



CONSUMER PROTECTION RULES

Communications Commission of Kiribati

August 2016

PART 1 – PRELIMINARY

1. Part VII of the Communications Act gives the Commission the authority to make consumer protection rules regulating unsolicited communications; confidentiality of subscriber information; terms of service, complaints and disputes; directory assistance and the quality of service.
2. Section 118 of the Communications Act further provides that in addition to the matters which are specifically prescribed in the Act, the Commission may make such rules as are contemplated by or necessary for giving full effect to the provisions of the Act. In this regard, the Commission has included rules under Section 51 to support its powers and functions to regulate the protection of consumers through the approval of a licensee's terms and conditions of service, including the price for a service.
3. These rules, except where indicated otherwise, are applicable to all licensees who hold an individual licence for the provision of communications networks and services.
4. 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, ongoing developments in the Kiribati communications sector and international best practices.

Short title

5. These rules may be cited as the Consumer Protection Rules.

Definitions and interpretation

6. 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

'Dominant Service Provider' means, for these rules, a service provider whose market share is equal to or exceeds forty percent (40%) of the total annual gross revenues of all licensed service providers for the public fixed and/or the public mobile communications market/s.¹

¹ The general terms and conditions for an individual licence include that a licensee may be designated as a Dominant Service Provider and may face additional regulatory obligations provided that its market share is

‘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

‘Public fixed communications service’ means any communications service, including voice, data or video that is provided to the public over a fixed communications network

‘Public mobile communications service’ means a communications service provided to the public by means of radio communications access facilities that transport messages between the cell area of one antenna to the cell area of a different antenna

‘Regulatory Framework’ means the Communications Act 2012 and any rules, decisions, orders, notices, determinations and technical standards made by the Commission in its lawful exercise of its powers under the Act

‘User information’ means a customer’s name, telephone number and any information about where the customer resides, billing records, call, message or Internet records and other information about the customer’s use of communications services.

PART 2 – OBJECTIVES OF THESE RULES

7. The objectives of these rules are to--
 - (a) promote access to communications services at just and reasonable terms and conditions
 - (b) protect consumers from receiving unwanted commercial electronic messages
 - (c) 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
 - (d) require licensees to establish key performance indicators for the quality of services available to consumers
 - (e) ensure that all consumers benefit from access to directory assistance services.

PART 3: APPROVAL OF THE TERMS AND CONDITIONS OF A SERVICE

8. In addition to the obligations set out in Section 51 of the Act, the Commission shall approve the draft terms and conditions, including the price for a communications service of a dominant service provider for--
 - (a) a new service that has not been offered to the public before and for

determined by the Commission to equal or exceed forty percent (40%) of the total annual gross revenues of all licensed service providers for a specific communications market.

- (b) an existing service already offered to the public as of the effective date of these rules that has not been approved by the Commission.
9. A dominant service provider shall, at least 30 days before the planned effective date of a service, submit to the Commission for approval—
- (a) its terms and conditions, including the price for the service and
 - (b) cost data supporting the proposed price of a service, demand forecasts for the service and any other information that the licensee believes can support the proposed price for the service.
10. Before approving a dominant service provider’s draft terms and conditions of a service, the Commission shall publish the terms for public comment, giving interest parties a period of 15 days to comment.
11. The terms and conditions of a service submitted under Rule 9 shall be deemed approved by the Commission unless the Commission rejects the terms and conditions by written notice to the licensee within 30 days of receipt.
12. Before approving a dominant service provider’s terms and conditions for a service, the Commission shall consider—
- (a) any valid feedback it receives from the public
 - (b) the extent to which the proposed price is based on the cost of efficient service provision and or a reasonable rate of return on investment and does not contain excessive charges, which are a result of the dominant service provider’s position
 - (c) any other information it deems relevant.
13. Where the Commission does not approve the terms and conditions of a service, it shall direct the licensee by written notice to—
- (a) make reasonable amendments
 - (b) re-submit the terms and conditions for approval.

PART 4: STANDARD TERMS OF SERVICE, COMPLAINTS AND DISPUTES

Standard Terms and Conditions

14. Pursuant to Section 58 (1) of the Act, the Commission requires that a dominant service provider shall—
- (a) prepare easy to understand standard terms and conditions for the provision of its communications services to consumers in both English and Kiribati, including the matters of and in compliance with Section 58 (1) (a)

- (b) submit those terms and conditions to the Commission for approval within 30 days of their effective service date and/or upon written notice by the Commission.
15. The standard terms and conditions submitted under Rule 14 shall be deemed approved unless the Commission does not approve the terms and conditions by written notice to the licensee within 30 days of receipt.
 16. Where the Commission does not approve the standard terms and conditions submitted under Rule 14, it shall direct the licensee by written notice to make amendments as quickly as possible but not to exceed a period of 30 days.
 17. Pursuant to Section 58 (3) of the Act, if a dominant service provider fails to establish, submit or make changes to the conditions, procedures or remedies if so required, the Commission may do so and the dominant service provider shall comply with such conditions, implement such procedures and provide such remedies.
 18. A dominant service provider shall--
 - (a) offer any approved standard terms and conditions for communications services to all consumers on a non-discriminatory basis and comply with those terms
 - (b) publish such terms and conditions on its website, make available at primary customer care/points of sale in a manner that ensures that prospective consumers are able to be clearly informed of them
 - (c) regularly review its standard terms and conditions to ensure ongoing compliance with the Regulatory Framework.
 19. The Commission may also require other licensees to develop and/or amend their standard terms and conditions of service either as a result of complaints received from consumers or by the Commission's own initiative, acting within reason.

Complaints

20. A licensee shall establish a process to handle complaints from its customers that shall—
 - (a) be free of charge
 - (b) provide a number of means to file a complaint such as by letter, telephone, online, email or in person
 - (c) include the timeframes in which the licensee will endeavor to resolve the complaint and notify the customer regarding the progress towards resolving the complaint
 - (d) ensure that personnel responsible for handling complaints are trained in the process
 - (e) advise customers of their option to contact the Commission regarding the unsatisfactory resolution of a dispute.

Disputes

21. A consumer may file a complaint with the Commission where—
 - (a) the consumer considers that the outcome of a complaint with a licensee was not satisfactory or
 - (b) the complaint has not been dealt with according to the license’s timescales and procedures.
22. The Commission shall endeavor to resolve a consumer complaint that meets the conditions of rule 21 within a period not to exceed 30 days.
23. A complaint will not be reviewed by the Commission unless the consumer has first complained to the licensee.
24. 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.
25. Where the Commission handles a complaint, it shall investigate, consult and act in good faith towards all parties involved in the dispute.
26. Where the Commission determines that a remedy is needed, it may require the licensee to provide the customer with one or more of the following—
 - (a) an apology, which may be public or made privately to the customer
 - (b) a practical action to correct the problem and prevent future occurrences and or
 - (c) a refund.

PART 5 – UNSOLICITED COMMUNICATIONS

27. A person who uses a communications network or service to communicate with a consumer for the purpose of sending a commercial message shall--
 - (a) Provide an easy, functional and readily accessible means for the consumer to opt-out of receiving such commercial messages
 - (b) Not send a commercial message that would reasonably be expected to cause annoyance, inconvenience or exploit the credulity, lack of knowledge or inexperience of the consumer.
28. For these rules, a commercial message means—
 - (a) any electronic mail message that is a commercial advertisement or promotion of a commercial product or service, including email that promotes content on commercial websites with the exemption of
 - (b) a commercial message that facilitates an already agreed upon transaction or updates a customer about an ongoing transaction or a commercial message sent as part of an existing

customer relationship.

29. 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 27 by including in its agreement with its customers conditions that require senders of commercial messages to—
- (a) take reasonable steps to protect their own customer equipment and computer systems from unauthorized access and use
 - (b) ensure that any commercial messages sent include the identity and location of the sender, include a return e-mail address and a subject line that accurately reflects the content of the message
 - (c) provide an easy, functional and readily accessible means by which the consumer may opt-out from receiving the commercial messages.
30. A licensee shall suspend or terminate a customer's access to its communications network services for breach of the above requirements in Rule 29.

PART 6 – CONFIDENTIALITY OF CUSTOMER INFORMATION

31. A licensee shall not keep user information for longer than is necessary for the fulfillment of the legitimate purpose(s) of its relationship with a customer 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—
- (a) 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
 - (b) as lawfully directed by the Commission or required for the investigation of any criminal offence or
 - (c) where otherwise required by the laws of the Republic of Kiribati.
32. 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.
33. A licensee shall promptly update and correct inaccurate user information where a customer gives notice to the licensee that such information is incorrect.

PART 7 - DIRECTORY ASSISTANCE

34. A dominant service provider shall develop and maintain an accurate electronic directory of users.

35. A licensee as defined in Rule 34 shall make its directory information available to another licensee of the same class—
- (a) upon request free of charge or on a cost-based basis if there are any costs involved and
 - (b) where this information will only be used for providing directory assistance services by the requesting licensee.
36. A licensee shall not disclose a customer's name, address or 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.
37. A dominant service provider shall be required to provide a telephone directory assistance service on a non-discriminatory and up-to-date basis to—
- (a) its own customers and to
 - (b) customers of other licensees with interconnected communications networks.
38. Where a licensee provides directory assistance services to the customers of other licensees, it shall be compensated for doing so—
- (a) as specified in the interconnection and access agreement between the licensees or
 - (b) through other cost-based commercial arrangements agreed by the parties.
39. A dominant service provider may also be obligated to—
- (a) include the directory information for the customers of other licensees in its directory
 - (b) publish online and/or print a directory in hard copy format.
40. A licensee who is required to publish a directory shall—
- (a) include individual and businesses customers' names and telephone numbers and addresses where practical
 - (b) include the contact details for its department responsible for consumer complaints
 - (c) make the directory freely available for public use inside its offices and at its points of sale
 - (d) make the directory available to the public at a reasonable price when published in hard copy format
 - (e) inform customers of their right to exclude and/or amend their name, address and telephone number from the directory.
41. Upon request of a customer either by writing, calling the customer care center, or through electronic means, a licensee shall—
- (a) remove, modify, or update customer directory information and
 - (b) notify other licensees to whom they have supplied the information. In turn these other licensees shall also remove or amend such information in their directories.

PART 8 – QUALITY OF SERVICE

42. A licensee shall establish key performance indicators for the services it provides to its customers. These indicators shall be equal to or higher than any Quality of Service Obligations (QoS) initially set out in its licence.
43. 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.
44. The QoS performance indicators submitted under Rule 43 shall be deemed approved unless the Commission rejects or requires changes to the indicators by written notice to the licensee within 30 days of receiving them.
45. 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 an annual or semi-annual basis thereafter.
46. 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—
- (a) 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
 - (b) 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.
47. 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.
48. 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 enforcement/mandatory actions. For the avoidance of doubt these actions may include, but are not limited to—
- (a) requiring the defaulting licensee to take such steps as the Commission considers appropriate to meet its obligations
and/ or
 - (b) requiring the licensee to provide refunds to the class of customers affected as a means of providing reasonable compensation for the licensee's failure to comply with its QoS performance indicators and obligations.

PART 9 – EFFECTIVE DATE

49. These rules are effective on the day on which they are made.

Made at Betio this _____ day of August, 2016.

Mr. Tangitang Kaureata
Chairman
Communications Commission Kiribati