

IN EXERCISE of the powers conferred by sections 27, 38, 39, 46K, 66 and 83R of the Kenya Information and Communications Act, 1998, the Minister for Information and Communications, in consultation with the Communications Commission of Kenya, makes the following Regulations:—

THE KENYA INFORMATION AND COMMUNICATIONS (CONSUMER PROTECTION) REGULATIONS, 2010

1. Citation.

These Regulations may be cited as the Kenya Information and Communications (Consumer Protection) Regulations, 2010.

2. Interpretation. Cap. 265.

In these Regulations, unless the context otherwise requires—

“child” means any human being under the age of eighteen years;

“commercial code of practice” means the principles, values, standards or rules that guide or govern the decisions, procedures and systems of an organization in a way that contributes to the welfare of its key stakeholders, and respects the rights of all constituents affected by its operations;

“complaint” means any statement of dissatisfaction with the services of a licensee made by a customer;

“customer” means any person who uses the services or purchases the products of a particular licensee or vendor, without necessarily being a subscriber to that licensee or vendor;

“disability” means a physical, sensory, mental or other impairment, including any visual, hearing, learning or physical incapability, which impacts adversely on social, economic or environmental participation;

“licensee” means a person licensed under the Act;

“outage credit” means a credit to be paid to a subscriber for a period of time when the service is not operating for reasons not caused by the subscriber;

“subscriber” means any person who purchases a communications service or agrees to

receive and pay for the service from a licensee through a subscriber service agreement;

“subscriber service agreement” means an agreement entered into by a licensee and subscriber for the provision of the licensed services to the subscriber;

“vendor” means a person who carries out the business of selling, reselling or distributing ICT terminal equipment used for the provision of licensed services.

3. Rights and obligations of customers.

(1) A customer shall have the right to—

(a) receive clear and complete information about rates, terms and conditions for available and proposed products and services;

(b) be charged only for the products and services they subscribe to;

(c) where possible, select a service provider and service of the customer’s choice;

(d) personal privacy and protection against unauthorized use of personal information;

(e) accurate and understandable bills for products and services authorised by the customer, and to fair prompt redress in the event of a dispute in the provision of the products and services;

(f) protection from unfair trade practices, including false and misleading advertising and anti-competitive behaviour by licensees; and

(g) equal opportunity for access to the same type and quality of service as other customers in the same area at substantially the same tariff limiting variations to available or appropriate technologies required to serve specific customers.

(2) A consumer shall—

(a) use communications systems and services in the appropriate manner, without abusing them;

(b) familiarize with and honour their obligations under any contract entered into with a product supplier or service provider;

(c) make reasonable decisions in exercising their right of choice; and

(d) familiarize with and abide by any safety or security requirements pertaining to the use of communications systems and services.

4. Safeguards.

(1) A service provider shall take appropriate technical and organizational measures to safeguard the security of its services.

(2) Where there is a particular risk of a breach of the security of the network, a licensee shall—

(a) inform the subscribers of the risk; and

(b) where the risk lies outside the scope of the measures that may be taken by the licensee, of any possible remedies, including an indication of the likely costs involved.

5. Customer care system.

(1) A licensee shall, within the period specified in its licence or by the Commission, establish a customer care system within which customers can make inquiries and complaints concerning its services in such format and containing such details as may be required by the Commission within the time prescribed in the licence or within a reasonable time after the grant of a licence, or as may be specified by the Commission and be available upon commencement of provision of service to the public.

(2) The Commission may from time to time publish guidelines relating to the customer care systems that the licensee may establish.

6. Provision of services and sale of ICT terminal equipment.

(1) A vendor shall provide all pertinent information on the equipment it offers for sale, including among others, the type-approval or type acceptance status and whether or not such equipment is new or used, to prospective buyers in a clear and unambiguous manner.

(2) A vendor shall honour all agreements entered into with a buyer, through the sale of terminal equipment and shall ensure that such equipment is in proper

working order at the time of sale.

(3) A vendor shall ensure that its advertisements relating to the goods regulated under the Act are unambiguous and factual.

7. Complaint handling procedures of licensees.

(1) A licensee shall provide easily understood information about its complaint handling processes in various media and formats, including as specifically directed by the Commission from time to time.

(2) A customer who wishes to lodge a complaint shall reduce the complaint in writing and lodge it within six months from the date of the incident that the complaint arises from.

(3) A licensee shall acknowledge the receipt of a complaint filed with it.

(4) A licensee shall where possible, advise a customer at the time of making the complaint on the expected action, timing for investigation and resolution of the complaint and in the event that the service provider regards the complaint as frivolous or vexatious, the consumer shall be informed accordingly.

(5) A licensee shall resolve all complaints made by its customers within a reasonable time.

(6) A licensee shall put in place a process to provide customer with sufficient information and the means to inquire on the progress of complaints and the processes may include complaint reference numbers or other identifiers in order to facilitate timely and accurate responses to subsequent inquiries by customers.

(7) A licensee shall inform the customer of the outcome of the investigation of their complaint, and any decision of the licensee.

(8) Where a customer is not satisfied with a decision made on a complaint, the licensee shall give the customer the option of pursuing an identified escalation process, where the decision may be examined by a suitably qualified person in the licensee's organisation.

(9) Where the consumer has already gone through the licensee's escalation process and the complaint has not been resolved to the consumer's satisfaction, the customer may refer the complaint to the Commission.

(10) The complaint handling processes shall be provided free of charge.

(11) Notwithstanding paragraph (10), where the investigation of the complaint requires the retrieval of records more than twelve months old or the retrieval results in any incremental expense or significant inconvenience to the licensee, a licensee may impose a reasonable charge for the complaint handling processes.

(12) Any such charges shall be identified by the licensee, be agreed to by the customer and referred to the Commission before being imposed.

(13) A licensee shall file, with the Commission, such information and statistics on all complaints reported, including those resolved and those outstanding, on a quarterly basis in the manner prescribed by the Commission from time to time.

8. Complaints by persons with disabilities.

(1) A licensee shall ensure that persons with disabilities can easily access its complaint handling processes.

(2) A licensee shall provide reasonable assistance to a customer who specifically requests for assistance when lodging complaints.

(3) A licensee shall take such measures as may be prescribed by the Commission to ensure that the requirements and interests of disabled customers are fully addressed.

(4) A licensee shall fulfill any specific obligations that relate to special services or special arrangements for customers with disabilities that the Commission may from time to time impose.

9. Protection of children.

(1) A licensee shall establish mechanisms that enable parents and legal guardians to block access of children to harmful content.

(2) A licensee who owns promotes, glamorizes or markets alcohol and tobacco products or other harmful substances that are directed at children commits an offence.

10. Information for customers.

(1) A licensee shall provide a clear and understandable description of available

services, rates, terms, conditions and charges for such services and publish the information within such periods as may be determined by the Commission.

(2) The Commission may from time to time publish information that may include, among others, tariffs and statistical information, it considers useful to customers.

(3) Without prejudice to any other information that may be required by the Commission, a service provider shall provide customers at the point of sale, where applicable with—

(a) the name of the service provider;

(b) a toll free consumer service number;

(c) the activation fee or initiation fee, including deposit requirements;

(d) the monthly access fees or base charges tariff provisions for calculating charges including, among others,-

(i) minimum charges, units, distances;

(ii) peak, and off peak rates;

(iii) night, weekends and holidays rates;

(iv) international call charges; and

(e) any additional or different prices, rates or unit values applicable, and additional taxes or fees.

12. Outage credit system.

(1) A licensee shall, within six months from the date of the grant of the licence, submit to the Commission a system of outage credits to be given to a subscriber, which upon the Commission's approval shall become part of the licensee's standard subscriber service agreement.

(2) A licensee shall not be responsible to subscribers for scheduled outages arising in accordance with the terms and conditions of a licence, from an event or effect, which in the Commission's view was not reasonably foreseeable or preventable.

13. Code of commercial practice.

(1) A licensee shall submit to the Commission, within six months of being granted a licence for approval, a commercial code of practice in the prescribed manner.

(2) Upon receiving the code submitted under paragraph (1), the Commission may—

(a) approve the proposed code;

(b) approve the commercial code of practice with the recommendation that the licensee makes alterations specified by the Commission;

(c) decline to approve the proposed code and direct that the licensee improves specified areas or further develops the proposed code; or

(d) extend the period for the review of the proposed code.

(3) The commercial of practice shall include, among others, the licensee's complaints handling procedure, advertising policy, system of outage credit and the emergency safety and assistance services and any other information as the Commission may determine.

(4) A licensee shall deliver to each subscriber within three months of the commencement of the service, the commercial code of practice as approved by the Commission.

(5) The commercial code of practice shall not replace or reduce any benefit of price assurance provided to the subscriber by the subscriber service contract; and shall-

(a) supplement the subscriber service contract and not reduce a subscriber's consumer rights; and

(b) be consistent with consumer protection laws.

14. Standard subscriber service Agreements.

(1) A licensee shall submit to the Commission, for approval, the standard subscriber service agreement applicable to each service it offers to the public.

(2) Where a dispute arises between a consumer and a licensee on the interpretation of the terms of a service agreement that had not been submitted to the Commission

for approval prior to the dispute or complaint and the dispute is submitted to the Commission for resolution, the decision of the Commission shall prevail over the provisions in the subscriber service agreement that had not been approved by the Commission.

(3) For the avoidance of doubt, agreements entered into between terminal equipment vendors and their customers through the sale of such equipment shall be subject to these Regulations and shall be enforced by the Commission.

15. Confidentiality.

(1) Subject to the provisions of the Act or any other written law, a licensee shall not monitor, disclose or allow any person to monitor or disclose, the content of any information of any subscriber transmitted through the licensed systems by listening, tapping, storage, or other kinds of interception or surveillance of communications and related data.

(2) A licensee shall, where applicable, establish mechanisms by which customers may be able to—

(a) know that information is being collected about them through their use of various telecommunications services and systems; and

(b) receive conspicuous notice that such information could be used, or is intended to be used, without authorisation, by the entity collecting the data for reasons unrelated to the original communications, or that such information could be sold (or is intended to be sold) to other companies or entities;

(3) Notwithstanding paragraph (2)(b), nothing in this regulation shall be construed to mean that a licensee may sell or offer for free, to a third party, any information collected by the licensee without the prior consent of the consumer concerned.

(4) In the case of children, the powers exercised in paragraph (1) and (2) shall be vested in the parents or lawful guardians on their behalf.

16. Operator assistance.

A licensee shall, where applicable, ensure that all its customers can access operator assistance services.

17. Unsolicited communications.

(1) A person who uses automated calling systems without human intervention, facsimile machines or electronic mail for purposes of direct marketing without the prior consent of the subscriber commits an offence.

(2) A person who sends electronic mail for purposes of direct marketing disguising or concealing the identity of the sender on whose behalf the communication is made, or without a valid address to which the recipient may send a request that the communications cease commits an offence.

(3) Where a natural or legal person legally obtains from its subscribers their electronic contact details for electronic mail, in the context of a sale of a product or service, the natural or legal person may use these electronic contact details for direct marketing of his or its own similar products or services so long as he or it gives the subscriber an opportunity to object, free of charge and in a simple manner, to the use of the data when it is collected and on the occasion of each message in case the subscriber had not initially objected to the use.

(4) All automated direct-marketing schemes to be used in Kenya shall be based on an opt-in principle, in which potential subscribers shall be accorded the opportunity to accept or reject inclusion in a marketer's mailing list.

18. Presentation and restriction of calling and connected line identification.
The Commission shall, from time to time, prescribe through guidelines, the manner in which calling line identification features shall be available to subscribers through licensees whose systems have such capabilities.

19. Emergency services.

(1) A licensee shall provide free access to emergency safety and assistance services in the manner determined by the Commission from time to time, in accordance with the written laws in force and international standards.

(2) A licensee shall permit calls to internationally and nationally emergency numbers to be free of charge.

(3) A licensee shall, where technically possible, forward any useful personal data to the designated emergency services providers upon connecting emergency calls.

(4) Where there is doubt, the Commission shall determine the numbers that qualify for toll free access under paragraph (1) and (2).

20. Billing

(1) A licensee shall install a billing system that permits, upon request by a customer, issuance of bills that identify the rates charged to the subscriber, the number called, the duration of each call, the charge per call, applicable discounts and the class of service and any other information as may be stimulated by the Commission.

(2) The Commission may include in the billing requirements information relating to—

(a) the name of licensee;

(b) the billing period covered by bill;

(c) change in licensee;

(d) disclosure of any rate or service charge, including those implemented within the next billing cycle;

(e) a listing of the statement or payment due date;

(f) amount of charges debited to each billed account from the previous cycle;

(g) amount of payments made to each billed account segregated from late payments;

(h) terms for late payment fees and termination of service;

(i) the licensee's toll free number or numbers by which customers may make inquiries about or dispute charges contained on the bill and the methodology used to quantify charges;

(j) toll free number of the where customers may make inquiries or file complaints;

(k) rental charges; and

(l) any other information that the Commission may from time to time by require to be included.

(3) A licensee shall put in place a mechanism through which a subscriber to its

service may place a request for an itemized bill, where the service is not issued as a standard offer and accord each customer the option of receiving itemized bills on a regular basis if the subscriber so wishes and upon payment of a reasonable charge.

21. Guidelines

(1) The Commission may issue guidelines for the implementation of these Regulations, the guidelines may, among others, relate to—

(a) standard of conduct for service providers; and

(b) A licensee shall, where technically possible, forward any useful personal data to the designated emergency services providers upon connecting emergency calls.

(c) Where there is doubt, the Commission shall determine the numbers that qualify for toll free access under paragraph (a) and (b).

(d) Key performance indicators for both the sector and individual service providers.

(2) The Commission may review the guidelines made under paragraph (1), to ensure that the guidelines remain relevant and effective.

22. Monitoring sector performance.

The Commission shall monitor sector performance, conduct consumer satisfaction surveys and publish its findings at least once in every two years.

23. Offences and penalties.

(1) A licensee who—

(a) fails to perform the measurement, reporting and record keeping tasks within the required time;

(b) fails to reach a target for any of the parameters stipulated under these Regulations;

(c) fails to submit, during a time specified by the Commission, information requested by the Commission pursuant to these Regulations;

(d) submits or publishes false or misleading information about the quality of its services;

(e) obstructs or prevents an inspection or investigation carried out by the Commission pursuant to these Regulations;

(f) engages in any act or omission whose effect would be to defeat the purposes of these Regulations, commits an offence.

(3) A person who commits an offence under these Regulations shall, where no specific penalty is provided for, is liable on conviction to a fine not exceeding three hundred thousand shillings or to imprisonment for a term not exceeding three years or both.

24. Period of compliance.

(1) A licensee shall put in place such measures, processes or systems necessary to fully comply with these Regulations within six months of their coming into force.

(2) All existing contracts and codes that have not been filed with and approved by the Commission as required by these Regulations shall be filed and approval sought within six months of the coming into force of these Regulations.

Dated the 14th April, 2010

Samuel Poghio,
Minister for Information and Communications.