsible for paying the phone bill.

### **7.2. Prohibited practices**

7.2.1. Children’s services must not contain anything that is likely to result in harm to children or which exploits their credulity, lack of experience or sense of loyalty.

7.2.2. Children’s services must not include anything that a reasonable parent would not wish their child to hear or learn about in this way.

7.2.3. Children’s services must not involve an invasion of privacy of any child.

7.2.4. Children’s services must not unduly encourage children to ring or procure other premium rate services or the same service again.

7.2.5. Promotional material for children’s services must not make use of adult themes or adult material.

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## **8. Adult services**

### **8.1. Required practices**

8.1.1. Any adult service must be clearly indicated as such in any promotional material and advertisements.

8.1.2. Promotions for adult services must be in context with the publication or other media in which they appear. Services should be in context with the advertising material promoting them. The content of a service should not be contrary to the reasonable expectation of those responding to the promotion.

8.1.3. Members must take reasonable steps to ensure that only persons of 18 years of age or older have access to adult content services. Explicit confirmation of a user’s age must be obtained prior to the delivery of an adult content service.

8.1.4. Marketing messages (including commercial messages) may no longer be sent to a customer of an adult service if that customer has not made use of the service during the preceding three months. This is to prevent the accidental marketing of such services to children as a result of a recycled telephone number.

8.1.5. A marketing message sent to initiate or re-initiate adult services may not:

- (a) include any graphical or photographic content that includes full frontal images or portrayal of intimate parts of the body; or
- (b) include any words or phrases that may be considered profane, including common popular or slang terms for excretory functions, sexual activity and genitalia; or

(c) include any links to any content described in (a) or (b).

## **8.2. Prohibited practices**

8.2.1. Adult services must not contain references that suggest or imply the involvement of children.

8.2.2. Promotions for adult services must not appear in publications or other media specifically targeted at children.

8.2.3. Adult services may not be marketed via direct communications with a customer of non-adult services, unless that customer has explicitly given permission for such marketing to take place and the customer has confirmed that they are, in fact, an adult.

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## **9. Competitions**

### **9.1. Provision of information**

9.1.1. The total cost for any entry into a promotional competition shall not exceed R1.50.

9.1.2. Any promotional material for a competition service must clearly display the full cost to enter the competition and any cost to the user to obtain the prize.

9.1.3. Any promotional material for a competition service must include details of how the competition operates.

9.1.4. Interactive competition services with an ongoing incremental cost, must, at reasonable intervals, inform the customer of any additional costs, and must require the customer to actively confirm their continued participation.

9.1.5. Promotional material must clearly state any information which is likely to affect a decision to participate, including:

- (a) the closing date;
- (b) any significant terms and conditions, including any restriction on the number of entries or prizes which may be won;
- (c) an adequate description of prizes, and other items offered to all or a substantial majority of participants, including the number of major prizes;
- (d) any significant age, geographic or other eligibility restrictions;
- (e) any significant costs which a reasonable consumer might not expect to pay in connection with collection, delivery or use of the prize or item;
- (f) the entry mechanism and workings of the competition;
- (g) how a person may obtain the competition rules.

9.1.6. The following additional information must also be made readily available on request, if not contained in the original promotional material:

- (a) how and when prize-winners will be informed;
- (b) the manner in which the prizes will be awarded;
- (c) when the prizes will be awarded;
- (d) how prize-winner information may be obtained;
- (e) any criteria for judging entries;
- (f) any alternative prize that is available;
- (g) the details of any intended post-event publicity;
- (h) any supplementary rules which may apply;
- (i) the identity of the party running the competition and responsible for the prizes.

9.1.7. Competition services and promotional material must not:

- (a) use words such as 'win' or 'prize' to describe items intended to be offered to all or a substantial majority of the participants;
- (b) exaggerate the chance of winning a prize;
- (c) suggest that winning a prize is a certainty;
- (d) suggest that the party has already won a prize and that by contacting the promoter of the competition, that the entrant will have definitely secured that prize.

9.1.8. Any customer entering an IVR, SMS or MMS competition after the competition has closed must be sent a reply indicating that the competition has already closed. This is in order to prevent a customer from spending unnecessary time on a call or submitting repeated entries for a competition after the closing date or time.

9.1.9. If a competition closes at a specific time of day, then that time must be clearly communicated to all entrants. For live television competitions, an appropriate count down or advanced warning must be provided.

## **9.2. Children's competitions**

9.2.1. Competition services that are aimed at, or would reasonably be expected to be particularly attractive to children must not offer cash prizes.

9.2.2. Competition services that are aimed at, or would reasonably be expected to be particularly attractive to children must not feature long or complex rules.

## **9.3. General provisions**

9.3.1. Competition services must have a specific closing date, except where there are instant prize-winners. An insufficient number of entries or entries of inadequate quality are not acceptable reasons for changing the closing date of a competition or withholding prizes. Once the closing date for a competition is reached, the advertised prizes must be awarded, notwithstanding the number of entries.

9.3.2. Prizes must be awarded within 28 days of the closing date, unless a longer period is clearly stated in the promotional material.

9.3.3. All correct entries must have the same chance of winning.

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## **10. Contact and dating services**

### **10.1. Provision of information**

10.1.1. Contact and dating services with an ongoing incremental cost, must, at reasonable intervals, inform the customer of any additional costs, and must require the customer to actively confirm their continued participation.

10.1.2. Providers of contact and dating services must warn users of the service of the risks involved when contact information is given out to other individuals and must give clear advice on sensible precautions to take when meeting people through such services.

10.1.3. Providers of contact and dating services must ensure that customers' contact information is duly protected and not publicly available.

10.1.4. Providers of contact and dating services must obtain explicit consent from a customer prior to making his or her contact information available to third parties.

10.1.5. Promotional material for contact and dating services must make clear any restrictions on the location, gender and age range of callers to the service.

## **10.2. Restrictions on the service**

10.2.1. Members must take reasonable steps to ensure that users of contact and dating services are authorised by the bill-payer to use that service.

10.2.2. Providers of contact and dating services must take reasonable steps to ensure that no children use the services.

## **10.3. Removal and deactivation of services**

10.3.1. When so requested by a customer, the provider of a contact and dating service must ensure that the customer's details are removed from the service at the earliest opportunity and in all cases within 24 hours.

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## **11. Subscription services**

### **11.1. Promotion of subscription services**

11.1.1. Promotional material for all subscription services must prominently and explicitly identify the services as "subscription services". This includes any promotional material where a subscription is required to obtain any portion of a service, facility, or information promoted in that material.

During an appeals panel hearing, it was recommended that "prominently" needs to be defined in the Code. (As well as this clause, this word is also used in 6.3.4 in the context of television adverts.)

11.1.2. An advert for a content subscription service which includes examples of the content provided as part of that service must include at least two examples of that content clearly displayed, except as provided for in 11.1.3.

11.1.3. For a television advert, if, during the voice over:

- (a) the fact that a service is a subscription service, and
- (b) the price and frequency of the billing

is clearly announced in the language of the advert, then that advert may promote a single content item, provided that the key word is generic and not linked to the specific content item.

11.1.4. Subscription services with different billing frequencies should not have a subscription mechanism likely to cause a customer to accidentally subscribe to a more frequent service.

11.1.5. Once a customer has subscribed to a subscription service, neither the amount and frequency of the charges nor the frequency of the service may be increased without the customer's explicit permission.

11.1.6. Where possible, billing for a subscription service must indicate that the service purchased is a subscription service.

11.1.7. Promotions for subscription services must not appear in publications or other media specifically targeted at children.

11.1.8. It is acceptable to use the "@" sign in place of "at" in any activation message, welcome message or similar communication. Similarly, "u" may be used in place of "you", "b" may be used in place of "be", and "r" may be used in place of "are".

11.1.9. For services that are not billed on a daily, weekly or monthly basis, the pricing should be of the format "RX every [time period]".

### **11.2. Subscription process**

11.2.1. Customers may not be automatically subscribed to a subscription service as a result of a request for any non-subscription content or service. Customers may not automatically be subscribed to a subscription service without specifically opting in to that service.

11.2.2. Any request from a customer to join a subscription service must be an independent transaction, with the specific intention of subscribing to a service. A request from a subscriber to join a subscription service may not be a request for a specific content item and may not be an entry into a competition or quiz.

**An adjudicator commented:**

I think the problem is really with 11.2.2 which speaks of the "intention" of the consumer. As we cannot really deduce this (especially on the strength of the evidence that adjudicators have available), we need a more objective standard.

11.2.3. Notwithstanding the above clause, it is permissible for a customer to be included as a participant in a promotional draw or competition as an additional benefit to being a subscription service customer. In such a case, all marketing and promotional material must make it reasonably clear to the customer that the promotional draw or competition is ancillary to the subscription service, and the process of joining the subscription service may not be disguised as an entry into a competition.

**An adjudicator commented:**

I'm not sure that the new phrase "all marketing and promotional material must make it reasonably clear" will lead to a significant change in my own adjudication outcomes because I think I would probably have assessed all of the marketing and promotional material in any event to determine what was reasonably clear. However, it may lead to a reduction in the number of inadvertent subscriptions and it will make adjudications easier to make and appeals against decision harder.

11.2.4. Members must ensure that children accessing subscription services confirm that they have permission from a parent or guardian do to so.

11.2.5. If a subscription service is initiated by a customer sending an SMS to the service provider, then a separate confirmation message must then be sent to the customer's mobile handset. Only once the customer has followed the activation instructions in the confirmation message can they be subscribed to the subscription service.

11.2.6. The confirmation message sent in response to a subscription request (such as that described in 11.2.5, or triggered by entering a mobile number on a web site) must include the subscription service information in the following format, flow and wording:

[service activation instructions and/or activation code]. You'll be subscribed to [XYZ service] from [name of service provider] at [cost of service and frequency of billing].

11.2.7. If the network is already undertaking any of the verification steps required in this chapter of the Code, then it is not necessary for members to repeat those particular steps again.

**Suggested addition from the tester:**

11.2.8. Should a confirmation message as described in 11.2.7 be sent, then the WASP must supply the network provider with the subscription service information in the following format, flow and wording:

"[service name] from [name of service provider] at [cost of service and frequency of billing] [additional information the WASP wants to convey]."

The message would then reads as follows:

"Confirm your request from [service name] from [name of service provider] at [cost of service and frequency of billing] [additional information the WASP wants to convey]. Reply "Yes" to confirm".

### 11.3. Subscription initiated via a browser (web or WAP)



11.3.1. If a subscription service is initiated by entering a customer's mobile number on a web page or WAP site, then a separate confirmation message must be sent to the customer's mobile handset in order to prove that the number entered matches the customer's mobile handset number. This message may either:

- (a) contain a PIN which is then confirmed or validated on the web page, or
- (b) contain the name of the service, an explanation of the confirmation process, and a URL with a unique identifier, which, when clicked, validates the handset number.

11.3.2. For any subscription services that are initiated via WAP, it is a requirement for the service provider who has a direct contract with the network operator to display a WAP confirmation page to the potential subscriber. This confirmation page must be displayed after the subscriber has first indicated an interest in the subscription service by clicking on a "join" or similar link.

11.3.3. The WAP confirmation page must display the following information in a clear and easy to read manner:

- (a) The name of the service and an indication that it is a subscription service
- (b) The price and frequency of billing
- (c) A phone number for customer support

11.3.4. Where it is necessary for a consumer to confirm that their MSISDN may be made available to an application, this may be done by including the following wording on the WAP confirmation page:

[Application name] has requested that your mobile number be made available.

11.3.5. The information listed in 11.3.3 and 11.3.4 above must be presented as text and not as an image.

11.3.6. The WAP confirmation page described above must also present a confirmation button. It must be clearly communicated to the customer on the confirmation page that clicking the confirmation button will initiate a subscription service.

11.3.7. The WAP confirmation page may not contain any marketing messages or other content that is likely to distract the customer from the required confirmation information and process.

11.3.8. The WAP confirmation page must offer all languages used in the promotional material for that service.

#### **11.4. Subscription initiated via USSD**

11.4.1. After selecting the required service, the customer must be presented with a confirmation step. The subscription service may not begin until the customer follows the confirmation instructions. The following information must be presented as part of the confirmation step:

- (a) The name of the subscription service;
- (b) The cost of the subscription service and the frequency of the charges;
- (c) Instructions to follow to confirm the subscription (e.g. "1 - Confirm, 2 - Cancel")

#### **11.5. Welcome message**

11.5.1. Once a customer has subscribed to a subscription service, a notification message must immediately be sent to the customer. This welcome message should not be mistaken for an advert or marketing message. The customer may not be charged for this message.

11.5.2. The welcome message must start with the text "Welcome: " and must also be a clear notification of the following information, in the following order:

- (a) The name of the subscription service;
- (b) The cost of the subscription service and the frequency of the charges;
- (c) Clear and concise instructions for unsubscribing from the service;
- (d) The service provider's telephone number.

## **11.6. Reminder messages**

11.6.1. A monthly reminder SMS must be sent to all subscription service customers. This reminder must be sent within 30 days of the initial notification message, and once per calendar month thereafter. The customer may not be charged for these reminder messages.

11.6.2. The reminder messages specified in 11.6.1 must adhere exactly to the following format, flow, wording and spacing:

Reminder: You are subscribed to [name of service provider] [content/service description].  
Cost [cost of service and frequency of billing]. SMS HELP [optional keyword] to [short code]/call [call centre number + "(VAS)" if applicable]. To unsub, sms STOP [service keyword] to [short code].

or

Reminder: You are subscribed to [name of service provider] [content/service description].  
Cost [cost of service and frequency of billing]. For help call [call centre number + "(VAS)" if applicable]. To unsub, sms STOP [service keyword] to [short code].

11.6.3. The entire reminder message must be sent in a single SMS, may not contain any line breaks or carriage returns and may not include any additional characters other than those specified in 11.6.2.

11.6.4. The content/service description must be text describing the content, promotion or service (e.g. "tones" or "poems"). This text must not be worded in a way that attempts to deceive or mislead the customer from the purpose of the reminder which is to inform the user that they are subscribed to a service.

11.6.5. The cost of service and frequency of billing must use the format "RX/day", "RX/week" or "RX/month" (or RX.XX if the price includes cents). No abbreviations of "day", "week" or "month" may be used.

11.6.6. For services that are not billed on a daily, weekly or monthly basis, the pricing should be of the format "RX every [time period]".

11.6.7. The text "(VAS)" must be included after any VAS-rated phone number. It does not need to be included after phone numbers which are not VAS-rated.

11.6.8. Members must test reminder messages on a range of phones to ensure that all characters and lines are displayed identically.

## **11.7. Reminder message for USSD services**

11.7.1. For services where the primary means of interacting with the service is via USSD, either the format set out in 11.6.2 or the the following format must be used:

Reminder: You are subscribed to [name of service provider] [content/service description].  
Cost [cost of service and frequency of billing]. For help, dial [USSD code1 + "(VAS)" if applicable] or call [call centre number + "(VAS)" if applicable]. To unsub, dial [USSD code2].

or

Reminder: You are subscribed to [name of service provider] [content/service description].  
Cost [cost of service and frequency of billing]. For help call [call centre number + "(VAS)" if applicable]. To unsub, dial [USSD code2].

11.7.2. Accessing the USSD unsubscribe facility specified in the above reminder message must immediately unsubscribe that user. No additional user action must be required.

11.7.3. All of the other requirements set out in section 11.6 of the Code continue to apply to services where the primary means of interacting with the service is via USSD.

### **11.8. Reminder message for WAP services**

11.8.1. For services where the primary means of interacting with the service is via WAP, either the format set out in 11.6.2 or the the following format must be used:

Reminder: You are subscribed to [name of service provider] [content/service description].  
Cost [cost of service and frequency of billing]. For help call [call centre number + "(VAS)" if applicable]. To unsub, click here [WAP link].

11.8.2. Accessing the WAP unsubscribe page specified in the above reminder message must immediately unsubscribe that user. No additional user action must be required.

11.8.3. The WAP link in the reminder message must begin with "www" to ensure that all phones recognise this as a clickable link.

11.8.4. All of the other requirements set out in section 11.6 of the Code continue to apply to services where the primary means of interacting with the service is via WAP.

### **11.9. Termination of a service**

11.9.1. Instructions on terminating a subscription service must be clear, easy to understand, and readily available.

11.9.2. Customers must be able to unsubscribe from any subscription service via SMS using no more than two words, one of which must be 'STOP'. If a reply could pertain to multiple services, either all services should be terminated, or the recipient should be given a choice of service to terminate.

11.9.3. The 'STOP' request described above must be charged at the lowest tariffed rate available (with the exception of reverse billed rates).

11.9.4. Where the words 'END', 'CANCEL', 'UNSUBSCRIBE' or 'QUIT' are used in place of 'STOP' in a request, the service provider must honour the opt-out request as if the word 'STOP' had been used.

11.9.5. Where a service is linked to a specific short code in advertisements for that service, then sending a 'STOP' request to that short code should result in the termination of that service. If a request to a short code could pertain to multiple services, either all services should be terminated, or the recipient should be given a choice of service to terminate.

11.9.6. If a message sent by a customer cannot be parsed by a WAP, then the resulting response to the customer should contain sufficient information for the customer to be able to unsubscribe from that service, or to be able to contact the service provider's customer support.

11.9.7. For services where the primary means of interacting with the service is via USSD or WAP, and for which the reminder message set out in clause 11.7.1. or 11.8.1. is used, clause 11.9.2. does not apply.

11.9.8. Members must ensure that the termination mechanism is functional and accessible at all times.

11.9.9. For USSD services, the unsubscribe option must be listed on the top-level menu, under the heading "UNSUBSCRIBE".

11.9.10. When a customer has requested that they be unsubscribed from a service, an unsubscribe notification must be sent to that customer, and must use the following text format, flow and wording:

You've been unsubscribed from [service name].

or

You've been unsubscribed from [service name]. To resubscribe [service activation instructions]. You'll then be resubscribed at [cost of service and frequency of billing].

11.9.11. A user must be removed from a subscription service if no successful bills have been processed for that service for more than three months, or if there is an indication from one of the mobile networks that the number is no longer in use or has been recycled.

11.9.12. If a user ports their number from one operator to another, that number must be removed from all subscription services.

11.9.13. If a customer sends an unsubscribe request directly to a member, and the request cannot be acted on immediately, the customer must be informed (for example, via a notification of the form "This may take up to 24 hours"). In any case such a request must be acted upon with two working days (48 hours).

11.9.14. If a consumer lodges a request with WASPA to be unsubscribed from a subscription service, the WASPA member concerned must honour that request within two working days (48 hours) of that request being passed on by WASPA.

## **11.10. Subscription service directory and logs**

11.10.1. Members must register all subscription services with WASPA, by providing the following information:

- (a) the name of the service;
- (b) the short code or access method (e.g. WAP) the service uses;
- (c) the price and frequency of billing for that service;
- (d) the customer support number associated with the service; and
- (e) unsubscribe instructions for the service.

11.10.2. When requested to do so by WASPA, a member must provide clear logs for any subscription service customer which include the following information:

- (a) proof that the customer has opted in to a service or services;
- (b) proof that all required reminder messages have been sent to that customer;
- (c) a detailed transaction history indicating all charges levied and the service or content item applicable for each charge; and
- (d) any record of successful or unsuccessful unsubscribe requests.

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## **12. Notification services**

### **12.1. Welcome message**

12.1.1. Once a customer has subscribed to a notification service, a welcome message must immediately be sent to the customer. This welcome message must include the following information, and should not be mistaken for an advert or marketing message:

- (a) The name of the notification service;
- (b) The cost of the notification service (price per notification) and the maximum number of notifications that will be sent in any one month;
- (c) Clear and concise instructions for unsubscribing from the service;
- (d) The service provider's telephone number.

### **12.2. Reminder messages**

12.2.1. A monthly reminder SMS must be sent to all notification service customers. This reminder must be sent within 30 days of the initial notification message, and once per calendar month thereafter.

12.2.2. This reminder message must include all of the information required in the welcome message.

12.2.3. The entire reminder message must be sent in a single SMS, may not contain any line breaks or carriage returns.

12.2.4. This reminder message must not be worded in a way that attempts to deceive or mislead the customer from the purpose of the reminder which is to inform the user that they are subscribed to a service.

12.2.5. The text "(VAS)" must be included after any VAS-rated phone number. It does not need to be included after phone numbers which are not VAS-rated.

12.2.6. Members must test reminder messages on a range of phones to ensure that all characters and lines are displayed identically.

12.2.7. Some notification services are of a seasonal nature (e.g. sports related notifications). During calendar months where a member does not send the customer any notifications and where no billing takes place, the member is not required to send a monthly reminder to the customer.

### **12.3. Termination of a service**

12.3.1. Instructions on terminating a notification service must be clear, easy to understand, and readily available.

12.3.2. Customers must be able to unsubscribe from any notification service via SMS using no more than two words, one of which must be 'STOP'. If a reply could pertain to multiple services, either all services should be terminated, or the recipient should be given a choice of service to terminate.

12.3.3. The 'STOP' request described above must be charged at the lowest tariffed rate available (with the exception of reverse billed rates).

12.3.4. Where the words 'END', 'CANCEL', 'UNSUBSCRIBE' or 'QUIT' are used in place of 'STOP' in a request, the service provider must honour the opt-out request as if the word 'STOP' had been used.

12.3.5. Where a service is linked to a specific short code in advertisements for that service, then sending a 'STOP' request to that short code should result in the termination of that service. If a request to a short code could pertain to multiple services, either all services should be terminated, or the recipient should be given a choice of service to terminate.

12.3.6. If a message sent by a customer cannot be parsed by a WSP, then the resulting response to the customer should contain sufficient information for the customer to be able to unsubscribe from that service, or to be able to contact the service provider's customer support.

12.3.7. Members must ensure that the termination mechanism is functional and accessible at all times.

12.3.8. When a customer has requested that a notification service be terminated, a message must be sent to that customer confirming the termination.

12.3.9. If a user ports their number from one operator to another, that number must be removed from all notification services.

12.3.10. If a consumer lodges a request with WASPA to be removed from a notification service, the WASPA member concerned must honour that request within two working days (48 hours) of that request being passed on by WASPA.

## **12.4. Notification service logs**

12.4.1. When requested to do so by WASPA, a member must provide clear logs for any notification service customer which include the following information:

- (a) proof that the customer has opted in to a service or services;
- (b) proof that all required reminder messages have been sent to that customer;
- (c) a detailed transaction history indicating all charges levied and the service or content item applicable for each charge; and
- (d) any record of successful or unsuccessful unsubscribe requests.

## **13. Miscellaneous**

### **13.1. Charitable promotions**

13.1.1. Any promotional material for charitable and/or fundraising promotions must make it clear that network operator fees and administration fees will be deducted from amounts paid.

During the AGM, there was some discussion of whether including this requirement is a disincentive for consumers to make contributions to charitable organisations, or whether it must be included in the interests of transparency.

13.1.2. Promotional material must specify the identity of the beneficiary.

13.1.3. Promotional material must make clear any restrictions or conditions attached to the contribution to be made to the beneficiary.

### **13.2. Interactive voice response (IVR) services**

13.2.1. For any IVR service that costs more than R3 per minute, there must be a clear announcement of the cost per minute at the beginning of the call. This announcement must not be of more than 5 seconds in duration, and must use the following format: "Call billed at X rand per minute".

13.2.2. No IVR services may have a false ringing sound (or other sound, including no sound at all) at the beginning of the call which might cause the user of the service to believe that the call has not yet started.

### **13.3. WAP push messages**

13.3.1. For any WAP push messages, a short code or some other means of identifying the member providing the service must be included in the message.

13.3.2. To enable the recipient to identify the sender of the WAP Push and opt-out from receiving further promotions, a short code to which the recipient can send the STOP command to opt-out should also be included within the WAP Push. The recipient should not have to open the WAP Push in order to identify a short code to which they can send STOP for the purposes of opting-out.

13.3.3. Further information on how the recipient can opt out of future promotions must also be available from the WAP site. This needs to be provided on the WAP landing page or further to the recipient clicking on one clearly identified link from the landing page, such as a help page. The information to be provided must include:

- (a) An explanation that the subscriber can opt-out from receiving further promotional WAP push messages by sending STOP to a specific short code. This short code must be the same as that included within the title of the WAP push; and optionally also
- (b) A link which the subscriber can select to opt-out from receiving further promotional WAP push messages.

13.3.4. The type of service (e.g. subscription service) and the cost of service (e.g. R7/day) must also be clearly displayed within the WAP site. This needs to be provided on the WAP landing page.

## **13.4. Prohibited services**

13.4.1. No WASPA member may provide a service described in this section or facilitate the provision of such a service by an Information Provider.

13.4.2. Prohibited services:

(a) Chat services where a customer is billed for receiving a message rather than being billed for sending a message. "Chat services" includes any service where facilities are provided for any form of conversation or dialogue between the customer and other customers of the service, between the customer and a software application, or between the customer and staff of the chat service provider. For the avoidance of doubt, this excludes notifications (covered by chapter 12, above) relating to permitted chat services, provided that these are notifications relating to the chat service and not conversational messages.

(b) Quiz services where a customer is billed for receiving quiz messages rather than being billed for sending a response. "Quiz services" covers any form service including a game, trivia, a competition or challenge where a customer is asked questions or prompted to provide a response or solve a problem, whether a prize is offered or not.

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## **14. Complaints procedures**

### **14.1. Lodging of complaints**

14.1.1. Any person may lodge a complaint against any member who, in the view of the complainant, has acted contrary to the provisions of this Code.

14.1.2. Any complaint must be lodged with the WASPA secretariat using the contact information published on the WASPA web site.

14.1.3. A complaint should contain the following information:

- (a) the name of the wireless application service provider against whom the complaint is being made, or if the identity of the service provider is not clear, the number of the service or other identifying information;
- (b) the full names, address and contact details of the complainant;
- (c) to the extent that the information is known or available, identification of the part or parts of the Code of Conduct which has allegedly been breached; and
- (d) a detailed description of the actions (or inactions) that resulted in the alleged breach.

14.1.4. Any complaint lodged that does not contain the above information may be referred back to the complainant by the secretariat, together with a request to provide the missing information.

14.1.5. If a complainant requests anonymity, the complainant's identity may be withheld from the member at the discretion of the secretariat.

14.1.6. The secretariat may initiate a complaint against a member on behalf of WASPA, should it become aware of an apparent breach of the Code.

14.1.7. The secretariat shall have the discretion to make use of either the informal or formal complaint procedure to process any complaints received, subject to clauses 14.2.1. and 14.3.1.

14.1.8. Where the complainant has lodged a complaint or dispute, or instituted an action with any other regulatory body or in a Court, and where the subject matter of that complaint, dispute or action is substantially the same as the subject matter of a complaint lodged by that complainant with the WASPA Secretariat, WASPA may decline to consider and deal with the complaint.

## **14.2. Informal complaint procedure**

14.2.1. In the case of a complaint for which it is feasible for the member to provide a prompt remedy and where no material breach of the Code seems to have occurred, the following informal complaint procedure will be followed.

14.2.2. The secretariat will forward the complaint to the member concerned.

14.2.3. The member has five working days to effect an appropriate remedy.

14.2.4. Thereafter, if the complainant is satisfied that the member has adequately addressed the complaint then the complaint is considered closed and no further action is taken.

14.2.5. If the complainant is not satisfied that the complaint has been satisfactorily resolved, then the formal complaint procedure will be used to handle the complaint further.

14.2.6. The secretariat will maintain a record of any complaints resolved through the informal complaint procedure.

## **14.3. Formal complaint procedure**

14.3.1. In the case of a complaint for which it is not feasible for the member concerned to provide a prompt remedy, or a complaint that has been escalated from the informal complaint procedure, the following formal complaint procedure will be followed.

14.3.2. If the secretariat believes that a complainant has not provided sufficient evidence for an adjudicator to be able to make a decision regarding their complaint, the secretariat may request that the complainant provide additional supporting material for their complaint. Should the complainant fail to provide any additional information, the secretariat may close the complaint due to lack of evidence without it proceeding to adjudication.

14.3.3. The member (or members) named in the complaint, or identified by the WASPA Secretariat on the basis of any identifying information included in the complaint, will be notified by the secretariat that a complaint has been lodged and that the formal complaint procedure is being followed.

14.3.4. The secretariat will provide the member with a copy of the complaint, and any additional information relevant to the complaint.

14.3.5. The member will be given five working days to respond to the complaint, and to provide any additional information the member deems relevant to the complaint, including any mitigating factors that the member wishes the adjudicator to consider.

14.3.6. If the member fails to respond within this time period, it will be assumed that the member does not wish to respond. An extension to this time period may be given to the member at the discretion of the WASPA Secretariat.

14.3.7. Notwithstanding any response from the member, the secretariat will assign the complaint to an adjudicator, and provide the adjudicator with all material relevant to the complaint.

14.3.8. The adjudicator must carefully review:

- (a) the complaint;
- (b) any response the member has made to the complaint;
- (c) the WASPA Code of Conduct;
- (d) any other material relevant to the complaint, as supplied by WASPA.

14.3.9. The adjudicator may make reference to the "annotated" version of the WASPA Code of Conduct, which contains explanatory notes and a history of changes to the Code.



14.3.10. The adjudicator may ask the secretariat to request that the complainant, the member, or both, furnish additional information relating to the complaint. Specifically, the adjudicator may request that the member respond to any additional breaches of the Code of Conduct discovered during the investigation of the complaint, but which were not specified in the original complaint.

14.3.11. Where a complaint relates to an advertisement, when requested to do so, a member must, within five working days, provide clear copies of the relevant adverts, flighting schedules in the relevant media (covering previous and future planned flighting) and flighting codes (where available).

14.3.12. Where a complaint involves any interaction with a customer, when requested to do so, a member must, within five working days, provide clear copies of all relevant logs of that interaction.

14.3.13. Providing incorrect or fraudulent information in response to a complaint, or in response to any other request to provide information is itself a breach of this Code.

14.3.14. On the basis of the evidence presented, the adjudicator will decide whether there has been a breach of the Code. Each case will be considered and decided on its own merits.

It has been suggested by adjudicators that the Code should include a clause which specifies that when making adjudications and determining sanctions, previous precedent should be taken into account. In addition, it should be made clear that precedent set by appeals panels should carry more weight than that set by adjudications.

14.3.15. If the adjudicator determines that there has been a breach of the Code, then the adjudicator must determine appropriate sanctions.

14.3.16. In determining any appropriate sanctions, the adjudicator must take into consideration:

- (a) any previous successful complaints made against the member;
- (b) any previous successful complaints of a similar nature.

14.3.17. Once the adjudicator has determined whether there has been a breach of the Code, and any sanctions, the adjudicator will provide the secretariat with a written report detailing these findings.

14.3.18. The secretariat will provide a copy of this report to the relevant member and to the complainant.

14.3.19. Should technical errors be identified in an adjudicator's report, the adjudicator has the sole discretion to decide whether the initial report should be withdrawn and replaced with an amended report.

There has been some debate about the wisdom of this clause. Should an adjudicator be entitled to amend a report after publication? If so, on what grounds? What constitutes a "technical error"? Are there any deadlines for such an amendment?

14.3.20. The member has five working days to notify the secretariat if it wishes to appeal against the decision of the adjudicator. An extension to this time period may be given to the member at the discretion of the WASPA Secretariat.

14.3.21. Unless otherwise specified in the adjudicator's report, any sanctions will be considered suspended if an appeal is lodged, until the appeal process is completed.

14.3.22. If no appeal is lodged, or if the adjudicator has specified certain sanctions as not being suspended pending an appeal, the failure of any member to comply with any sanction imposed upon it will itself amount to a breach of the Code and may result in further sanctions being imposed.

14.3.23. The member must provide the secretariat with confirmation of compliance with any applicable sanctions within five working days of receiving the adjudicator's report.

14.3.24. The member must pay any applicable fine(s) imposed by an adjudicator within five working days of receipt of invoice.

14.3.25. The secretariat will maintain a record of any complaints resolved through the formal complaint procedure.

#### **14.4. Sanctions**

14.4.1. An adjudicator finding prima facie evidence that any member may have breached clause 3.1.2 of the Code of Conduct must request that WASPA refer the breach to the relevant statutory or regulatory authority, unless that authority has already made a ruling on that particular case. If the relevant authority has already made a ruling on that particular case, then the adjudicator may find a breach of clause 3.1.2.

14.4.2. For all other clauses of the Code, possible sanctions that may be imposed on a member found to be in breach of the Code of Conduct are one or more of the following:

- (a) a requirement for the member to remedy the breach;
- (b) a formal reprimand;
- (c) an appropriate fine on the member, to be collected by WASPA;
- (d) suspension of the member from WASPA for a defined period;
- (e) expulsion of the member from WASPA;
- (f) a requirement for the member to disclose the identity of any information provider found to be acting in breach of this Code of Conduct;
- (g) a requirement for the member to suspend or terminate the services of any information provider that provides a service in contravention of this Code of Conduct;
- (h) a requirement to withhold a specified amount or portion of money payable by the member to the information provider.

It has been suggested by adjudicators that point (a) above should specifically indicate that adjudicators may order refunds to a complainant (or consumers affected by the breach).

14.4.3. When determining sanctions, the adjudicator should take note of 14.3.21, and specify any sanctions that will not be suspended if an appeal is lodged. Sanctions that can be specified in this way are limited to those that are intended to prevent future harm and include:

- (a) Sanctions requiring a member to amend, suspend, or terminate a service being offered in breach of the Code of Conduct;
- (b) Any sanctions imposed as a result of the failure of a member to comply with previous sanctions, as specified in 14.3.22.

14.4.4. In addition, possible sanctions against a member in breach of the Code include advising the relevant network operators or that member's aggregator to do one or more of the following:

- (a) block a member's access to a specific number for a defined period;
- (b) block a member's access to a specific category of service for a defined period;
- (c) terminate a member's access to a specific number;
- (d) terminate a member's access to a specific category of service;
- (e) withhold a specified amount or portion of money payable by the network operator to that service provider;
- (f) pay some or all of withheld funds to WASPA, as an appropriate fine on the service provider;
- (g) issue a blanket refund to the customers of a service found to be in breach of the Code of Conduct.

14.4.5. When considering appropriate sanctions, the adjudicator should consider the member's use of the checking service described in section 14.8. Where a member has had a service or advertisement checked by WASPA this should be taken as a mitigating factor when considering sanctions, provided that the service or advertisement has not been subsequently amended so as not to comply with the Code.

14.4.6. Where a service is provided by one WASPA member using the facilities of another member, if the member providing these facilities has taken reasonable steps in response to any alleged breach of the Code by the member providing the service, this must be considered as a significant mitigating factor when considering any sanctions against the member providing the facilities.

14.4.7. For the avoidance of doubt, no sanction may be applied to a member who has not been given an opportunity to respond to a complaint.

14.4.8. If a sanction specifies that a member be suspended from WASPA for a defined period, then this means that the Secretariat shall:

- (a) update the member's status to reflect as "suspended" on the WASPA web site;
- (b) notify the relevant network operators of the member's suspension and recommend the suspension of WASP services to that member for the period specified in the ruling; and
- (c) notify WASPA's general membership of the member's suspension.

#### **14.5. Information provider notices**

14.5.1. If the adjudicator has determined that an information provider is operating in breach of the Code of Conduct, and the adjudicator is of the reasonable opinion that the information provider may persist in such breach, whether through the member against whom the complaint was lodged or another member, the adjudicator may instruct the secretariat to issue a notice to WASPA's members.

14.5.2. The notice referred to in 14.5.1. must clearly identify the information provider and the relevant breach or breaches of the Code of Conduct, and must specify a date from which the notice applies.

14.5.3. Any member permitting the information provider to operate in breach of the Code of Conduct (in the same or substantially similar manner to that identified in the notice referred to in 14.5.1), after the date specified in the notice, will be automatically in breach of the same part or parts of the Code of Conduct as the information provider. Such members will be subject to sanctions determined by the adjudicator in accordance with section 14.4, read in conjunction with clause 14.3.15.

#### **14.6. Appeal process**

14.6.1. Any member found to have breached the Code of Conduct by an adjudicator has the right to appeal for a review of the adjudicator's decision, and/or a review of the sanctions imposed by the adjudicator.

14.6.2. When notifying WASPA of the intention to appeal, the member must specify if they wish to request a face-to-face appeal hearing. If a face-to-face appeal hearing is requested then that member must be given an opportunity to present their appeal in person to the appeals panel.

14.6.3. A member requesting an appeal must pay an appeal fee. The fee may vary depending on the type of appeal requested. Appeal fees will be set by WASPA's Management Committee in consultation with WASPA's membership. The member must pay any applicable appeals fee within five working days of receipt of invoice.

**It has been proposed that at least a portion of the appeals fee be non-refundable, in order to cover WASPA's costs for the appeal process.**

14.6.4. Once the secretariat has been notified that a member wishes to appeal a decision, that member has fifteen working days to supply the secretariat with any additional information it deems relevant to the complaint. An extension to this time period may be given to the member at the discretion of the WASPA Secretariat.

14.6.5. The secretariat will inform the complainant that the service provider has lodged an appeal against the adjudicator's decision.

14.6.6. The secretariat will convene an appeals panel, consisting of three adjudicators. No person who could be considered to represent either the complainant or the service provider concerned may sit on the appeals panel.

14.6.7. The appeals panel must consider the evidence provided to the adjudicator, the adjudicator's decision and any additional information provided by the service provider.

14.6.8. If the member has requested a face-to-face appeal hearing, then the appeals panel must also consider the member's appeal, as presented during the appeal hearing.

14.6.9. On the basis of the evidence presented, the panel will decide whether there has, in fact, been a breach of the Code.

14.6.10. If the panel determines that there has, in fact, been a breach of the Code, then the panel must review the sanctions recommended by the adjudicator.

14.6.11. The panel may maintain the same sanctions recommended by the adjudicator, or may determine such other sanctions, as it deems appropriate given the nature of the breach and the evidence presented.

14.6.12. An appeals panel must also determine, based on the merits of the appeal, whether the appeal fee must be refunded, partially refunded or forfeit by the service provider.

This clause will also need to be modified if a portion of the appeals fee is going to be non-refundable.

14.6.13. Once the panel has determined whether there has been a breach of the code, and reviewed any associated sanctions, the panel will provide the secretariat with a written report detailing these findings.

14.6.14. The secretariat will provide a copy of this report to the relevant member and to the complainant.

14.6.15. The member must, within five working days, comply with any sanction imposed.

14.6.16. The failure of any member to comply with any sanction imposed upon it will itself amount to a breach of the Code and may result in further sanctions being imposed.

14.6.17. The member may not request a further review of the panel decision or request a further appeal.

14.6.18. The secretariat will maintain a record of any complaints panel proceedings.

## **14.7. Emergency procedure**

14.7.1. Where it appears to the secretariat that a breach of the Code has taken place that is serious and requires urgent remedy, the 'emergency procedure' will be used.

14.7.2. The member concerned will be notified by the secretariat that the emergency procedure has been invoked.

14.7.3. The secretariat will convene an emergency panel, consisting of at least three persons. No person who could be considered to represent the member concerned may sit on the emergency panel.

14.7.4. As soon as reasonably possible, the emergency panel will determine if a breach of the Code has taken place that requires urgent remedy, and prescribe such remedy.

14.7.5. Where urgent remedy is required, the secretariat will notify the relevant member's nominated representative that the emergency procedure has been invoked and that urgent remedy is sought.

14.7.6. The member concerned must comply with the urgent remedy as soon as practicable. Failure to do so constitutes a breach of this Code.

14.7.7. The secretariat may also advise the relevant network operator or operators to block a member's access to a specific number or a specific service.

14.7.8. Once the emergency procedure has been completed, the breach of the Code will be reviewed using the formal complaint procedure above. If, during the formal complaint procedure, the urgent remedy exercised above is deemed to be inappropriate, it may be reversed.

14.7.9. The emergency procedure may be invoked for a complaint that is already being handled by the formal complaint procedure. In this case, the SP must be provided an opportunity to supplement any response already submitted to the formal complaint once the emergency procedure has been completed.

14.7.10. Neither WASPA, the WASPA secretariat, nor any WASPA member can be held liable for any damages whatsoever as a result of exercising the emergency procedure.

#### **14.8. Service and advert advice service**

14.8.1. WASPA may introduce a service and advert advice service for its members. This service will provide a mechanism for members to submit a copy of a proposed advertisement or a suitably detailed description/flowchart of a service to be provided.

14.8.2. This service may be subject to a prescribed fee.

14.8.3. The checking service will review the service or advertisement and provide advice to the member on whether or not the service or advertisement appears to comply with the WASPA Code.

14.8.4. Advice provided by this service does not represent a finding as to whether or not a service or advertisement is in breach of the WASPA Code. An adjudicator or panel reviewing a complaint against a service or advertisement is not obliged to agree with the advice provided by the checking service.

#### **14.9. Media Monitor**

14.9.1. WASPA may employ a Media Monitor, whose role it is to monitor WASPA members' advertising and services for compliance with the WASPA Code of Conduct and *Advertising Rules*.

14.9.2. The Media Monitor may lodge complaints with WASPA using the procedure outlined in sections 14.1, 14.2 and 14.3 of the Code.

14.9.3. In the case of complaints handling using the formal complaint procedure, the adjudicator reviewing the complaint may request that the Media Monitor perform further tests to ensure compliance with the Code.

14.9.4. In addition to the informal and formal complaints process, the Media Monitor may also may use of the "Heads Up" process set out below. The Media Monitor may make use of this process if it seems feasible for the member concerned to provide a prompt remedy to the problem identified.

14.9.5. For the "Heads Up" process, the Media Monitor will send a notification of the problem directly to the relevant WASPA member, and send a copy of this notification to the WASPA Secretariat.

14.9.6. The Member has two working days to respond to the "Heads Up" complaint, thereafter, if the Media Monitor is satisfied that the member has adequately addressed the "Heads Up" complaint, it is considered closed, and no further action is taken against the member.

14.9.7. If the Media Monitor is not satisfied that the "Heads Up" complaint has been satisfactorily resolved then the Media Monitor may either give the member a further two working days to resolve the matter, or proceed to lodge a formal complaint, as described in sections 14.1 and 14.3 of the Code.

14.9.8. The Secretariat will maintain a record of any "Heads Up" notifications and correspondence copied to the the Secretariat.

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## **15. References**

- The SMS Code, developed by the Marketing Federation of South Africa and others.
  - Advertising Guidelines, MTN, November 2004.
  - Comprehensive WASP Advertising Guidelines, Vodacom, November 2004.
  - The Wireless Application Service Provider Handbook, Executive Version 6, published by Vodacom Connect, 29 July 2003.
  - Notice inviting comment on proposed guidelines for recognition of industry representative bodies in terms of Chapter XI of the Electronic Communications and Transactions Act, 2002 (Act No. 25 of 2002), *Government Gazette*, 8 September 2004.
  - The Internet Service Providers' Association's code of conduct; <http://www.ispa.org.za/code>, version dated 25 June 2003.
  - Code of Practice, Tenth Edition, Independent Committee for the Supervision of Standards of Telephone Information Services, United Kingdom, January 2004.
  - The Advertising Standards Authority of South Africa, Code of Practice and Procedural Guide; <http://www.asasa.org.za>.
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## **16. Table of Abbreviations**

The following abbreviations are used in this document and in the *WASPA Advertising Rules*.

CSD	Circuit Switched Data
EBB	Event Based Billing
GPRS	General Packet Radio Services
IVR	Interactive Voice Response
MMS	Multimedia Messaging Service
MO	Mobile Originating
MSISDN	Mobile Station International Subscriber Directory Number
MT	Mobile Terminating
OBS	Online Billing Services
PIN	Personal Identification Number
PRS	Premium Rate Service
PSMS	Premium Short Message Service
SMPP	Short Message Peer to Peer
SMS	Short Message Service
SMSC	Short Message Service Centre
USSD	Unstructured Supplementary Service Data
VAS	Value Added Services
VAT	Value Added Tax
WAP	Wireless Application Protocol
WASP	Wireless Application Service Provider
WASPA	Wireless Application Service Providers' Association

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