Guideline No. 20
PREMIUM RATE SMS
(Version 4: March 2005)

Introduction
ICSTIS Guidelines are intended to advise the premium rate services industry on how the Committee interprets or applies provisions in the Tenth Edition of the ICSTIS Code of Practice. Service providers seeking clarity about the application of any Code provision to a particular service are strongly advised to contact the Secretariat before starting to operate the service.

A current list of all of the latest versions of ICSTIS Guidelines appears on the ICSTIS website. Copies of Guidelines are available, free of charge, from the Secretariat.

What Are Premium Rate SMS?
Short Message Services (SMS) enable the transmission of alphanumeric messages between mobile subscribers and external systems such as electronic mail, paging and voicemail systems.

Scope of this Guideline
This Guideline covers both reverse-billed SMS and SMS services where the premium rate charge is applied when the consumer sends a text message (SMS mobile origination services) as well as any promotions for either type of service.

Reverse-billed premium rate SMS deliver content to mobile telephone handsets for a charge. Consumers typically subscribe to a service and are then charged a premium for the messages they receive. At present, charges normally range from 10p to £1.50 per message received. However, each mobile network operator determines the exact tariffs applicable.

This Guideline must be read in conjunction with Guideline 17, which deals with unsolicited promotions.

What constitutes a service?
The interpretation of what constitutes a service is largely dependent on what is promised to the consumer in the advertising or marketing material. For example, if consumers are informed that they will receive a premium rate SMS every day for five days, with each premium rate SMS charged at £x, then the Committee considers the duration of the service to be for the five-day period.

Subscription services are those where a sign-on process initiates a recurring premium rate service. These would include all services billed by a mobile payment mechanism even where the service may be received on a different platform. For example, where a consumer signs up to a service, which is paid for by premium rate text messages but is accessed via email.

A single payment for a single product or service constitutes a single service – not a subscription service.
Responsibility for Services
Paragraph 3.1 of the Code of Practice states that:

“Service providers are responsible for ensuring that the content and promotion of all of their premium rate services (whether produced by themselves or by their information providers) comply with all relevant provisions of this Code.”

The definition of a service provider is contained within Paragraph 1.1.3 of the Code of Practice, which states that:

“A ‘service provider’ is any person engaged in the provision of premium rate services who contracts with, or enters into arrangements with, a network operator for facilities enabling the provision of premium rate services or who contracts or enters into arrangements with any person who does not fall within section 120(9) of the Act [Communications Act 2003] who has himself contracted with or entered into arrangements with a network operator for such facilities...”

In the case of premium rate SMS, the definition is still applicable and the service provider is the company that contracts directly with the mobile network(s) regardless of who the content provider may be. This is the company that ICSTIS will turn to and hold responsible for breaches of the Code of Practice. ICSTIS recognises that breaches can occur as a result of actions taken by third parties (information providers) with whom the service provider may have contracted. In raising any breaches with the service provider, ICSTIS will take all relevant factors into account during the adjudication.

Misleading Promotional Material
Paragraph 4.3.1 of the Code of Practice states that:

“Services and promotional material must not:

a mislead, or be likely to mislead, by inaccuracy, ambiguity, exaggeration, omission or otherwise,

b be such as to seek to take unfair advantage of any characteristic or circumstance which may make consumers vulnerable.”

The Committee is likely to find a breach of the above paragraph of the Code of Practice if a service provider does not adhere to the following guidance:

Clarity of what the service is
It should be clear to the customer at the outset what a service is and its likely duration the service will last. For example, we have had several cases where consumers have not clearly been told that they are entering into a subscription service. Such services and their advertising material have been found to be in breach of the above Code provision. Service providers are encouraged to provide consumers with a free instructional text message of what they have signed up to and the frequency with which they will receive premium rate text messages.

Clarity of instructional information
Service providers are advised to ensure that all promotional material, whether through print media, the Internet, television or transmitted via text message, contains adequate instructions on how the premium rate SMS works.

Where service providers have failed to do this, ICSTIS has found them to be in breach of paragraph 4.3.1(a) (‘misleading’). For example, we have adjudicated on several cases where the service provider has been found to be in breach of the ICSTIS Code
of Practice, as consumers had not been made aware clearly, or at all, that they were entering a subscription service.

Unsubscribing from services
Service providers should be able to provide unsubscribe information in the form of a text message to consumers either before or as soon as reasonably possible after they have subscribed to the service. An opt-out 'request' is considered to be an instructional message and, accordingly, should be free.

The unsubscribe process should require no more than one text message to take effect. Any messages sent to the consumer confirming exit from the service should be free.

ICSTIS has upheld a breach of 4.3.1(b) ('vulnerability') in cases where consumers have been unable to unsubscribe – for example, due to an over-complicated or convoluted procedure aimed at delaying or preventing someone from opting out of the service.

Universal Command to Stop Services
ICSTIS is aware that the mobile networks have recently amended their contracts with their service providers stating that consumers must be able to exit services when they send the word ‘STOP’. ICSTIS has always believed that consumers should be able to exit services whenever they choose.

To this end, the Committee would expect the following to be adopted as for the ‘universal command’ to stop services:

- The word ‘STOP’
- The word ‘STOP’ can be followed by the service name for example ‘chat’
- There is only one space or one character between the word ‘STOP’ and the service name.
- The command must not be case sensitive.

Pricing Information
Paragraph 4.4.1 of the Code of Practice states that:

“The service provider must state clearly in all promotional material the likely charge for calls to each service. Prices must be noted in the form of a numerical price per minute, or the total maximum cost to the consumer of the complete message or service, both of which must be inclusive of VAT. When applicable, promotional material must make clear that calls from some networks may cost more than the likely charge shown.”

Paragraph 4.4.1 of the Code of Practice applies to premium rate SMS in so far as the service provider must clearly state in all promotional material the likely charge for receiving or sending a premium rate text message.

In accordance with paragraph 4.4.2 of the Code of Practice, the pricing information must be legible, prominent, horizontal and presented in a way that does not require close examination.

The Committee would view it as best practice to state the cost to the consumer of sending a text message to initiate or take part in a reverse-billed premium rate SMS. The Committee expects the cost of sending non premium rate text messages to be factored into the total cost by stating, for example, that ‘standard operator rates apply for SMS messages sent’ or ‘call costs range from x pence to y pence per message depending on network’.
**Maximum call costs**

For all services, the Committee would like to remind service providers that, depending on the service type and the target audience (for example, children), the standard and specific provisions of the ICSTIS Code of Practice will apply. For example, adult services must cost more than £20 and must terminate by forced release. Equally, services specifically targeted at children must terminate after the £3 spend limit has been reached.

Pay for product services, which include ring tone, logo, wallpaper and games services (as stated in Guideline 12) must not cost more than £20 in total unless permission to do otherwise is specifically granted by ICSTIS.

All non-live sexual entertainment services must not cost more than £20 in total (as stated in Paragraph 6.7.7 of the Code).

**Instructional Messages**

Instructional messages are messages that welcome, explain or provide general or specific information about a premium rate SMS service to consumers but are not a substantive part of the service being promoted.

The Committee would not expect the consumer to be charged for pricing information or other instructional messages.

Non-exhaustive examples of such messages include an SMS sent:

- confirming that a consumer has entered into a subscription service at £0.xp per text and the duration of the service
- confirming the age of a consumer
- confirming the exit of a consumer from a service
- explaining how a service works but which does not contain any ‘content’ or form a substantive part of the service itself.

**Address Information**

Paragraph 4.5 of the Code of Practice states that:

“For any promotion the identity and contact details of either the service provider or information provider, where not otherwise obvious, must be clearly stated so that customers can contact them directly.

The identity means the name of the company, partnership or sole trader and the contact details must consist of one of the following:

- a full postal address including postcode, or
- a PO Box number including postcode (PO Box numbers cannot be used in the case of employment, employment information and business opportunity services), or
- a telephone helpline number (to be charged at no more than UK national rate).”

The above information is mandatory for promotions for premium rate SMS, regardless of whether the promotion is advertised through print media, the Internet, television or promotions sent by text message.
Data Protection

All premium rate SMS service providers should ensure that they process any personal data and mobile phone numbers in accordance with the requirements of the Data Protection Act 1998 and the Telecommunications (Data Protection and Privacy) Regulations 1999, and any other relevant legislation. Further information on these requirements can be obtained from the Office of the Information Commissioner and the website: www.dataprotection.gov.uk. In particular, service providers must ensure compliance with paragraph 3.4.3 of the Code of Practice, which states that:

“Services which involve the collection of personal information, such as names, addresses and telephone numbers (which includes the collection of Calling Line Identification (CLI) or caller display information), must make clear to callers the purpose for which the information is required. The service must also identify the data controller (if different from the service provider or information provider) and any different use to which the personal information might be put, and give the caller an opportunity to prevent such usage."

The service provider should store all text messages sent and received by consumers for a period of at least three months.

Requirements for Prior Permission

Most premium rate services do not require permission from ICSTIS before they can operate. However, there are some types of service which require assessment by the Committee before they operate.

1. Text Chat and Dating Services

Under paragraph 3.3.1 of the ICSTIS Code of Practice, the following types of reverse-billed premium rate SMS currently require prior permission from ICSTIS before they can operate:

- Services offering ‘text chat’ services
- All SMS contact and dating services

Please note that services offering ‘text chat’ services and all SMS contact and dating services which cost 10p per text or less are excluded from requiring prior permission.

Typical examples of specific conditions that the Committee may impose on such services may include:

Call cost warning/forced release:
After the consumer has spent £10, the consumer must be informed of the cost per text message and asked to provide a positive response that they wish to continue participating in the service. If there is no response from the consumer, the Committee would require the consumer’s connection to the service to be terminated.

Pricing requirements:
The Committee would require the consumer not to be charged for receiving the pricing notification or other instructional messages.

Age confirmation:
For ‘text chat’ services of an adult nature (i.e. sexual entertainment), service providers should ensure that the consumer is over the age of 18 before starting a service. For

1[1] A text chat service is one that involves an exchange of conversational messages whether it be with a monitor, other consumers or using artificial intelligence to generate responses.
‘text chat’ services of a non-adult nature (i.e. those which can be used by 16 year olds and above) service providers should ensure that the consumer is over the age of 16 before starting a service. The Committee would require service providers to request either:

- The consumer’s date of birth in the form of dd/mm/yy (or a variation thereof) to ensure that the consumer is old enough to take part in the service, or
- The consumer should send a text stating their age either in numbers or words.

Some niche text chat services (such as a cricket chat service or a service unlikely to lead into general chat topics) may be exempt from having the age check requirements subject to consideration by the Committee.

**Group chat text services**

The Committee requires that consumers must be informed, before they enter the service, of the minimum number of messages (depending on the number of people in the group) they will receive.

If there is a dating element to the ‘text chat’ service, the Committee may require the imposition of the following conditions:

- Service providers must warn callers of the risks involved when telephone numbers are given out to other individuals and give clear advice on sensible precautions to take when meeting people through such services.
- Service providers should ensure that publicly available elements of the service do not contain telephone numbers, addresses or any other means of direct contact.

**Text chat and the youth market**

The Committee has recognised that, for text chat services, there exists a three-tier marketplace:

- Children’s services (under 16s)
- Youth services (16-17 year olds)
- Adult services (over 18s)

Specific conditions are likely to exclude text chat services from being targeted to children (under 16). However, the Committee is likely to permit non-adult (non-sexual entertainment) text chat services to be offered to the 16-17 age group on the proviso that the advertising of such services occurs in publications where the target readership is not below 16 years of age.

With respect to other advertising media, equivalent measures should be taken; for example, such services should not be advertised on television at times when young children may be watching.

**2. Pay for Product Services**

Under paragraph 6.6.2, pay for product services likely to cost more than £20 require prior permission from ICSTIS before they can operate. Typical examples of specific conditions which the Committee may impose on such services may include:

- **Promotional material**
  - Promotional material for subscription services must clearly indicate that the service is subscription based. Such information should be prominent and highly visible to readers.
• Subscription services terms of use (e.g. whole cost pricing, opt-out) information should be clearly visible.
• Wherever stop instructions are displayed, the information provided must advertise the generic STOP command, and additionally service-specific stop commands – for example, “stop polytones” may also be advertised.

Subscription initiation
Initial subscription messages must contain the following information:
• Name of service
• Confirmation that the service is subscription based
• The billing period (e.g. per day, per week or per month)
• How much the user is charged for that billing period
• How to leave the service (including the generic stop command),
• Service operator contact details

These points should be in the first message(s) sent to the customer, and must be before any promotional content is provided. They must be in a free-to-receive message(s). The initiation of any form of subscription service should result in the initial subscription message being sent to the handset.

Subscription reminders
Once a month the following information shall be sent to subscribers:
• Name of service,
• that the service is subscription based
• what the billing period is (e.g. per week, or per month)
• how much the user is charged for that billing period
• Service operator contact details

Subscription service users must also be sent a reminder of the STOP command. The frequency is determined by the cost of the service.
• Service providers must send a stop command reminder every time the total spend reaches £20 since last stop command reminder.
• If the service is designed to cost less than £20 per month, the service provider must send the STOP command reminder every month instead of when £20 has been spent

Subscription termination
• After a user has sent a STOP command to a service, the service operator should not submit any further billed messages for the relevant service
• Users must be free to leave a service at any time and service providers must do nothing to indicate otherwise unless specific permission to do so has been granted.

How To Contact ICSTIS

ICSTIS              Tel: 020 7940 7474
Clove Building     Fax: 020 7940 7456
4 Maguire Street  Free Helpline: 0800 500 212
London             Press Office: 020 7940 7408
SE1 2NQ            E-mail: secretariat@icstis.org.uk

Web site: www.icstis.org.uk

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