

REGULATIONS ON PROMOTIONS BY TELECOMMUNICATIONS OPERATORS

ISSUED BY

REGULATORY BOARD

RWANDA UTILITIES REGULATORY AGENCY - (RURA)

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SECTION 1 PREAMBLE

The Regulatory Board of the Rwanda Utilities Regulatory Agency in exercising its powers conferred upon it by:

Given the Law N° 39/2001 of 13 September 2001 establishing the Rwanda Utilities Regulatory Agency, especially in its Articles 1 and 5;

Given the Law N° 44/2001 of 30 November 2001 governing Telecommunications, especially in its Articles: 3, 25 and 26;

Given the Presidential Order N° 04/01 of 15/03/2004 determining specific duties of the Regulatory Board in Telecommunications matters, especially in its Article 3;

AND AFTER its deliberations in its meeting of 06th May 2011;

HEREBY issues the following regulations on promotion of services and goods in telecommunication industry in the Republic of Rwanda;

SECTION 2 DEFINITIONS AND INTERPRETATION OF TERMS

In these regulations unless the context otherwise requires, these terms shall have the following interpretations:

-**“Advertisement”** means any message, the content of which is controlled directly or indirectly by the advertiser, expressed in any language and communicated in any media to consumers with the intent to influence their choice, opinion or behavior.

-**“Agency”** means the Rwanda Utilities Regulatory Agency established by Law N°39/2001 of 13/09/2001 for the regulation of certain public utilities including Telecommunications networks and /or telecommunications services.

-**“License”** means the legal permission granted by the Agency under the Law N° 44/2001 of 30/11/2001 governing telecommunications to provide a particular type of electronic communications network and /or electronic communications services.

-**“Licensee”** means any company or person who holds an operating license issued by the Agency.

-**“Permit”** for the purposes of these regulations means and includes the permission granted by the Agency in writing to a Telecom Operator and or

licensee to conduct a promotion campaign of the services or goods delivered under its license.

-**“Presidential Order”** means the Presidential Order N° 04/01 of 15/03/2004 determining specific duties of the Regulatory Board in telecommunications matters or any succeeding legislation thereto

-**“Promotion”** means any message, the content of which is controlled directly or indirectly by the advertiser, expressed in any language and communicated in any media to consumers with the intent to influence their choice, opinion or behavior in order to get a shared reward or benefit.

-**“Relevant laws”** means any applicable law or regulation with which a telecom operator must comply in connection with its license conditions.

-**“Telecom operators”** for the purpose of these regulations means and includes all licensees holding a license and are under the regulation of the Agency in the Republic of Rwanda

SECTION 3 SCOPE AND OBJECTIVES OF THE REGULATIONS

- a) These regulations apply to all licensees that engage in or are about to engage in any promotional exercise
- b) The objectives of these regulations include;
 - i. To ensure ethical conduct and acceptable standards for promotions
 - ii. To set clear and minimum requirements and standards for matters related to promotions by the licensed operators governed by these regulations
 - iii. To protect and promote consumer interests/rights
 - iv. To prevent any possible anti-competitive behavior and practice that may be hidden in any promotional package
- c) The regulatory board may amend these regulations at any time including the scope and objectives hereof depending on circumstances within the market.

SECTION 4 MINIMUM STANDARDS AND REQUIREMENTS FOR PROMOTIONS

All promotional exercise shall meet the following minimum standards and requirements;

- a) A promotion exercise shall have the effect of bringing the customers closer to the concerned licensee and that the promotion exercise should be one through which the customers get effective service (value for money) which is the subject of the promotion;
- b) All licensees shall provide to the Agency a descriptive report of the concerned goods and services that are to be promoted vis-a-vis the targeted consumers. The report to be submitted shall indicate the following;
 - i. A statement of intention for the promotion
 - ii. The general impact of the promotion on the concerned licensee's service provision
 - iii. The impact on the Quality of Service parameters set by the Agency
 - iv. The impact on grade of service set by the Agency
 - v. A proof of compliance with the Agency's type-approved standards
 - vi. State if the promotion includes or relates to comparative advertising
 - vii. The impact of the promotion on the basic consumer rights and obligations including but not limited to safety, privacy, information, choice all in the interest of transparency in service delivery
 - viii. Indicate the customer options
 - ix. Outline if the licensee would require any scarce resources e.g. numbers i.e. codes with a view to confirming any compliance with earlier allocations
- c) The licensee shall ensure that its network is capable of sustaining the traffic that may be generated from such promotion.
- d) The licensee must specify the time, duration, date and range of such promotion and the date of redemption of such promotional benefits.
- e) All promotions must not misrepresent the licensees' opportunity to provide the goods and services at the terms presented. If supply of the goods and services are limited, or the licensee can fulfill only limited demand, this must be clearly captured in the report and stated in the communication medium for the promotion.
- f) The licensee must specify the target subscribers for the promotion by clearly distinguishing if it targets new subscribers and or existing subscribers.

- g) The licensee must indicate if the products and or services (i.e. subjects of the promotion) are available to only a particular geographical region or group of customers.
- h) The licensee must ensure a geographical balance while offering its promotional sales to its consumers without an undue concentration on consumers in a particular geographical location.
- i) The licensee must communicate clearly and understandably to the subscribers all relevant terms and conditions of the promotions.
- j) Where a licensee communicates certain categories and / or specific products services as rewards or potential rewards for partaking in a promotion, it must ensure that the specific items and or services portrayed and /or promised are not varied.
- k) The licensee must have the means and be able to prove any claim or representation in a promotion and the Agency has the discretion to demand for any survey report or data from the licensee for purposes of proving the same.

SECTION 5 PROMOTIONAL TARIFF

- a) The licensee must communicate all promotional tariffs and financial implications clearly and have no hidden or disguised predatory pricing, price adjustments/ discrimination in a negative sense, unrealistic price comparisons and or exaggerated claims as to worth or value.
- b) Advertising with complicated price structures and information shall not only appear in transient types of media such as radio and television but must be accompanied with detailed print media explanations, and on the licensee's website. The transient media must specifically instruct consumers to see the print mediums for details.
- c) The promotional tariff must be bound by the article 29 of the Law N° 44/2001 of 30/11/2001 governing Telecommunications or any other succeeding legislation thereto.

SECTION 6 DURATION OF THE PROMOTION

- a) No licensee shall conduct a promotion for the same product or service for more than three times within a year or twelve calendar months provided that the Agency shall have the discretion to prevent or restrict any licensee from any such promotional exercise for the same product.
- b) However, for the purpose of ensuring effective and fair competition in the telecommunications industry, one promotion cannot exceed a period of

one month provided that no such promotion shall be in conflict with section 6(a) above.

SECTION 7 ADVERTORIAL MEDIUM

- a) The licensee shall be required to make promotions only via print, radio, mail, licensee's website, text messages (consumers having the option to reject), electronic mail (where permitted by recipient to send such promotional material), and/or visual media, with accuracy and clarity of the goods and services being offered.
- b) No promotion shall contain or relate to any obscenities or profanities unsuitable for young persons and children or contain any racial or prejudicial content relating to national origin, religion, sex, gender or age.
- c) Nothing in these promotions shall solely and wholly be an advertisement and no promotion shall be considered as an advertisement by a licensee provided that a reward or benefit is attached or clothed within that activity.

SECTION 8 COMPARATIVE ADVERTISING

- a) Advertisements must not unfairly discredit, disparage or attack other products, services, advertisements or companies, or exaggerate the nature or importance of competitive differences.
- b) No licensee shall imitate the slogans or illustrations of another advertiser in such a manner as to mislead the consumer.

SECTION 9 SERVICES

Any service which is the subject of a promotion shall be clearly defined with details relating to its limitations, scope, duration etc. No surprises related to any promotion shall be entertained (For example internet service capacity and Quality of Service).

SECTION 10 SUBMISSION OF A DESCRIPTIVE REPORT

- a) Every licensee shall prior to the release of any promotion of its products and services, provide a descriptive report (as per section 4b) to the Director General of the Agency.
- b) The descriptive report shall be presented in accordance with a form as provided in Schedule 1. The form can be downloaded from the Agency's website at www.rura.gov.rw

- c) The Agency shall react to the descriptive report after receiving the same and the Agency shall communicate to the concerned–licensee of any concern or otherwise with regards to the promotion.
- d) Where there is a need or a situation for an aspect of the promotion to be addressed, verified or altered the Agency may request the concerned-licensee to remedy the situation or issue directives in that regard
- e) The Agency may seek for a formal meeting with the concerned-licensee with a view to having a thorough discussion on the subject- matter thereof and the concerned-licensee may be required to make a presentation on the same before the Agency gives its final directives on the matter.

SECTION 11 AN ORDER OF CANCELLATION AND CESSATION

- a) The Agency reserves the right to issue an immediate order for the cancellation of any promotion prior to the commencement of the promotion which order of cancellation may be based on but not limited to the following;
 - i. Anti competitive behavior
 - ii. Lottery and gambling related promotions
 - iii. An act against public order
- b) The Agency shall communicate to the licensee the reasons for the order of the cancellation of the promotion
- c) Notwithstanding Section 11 (a) hereof, after the commencement of the promotion, the Agency reserves the right to order for cessation of any promotions for reasons not limited to;
 - i. Network Congestion
 - ii. Poor performance in licensees' services
 - iii. Genuine Consumer complaints
 - iv. Proved misrepresentation of any material fact in relation to the promotion,
 - v. Contravention of specific approval,
 - vi. Variation from submitted content and /or context
- d) Upon the order of cancellation or cessation, the licensee must discontinue such promotions with immediate effect subject to the order. The discontinuation must be communicated to the subscribers via SMS, website publication, newspaper publication or any other effective medium of communication.

SECTION 12

ISSUANCE OF ANY ORDER OR DIRECTIVE

- a) Notwithstanding anything contained in these regulations particularly in section 11 hereof, the Agency, in making any order or directive, shall also consider the following in complimenting the provisions of Section 11;
 - i. An evaluation of the descriptive report and related documents
 - ii. An evaluation of the interest of consumers, public health, safety, and environmental issues;
 - iii. An evaluation of the social and economic impacts of the proposed promotion;
 - iv. An evaluation of mitigation measures to alleviate any problems identified in the second and third paragraphs of this subsection; and
 - v. The relationship of the proposed promotion to the existing national policies and strategies for the ICT sector development, the laws and regulations
- b) Any order to be issued by the Agency shall contain, among other things, the name of the concerned licensee, the description of the promotion, the duration of the promotion and it shall bear a serial number, signed and sealed by the Agency.

SECTION 13

REGULATORY SANCTIONS

- a) The Agency reserves the right to place appropriate sanctions on defaulting licensees.
- b) Without prejudice to other sanctions provided for in other relevant laws a violation of these regulations shall attract the following sanctions;
 - i. Imposition of fines and /or penalties in line with the provisions of the relevant Laws,
 - ii. The concerned licensee shall pay a maximum fine of Rwf 5,000,000per day in the following cases:
 - Proceeding with the promotions without providing the relevant descriptive report to the Agency with effect from the actual date of the promotion
 - Proceeding with the promotions after an order of cancellation or cessation by the Agency, with effect from the effective date of notification of the order
 - Having a promotion period more than what is provided for by these regulations from the date of the extension

- iii. Providing falsified or misleading information to the Agency for the purposes of the promotion, falsified or misleading information to the general public, the licensee shall pay a maximum fine of Rwf 10,000,000
- iv. Failing to comply with any specific order or directive of the Agency in relation to the concerned promotion, the licensee shall pay a maximum fine of Rwf 5,000,000 per day of its non compliance.

SECTION 14 RIGHT OF APPEAL

- a) There is a right of appeal available to any dissatisfied concerned-licensee under these regulations
- b) A concerned-licensee is entitled to make an appeal in the following circumstances:
 - i. Where a promotion is cancelled by an order
 - ii. Where an order of cessation is issued by the Agency
 - iii. Where a fine has been imposed by virtual of these regulations
 - iv. In a case where the concerned-licensee is of the view that its license rights have been infringed upon.
- c) Where an order or directive is issued, the concerned-licensee is entitled to appeal against the decision of the Agency by filing a Request for Appeal addressed to the Chairperson of the Board Rwanda Utilities Regulatory Agency at the known address.
- d) The Request for Appeal must be in writing and received by the office of the chairperson of the Agency's Regulatory Board within seven working days from the date of the decision. The concerned- licensee must provide the grounds for the appeal.
- e) The licensee making the appeal will be given at least seven working days advance written notice of the date of the appeal hearing.
- f) At the appeal hearing, the grounds of appeal shall be treated as a new complaint and the issues to be considered in their entirety.
- g) Decisions of the regulatory board on the appeal shall be reached and communicated to the concerned licensee within seven working days from the date of the appeal hearing.
- h) Decisions by the regulatory board shall be binding subject to the decisions being overruled by a competent court.

SECTION 15

COMING INTO FORCE

These regulations shall come into force on the date of approval and signature by the Regulatory Board

DONE ON 06TH MAY 2011

EUGENE KAZIGE

CHAIRMAN OF THE REGULATORY BOARD

(Sé)

SCHEDULE 1: FORM OF DESCRIPTIVE REPORT

1. Operator/Licensee

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2. Licensee number

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3. Number and date of registration under the Companies

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4. Registered address

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5. Contact address, email, fax, telephone number

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6. Detailed description of Promotion

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7. Media to be utilized for Promotion (tick as appropriate)

Radio ()

Print ()

SMS ()

Web ()

Television ()

CD-ROM ()

8. Other formats (please detail)

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9. List of attachments submitted

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10. Commencement date

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11. Closing date

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12. Prizes to be won, if any

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13. Conditions of participation

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14. Mode of participation

.....
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15. Mode of Notification

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16. Mode of claiming prizes

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17. Process of selecting winners

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18. Geographical location and targeted consumer (s)

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19. Where appropriate, state who owns the copyright of the entries?

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20. State clearly whether winners will be used in post-event publicity

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21. Details of any other factors likely to influence consumers' decisions or understanding of the promotion

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Dated of submission

Signature of licensee's representative.....

Name of representative.....

Designation.....

Declaration Statement

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Seal

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**SEEN TO BE ATTACHED TO THE REGULATION No 002/RURA/2011 OF
06/05/2011**

**EUGENE KAZIGE
CHAIRMAN OF THE REGULATORY BOARD**