



Government of
The Republic
of Vanuatu



Telecommunication &
Radiocommunication
Regulator

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Second Consultation Paper on **Draft Telecommunications Consumer Protection Regulation**

INVITING PUBLIC COMMENT AND INPUT

24/08/2015

Draft Telecommunications Consumer Protection Regulation

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CONSULTATION FEEDBACK INFORMATION

- TRR welcomes and invites comments and feedback to this consultation document from all interested parties;
- We would appreciate your response to be clear by quoting the corresponding main sections and sub sections when providing your comments;
- More general comments on the consultation document should be indicated accordingly;
- In the interests of transparency, TRR will make public all or parts of any submissions made in response to this Consultation Document unless there is a specific request to treat all or part of a response in confidence. If no such request is made, TRR will assume that the response is not intended to be confidential. TRR will evaluate requests for confidentiality according to relevant legal principles;
- Respondents are required to clearly mark any information included in their submission that they consider confidential. They shall provide reasons why that information should be treated as such. Where information claimed to be confidential is included in a submission, respondents are required to provide both a confidential and a non-confidential version of their submission. TRR will determine, whether the information claimed to be confidential is to be treated as such, and, if so, will not publish that information. In respect of the information that is determined to be non-confidential, TRR may publish or refrain from publishing such information at its sole discretion.
- If you have specific questions, please use Section 5 (Your Specific Questions) to provide us with your queries;
- TRR will accept comments in English, French or Bislama;
- If comments are submitted in printed format, they must be submitted on A4 paper accompanied, wherever possible, by a disk containing the comments, in electronic format;
- Comments on this consultation document should be provided to TRR via the following means:
 - Email address consultation@trr.vu
 - Faxed to (678) 24470
 - Posted or hand delivered to:
Public Input – Draft Telecommunications Consumer Protection Regulation
Telecommunications and Radiocommunications Regulator
P O Box 3547, Port Vila, Vanuatu
- The deadline for public Comments is **4pm, 11 September, 2015;**
- For any phone enquiries regarding this Consultation document, please call the following numbers:
 - (678) 27621 or (678) 27487

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- All comments will be reviewed by TRR's. TRR will, however, keep the Consumers informed of development of this Regulation and will use it to assist TRR's finalization of the Regulation. TRR will consider every comment submitted when finalizing its report or decision. For transparency, a record of every comment received will be made available for public information, unless comments are labeled 'In Confidence' (see also dot points 4 and 5 above);
- For more information about TRR's Consultation Guidelines, please visit the following website www.trr.vu <www.trr.vu>
- You are welcome to visit our website <http://www.trr.vu> for more details on the latest developments in the telecommunication services industry and other related matters.

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INTRODUCTION

This Second Consultation Document (“document”) seeks public feedback on a draft Consumer Protection Regulation that proposes to add implementation detail to the procedures established by the Telecommunications and Radiocommunications Regulation Act No 30 of 2009 (“the Act”) and establish some key safeguards of the rights and interests of telecommunications consumers. It is a modified version of that which was first sent for Public Consultation in 2014.

A draft of the proposed RRegulation, which is titled *Telecommunications and Radiocommunications (Consumer Protection) Regulations 2015 (“the draft Regulation”)*, is provided at Annex A.

Arrangements affecting the collection of information relating to service provider’s compliance with the requirements of the draft Regulation (and Part 8 of the Act more broadly) will be addressed through the TRR’s planned review of its general data collection arrangements.

It is expected that the draft Regulation will need to be amended or supplemented in the future as new consumer issues arise which require coverage in the Regulation. For example, TRR is still working through some consumer-related issues relating to directory information services and emergency call services and intends addressing those issues through separate Regulations and/or orders in the near future.

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1 INTERPRETATIONS

The key terms used in the draft Regulation are either already defined in the Act or otherwise are defined in the draft Regulation itself. Most significantly, the term 'consumer' is used instead of the term 'end user' because the former is better recognized in general usage. 'Consumer' has been given a definition in the draft Regulation that is the same as the definition of 'end user' in the Act, namely: 'a person who is the ultimate recipient of a telecommunications service or another service provided by means of that telecommunications service but does not include affiliates of a service provider'.

2 BACKGROUND

2.1 Part 8 of the Act sets out a number of important consumer protections, including:

- A prohibition on demands for payment for services that have not been requested (s.39(1));
- Certain minimum requirements for invoices (s.39(2));
- Guaranteed ability for a consumer to inspect and verify the debits a service provider makes against his or her pre-paid credit balance (s.39(3));
- A prohibition on false and misleading information (s.39(5));
- A prohibition on the use and disclose of the personal information of consumers (except in certain specified circumstances) (s.40);
- A requirement that service providers have in place procedures for handling consumer complaints (s.41);
- A prohibition on unjustified discrimination between consumers (except in certain specified circumstances) (s.42);
- The ability for the TRR to assume a role in the review and approval of the terms of services under which a service provider supplies, or offers to supply, a telecommunications service to a consumer (s.43).

2.2 The Act provides for TRR to (and also envisages that it will) set out additional implementation details and specific requirements in relation to these consumer protections, and in the interests of consumer protection generally (e.g. in Part 8 and section 7 of the Act).

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3 PURPOSE

3.1 TRR intends to introduce a Regulation addressing certain consumer protection issues to:

- help implement, facilitate and give effect to the statutory consumer protections in Part 8 of the Act by adding supplementary detail or requirements and establish procedures to govern how they will be applied, implemented or assessed.
- formalise TRR's oversight of the terms and conditions under which telecommunications services are supplied to consumers to ensure that they are reasonable, appropriate and sufficient.
- ensure consumers are given sufficient information about the capabilities and limitations of their telecommunications services, and the terms and conditions under which it is provided.
- establish the minimum requirements and conditions available from operators to protect consumers.
- Strengthen customer relations and protection within the telecommunications sector.
- assist all licensees to develop their customer practices and service guarantees in accordance with Part 8 of the Act

4 REGULATORY IMPACT ASSESSMENT

4.1 The draft Regulation is to be made under subsection 7(3) of the Act, specifically to implement, enforce and to give effect to existing consumer protection provisions in Part 8 of the Act, which include, but not limited to:

- Section 43 of the Act regarding the terms of service on which a service provider supplies, or intends to supply, a telecommunication service to a consumer.
- Section 40 regarding the protection of the personal information of consumers.
- Section 41 regarding the service providers' procedures for dealing with disputes and complaints from consumers.
- Section 39 of the Act regarding the provision of information to consumers, including by way of advertisement, in a manner that is not misleading or deceptive, or likely to mislead or deceive.

4.2 This Regulation will also support and assist various clauses of the Licences such as:

- Clause 15 of the licences that deals with fair dealing practices; and
- Clause 16 regarding confidentiality of customer information;

4.3 This draft Regulation supports the Government's National ICT Policy, Universal Access Policy and Cyber Security Policy in relation to the consumer interfaces of those policies.

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- 4.4 The implementation of the draft Regulation will support part 8 of the Act, by providing guidance to service providers on the consumer protection standards that should be applied in their consumer dealings.
- 4.5 From experience, the current TRR Consumer Protection Guideline has not been as effective as planned. This draft Regulation will address that outcome to some extent.
- 4.6 The Universal Access Policy will extend service coverage to 98% of the population by January 2018 and this means that many people in rural areas will become telecommunications consumers for the first time. They will have had either little or no experience as consumers in this sector. The Regulation will provide guidance on their expectations as consumers of the standards that service providers should apply. They will be better able to assert their consumer entitlements as a result. .
- 4.7 The provisions of the Regulation will greatly assist all people in Vanuatu in what they can expect from the providers of their current telecommunication services.
- 4.8 The Regulation will support the improvement in the provision and quality of telecommunication services.
- 4.9 It is necessary and appropriate to make the draft Regulation at this time because there is considerable variation in the level and sufficiency of the information in both service providers' terms of service and in the information given to consumers about those terms of service or the services themselves. TRR is concerned that consumers' interests may not be or being given sufficient protection and thus wants to introduce a degree of regulatory oversight, as is provided for in the Act, to ensure that service providers address particular matters in their terms of service, that those terms of service are reasonable and sufficiently clear, and that service providers give consumers certain information about their service and contract. This is reflected in the types of complaints and queries that TRR is increasingly receiving from consumers. There is also currently insufficient protection for licensees regarding the circumstances in which it is appropriate and legitimate for them to use or disclose the personal information of consumers. Better specification of the legitimate uses and circumstances of disclosure is needed to provide certainty to licensees.
- 4.10 The draft Regulation will assist the implementation of TRR's work program, in particular in relation to quality of service Regulation and consumer protection issues, by formally involving TRR in the review and approval of service providers' standard terms of service.
- 4.11 TRR has ensured that the draft Regulation is proportional to the issues being addressed and does not impose unnecessary burdens on licensees by limiting the scope of the new provisions and obligations to the minimum necessary to adequately safeguard consumers' interests and introduce some regulatory oversight. Thus the draft Regulation requires:
 - review and approval of service providers' terms of service but does not attempt to specify what those terms of service must be or to standardize them across different service providers beyond a minimum set of topics that they must cover.

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- service providers to provide consumers with information about certain matters that are directly relevant to consumers but does not attempt to specify the way in which that information is presented or communicated to consumers;
 - service providers to publish a Protection of Consumer Information policy but does not specify what those policies must be (other than in broad terms to ensure consistency with the Act).
 - Advertisements for telecommunications services to identify the performance characteristics that the user would be likely to experience under typical usage conditions (as distinct from theoretical or ideal conditions that are not likely to be experienced in practice) but does not specify how such information must be presented or communicated and does not involve TRR in review or approval of proposed advertising.
- 4.12 Further many of the requirements that the draft Regulation will introduce simply formalize practices or arrangements that service providers should already be doing or have in place in the interests of their customers. The draft Regulation thus introduces some minimum standards and a degree of regulatory oversight to activities that service providers should already be addressing as required under the Act and in licence obligations. For example, service providers already use standard terms and conditions to govern their supply of telecommunications services to consumers—the draft Regulation is thus only introducing an approval mechanism to ensure those standard terms are adequate. Service providers already provide various information to their existing and potential customers—the draft Regulation is simply ensuring that information is provided about certain key matters relevant to consumers’ interests.
- 4.13 The draft Regulation will help safeguard and promote sustainable and effective competition by ensuring some level of minimum uniformity in the way that licensees deal with their customers and consumers. Competition based on different standards, performance characteristics and so on is not removed by excessive regulatory uniformity. These Regulations are addressed to minimum requirements and leave it licensees to innovate in creative and useful ways to improve their customers’ overall experience, and to compete at that level.
- 4.14 The draft Regulation addresses terms and conditions and enable public interest values to be brought to bear in the approval process.
- 4.15 The implementation arrangements are intended to be straight forward. The draft Regulation allows for any existing terms of service that are currently in use to continue to be used until they, or a modified version of them, are approved by the TRR. Further, the time and effort required to fulfill most of the other new requirements should be minimal because they simply formalize, or introduce some regulatory oversight of, activities that service providers should already be doing or internal policies that service providers should already have in place.

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4.16 The benefits of the draft Regulation outweigh any negative effects of it, which are minimal. The minimal negative effects are related to a small increment in regulatory administration in all relevant organizations, but in the case of the licensees is little more than many would be

undertaking now as part of enlightened and comprehensive customer care and contract administration.

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	Aspect	Under the status quo (i.e. with no additional Regulation)	Under the draft Regulation as proposed
1	Approval of service providers' terms of service (s.4(1))	<p>(+) Service providers retain full control over the terms and conditions it will supply service to consumers</p> <p>(-) There is considerable variation in the quality and sufficiency of the terms and conditions that govern the supply of communications services to consumers, leaving some consumers' interests insufficiently protected or at risk</p> <p>(-) TRR is unable to address poor or inappropriate terms in a service provider's terms of service until after a problem or complain arises, which is too late</p>	<p>(+) TRR is able to ensure service providers address any inadequacies in their terms of service before consumers are affected by them.</p> <p>(+) Enables TRR to keep on file the terms of service governing all telecommunications services supplied to consumers, which will improve the TRR's ability to respond to any associated consumer complaints or enquires it may receive (although TRR expects fewer such complaints after it has completed the approval process for terms of service)</p>
2	Indicative list of the matters to be addressed in service providers' terms of service (s.4(2))	<p>(-) Some telecommunications services continue to be supplied under terms and conditions that are inadequate or provide insufficient protection for consumers interests, leaving consumers at risk in the event that a problem or disagreement arises</p> <p>(-) Significant variation in the matters covered in different service providers' terms of service, leaving some consumers less informed and less protected than others</p>	<p>(+) Service providers are given guidance as to the matters that the TRR expects to see in service providers' terms of service, which will ensure all service providers' terms of service address a minimum set of important matters related should streamline the approval process</p>
3	Indicative list of the matters that service providers must inform their customers of at the point of sale (s.5)	<p>(-) Risk that consumers are inadequately informed at the point of sale and enter into a contract for a telecommunications service based on incomplete or misleading information</p>	<p>(+) Certainty that consumers will be informed at the time of sale of certain key issues relating to the telecommunications service they are considering purchasing</p> <p>(+) Consumers are better informed, and base their decisions accordingly</p>

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4	Obligation on service providers to endeavor to ensure sufficient accuracy and completeness of customer information, to inform consumers of the purpose for collecting the information, and to enable customers to inspect and correct that information (s.6)	(-) No certainty that consumers will be adequately informed by licensees about the licensee's practices for the collection and use of personal information.	(+) Certainty that consumers will be informed of what information about them will be collected, how it will be used, and how the consumer can verify or change it. (+) Consumers are better informed, and base their decisions accordingly
5	Specification of the circumstances in which consumer information may be used or disclosed (s.7)	(-) As there are currently no authorized uses or discloses of customer information other than the general ones stated in the Act, important uses of customer information, including those related to safety of life, would continue not to be allowed.	(+) Service providers are authorized to use and disclose customer information for specified purposes, all of which are important and many of which consumers may expect already occur automatically.
6	Obligation on service providers to publish a policy statement explaining the type of customer information it collects, the purposes of which it is used, and the arrangements in place to protect confidentiality (s.8)	(-) There is no certainty that customers will be adequately informed, or have access to information, about service providers' practices and procedures for the collection, protection and use of personal consumer information (-) Poor or insufficient policies and practices regarding the collection, protection and use of personal consumer information may not be identified or corrected until after a problem or complaint arises	(+) Consumers are informed, or have easy access to information, about their service provider's policies and practices for the collection, protection and use of personal consumer information (+) Any poor or insufficient policies and practices regarding the collection, protection and use of personal consumer information are able to be identified and corrected early, before they lead to problems or complaints.
7	Obligation on service providers to mention performance under typical usage conditions (and not just theoretical ideal conditions) when advertising telecommunications	(-) Risk of consumers misunderstanding the actual performance capabilities of the telecommunication services advertised to them, leading to consumer complaints when their expectations are not met	(+) Consumers are better informed, and base their decisions accordingly (+) Consumers' expectations of their telecommunications services are realistic, resulting in less dissatisfaction and associated

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	services (s.9)		complaints to the TRR
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(+) = a consequence; (-) =negative consequence

5 CONSULTATION QUESTIONS

Q1 Do you support the draft Regulations as they have been drafted?

Q2 If the answer to Q1 is 'no', please indicate the alternative approaches that you would prefer to the consumer topics raised in the draft Regulations, including, if possible, the text that might appear in the draft Regulations instead of what is currently there. Please also state the reasons for your view.

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Q3 If the answer to Q1 is 'no' because a topic has not been covered or covered to the extent that you think it should be, please indicate the additional coverage and text that you would propose be included in the draft Regulations at this time, bearing in mind that some topics are likely to be included in separate Regulations or later versions of these Regulations by the TRR. Also please state the reasons for your view.

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ANNEX A



REPUBLIC OF VANUATU
TELECOMMUNICATIONS AND
RADIOCOMMUNICATIONS REGULATION
ACT NO. 30 OF 2009

Telecommunications and Radiocommunications
(Consumer Protection) Regulation
Order No. 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.

1 Commencement

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

Made at Port Vila this _____ day of _____, 2015

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RONALD NEIL BOX
Telecommunications and
Radiocommunications Regulator

PART 1 PRELIMINARY

1. Definitions

In this Regulation, unless the contrary intention appears:

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;

customer means a consumer or end-user who has a contract or arrangement to receive telecommunications services from a service provider;

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

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.

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

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

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

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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 or end-users, and does not apply to services supplied or proposed to be supplied solely to another service provider or to other service providers.

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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 and end-users reasonable advance notice of the change, including when it takes effect; and
- (b) give customers and end-users 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, as further draft terms of service, 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. [note: this is the same as what we had, namely, 42(a) – (e), which means all of these, but you can put it the SLO way if you wish – it does not matter];

if you wish

- (3) The matters to be specified pursuant to section 43(2)(b) must include: [this change does not work and should not be included]
 - (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

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- (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 and consumer can review and verify the debits against the consumer'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.

PART 4 INFORMATION TO CONSUMERS

5. Provision of service information at point of sale

- (1) This Part 4 applies where a telecommunications service is offered to a consumer as follows:
 - (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 providers 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 a telecommunications service to a consumer as referred to under subclause (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 or duration, 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 or duration 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
 - (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

6. Accuracy of consumer information

A service provider must allow a consumer to inspect its records relating to a telecommunications service provided to that consumer and to promptly correct or remove information in those records about the consumer that is shown to be incorrect.

7. 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.

8. Service providers to publish a Protection of Consumer Information Policy

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

- (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

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(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.

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**PART 6 ADVERTISING OF TELECOMMUNICATIONS SERVICES AS
“FREE” OR WITHOUT CHARGE**

9. Subject to clause Paragraph (10) 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.
10. 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.