



REPUBLIC OF VANUATU

TELECOMMUNICATIONS AND RADIOCOMMUNICATIONS REGULATION ACT NO. 30 OF 2009

Telecommunications and Radiocommunications (Consumer Protection) Regulation Order No. 157 of 2015

In exercise of the powers conferred on me by subsection 7(3) of the Telecommunications and Radiocommunications Regulation Act No. 30 of 2009 and with the approval of the Prime Minister, I, RONALD NEIL BOX, Telecommunications and Radiocommunications Regulator, make the following Regulation.

PART 1 PRELIMINARY

1 Definitions

In this Regulation, unless the contrary intention appears:

Act means the Telecommunications and Radiocommunications Regulation Act No.30 of 2009;

advertising means the communication by a service provider in person or by any media to one or more consumers or potential consumers of information about a telecommunications service or services offered to consumers or end-users;

consumer means the same as end user;

consumer information means:

- (a) a consumer's name and address; and
- (b) a consumer's telephone number; and
- (c) the content of a consumer's communication to a service provider; and
- (d) records of a consumer's calls, message or internet sessions; and
- (e) a consumer's billing records; and
- (f) data indicating a consumer's current or past location; and
- (g) other information about or from a consumer as to which confidentiality or privacy obligations are owed to the consumer under Vanuatu law;

customer means a person, including a consumer or end-user, who has a contractual relationship with a service provider for the use by that person of a telecommunications service provider by that service provider, as set out in Section 2 of the Act;

end user has the meaning given in Section 2 of the Act;

service provider has the meaning given in Section 2 of the Act;

telecommunications service has the meaning as in Section 2 of the Act.

2 Scope

Unless otherwise expressly stated, this Regulation only applies in respect of the supply or proposed supply by a Service Provider of a Telecommunications Service to consumers, and does not apply to services supplied or proposed to be supplied solely to another service provider or to other service providers.

PART 2 NOTIFICATION OF CHANGES TO A SERVICE

3 Notification of changes to a service

A service provider that intends to change any aspect of a telecommunications service provided to end-users that alters the quality or functionality of the service to end users must:

- (a) give customers reasonable advance notice of the change, including when it takes effect; and
- (b) give customers reasonable advance notice of any change or amendment to the terms of services or contract that arises from the change of service (whether the terms of service or contract previously addressed the changed aspect of the service).

PART 3 APPROVAL OF DRAFT TERMS OF SERVICE

4 Regulator to approve draft terms of service

- (1) A service provider must submit its draft terms of service for services provided to consumers to the Regulator for approval, pursuant to section 43 of the Act and this Regulation:
 - (a) for any draft terms of service for a service that is first offered after the effective date of this Regulation, the draft terms of service must be submitted to the Regulator for approval prior to the service being provided to any consumer.
 - (b) for services being offered as at the effective date of this Regulation, the draft terms of service must be submitted to the Regulator for approval within 20 working days from the commencement of this Regulation.
 - (c) any revision or change to terms of service approved by the Regulator pursuant to this Regulation must be submitted to the Regulator for approval at least 20 working days prior to the proposed revision or change taking effect.
- (2) Any submission of draft terms of service to the Regulator for approval must comply with and include the matters specified in sections 43(2) (a), (b), (c), (d) and (e) of the Act.
- (3) The matters to be specified pursuant to section 43(2)(b) must include:
 - (a) the service provider's terms and conditions or commitments relating to the quality or performance of services generally, or in respect of particular services; and
 - (b) the service provider's policies and procedures relating to any change to a customer's service, the suspension, disconnection or cancellation of a telecommunications service, and the procedures by which service may be reinstated, reconnected or upgraded; and
 - (c) the post-sale support or assistance that is available to consumers, including any associated charges; and
 - (d) for pre-paid telecommunications services, the means by which a customer can review and verify the debits against the customer's pre-paid credit balance, as referred to in section 39(3) of the Act; and

- (e) the procedures, by which the service provider will deal with disputes and complaints from consumers, as referred to in section 41(1) of the Act; and
 - (f) the service provider's policies and processes in relation to the protection of the confidentiality of personal customer information.
- (4) The Regulator will endeavour to make a decision on the request for approval of a draft terms of service from a service provider within 21 business days after completing the consultation process in section 43(4) of the Act.

5 Power of exemption

- (1) The Regulator may exempt by formal advice in writing a service provider from specific obligations under this Part in circumstances where all or the overwhelming majority of the customers of the service provider use the telecommunications services supplied by the service provider for the conduct of their businesses.
- (2) In relation to exemptions granted pursuant to sub-paragraph (1) the Regulator may impose such conditions as the Regulator may consider appropriate in the circumstances.

PART 4 INFORMATION TO CONSUMERS

6 Provision of service information at point of sale

- (1) This Part 4 applies where the supply of a telecommunications service is offered to a consumer:
 - (a) in person at a physical point-of-sale location (being a service provider store, the premises of a service provider's agent or distributor, a service provider's street-side "umbrella" stand, or a customer's residence); or
 - (b) over the phone (including using a tele-marketing call) or over the internet.
- (2) A service provider that offers to supply a telecommunications service to a consumer as referred to under sub-paragraph (1) must, when offering the service, provide the consumer with accurate and current information about the service, in simple and plain language, and free of charge, specified as follow:
 - (a) the functionality provided by the service under usual usage conditions, including where applicable limits on geographic availability, and any quality of service commitments of the service provider; and
 - (b) the prices and all associated charges for the service and any necessary equipment, including:
 - (i) the circumstances that result in charges being incurred; and
 - (ii) whether the charges are subject to change during the period of the contract and if so, how those changes will be communicated to the consumer; and
 - (c) where the service involves a contract with a fixed term, the duration and expiry date of the contract and the minimum total charge, if calculable, that the consumer could expect to pay over the term of the contract; and
 - (d) the toll-free customer service telephone number the consumer can use to obtain additional information from, or report service faults to, the service provider; and

PART 4 INFORMATION TO CONSUMERS

- (e) the service provider's procedures for dealing with disputes and complaints from consumers pursuant to section 41 of the Act; and
 - (f) where or how a copy of the service provider's terms of service can be obtained.
- (3) The above information may be provided in the form of a summary document at the point of sale, which if provided must be available in Bislama, English and French.

PART 5 PROTECTION OF CONSUMER INFORMATION

7 Accuracy of consumer information

A service provider must allow a customer to inspect its records relating to a telecommunications service provided to that customer, and to other consumers who the customer has permitted to use the service, and to promptly correct or remove consumer information in those records that is shown to be incorrect.

8 Authorised uses and disclosures of consumer information

For the purposes of section 40 of the Act, a service provider is authorised to give out consumer information to another party if:

- (a) the disclosure or use is reasonably necessary for any other licensee carrying on its business as a licensee and in compliance with its licence and the Act, and the disclosure or use is made solely for that purpose; or
- (b) the disclosure or use is solely for the purpose of establishing maintaining or providing directory information and otherwise complies with the Act and any applicable licence; or
- (c) the disclosure is made to an emergency service organisation for the purposes connected with it dealing with a matter raised by the consumer during a call to an emergency call service; or
- (d) the disclosure or use is reasonably necessary for a purpose connected with persons being alerted to an emergency or a likely emergency; or
- (e) the service provider believes, on reasonable grounds, that the disclosure or use is reasonably necessary to prevent or lessen a serious and imminent threat to the life or health of a person; or
- (f) the disclosure or use is reasonably necessary for the purpose of the preservation of human life at sea.

9 Service providers to publish a Protection of Consumer Information Policy

A service provider that provides a telecommunication service to a consumer must provide to the consumer, on request, a hard copy of, and also publish on its website, a document titled "Protection of Customer Information Policy" that sets out:

PART 5 PROTECTION OF CONSUMER INFORMATION

- (a) the types of consumer information that the service provider collects from consumers or otherwise records as part of its supply of telecommunication services; and
- (b) the use of that consumer information by the service provider that may be made in compliance with the Act, this Regulation or the service provider's licence; and
- (c) the arrangements that the service provider has in place to protect the confidentiality of consumer information; and
- (d) how a consumer can inspect and correct consumer information that is held by the service provider.

PART 6 ADVERTISING OF TELECOMMUNICATIONS SERVICES AS "FREE" OR "WITHOUT CHARGE"



10. Advertising services as "free" or "without charge"

- (1) Subject to subsection (2) below, an advertisement for a telecommunications service must not state or imply that the service is provided or offered free or for no-charge, unless the service is provided entirely and unconditionally for free and without any charge generally or pursuant to a particular offer the subject of the advertising.
- (2) If there are particular conditions or times where a service may be used for free or for no-charge, any advertisement about this must specify prominently those conditions or times and the other charges that will or may be incurred by the consumer to use the service.

11 Commencement

This Regulation commences on the day on which it is made.

Made at Port Vila this 21st day of October, 2015

RONALD NEIL BOX
Telecommunications and
Radiocommunications Regulator