

CONSUMER PROTECTION RULES

CONSULTATION DRAFT

Communications Commission of Kiribati

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PART 1 - PRELIMINARY

1. Sections 53, 54, 58, 59 and 60 of the Communications Act 2012 provide that the Commission may make consumer protection rules regulating unsolicited communications; confidentiality of subscriber information; terms of service, the handling of disputes and complaints; directory assistance and quality of service.
2. These rules are applicable to all licensees who hold an individual licence for the provision of communications networks and services and the consumers of those services.
3. These rules will be subject to periodic review and may be amended following consultation with stakeholders in light of the emergence of new technologies and services and ongoing developments in the Kiribati communications sector and international best practices.

*Short title and effective date*

1. These rules may be cited as the Consumer Protection Rules and are effective upon publication.

*Definitions and interpretation*

1. The words and expressions used in these rules have the same meaning as in the Communications Act 2012, including the definitions set forth below:

‘Act’ means the Communications Act 2012

‘Day’ means a calendar day

‘Directory assistance services’ means such services to provide access to a customer’s name, address where available and telephone number.

‘Person’ means a natural or legal person

‘Unsolicited communications’ means a message—any sign, signal, writing, image, sound, instruction, information or intelligence of any nature--that a consumer has not consented to receiving or requested

‘User information’ means a customer’s name, telephone number and any information about where the customer resides, account status and payment history, call records and other information about the customer’s use of communications services

PART 2 – OBJECTIVES OF THESE RULES

1. The objectives of these rules are to:
   1. increase awareness of the rights of consumers of communications services
   2. protect consumers from unwanted commercial messages
   3. give consumers and licensees a clear understanding of what they should expect from each other through commercial contracts
   4. ensure that licensees provide mechanisms for consumer complaints and advise customers of their option to contact the Commission regarding the unsatisfactory resolution of a dispute
   5. improve the quality of services available to consumers
   6. ensure that all consumers benefit from access to directory assistance services.

PART 3 – UNSOLICITED COMMUNICATIONS

1. A person shall not use a communications network or service to communicate with a consumer for commercial purposes where:
   1. the consumer has not consented to the communication
   2. the communication would reasonably be expected to cause annoyance, inconvenience or exploit the credulity, lack of knowledge or inexperience of the consumer.
2. For these rules, a commercial message means a message with the primary purpose of:
   1. offering to supply goods or services
   2. advertising or promoting goods or services
   3. advertising or promoting a supplier or prospective supplier of goods or services
   4. offering or promoting a business or investment opportunity
   5. offering, advertising or promoting any other commercial services as reasonably determined by the Commission from time to time.
3. A licensee shall take reasonable steps to prevent its communications network and services from being used in ways that would be in breach of Rule 7 by including in its agreement with customers conditions that require the customer to:
   1. obtain consent from consumers before sending commercial messages
   2. take reasonable steps to protect their customer equipment and computer systems from unauthorized access and use
   3. ensure that any commercial messages sent include the identity of the sender and a return e-mail address/and or telephone number in the case of voice messages
   4. provide a functional and readily accessible means by which the consumer may opt-out from receiving commercial messages regardless of whether the message is solicited or unsolicited.
4. A licensee shall suspend or terminate a customer’s access to its communications network services for breach of the above requirements in Rule 9.

PART 4 – CONFIDENTIALITY OF CUSTOMER INFORMATION

1. A licensee shall not keep user information for longer than is necessary for the fulfillment of the legitimate purpose(s) of the relationship and in any case shall not retain user information for more than 3 years after the information is no longer required for the purpose for which it was obtained, except—
   1. where required for a dispute or court proceedings that have not yet been concluded, provided that the user information is not retained after the dispute or proceedings are finally concluded
   2. as lawfully directed by the Commission or required for the investigation of any criminal offence or
   3. where otherwise required by law.
2. A licensee shall remove user information at the request of a customer where the purpose for which the information was originally processed has ended and the licensee cannot provide a reasonable justification for the retention of such information.
3. A licensee shall promptly update and correct inaccurate user information wherea customer gives notice to the licensee that such information is incorrect.

PART 5: TERMS AND CONDITIONS OF SERVICE, COMPLAINTS AND DISPUTES *Terms and Conditions of Service*

1. A licensee shall—
   1. prepare fair and reasonable, easy to understand standard terms and conditions for the provision of communications services to consumers in both English and Kiribati
   2. submit those terms and conditions to the Commission for approval within 30 days of their license effective date and/or upon written notice by the Commission.
2. The Commission may extend the requirements of Rule 14 to holders of class licenses in the future.
3. The standard terms and conditions submitted under Rule 14 shall be deemed approved unless the Commission rejects the terms and conditions by written notice to the licensee within 15 days of receiving those terms and conditions.
4. The Commission may reject the standard terms and conditions submitted under Rule 14 by written notice and direct the licensee to make reasonable amendments where the Commission is not satisfied with terms and conditions dealing with--
   1. the handling of complaints and disputes with customers, including response timeframes and
   2. the provisions for customer remedies including refunds and compensation where circumstances warrant.
5. If the Commission rejects a licensee’s standard terms and conditions under Rule 17, the licensee shall amend the standard terms and conditions accordingly and shall resubmit them to the Commission for approval.
6. A Licensee shall--
   1. offer any approved standard terms and conditions for communications services to all consumers on a non-discriminatory basis and comply with those terms
   2. make their approved standard terms and conditions available on their website and in printed format for public reference at primary customer care/points of sale. It shall also provide a copy to any consumer upon request
   3. provide annual reports to the Commission by 31 March each year indicating the number of complaints and disputes in the previous financial year and the outcome of those complaints and disputes
   4. regularly review their standard terms and conditions of services in order to ensure compliance with these rules and the Regulatory Framework.
7. A licensee whose standard terms and conditions have been approved by the Commission may submit new or varied standard terms and conditions for approval. Rules 16 and 18 above shall apply in these cases.
8. The Commission may require that a licensee amend its standard terms and conditions in such a manner as the Commission may prescribe either as a result of complaints received from consumers or by the Commission’s own initiative, acting within reason.
9. Nothing in these rules prevents a licensee from agreeing and complying with terms and conditions negotiated individually with a consumer.

*Complaints*

1. A licensee shall seek to amicably resolve any complaints received from customers through a complaint handling process that is described in its standard terms and conditions.
2. A licensee’s complaint handling process, at a minimum shall:
   1. be free of charge
   2. provide a number of means to file a complaint such as by letter, telephone, online, email or in person
   3. include the timeframes in which the licensee will endeavor to resolve the complaint and notify the customer regarding the progress towards resolving the complaint
   4. ensure that personnel responsible for handling complaints are trained in the process
   5. advise customers of their option to contact the Commission regarding the unsatisfactory resolution of a dispute.

*Disputes*

1. A consumer may file a complaint with the Commission--
   1. where the consumer considers that the outcome of a complaint with a licensee was not satisfactory or
   2. where the complaint has not been dealt with according to the timescales and procedures as indicated in the licensee’s own standard terms and conditions.
2. The Commission shall endeavor to resolve a consumer compliant that meets the conditions of Rule 25 within a period not to exceed 30 days.
3. A complaint will not be reviewed by the Commission unless the consumer has first complained to the licensee.
4. The Commission may also dismiss or refrain from resolving a complaint, in whole or in part, if it appears that the complaint, or part of it, is trivial or vexatious, or that further proceedings are not in the public interest.
5. Where the Commission handles a complaint, it shall investigate and consult and act in good faith towards all parties involved in the dispute.
6. If the Commission determines that a remedy is needed, it may require the licensee to provide the customer with one or more of the following:
7. an apology, which may be public or made privately to the customer
8. a practical action to correct the problem and prevent future occurrences and or
9. a financial award, which may include a refund and/or compensation.
10. Any remedy determined by the Commission in Rule 30 should not be inconsistent with any reasonable conditions and procedures established by the licensee pursuant to this Part.
11. During the period that the final resolution of a consumer complaint is pending either with a licensee or with the Commission, the licensee concerned with the complaint shall refrain from suspending or terminating the service(s) provided to the consumer without the prior written approval of the Commission; except where the consumer has requested, in writing, that the service(s) be terminated or suspended.

PART 6 - DIRECTORY ASSISTANCE

1. A licensee who provides public fixed and mobile voice communications services shall develop and maintain an accurate electronic Directory of users.
2. A licensee as defined in Rule 33 shall make its directory information available to other licensees of the same class--
   1. upon request free of charge or on a cost based basis if there are any costs involved and
   2. where this information will only be used for providing Directory Assistance services by another licensee.
3. A licensee shall not disclose a customer’s name, address and phone number as part of a directory assistance service or provide that information to another licensee if the customer has requested that this information not be disclosed.
4. A licensee who meets the requirements in Rule 33 and has equal to or more than 40% market share in the public fixed communications services market shall be required to provide a 24 hour telephone directory assistance service on a non-discriminatory, up-to-date basis free of charge to its customers and to the customers of other licensees with interconnected communications networks.
5. A licensee who is required to provide Directory Assistance services to the customers of other licensees as per Rule 36 shall be compensated for doing so--
   1. as specified in the interconnection and access agreement between the licensees
   2. through other cost-based commercial arrangements agreed by the parties.
6. A licensee who meets the conditions of Rule 36 may also be obligated to--
   1. include directory information for the customers of other licensees
   2. publish and print a Directory in hard copy format every two (2) years.
7. A licensee who is required to publish and print a Directly as per Rule 38 shall—
8. include individual and businesses customers’ names and telephone numbers and addresses where practical
9. include the contact details for its department responsible for consumer complaints
10. make the Directory freely available for public use inside their offices and at their points of sale
11. make the Directory available to the public at a reasonable price in hard copy format
12. describe the opportunity for customers to exclude and amend their name, address and telephone number from the Directory, at no cost.
13. Upon request of a customer either by writing, calling the customer care center, or through electronic means, a licensee shall remove, modify, or update customer directory information and shall notify other licensees to whom they have supplied the information. In turn these other licensees must remove or amend such information in their Directories.

PART 7 – QUALITY OF SERVICE

1. A licensee shall establish key performance indicators for the quality of service for the services it provides to its customers. These indicators shall be equal to or higher than any Quality of Service Obligations (QoS) set out in their licence.
2. On written request by the Commission, a licensee shall submit its QoS performance indicators for the services specified in the request to the Commission for approval within 30 days.
3. The QoS performance indicators submitted under Rule 42 shall be deemed approved unless the Commission rejects or requires changes to the indicators by written notice to the licensee within 15 days of receiving them.
4. A licensee shall provide a Quality of Service (QoS) Compliance Report to the Commission certifying its actual performance against any approved indicators within twelve (12) months of its licence effective date and on a semi-annual basis thereafter.
5. With respect to the verification of the licensee's compliance with any or all of the QoS indicators, the Commission may, at any time and at its sole discretion, require the licensee to--
6. carry out, at its own cost and expense, sample testing and to deliver a special report in accordance with the written instructions of the Commission; and
7. submit to sample testing or a full audit carried out, at the cost and expense of the Commission, by a person designated by the Commission.
8. The Commission may publish on its website the results of a licensee's compliance with the QoS performance indicators in full or in summary form, including in a comparison with other licensed service providers and international benchmarks. However, the Commission shall not publish the results of a licensee's compliance for the first year following a licensee’s licence effective date.
9. Where the Commission finds that the licensee has failed to meet its Quality of Service performance indicators on a repeated basis or in a manner that is significantly disruptive to customers, it may impose such enforcement/mandatory actions and penalties. For the avoidance of doubt these actions may include, but are not limited to, requiring the defaulting licensee to take such steps as the Commission considers appropriate to meet its obligations and/ or imposing a financial penalty.
10. The Commission may also require the licensee to provide refunds to any class of customers as a means of providing reasonable compensation for the licensee’s failure to comply with its QoS performance indicators and obligations. The amount of compensation shall take into account the severity, impact and duration of the licensee’s failure to meet its QoS Obligations.