



GENERAL NOTICE NO. 15/2022

PROPOSED DECISION IN TERMS OF SECTION 32 OF THE ESWATINI COMMUNICATIONS COMMISSION ACT, 2013: COMMUNICATIONS (CONSUMER PROTECTION) GUIDELINES, 2022 - INVITATION FOR WRITTEN REPRESENTATIONS

The Eswatini Communications Commission, hereinafter referred to as the Commission, in exercise of its mandate under Section 6 and 7 of the Eswatini Communications Commission Act, 2013 has developed the Communications Consumer Protection Guidelines, 2022.

The purpose of the Communications Consumer Protection Guidelines, amongst others, is to:

- a) Ensure the protection of communications consumers in Eswatini. The Guidelines also make recommendations for the review of policies spanning issues such as consumer privacy and confidentiality, quality of service provision, safety of ICT products and services and regulatory responsiveness;
- b) Ensure ethical conduct by providers of communications products and services;
- c) Ensure the availability of effective consumer redress; and
- d) Align with regional and international policies on consumer protection issues.

The provisions of Section 32 of the ESCCOM Act, 2013, provides for stakeholders and interested persons to make comments on proposed decisions of the Commission. In this regard, the public is hereby invited to submit their written representations on the Communications Consumer Protection Guidelines. Representations must be submitted to the Commission no later than **17h00 on 12 September 2022** by post to Eswatini Communications Commission, P.O. Box 7811 Mbabane, hand delivered or electronically to legal@esccom.org.sz.

A copy of the Guidelines is also available at the Commission's offices at North Wing, 4th Floor, Sibekelo Building, Mhlambanyatsi Road, Mbabane.

Mvilawemphi Dlamini

CHIEF EXECUTIVE



Subject: Proposed Communications (Consumer Protection) Guidelines, 2022

Number: 15/2022

Scope: Licensees of Electronic Communications and Consumers of Regulated Services in Eswatini

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1. CITATION AND COMMENCEMENT

1.1 These Guidelines may be cited as the Communications (Consumer Protection) Guidelines, 2022.

1.2 These Guidelines shall come into force on **13 September 2022**.

2. MANDATE OF THE COMMISSION

The functions of the Commission as specified in Section 6 and 7 of the ESCCOM Act include the responsibility to “promote the interests of end-users and licensees with regards to the quality of all communications services and equipment within the remit of the Commission” and to “ensure end-user protection and privacy”.

3. INTERPRETATION

In these Guidelines, unless the context otherwise requires, any word or expression to which a meaning is assigned in the Act has that meaning, and:

“**Act**” means the Eswatini Communications Commission Act, 2013 (Act. No. 10 of 2013);

“**Bill**” means a written statement of money owed for services provided by a licensee; an amount of money owed for goods supplied or services rendered, set out in a printed or written statement of charges;

“**Clear and visible**” means readily understandable and presented in a format that compared to other material with which information is presented, makes it noticed and understood by a reasonable consumer;

“**Commission**” means the Eswatini Communications Commission;

“**Consumer or subscriber**” means any individual or business or other body that purchases or subscribes to any communication service and includes any person who agrees to receive, pay for or who uses a telecommunications network, broadcasting or postal and courier service. This includes a user of particular goods or beneficiary of particular services irrespective of whether that user or beneficiary was party to a transaction concerning supply of those particular goods or services;

“**Complaint**” means any grievance alleging non-compliance by a licensee with the Act, terms and conditions of its license, Regulations gazetted in terms of the Act, or any directive issued to the licensee in terms of the Act;

“**ICTs**” in these Guidelines means electronic communications services, including broadcasting and postal services;

“Licence” means a licence issued under the Act and the words ‘licensed services’ shall be construed accordingly;

“Licensee” means a person who is the holder of, or deemed to be the holder of, a licence to provide any kind of communications service under the remit of the Commission in accordance with the Act;

“Market abuse” means unfair trade practices, including false and misleading advertising and anti-competitive behaviour;

“Operator” means service provider;

“Regulator” means the Eswatini Communications Commission as established by Section 3 of the Act;

“Service Provider” means any licensee authorized to provide electronic communications services;

“Solicitation” means an offer, tentative or otherwise, by a service provider, employee or agent of a service provider, to a consumer or consumers, or to the public generally, to provide a product or service for compensation; and

“Subscriber or Customer service agreement” means an agreement entered into between the licensee and the consumer for provision of the licensed services to the consumer.

4. OBJECTIVES OF THE GUIDELINES

The ICT industry is very dynamic and innovative. In addition, the policy and regulatory landscape is undergoing a lot of change through de-regulation and liberalization of markets for increase in investment. These rapid technological changes coupled with the trends in ICT consumer needs have led to increasing disputes between the service providers and consumers.

The objectives of these Guidelines, therefore, are to:

- a) Ensure that there is protection of users of ICT products and services. The Guidelines also make recommendations for the review of policies spanning issues such as consumer privacy and confidentiality, quality of service provision, safety of ICT products and services and regulatory responsiveness.
- b) Achieve and maintain ICT consumer protection in Eswatini;
- c) Ensure the flow of information to consumers to allow them to make informed choices;
- d) Ensure ethical conduct by providers of ICT products and services;
- e) Ensure the availability of effective consumer redress;
- f) Ensure the availability of affordable ICT services;
- g) Ensure alignment with the rapid changes within the ICT sector; and

h) Align with regional and international policies on consumer protection issues.

5. KEY PRINCIPLES ON CONSUMER PROTECTION

The Commission has a responsibility to ensure that service providers abide by the following principles on consumer protection.

- a) To act fairly, reasonably, timeously and responsibly in all their dealings with consumers;
- b) To ensure that all ICT products and services meet the specifications as contained in their licences and all the relevant regulations and codes of service;
- c) To ensure non-discrimination against consumers on the basis of race, gender, ethnic background, sexual orientation, special needs, religion and non-discrimination of marginalised and vulnerable groups;
- d) To assist consumers with information and guidance with regards to products and services;
- e) To ensure consumers' personal information is kept confidential;
- f) To handle consumer complaints promptly and inform consumers on how to take their complaints forward if they are still not satisfied;
- g) To ensure that licensees' staff are adequately trained on their internal consumer complaints procedure followed, in line with the requirements set out in these Guidelines; and
- h) To provide various avenues for complaints registration including virtual and digital means, telephone calls and service centres.

6. CONSUMER RIGHTS AND OBLIGATIONS

The following consumer rights and obligations shall be recognized and enforced by ICT service providers and the Commission;

6.1 Consumer Rights

6.1.1 The Right to Safety

The consumer has to be protected against ICT products, equipment and production processes that are hazardous to health or dangerous to life of present and future generations.

6.1.2 The Right to Be Informed / Right to Disclosure

The consumer has a right to access transparent, up-to-date, and complete information on the following:

- a) Each product or service offered;
- b) Prices charged;
- c) Terms and conditions for available or proposed products and services;
- d) Customer contract indicating service provider details;
- e) Duration of the customer contract and terms governing the contract renewal and/or termination including circumstances under which a contract may be terminated;
- f) Prior notification of changes to the customer contract during its validity period;
- g) Price and tariff structure including all applicable rates as consented to by the consumer, with specification of any additional fees and charges that apply;
- h) Each service provider shall be required to notify consumers about the availability of their complaints handling procedure.

6.1.3 The Right to Consumer Education and Awareness

The consumer has the right to acquire knowledge and skills needed to make informed, confident and intelligent choices about ICT products and services while being aware of basic consumer rights.

6.1.4 The Right to Choose

The consumer has a right to select their preferred service provider, product and/or service, where multiple options exist.

6.1.5 The Right to Be Heard

The consumer has the right to be heard and to the following:

- a) Access to a fair and transparent complaints handling procedure;
- b) Full participation in the complaints handling process;
- c) Ability to submit evidence and witnesses; and
- d) Appeal mechanism to the Commission if not satisfied with the decision.

6.1.5.1 All service providers must establish and publish complaints handling procedures.

6.1.5.2 The complaints handling process shall include the following minimum requirements:

- a) Register of complaints;
- b) Service provider toll free number or numbers by which consumers may inquire about services; and

- c) Contact number of the Commission where consumers may make inquiries or file complaints in cases where they are not satisfied with the redress to their complaint by the service provider.

6.1.6 The Right to Remedy

The consumer has the right to receive a fair settlement of *bona fide* claims against the service providers, including compensation for misrepresentation, service failure or interruption, inferior or unsatisfactory services. The consumer also has a right to exercise out-of-court procedures for the settlement of disputes. Such processes must be simple, transparent, and free to consumers, and must allow for a fair settlement within a reasonable time period.

6.1.7 The Right to Access Quality Basic ICT Services

The consumer has the right to access basic ICT products and services that are reliable and of high quality, from both service providers and the Regulator. Service Providers must publish information about initial supply times, fault rates and repair times as well as put technical and organizational measures in place to guarantee the integrity and security of their networks and services. The Regulator should set and enforce quality of service standards. Consumers are entitled to guaranteed access to emergency calling services.

6.1.8 The Right to Privacy

The consumer has a right to enjoy lawful personal privacy and should be protected against unauthorized use of their personal information. The consumer shall have a reasonable expectation of privacy regarding their personal information and calling patterns. Service providers may use and disclose confidential consumer or subscriber information only for the purposes for which it was collected, except by written consent of the consumer or as expressly permitted by national law.

The consumer information that requires privacy includes:

- a) Personal information about a subscriber (such as national identification number, credit and other personal financial information) collected directly from the subscriber or from another source;
- b) Information derived by the service provider from the provision of service to a subscriber (such as the subscriber's calling patterns, type, destination, and amount of use, services subscribed to, and information contained in telephone bills);

- c) A consumer's name, telephone number and address if a subscriber has requested that such information be withheld from a printed or electronic directory;
- d) The consumer also has a right to privacy including prohibition of unsolicited marketing material; and
- e) The right not to be listed in a telephone or postal directory and/or for a consumer's telephone number to be given to a third party as well as the right not to have automatic call-backs.

6.1.9 Right to Clear and Accurate Billing

The consumer has a right to be availed with clear, accurate and understandable bills for products and services they subscribe to, in accordance with agreed terms and conditions. Charges should respond to the services consumed, and consumers should not be made to pay for ancillary services they do not need.

Consumers have a right to a non-itemized bill and, where itemized bills are provided, these should be in accordance with the consumer's right to privacy.

Bills should include the following minimum information:

- a) A brief, clear, and non-misleading description of the services rendered;
- b) Name of the service provider associated with the charge;
- c) Verifiable charges in a format that can be easily compared;
- d) Billing period covered by the bill;
- e) Disclosure of any rate or service change;
- f) Payment due date;
- g) Balance carried forward from the previous billing cycle;
- h) Rental charges; and
- i) Terms for late payment fees and termination of service.

In cases where consumers lodge a billing complaint against the service provider, the complaint handling process should be guided by the following:

- a) The service provider shall not disconnect the service to the consumer while the investigation of a disputed portion of a bill is still pending;
- b) The service provider shall reach a determination regarding the billing complaint and communicate it to the complainant within a determined timeline;
- c) The service provider shall not disconnect the service until the complainant has been notified about the results of the investigation and determination;

- d) The service provider shall not apply adverse collection procedures, late charges and/or penalties while the investigation of a disputed bill is still pending; and
- e) The service provider shall ensure that the consumer is informed well in time about the payment deadline before they disconnect him/her.

6.1.10 Right to Responsive Regulatory Commission

The consumer has a right to be represented by a responsive regulatory Commission that is continuously and proactively looking out for their interests, taking into account their needs, expectations, preferences and values. As such, the Commission shall;

- a) Establish and publish clear rules requiring service providers to have quality, reliable and affordable ICT products and services;
- b) Establish and publish clear rules requiring service providers to have a consumer complaint handling process;
- c) Monitor sector performance regarding provision of quality, reliable and affordable ICT products and services and report the findings at least once a year;
- d) Create a consumer outreach program capable of educating and empowering consumers about their rights, responsibilities and opportunities; and
- e) Ensure service providers provide access to emergency services by which the public may, at any time and free of charge, communicate during emergency situations.

6.1.11 The Right to Protection Against Market Abuse

The consumer has a right to be protected from market abuse such as excessive pricing, discriminatory pricing, contractual lock-ins, unfair trade practices including false and misleading advertising as well as any form of anti- competitive behaviour. Measures for non-payment of bills should be proportionate and non- discriminatory, with the consumer given prior notice of termination or interruption of service. Prior to disconnection, consumers have the right to a reduced service that allows them to make emergency calls.

6.1.12 The Right to Cancel or Change a Contract

The consumer has a right to cancel a contract within reasonably short periods not exceeding ninety (90) days from date of signing the contract. Cancellation provisions shall be clearly indicated in all contracts.

6.2 Consumer Obligations

Consumers of communications services have the following obligations:

6.2.1 Critical Awareness

The consumer must always be aware and seek sufficient information about the provision, quality, and variety of products and services available in the market. Consumers should only enter into contracts with *bona fide* service providers and familiarize themselves with and honour their obligations under any contract entered into with a product or service provider. Consumers should also make reasonable decisions in exercising their right of choice. They also have responsibility to understand and a duty to abide by any safety or security requirements pertaining to the use of communications systems and services.

6.2.2 Social Responsibility

The consumer has a duty to exhibit social responsibility, concern and sensitivity to the impact of their actions on other citizens, in particular, in relation to disadvantaged groups in the community and in relation to the economic and social realities obtaining. The consumer should report any violation of the Act and any regulations administered through the Act. The consumer should not misuse or cause damage to infrastructure. They should use communications systems and services in an appropriate manner.

6.2.3 Involvement or Action

The consumer has the responsibility to assert themselves and ensure that they get fair deals. The customer should actively participate in all fora to do with policy formulation and legislation for the services they use.

6.2.4 Association

Consumers have the responsibility to form consumer or citizen groups in order to develop the strength and influence to promote and protect their interests.

6.2.5 Respect Contract Obligations in Customer Contracts

The consumer shall respect the provisions of the customer contract at all times. The customer has a responsibility to fairly make good use of the services, products and equipment as stated in the agreement.

The consumer also has an obligation to pay bills and service charges for products and services utilised, as stipulated in the customer contract, and such payment must be prompt.

6.2.5 Genuine Claim

The consumer has the duty to make genuine complaints and provide proof of the circumstances when registering complaints or claiming compensation.

6.2.6 Environmental Protection

The consumer has the duty to ensure appropriate disposal of waste from utilisation of electronic communication products, equipment and services.

6.2.7 Privacy of Other Users

The consumer has the duty to respect the privacy of other users of communications services.

7. SERVICE PROVIDER RESPONSIBILITIES

Service providers have a responsibility to comply with the following parameters;

7.1 Customer Care System

A Service Provider shall:

- 7.1.1** Establish a consumer care charter which also includes the inquiry and complaints handling process;
- 7.1.2** File the consumer care charter with the Commission
- 7.1.3** Maintain adequately trained personnel to receive and respond promptly to inquiries and complaints from consumers;
- 7.1.4** Take commercially reasonable action to promptly remedy and avoid the recurrence of the cause of consumer complaints that relate to the quality, availability or delivery of products and services.

7.2 Provision of Information

A Service Provider shall provide clear and understandable information, visibly displayed to consumers or potential consumers at all business premises and on the website. This information shall include among other details:

- 7.2.1** The name of the service provider;
- 7.2.2** Toll-free consumer service numbers; and
- 7.2.3** Tariffs related to their product offering including in and out-of-bundle rates, peak and off-peak times and rates, night, weekend and holiday rates and international rates; as approved by the Commission.

7.3 Non-discrimination

A Service Provider shall provide services without discrimination amongst consumers of like classes or category of consumers or to any person who wishes to become a consumer.

7.4 Service Level Agreements

A service provider shall notify customers of the full terms and conditions, before the provision of any service. These should either be provided in written form (whether electronic or hard copy) or subscribers should be directed to where they can obtain a copy of the terms and conditions.

All Licensed operators shall ensure that their terms and conditions are fair, transparent and written in plain, clear and straight forward language. The contract shall spell out necessary redress mechanisms in the event of failure to provide the products or services promised.

7.5 Accurate Billing

Licensees shall issue easy-to-understand bills, and establish verifiable charges, so that consumers can confirm or challenge billing information, including amongst other things, call charges and payments. These billing records shall be retained by the licensees for at least five (5) years.

Licensees must ensure that all roaming charges are clear and billed to the consumer within sixty (60) days from the call date.

7.6 Complaints and Redress

Service Providers shall develop, publish and implement customer service guidelines for use by its employees to resolve disputes in an effective and efficient manner. Service Providers shall also make the Commission's contact details available to consumers, notifying them of a process to escalate their complaint to the Commission.

Where a consumer is dissatisfied with the Service Provider's response to their complaint, he or she may refer the complaint to the Commission. The Commission shall investigate any complaint referred to it and may require the Service Provider to submit additional information. Upon completing the investigation on the complaint, the Commission shall make a decision in writing and inform the consumer and the Service Provider of its determination.

7.7 Privacy and Confidentiality

Service Providers must take steps to protect the Consumer's privacy regarding personal information in line with the Data Protection Act, 2022. Service Providers shall protect consumers from unauthorised use of their personal records and information, as well as illegal, unsolicited, unwanted or offensive communications. These provisions must not apply where consumers give their informed permission and express consent to the disclosure of personal information.

7.8 Environmental Responsibility

Service Providers should be highly sensitive to the impact of their actions on the physical environment, which must be aimed at fostering conservation, to ensure a high level of safety and quality of life for present and future generations.

8. REVIEW AND AMENDMENT OF THE GUIDELINES

The Commission may review and amend these Guidelines as and when necessary from time to time.

9. VIOLATIONS

Any person who contravenes any provision of these Guidelines shall be dealt with in accordance with Section 42 of the ESCCOM Act.

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CHIEF EXECUTIVE