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GENERAL NOTICE

NOTICE 157 OF 2011

ICASA

Independent Communications Authority of South Africa

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INDEPENDENT COMMUNICATIONS AUTHORITY OF SOUTH AFRICA

DRAFT CODE OF CONDUCT ON THE SALE, LEASE, RENTAL OR SUBSIDISATION OF SUBSCRIBER EQUIPMENT

1. The Authority initiated an inquiry in terms of section 27 of the now defunct Telecommunications Act, 1996 (Act No. 103 of 1996) with a view to solicit views from the industry whether it will be appropriate for the Authority to regulate subscriber handsets that were bundled with other services by mobile licensees and offered to subscribers and customers as such.¹
2. Based on the Findings and Conclusions² document, the Authority commenced a regulation making process and draft regulations were published and interested parties were invited to submit written representations to the Authority. The final regulations³ were in the final analysis promulgated into law after the finalisation of the consultative process with the public.
3. The regulations were challenged, on a procedural irregularity, in a court of law and resultant therefrom were (regulations) withdrawn. The withdrawal of the regulations was at the Authority's own volition after a realisation that the prospects of success were unconvincing to stage a sustainable opposition to the review application.

¹ Government Gazette No. 28516 dated 17 February 2006

² Government Gazette No. 28924 dated 15 June 2006

³ Government Gazette No. 31156 dated 17 June 2008

4. The Authority decided to re-work the regulations and significant changes, including the empowering provisions, were made to the new version of the regulations. The draft regulations were, prior to publication in the Gazette, subjected to a rigorous and robust scrutiny both internally and external legal counsel.
5. Upon receipt of the written representations and oral submissions by licensees and other interested parties, there was a groundswell of objections to the latest version of the draft regulations that includes amongst others, empowering provisions, duplication with other regulations and the recent promulgation of the Consumer Protection Act, 2008 (Act No. 68 of 2008).
6. The Authority analysed the objections raised by the industry and the stakeholders and concluded that the empowering Legislation on regulation of subscriber handsets is not cut and dried in its current form and content, and that in light of the much-vaunted Amendment to the Electronic Communications Act, 2005 (Act No. 36 of 2005) an attempt will be made to strengthen the Authority with express powers that will enable the Authority to regulate subscriber handsets and matters relating thereto in a more effective and meaningful manner. The regulation making process under review is hereby put on hold till further notice from the Authority.



Dr STEPHEN MNCUBE
CHAIRPERSON
