



**Introducing Prior Permission
For Premium Rate Services Used
In Television And Radio Programmes**

A PUBLIC CONSULTATION

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Section 1

Executive Summary

In the middle of February 2007 ICSTIS and Ofcom became aware of a number of apparent problems relating to premium rate and/or production compliance when used for voting and competition entry on mainstream television channels and, to a lesser extent, on radio. The allegations, many of which were reported extensively in the media, suggested that the ICSTIS Code of Practice and/or the Ofcom Broadcasting Code had not been complied with and that consumer trust in premium rate services had, as a consequence, been eroded.

Given the growing media reports of problems with premium rate usage in broadcasts, ICSTIS held an industry meeting on 8 March 2007. It was the view of the wide range of industry practitioners present, and Ofcom, that there was a need for short and medium-term action to address the issues of compliance and trust.

In the short term, all broadcasters agreed to audit their current and forthcoming services to ensure Code compliance and to report to ICSTIS on their findings within two weeks of our writing. ICSTIS is very grateful to broadcasters and their partners for the speed and apparent thoroughness with which they have audited services, and we will be following up with broadcasters and partners individually as necessary, especially where assurances have been provided which later appear to be misplaced.

The exercise added to our understanding of the sector and the different risks associated with services of varying size or nature and the different mechanisms for entry, most obviously red button, text and call-in participation. This has contributed to the proposals which ICSTIS is testing in this consultation paper.

In the meantime, ICSTIS and Ofcom are investigating alleged breaches of their respective Codes. We are working together to ensure issues are being addressed by the body most appropriate to the individual incidents and handled together in any cases where there are obvious and serious issues of shared concern.

At the 8 March meeting there was general support for an ICSTIS proposal for the introduction of a prior permission (licensing) regime for premium rate services when used in broadcasts.

On 22 March Ofcom announced an inquiry into the use of premium rate services in television programmes. The inquiry is being led by Richard Ayre, a member of the Ofcom Content Board. ICSTIS is a member of the inquiry steering group. The inquiry is expected to report to the Ofcom Board and Content Board by early summer. The terms of reference are to be found at: www.ofcom.org.uk/media/news/2007/03/nr_20070322a. The inquiry seeks to understand the root causes of the failures in compliance which appear to have emerged in the last few weeks.

Ahead of the Ofcom inquiry's final report and recommendations, ICSTIS and Ofcom have agreed that ICSTIS should continue to consult on a proposal to introduce a prior permission (licensing) regime for premium rate services when used in broadcasts. However, we and Ofcom also agree that no final decisions should be taken on any such proposal until such time as the outcome of the inquiry is known.

Should the inquiry conclude that such an approach would form part of the solution to the problems which have been recently identified, the outcome of this consultation, together with the stakeholder feedback that it generates, may provide a basis for early action. ICSTIS will consider the outcome of this consultation and the final recommendations of the Ofcom inquiry before we together decide how best to respond. Our timing at this stage cannot be precise but

we would hope to make an announcement in the summer and soon after Ofcom publishes its report and recommendations from its inquiry.

Set out in Section 3 is our proposed definition of premium rate services used in broadcast programming as 'Broadcast Premium Rate Services' that are:

"premium rate services which are promoted on television or radio and which provide a facility for interaction or the provision of information, whether in the form of votes, entries, bids or otherwise howsoever."

It is our proposal that service providers (as defined in the ICSTIS Code) are required to obtain prior permission for Broadcast Premium Rate Services. The details of the process are set out in Section 5. The reasoning for this relates to the additional risks associated with these services and this is explained in Section 3. We recognise that the definition of a Broadcast Premium Rate Service ('Broadcast PRS') is broad and captures all radio and television output involving a premium rate service. The definition is drawn deliberately in a broad form in order to ensure that everything which needs to be the subject of a prior permission regime can be. This should help to ensure that the prior permission regime is future-proof in a field which can develop and change rapidly.

However, there are premium rate services caught by this definition which it is not considered necessary to include within the prior permission regime; e.g. premium rate services which are not related to any television programme or other broadcast activity except that they are the subject of commercial advertisement on television or radio. This is set out more fully in Section 4, along with the detailed consideration of some other specific kinds of premium rate service which might not be required to obtain prior permission even though they would fall within the definition of Broadcast PRS.

We recognise that the value chain in Broadcast PRS is complex and that many parties, not least the broadcaster and/or production companies, also have responsibilities. It is often the case that a principal beneficiary and/or the actual provider of a form of content does not contract directly with the phone networks involved and is not, therefore, the provider of the service as defined by the ICSTIS Code of Practice. These parties are, however, providers of premium rate services as broadly defined under the Communications Act 2003 and are subject to the provisions of the ICSTIS Code of Practice as information providers as defined in the Code.

In relation to premium rate services on television and radio, there was a broad view at the 8 March meeting and thereafter that the broadcasters and production companies are critical partners to the provision of a compliant service. This paper (specifically Section 5) sets out the issues and seeks comments on how this could be addressed, recognising that some of the problems that have emerged in recent weeks may not have been instigated by the service provider in what is a complex value chain of service delivery.

Section 2

Background

In the middle of February 2007 ICSTIS and Ofcom became aware of a number of apparent problems relating to premium rate and/or broadcast production compliance when used for voting and competition entry on mainstream television channels and, to a lesser extent, on radio. The allegations, many of which were reported extensively in the media, suggest that the ICSTIS Code of Practice and/or the Ofcom Broadcasting Code had not been complied with and that consumer trust in premium rate services had, as a consequence, been eroded.

We have worked closely with Ofcom in relation to all of the complaints received and a number of these investigations continue. Our investigations and decisions must be evidence-based and we have advised newspaper and other publishers, in particular, that we expect full disclosure of the evidence they allege before we embark on investigations. In some cases, this evidence has not been forthcoming to substantiate the stories reported and allegations made. We have also worked closely with Ofcom to establish in each case whether the issue for investigation is one that relates to broadcasters and their responsibility for the fairness of content (principally an Ofcom matter), or some aspect of the premium rate service (principally an ICSTIS matter). Individual cases will be investigated on their merits and the adjudications will be published in the normal way by Ofcom and ICSTIS respectively.

Given the growing media reports of problems with premium rate usage in broadcasts, ICSTIS held an industry meeting on 8 March 2007. It was the view of the wide range of industry practitioners present, and Ofcom, that there was a need for short and medium-term action to address the issues of compliance and trust.

In the short term, all broadcasters agreed to audit their current and forthcoming services to ensure Code compliance and to report to ICSTIS on their findings within two weeks of our writing. ICSTIS is very grateful to broadcasters and their partners for the speed and apparent thoroughness with which they have audited services, and we will be following up with broadcasters and partners individually as necessary, especially where assurances have been provided which later appear to be misplaced.

The exercise added to our understanding of the sector and the different risks associated with services of varying size or nature and the different mechanisms for entry, most obviously red button, text and call-in participation. This has contributed to the proposals in this consultation paper.

In the medium term, ICSTIS proposed the introduction of a prior permission (licensing) regime for premium rate services when used in broadcasts.

A copy of the Press Release of 8 March 2007 issued following the industry meeting is at **Annex 1**, along with the subsequent letter to broadcasters from Sir Alistair Graham, Chairman of ICSTIS, of 12 March 2007.

The Ofcom Television PRS Inquiry

On 22 March Ofcom announced an inquiry into the use of premium rate services in television programmes. The inquiry is being led by Richard Ayre, a member of the Ofcom Content Board. ICSTIS is a member of the inquiry steering group. The inquiry is expected to report to the Ofcom Board and Content Board by early summer. The terms of reference are to be found at: www.ofcom.org.uk/media/news/2007/03/nr_20070322a.

ICSTIS and Ofcom have discussed the relationship between the Ofcom inquiry and ICSTIS' proposals following the 8 March meeting. The inquiry is intended to be a strategic analysis of the

benefits and risks to broadcasters of using premium rate services in programmes, and the effectiveness of broadcasters' compliance procedures. In looking at these issues, Ofcom's inquiry also examines consumer protection issues and attitudes, and the nature of premium rate supplier value chains.

ICSTIS' proposals, which form the basis of this consultation paper, focus on enhancing consumer protection through the introduction of a prior permission regime for providers of premium rate services. However, we recognise that broadcasters and production companies have an important role to play in the delivery of ICSTIS Code-compliant services. This paper therefore explores the issues involved in the value chain for delivery of Broadcast PRS and seeks feedback on how best these might be addressed in a prior permission scheme which has a primary focus on service providers.

As well as informing ICSTIS as to how we might best structure a prior permission scheme, the timing of the consultation is such that the public responses will also be available to Ofcom to consider as part of its deliberations following the outcome of the Ofcom inquiry, which is due to report in the early summer to the Ofcom Board and Content Board.

Section 3

Definition Of Premium Rate Services Used In Broadcasting And The Risks Associated With Such Services

Premium rate services included in the editorial content of broadcast output now take many forms, whether as a means for consumers to vote in a talent contest, a competition entry mechanism to give away a prize, or in, more niche channels, where the programme funding comes from the revenues from the telephone calls rather than commercial advertising. Examples of the latter include Call TV Quiz Services, as well as some channels dedicated to chat and auction services.

Accordingly, we would define the use of premium rate services in broadcast programming as 'Broadcast Premium Rate Services' that are:

"premium rate services which are promoted on television or radio and which provide a facility for interaction or the provision of information, whether in the form of votes, entries, bids or otherwise howsoever."

It is our proposal to require service providers (as defined in the ICSTIS Code) to obtain prior permission for Broadcast PRS. This is because of the additional risks associated with these services as explained below. We recognise that the definition of a Broadcast PRS is broad and captures all radio and television output involving a premium rate service. Our detailed consideration of this and how we propose to apply the new controls to Broadcast PRS which may already have permission to operate (e.g. Call TV Quiz Services) are set out in Section 4, along with detailed consideration of some specific areas which may also be captured by this definition.

In particular, while the definition is necessarily very broad in order to be all-embracing and future-proof, straightforward advertising for traditional premium rate services is caught by the definition and we would propose to exclude such services from the prior permission requirement as set out further below.

Q1. Do you agree with this definition of Broadcast Premium Rate Services? If not, why not and what would you propose instead?

There appear to be identifiable and broadly common characteristics associated with these services. These include:

- programmes that can attract large audiences with a high level of public engagement and trust in their premium rate services (which needs to be maintained),
- some services which are time-critical to a considerable extent, with winners, vote or poll decisions and outcomes often needed during programme time or within a short fixed time thereafter.

The risks

The reports of February and March 2007 highlighted a number of risks arising from Broadcast PRS. These have been clarified through our contacts with telephone networks, service providers, broadcasters, production companies and others. The risks were set out for the first time in a letter from Sir Alistair Graham, Chairman of ICSTIS, to leading broadcasters on 12 March 2007 (see **Annex 1**).

We set out below the core risks highlighted in that letter and how they are addressed by the conditions we propose to attach to any grant of prior permission.

Connectivity and capacity

Providers in the value chain recognise that there are different challenges with each of the mechanisms for entering a Broadcast PRS – for example, entering a competition or registering a vote. There are issues about how much time is needed after a service closes in order to deal with any latency, predominately in the mobile networks and other systems.

It is clear, for example, that different arrangements are needed to deal with the different timeframes for taking votes by text, red button and through conventional voice calls. It is also necessary to distinguish between the risk of a total network failure that could affect all calls and texts to the programme, and a failure that is specific to the premium rate calls and texting arrangements put in place for the service in question.

The former is something wholly beyond the control of those in the value chain. However, those seeking prior permission should have arrangements to minimise risks of the latter through arrangements to satisfy themselves that services are run so that votes or entries can be received, counted or considered in line with the call to action. The service provider will need to show that any general network limitations are properly considered and factored into the design of the service.

Managing closure times effectively is also another area of risk. Different service closure times may be necessary for different entry methods – most obviously the possible need to close the text entry route earlier given our understanding that there can be technical constraints and latency in mobile networks with respect to the handling of large-scale consumer texting to one shortcode. Processes need to be in place to ensure this is reflected, and not undermined, by the scripts and captions used during live broadcast. Simply put, votes should not be solicited at a point when it is certain entry methods have closed or are about to close and so have no realistic chance of being counted.

Issues and risks have also been identified about ‘closed lines’, as well as about the point at which lines are opened which may differ from when calls will be accepted and considered. There may be good reasons for opening lines early – for example, to test them from a technical perspective. Often, lines do not physically close at the deadline announced in the broadcast. The service will continue to take calls or texts but presenters tell viewers and listeners that the service “has closed”. Similarly, the message on the line will say that entries are closed. At this point entries are invalid and/or do not affect the outcome of the event. However, the call/text to receive the message in question is still charged at a premium rate.

There are arguments that closing a number or shortcode in ways that result in any sort of ‘engaged’ or ‘unobtainable’ message simply invites re-dials and that a dead tone may prompt fruitless calls to networks or to the broadcaster. We recognise the reasons why lines may be opened early and not closed immediately after the event in question.

However, we believe it is not easily justified to have lines open with premium rate costs to callers when the calls in question have no actual value to the caller, especially in the absence of clear warnings to viewers or listeners about opening and closing times. Our understanding is that it is easy to close landlines and revert to a ‘dead tone’ but this appears to be less straightforward with a mobile shortcode, although again not impossible.

We set out below the proposed conditions in respect of connectivity and capacity.

<p>Connectivity and capacity</p>	<p>There must be sufficient time for all valid responses sent by viewers or listeners to be considered and reflected in any outcome of the event (where there is one) which may then be reported on air.</p> <p>Where arrangements exist for the handling of excess peak traffic by additional parties, these arrangements must ensure that all valid votes and entries so handled are treated equally with those received by the primary party.</p> <p>Red button interactive calls made prior to the time announced for line closure must complete the relevant competition entry/vote count process.</p>
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Q2. What evidence do you have as to how serious and widespread a problem there is in respect of calls received either before lines are announced as open or after lines are ostensibly closed, and what steps could be taken to manage this problem in a way that limits callers from incurring costs without the benefits of receiving the service?

Q3. Do you agree with our proposed conditions for prior permission in relation to connectivity and capacity? Have we omitted anything that is critical to considering risk?

Conduct

We appreciate the excitement and entertainment value that can come from that last call to action in a programme as the vote, poll or bid is taken so that an editorial decision based on viewer participation and engagement can be made. We equally recognise and understand the practical technical network infrastructure issues and bottlenecks that can and do exist in telephony. This could result in outcomes that are incomplete and that effectively mean that some viewers are participating (at a cost) but without any effect.

For this reason, we are proposing to bring forward conditions as part of the prior permission application process which will ensure deadlines for announcing the outcomes of viewer participation allow sufficient time for all entries to be processed and taken into account whether they come via voice calls or SMS texts.

Furthermore, we propose to seek assurances through the prior permission process that procedures exist to ensure that all correct entries stand the same chance of success in a competition. We do not find it acceptable, and the Code of Practice does not allow it, for earlier entries to have any unknown advantage over later ones made within the set timeframe.

We propose to seek assurances that, where potential winners are chosen selectively from a shortlist, rather than randomly, by the service provider or programme-maker, the only reason for doing this will be to ensure compliance with the competition rules or broadcast regulations (e.g. on minimum age or use of language on air). It would not be acceptable to solicit unrestricted entries if programme-makers were intent on selecting a candidate/winner from a restricted group linked, for instance, to the likely audience profile.

In respect of competition services, in particular, we propose that those responsible maintain, as a minimum, records and evidence of winners (their name, address, phone number and prize awarded), together with material relating to the selection process, such as copies of timed and dated notifications of winners and the names of staff making the random selection. Such records should be retained for a period of 12 months from announcement of the winners. This will enable the provider to demonstrate that the competition was carried out in a fair and impartial manner in accordance with the Code of Practice.

Insofar as the outcomes of competitions have potentially major implications for contestants, we would welcome views on the case for introducing a requirement that they make use of independent third party verification and supervision for competitions where the prize is worth £5,000 or more. This is already widespread practice in the field of sales promotion. We invite views on making this norm a requirement for Broadcast PRS.

We set out below the proposed conditions for conduct.

Conduct	<p>Calls and SMS entries must not be accepted before lines have been announced as opened or continue to be accepted after an announcement that lines are closed has been made. After an announcement that the lines have been closed has been made, the lines must be closed.</p> <p>Terms and conditions must be comprehensive, clear and up-to-date, and all amendments made during the service must be appropriately publicised. It must be clear whether and, in which case, how amendments during the course of the service may be made. No amendments should be made retrospectively if they affect the position of existing entrants, including their decision to participate at all.</p> <p>Phone lines must not remain open when programmes are repeated and, in addition, the premium rate number should be obscured where possible.</p> <p>Viewers and listeners must not be led to believe that a recorded programme featuring premium rate participation is being broadcast live.</p> <p>Winning entrants for competitions must be randomly selected from all correct entries unless there is a tie-breaker or totally skill-based outcome.</p> <p>In any competition where a prize is worth £5,000 or more, there must be independent third party verification of the fairness of winner selection.</p> <p>Pre-broadcast selection of potential competition winners is not permitted unless necessary to prevent a contravention of competition rules or broadcasting regulations.</p> <p>In respect of competition services, records and evidence of winners and the distribution of prizes must be maintained for a minimum period of 12 months from closure of the competition.</p> <p>Customer service arrangements for handling participant enquiries should be in place.</p>
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Q4. Do you agree with our proposed conditions for prior permission in relation to conduct as set out above? Have we omitted anything that is critical to considering risk?

Cost and conditions

This is an area where the prior permission conditions we propose are generally re-affirmation of Code requirements, rather than them being unique to Broadcast PRS. These include the requirement that pricing is presented in a way that ensures the costs are clear, prominent, and easy to identify and understand. We expect service providers to have procedures in place that ensure they look in each case at the nature of the service/broadcast and ensure that the way costs are presented matches the character of the service and anticipated viewer or listener understanding of it.

A 50p cost for a vote on a TV show may be generally well understood if correctly promoted. However, a £1.50 text bid in an auction that appears to offer the viewer or listener the chance of winning a car for less than £20 (based on the proposition that the lowest unique bid wins) could be less evident, especially if this is 'hidden away' relative to the prominence given to the chance of securing a car for just £20.

Services which raise money for charity need to comply with the relevant sections of the 11th Edition of the Code of Practice (and by extension relevant legislation) in respect of the presentation of information on the charity and the amount of the proceeds from the service going to good causes.

Terms and conditions need to be freely available and should be presented in as clear a way as possible. Presentation of terms and conditions on the broadcast channel's website is acceptable but this should be clearly promoted on air. Terms and conditions are the foundation on which participation takes place. Where it becomes necessary to alter terms and conditions during the provision of a service, which should be exceptional, this should be appropriately publicised so that viewers and listeners are clear if the amendments have affected what future entrants need to do. Terms and conditions should not, however, be altered retrospectively so as to affect the position of people who have already paid to participate, including their actual decision to participate in the first place.

We set out below the proposed conditions for cost.

Cost	<p>Pricing information must be displayed in a way that is prominent, clear and accurate.</p> <p>It must be made clear that the cost of calling from different networks may vary including, where relevant, from fixed line operators who can and do charge 'set-up fees' for some premium rate services.</p> <p>Services involving a charitable donation must make clear how much of the call cost will go to charity and must otherwise accord with charity law.</p>
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Q5. Do you agree with our proposed conditions for prior permission in relation to cost and conditions as set out above? Have we omitted anything that is critical to considering risk?

Coherence

Services generally rely on arrangements involving a number of parties in a value chain including network operators (landline and mobile), premium rate service providers, production companies, agencies and broadcasters. It is important that those seeking general prior permission to run such services can demonstrate they understand the inter-relationships between the various parties, and have contracts and arrangements for inter-business dealings that ensure

coherence. This is to prevent, in particular, the risks that exist in managing text and call-handling and programme content in 'real time'.

We set out below the proposed conditions for coherence.

Coherence	<p>Contractual arrangements between broadcasters, production companies, service providers and other partners must clearly and coherently identify which person is responsible for the performance or management of each activity associated with the service.</p> <p>There must be no amendments to operational systems or procedures relating to the service without senior management authorisation.</p> <p>All staff, whether internal or employed by contractual partners, must have the ICSTIS Code of Practice drawn to their attention and have suitable training.</p> <p>Procedures must exist for the back-up of all operational systems and to deal with predictable problems inherent in providing Broadcast PRS.</p> <p>Subject to reasonable notice from ICSTIS, service providers must make provision for Executive staff of ICSTIS and/or its agents to visit the relevant premises from which the service is provided and have access to any records relevant to the provision of the service.</p>
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Q6. Do you agree with our proposed conditions for prior permission in relation to coherence as set out above? Have we omitted anything that is critical to considering risk?

The issues above relating to connectivity and capacity, conduct, cost and coherence are generally ones where the interaction between service providers, broadcasters and any production companies involved is key to ensuring compliance. These are areas, therefore, where the scope of any prior permission arrangement requires careful consideration. This matter is considered in detail in Section 5.

Section 4

Broadcast Premium Rate Services Requiring Permission And Proposals For Exemptions

In Section 3 we set out a proposed definition of Broadcast PRS. At the same time, we recognise that this is necessarily a broad definition designed to capture the wide variety of premium rate services used as part of the editorial content of programmes on television and radio. It is also intended to cover PRS that have yet to be devised.

We recognise equally that the majority of issues that have recently arisen with possible non-compliance relate to television. We are, however, also investigating a number of complaints involving premium rate usage on radio. We are aware that some in the radio sector are considering how they can satisfy themselves that current and planned services are compliant and we welcome such initiatives.

We take the view that the risks inherent in providing premium rate services in programmes on television exist in radio too. These inherent risks include the extended value-chain, call/entry/count urgencies and latency. The same issues exist in radio as in television on selection of entrants and winners and the award of prizes.

Q7. Do you agree with our analysis that the same inherent risks for premium rate use in programmes on television also exist in radio?

On this basis, it is our judgement that it is right to have a definition of Broadcast PRS that extends to radio in the generality, subject to our proposals below in respect of some niche services. As explained elsewhere in this paper, this should not constitute any additional compliance cost if the challenges are broadly identical and if the same service providers are generally involved.

Q8. Do you agree with our judgement that the definition of Broadcast PRS should specifically extend to radio for the reasons set out above? If not, why not?

Commercially advertised traditional premium rate services

The very broad definition of Broadcast PRS would, as it stands, include traditional premium rate services advertised on television or radio. We see no reason why such services should necessarily be included within a prior permission regime which is primarily concerned with services which enable interaction (for example, voting or competition entry) in the course of broadcast programmes. Accordingly, it is intended that premium rate services which are simply commercially advertised on television or radio but have no other characteristic making it likely that the problems of the sort described in Section 2 will arise should be excluded from the requirement to have prior permission to operate.

Call TV Quiz Services

These services fall within the definition of Broadcast PRS. The services have previously been recognised as posing additional risks to viewers and have generated a considerable amount of media and political interest and concern, as well as a sustained level of consumer complaint.

On 4 April 2007, ICSTIS issued a revised Statement of Expectations which it is intended will be backed by specific prior permission conditions. In addition, we recognise that many of the elements and risks identified in Section 3 above are equally relevant to Call TV Quiz Services. Accordingly, we will continue to require that Call TV Quiz services may be provided only on the basis of having a prior permission specific to the provision of Call TV Quiz Services. Under our

proposals, it would not be sufficient to have only Broadcast PRS prior permission in order to provide Call TV Quiz Services.

It is intended that some specific conditions proposed for Broadcast PRS, and which are not currently required by the Statement of Expectations, should be included as conditions applicable to prior permission for Call TV Quiz Services, notwithstanding the revised Statement of Expectations issued on 4 April 2007. Specifically, these are:

- Terms and conditions must be comprehensive, clear and up-to-date, and all amendments made during the service must be appropriately publicised. It must be clear whether and, in which case, how amendments during the course of the service may be made. No amendments should be made retrospectively if they affect the position of existing entrants, including their decision to participate at all.
- Phone lines must not remain open when programmes are repeated and, in addition, the premium rate number should be obscured where possible.
- Contractual arrangements between broadcasters, production companies, service providers and other partners must clearly and coherently identify which person is responsible for performance or management of each activity associated with the service.
- Subject to reasonable notice from ICSTIS, service providers must make provision for Executive staff of ICSTIS and/or their agents to visit the relevant premises from which the service is provided and have access to any records relevant to the provision of the service.

Q9. Do you agree with our proposal to require providers of Call TV Quiz Services to continue to obtain prior permission specific to Call TV Quiz Services but that we include in the existing permission certificates for providers of such services the above conditions? If not, why not?

Auction services

An auction is the process of buying and selling things by offering them up for bids, taking bids and then selling the item to the highest bidder. A reverse auction (which can go by other names, such as lowest unique bid auction) is a type of auction in which the roles of the buyer and seller are reversed, with the primary objective to drive purchase prices downward. Both variants are used on television with premium rate services being the means of bidding. The auctions tend to be time-limited, the goods are often restricted in quantity for each sale and all entrants pay to take part regardless of whether they are successful in buying the item for sale.

Such services appear to raise near identical issues to competitions and other forms of premium rate service used in broadcasting, and have similar risks. There are risks over whether 'paid-for bids' are received in time and are always properly considered. There is legitimate interest over the outcome of auctions – over whether the product auctioned was properly promoted and went to the rightful bidder.

For these reasons, we are minded to include auction channels and services in the proposed arrangements.

Q10. Do you agree with our assessment that Broadcast PRS involving auctions should be included with the need to obtain prior permission? If not, why not?

Music channels where viewers or listeners use premium rate to select video or songs to be played on air

Some broadcast services allow participants to select the song or music video playlist on the basis of the most popular requests made through premium rate phone calls or texts to the

programme. All participants pay regardless of whether their chosen song or video gets to the playlist.

Such services appear to raise near identical issues to competitions and other forms of premium rate service used in broadcasting, and have similar risks. There are risks over whether votes to secure the desired playlist choice are received in time and are always properly considered.

Q11. Do you agree that music channels using premium rate votes to determine playlists from participants should be included with the need to obtain prior permission? If not, why not?

Participation services with a charitable element

There are additional compliance issues relating to charitable giving, whether that is the primary purpose or subsidiary element of the call to action in a broadcast. In each case, requirements arise in terms of the ICSTIS Code of Practice and the need to comply with charity law. Public concern can be generated if there is a perception that such services, initially at least, appear to operate in ways that are not Code-compliant or raise issues about the amount of the cost of the call that goes to the good cause.

For this reason, we believe it right to include such services with the definition of Broadcast PRS.

Q12. Do you agree with our analysis that premium rate services involving charitable giving and donations should be included with the need to obtain prior permission? If not, why not?

Chat services

There are some niche digital channels which allow viewers to converse ('chat') with the presenters of the programme in a live environment. The calls to the presenters are at premium rate.

Such services involve live conversation so are already subject to prior permission from ICSTIS. Additionally, they are subject to the requirement to put in place payments into a bank-secured bond and a common compensation scheme, from which claims for compensation involving the unauthorised use of the telephone may be paid. Given the regime already in place to manage these services, backed by bespoke prior permission conditions, we do not at this time propose to require such services to obtain any additional prior permission.

Q13. Do you agree with our assessment as to why we suggest that chat services should be excluded from the prior permission regime proposed in this paper? If not, why not?

Other services

As has been made clear earlier, we recognise that there can be a wide variety of Broadcast PRS as caught by the definition set out in Section 3. We do not propose to list each and every one in this document. However, if there are other categories of service which fall within the definition but which might be excluded from the need to obtain prior permission, we would welcome information as to (a) what they are and (b) why they present a lower risk than the generality of Broadcast PRS as defined, such that subjecting them to the process of prior permission would be disproportionate.

Q14. Do you consider that there are other categories of service which fall within the definition of Broadcast PRS but which should not be required to obtain prior permission?

Section 5

The Prior Permission Process

We are proposing a prior permission regime based on applicant service providers seeking permission to provide Broadcast PRS regardless of how many such services they may operate. This will remove the time critical aspect which would be involved if each separate service required permission. It should also minimise the bureaucracy and costs associated with applying for permission – see also Section 6 for an Impact Assessment. At the same time, however, it should not undermine the value of the permission process itself in terms of complying with the draft conditions set out in Section 3.

In proposing this arrangement, we also recognise that other parties in the value chain, such as production companies and broadcasters, can have a very important role to play in ensuring that the service is delivered in a way that viewers and listeners expect and is compliant with the ICSTIS Code of Practice. This section therefore explores the issues involved in the value chain and sets out how ICSTIS' Code of Practice currently deals with information providers who, in this context, may be a production company and/or broadcaster, and raises questions about the most effective way of ensuring compliance with the Code, including by broadcasters and/or production companies.

Paragraph 5.1.1 of the Code enables ICSTIS to require that particular categories of service must not be provided without its prior written permission for any service within that category. Prior permission may be granted subject to the imposition of additional conditions and a breach of any condition imposed will itself be a breach of the Code (paragraph 5.1.3).

Dealing with the value chain of Broadcast PRS

We recognise that various different players may be involved in the provision of Broadcast PRS. Commonly, there will be a service provider which contracts with a network enabling it to provide the PRS service; broadcasters and/or production companies then use the PRS to obtain votes or competition entries or to enable other interaction with the public. However, the broadcaster might itself contract directly with a network and so itself become a service provider, or there may be (and commonly will be) other parties involved between the service provider and the broadcaster.

ICSTIS deals with network operators, service providers and information providers. Broadcasters and/or production companies are likely to be classed as information providers. They provide the content of Broadcast PRS (e.g. the opportunity to vote to determine the winner of a talent contest). To the extent that broadcasters may be defined as information providers by ICSTIS, they are already obliged to comply with the ICSTIS Code of Practice and this has been recognised in investigations previously carried out by ICSTIS when broadcasters have chosen to engage directly with ICSTIS in relation to Code breaches.

It is not unusual in the premium rate industry that a service provider does not deal directly with the content of services despite having responsibility under the ICSTIS Code for compliance with Code provisions. However, service providers are explicitly liable for the actions of their information providers. Because of this, service providers commonly protect themselves through contractual arrangements under which information providers accept responsibility for ICSTIS Code breaches and their consequences. Service providers also generally have financial control in respect of money passing to information providers.

In the case of Broadcast PRS, however, arrangements with broadcasters do not appear to be typical of the premium rate industry. The pressures of live broadcasting and audience involvement can lead to priority being accorded to the perceived need to maintain dramatic impetus in shows. This is in the context of broadcasters occupying a unique, highly-visible and

trusted place in relation to viewers and listeners. This can lead to unfortunate consequences, especially if the party held responsible by ICSTIS – the service provider – has a limited role and a lower status in the broadcast element of the provision of the delivery of the premium rate service.

As can be seen from our analysis of the proposed conditions in Section 3, there are a number of elements where broadcasters or programme producers need to act to comply with those conditions in order for there to be adequate consumer protection in place.

In imposing a prior permission regime on service providers, ICSTIS will need to be sure that, in the arrangements made between service providers and information providers, there is real clarity to show that the prior permission conditions have been understood, and that responsibilities for the service, promotion and delivery are clear. Accordingly, we propose that, for ICSTIS to be assured that clear arrangements are in place to enable compliance with the Code and the conditions for prior permission, ICSTIS needs either to assess those arrangements itself or to be reliably assured as to their operation.

We propose, therefore, that service providers who have previously provided Broadcast PRS and in respect of which ICSTIS is not aware of any breaches of the Code being under investigation or having occurred relating to the provision of Broadcast PRS, ICSTIS would be willing to accept assurances that responsibilities to deal with the different conditions set out in **Annex 2** are understood and that the role of the different parties in relation to each of the conditions is clear. If a service provider has not previously provided Broadcast PRS, ICSTIS is willing to accept adequate assurances in respect of new documentation which is to be used in the establishment of arrangements between the parties.

ICSTIS intends that such assurances should be provided by a suitably-qualified person and would expect that such a person would be a qualified solicitor, barrister or accountant. Alternatively, ICSTIS will consider the documentation itself but this will involve additional charges for the prior permission to defray the direct expenses that ICSTIS incurs in carrying out that task.

Once permission has been granted for a service provider to provide services with a particular information provider, the permission would cover any services provided by that service provider for that information provider. Where there is a different information provider, however, the documentation in relation to the arrangements with that information provider would also need to be certified.

We do recognise that this approach, while improving matters, may well leave service providers, to a considerable extent, in the hands of information providers in respect of compliance and that service providers may still, in reality, have little direct control.

While ICSTIS identifies information providers in its Code and imposes a general duty to comply, it regulates them directly only in limited circumstances.

Within the processes set out in Part 8 of the Code, a mechanism is set out where ICSTIS can deal directly with information providers where they accept responsibility for the service and/or its promotion and undertake that, if a breach is established and a sanction or administrative charge is imposed, they will be responsible for compliance and/or payment. Should the information provider fail to discharge any such obligations, the service provider remains responsible. This is set out in paragraphs 8.1.4 and 8.5 of the Code.

The cases may only proceed against information providers if ICSTIS accepts that the cases are ones where it is appropriate for it to deal with the information provider. In addition, if ICSTIS identifies the case at any time as one which ought to be dealt with directly by the service provider (typically, in a case where investigation reveals that the fault lay with the service

provider rather than the information provider), ICSTIS may require the service provider to answer directly.

In the light of these provisions, which came into existence only with the coming into force of the 11th edition of the Code, there is a route under which it would be possible to take a different course in respect of the regulation of Broadcast PRS. It would be possible to require that, as part of the requirements that would have to be fulfilled to obtain prior permission, service providers could be required to provide an undertaking given by the broadcaster or production company, as information provider, which would accept that it would step forward to deal directly with ICSTIS in respect of breaches of the Code or of the conditions. It would apply where that broadcaster or production company, as information provider, had apparently been responsible for a breach of the Code or of the relevant conditions. If no such undertaking was provided, permission would be declined and that broadcaster or production company would not have access to premium rate facilities.

It has to be recognised of course that, while broadcasters are obliged to comply with the Code, whether as information providers or under the terms of the Ofcom Broadcasting Code (to which they are subject), ICSTIS does not regulate broadcasters directly unless they happen to be service providers themselves. Accordingly, there could be risks of non-compliance arising both under the ICSTIS Code of Practice or the prior permission conditions on the one hand and the Ofcom Code on the other if this suggestion was to be pursued. Accordingly, any risk of double jeopardy to broadcasters would have to be acknowledged and robust arrangements would need to be in place to deal with that risk.

Q15. Do you agree with our proposals to introduce prior permission for Broadcast PRS where the primary focus of the need to obtain prior permission will be on service providers alone? If not, why not?

Q16. Do you have any suggestions about how the effectiveness of the proposed prior permission regime might be improved?

Q17. What thoughts or suggestions do you have as to whether or not it would be sensible to engage broadcasters and/or production companies (when information providers) directly within the prior permission regime by causing them to accept, in effect, a position where they are directly answerable to ICSTIS for Code and condition breaches?

More than one service provider

On occasions, there will be more than one service provider engaged in the provision of a particular service. Where that happens to deal with overflow capacity and this is contracted-for with the lead service provider, ICSTIS will deal with the lead service provider only. Where there is more than one service provider in order to provide different elements of the service, such as text voting and telephone voting, each service provider in this scenario will need to obtain prior permission.

All permission certificates granted by ICSTIS set out the relevant conditions which apply in respect of that permission, and also make clear that such permission may be withdrawn or varied on reasonable grounds and with notice in writing.

Monitoring and inspection

At the 8 March 2007 meeting held with industry providers, ICSTIS undertook to create a programme of monitoring and inspection of competition and voting services. We are proposing to include in the prior permission arrangement provisions entitling ICSTIS to inspect service provider and information provider operations in respect of Broadcast PRS and matters relating to those services.

Other Code provisions

Where the prior permission certificate is granted, the services will additionally continue to be subject to the general provisions of the ICSTIS Code of Practice.

The process for introducing the requirements for prior permission for Broadcast PRS, if it is still considered necessary following the consultation and recommendations from ICSTIS and the Ofcom inquiry, is that a Notice substantially in the form set out in **Annex 3** would be published. It may then be expected that the prior permission requirement will come into effect **four weeks** after the publication of that Notice. A detailed timetable for receiving and processing applications for prior permission would be published with any final Notice.

Section 6

Business And Consumer Impact Assessment

In proposing the need for prior permission for Broadcast PRS, we recognise that there are compliance costs in relation to some of the arrangements proposed.

Service providers

If the proposals in this consultation are agreed, they will involve service providers in certain costs associated with making their application for permission. These will include the costs associated with the application itself to ICSTIS (£350), plus the costs associated with the time involved in completing it and any necessary paperwork.

We are proposing that a single approval be issued to each service provider, covering all the services they operate within the definition. We estimate that the time involved in completing and submitting an application should be no more than one day Full Time Equivalent. Using a notional hourly charge of £75, we assume staff costs of around £750 per applicant. We assume separate service provider legal costs of £500 per applicant to certify applications.

Insofar as further work is involved in extending the prior permission to cover additional broadcasters, the further documentation will have to be provided and certificated. However, given that the documentation is likely to be very similar on each occasion, the cost to the service provider of the certification process should be less than the estimated £500 for extensions of permission to enable service providers to work with additional broadcasters.

Overall this suggests costs of £1,600-£2,000 per application. Our current assumption is that there will be about 40 service providers seeking permission certification. This suggests a one-off compliance cost of £80,000.

Having pre-consulted with many providers in the value chain about these proposals, we are of the view that the additional costs associated with compliance changes necessary to ensure that the draft conditions can be met should be limited, as most providers have advised us that these activities are largely completed now. We recognise that there may be some additional costs associated with checking compliance internally in order to prevent further problems and non-compliance from arising. We would welcome views on the likely impact of any additional compliance costs foreseen by providers as a consequence of these proposals.

Information providers/broadcasters

The conditions which have been identified above as conditions which would apply to prior permission to operate Broadcast PRS do include elements to which broadcasters will need to have regard. These, in turn, could have implications for production companies and other parties in the value chain. We believe broadcasters will wish to exercise at least the same degree of diligence in relation to their engagement with the application process. Broadcasters do not face application fees but we assume they will incur higher due diligence legal costs and equivalent internal staff costs. In addition, broadcasters may be engaged in additional diligence checks in relation to their service provider partners. And we assume individual broadcasters will have multiple relationships with different service providers.

Network operators

We do not believe there are additional compliance costs for networks in the regime proposed. Networks are required to carry out due diligence on their service provider partners but we assume the service providers in this case are already known to the networks and that there are *de minimis* costs to networks in checking that partners have the necessary certificate of permission to operate.

Set against these costs are the potential benefits that may be derived for consumers (and ultimately to the same businesses) from increased usage of these services arising from improved listener/viewer trust and confidence in them. Our best estimates of the total size of the Broadcast PRS market is £270m annually. Using this figure as a base, a 5% increase in participation by telephone entrants (assuming improved trust) would generate an increase of £13.5m per annum in revenues to these programmes collectively. Indeed, every 1% movement in response – whether up as confidence expands or down if action is not taken or confidence is damaged now or in the future – has a ‘value’ of over £2.5 million. We have not sought to calculate the cost to networks, broadcasters and others in handling public complaints or the cost of engaging with avoidable enforcement actions. Both costs should fall if the arrangements proposed and other actions have an effect.

Small business impacts

While the size of market players varies, this is generally a sector where all businesses are of a relatively substantial size ranging from around 40 staff for some bureau and aggregator businesses to the thousands who work for leading broadcasters. The requirements of the proposed regime are generally universal. We did, however, feel it right not to impose third party validation requirements on competitions with modest prizes as these pose smaller risks of widespread harm. This approach seems likely to remove the threat of unnecessary additional cost to smaller competitions.

We would be interested to hear from stakeholders as to any data they can share with us about both the market size generally and the actual costs involved in the proposed regulatory changes set out in this paper. The more information we have on this, the better able we will be to judge whether the steps we propose are grounded in measurable benefits as well as being proportionate.

Section 7

Conclusion And Next Steps

On 8 March 2007 we committed to introducing an appropriate regime for prior permission for premium rate services used in broadcasting in June 2007. Such a prior permission system would define where responsibility for compliance with the ICSTIS Code of Practice lies so that viewers and listeners can have absolute confidence in services. It was acknowledged during the meeting of 8 March that any such arrangement would depend on all broadcasters, and need to be underpinned by them to some degree.

In light of Ofcom's announcement of an inquiry on 22 March 2007, ICSTIS and Ofcom have agreed that no final decision should be made until the inquiry is complete and the outcome known. However, we have also agreed that there is benefit in ICSTIS consulting now on the principles of a prior permission regime as one possible way forward to improved compliance. We would expect to make our conclusions known soon after publication of the outcome of Ofcom's inquiry.

Should a prior permission regime be considered the best course of action, we are required to give reasonable notice of such requirements. We would aim to confirm the intended scope of the prior permission regime as soon as possible and to give service providers four weeks thereafter in which to submit applications to cover their businesses.

On this basis, we are seeking comments on this document and on the draft conditions at **Annex 2 by 5:00pm on Tuesday 12 June 2007 (four weeks from the date of issue of this document)**. We recognise that this is a shorter consultation than normal but also that the matter has been the subject of intense discussion and consideration within all the relevant parts of the industry for some time. We believe this strikes an appropriate balance between urgency and care. The timing will also mean that individual public responses to the consultation can also be made known to Ofcom and that it can consider them along with the outcomes of the Ofcom inquiry.

Section 8

Questions For Stakeholders

The following questions appear through the body of the consultation document:

Q1. Do you agree with this definition of Broadcast Premium Rate Services? If not, why not and what would you propose instead?

Q2. What evidence do you have as to how serious and widespread a problem there is in respect of calls received either before lines are announced as open or after lines are ostensibly closed, and what steps could be taken to manage this problem in a way that limits callers from incurring costs without the benefits of receiving the service?

Q3. Do you agree with our proposed conditions for prior permission in relation to connectivity and capacity? Have we omitted anything that is critical to considering risk?

Q4. Do you agree with our proposed conditions for prior permission in relation to conduct as set out above? Have we omitted anything that is critical to considering risk?

Q5. Do you agree with our proposed conditions for prior permission in relation to cost and conditions as set out above? Have we omitted anything that is critical to considering risk?

Q6. Do you agree with our proposed conditions for prior permission in relation to coherence as set out above? Have we omitted anything that is critical to considering risk?

Q7. Do you agree with our analysis that the same inherent risks for premium rate use in programmes on television also exist in radio?

Q8. Do you agree with our judgement that the definition of Broadcast PRS should specifically extend to radio for the reasons set out above? If not, why not?

Q9. Do you agree with our proposal to require providers of Call TV Quiz Services to continue to obtain prior permission specific to Call TV Quiz Services but that we include in the existing permission certificates for providers of such services the above conditions? If not, why not?

Q10. Do you agree with our assessment that Broadcast PRS involving auctions should be included with the need to obtain prior permission? If not, why not?

Q11. Do you agree that music channels using premium rate votes to determine playlists from participants should be included with the need to obtain prior permission? If not, why not?

Q12. Do you agree with our analysis that premium rate services involving charitable giving and donations should be included with the need to obtain prior permission? If not, why not?

Q13. Do you agree with our assessment as to why we suggest that chat services should be excluded from the prior permission regime proposed in this paper? If not, why not?

Q14. Do you consider that there are other categories of service which fall within the definition of Broadcast PRS but which should not be required to obtain prior permission?

Q15. Do you agree with our proposals to introduce prior permission for Broadcast PRS where the primary focus of the need to obtain prior permission will be on service providers alone? If not, why not?

Q16. Do you have any suggestions about how the effectiveness of the proposed prior permission regime might be improved?

Q17. What thoughts or suggestions do you have as to whether or not it would be sensible to engage broadcasters and/or production companies (when information providers) directly within the prior permission regime by causing them to accept, in effect, a position where they are directly answerable to ICSTIS for Code and condition breaches?

Section 9

Responding To The Consultation

We are seeking the views of all stakeholders on the proposals and questions contained in this paper by no later than **Tuesday 12 June 2007 (four weeks from the date of issue of this document)**.

Where possible, comments should be submitted in writing and sent by e-mail to jharris@icstis.org.uk. Copies may also be sent by mail or fax to:

James Harris
Head of Industry Support
ICSTIS
Clove Building
4 Maguire Street
London SE1 2NQ

Tel: 020 7940 7465
Fax: 020 7940 7456

If you have any queries about this consultation, please telephone or e-mail James Harris using the above contact details.

Confidentiality

We plan to publish the outcome of this consultation and to make available all responses received. If you want all or part of your submission to remain confidential, you must make a specific request for this, along with your reasons for making the request.

Annex 1 ICSTIS Press Release Of 8 March 2007

PRESS RELEASE



Clove Building
4 Maguire Street
London SE1 2NQ

Tel: 020 7940 7474
Fax: 020 7940 7456
Press Office: 020 7940 7408
Email: pressoffice@icstis.org.uk
Web: www.icstis.org.uk

For immediate release: Thursday 8 March 2007

ICSTIS ANNOUNCES MEASURES TO RESTORE PUBLIC TRUST IN PARTICIPATION TV

ICSTIS, the premium rate services regulator, has announced a number of immediate and future actions that will be taken to restore public trust in the premium rate participation TV sector.

The need for change has been agreed following a meeting with leading broadcasters, programme makers and premium rate service providers. The urgent meeting was convened by ICSTIS in the wake of the recent serious allegations made against a number of participation TV services, and looked at how the recent problems came about and at what needed to be done to prevent them happening again.

Speaking at today's meeting, ICSTIS Chairman Sir Alistair Graham said: "There is no doubt that the public thoroughly enjoys taking part in premium rate competitions and votes on television. However, there is equally no doubt that public trust and confidence in these services has been damaged by the allegations that have been made in the last few weeks.

"It is in everyone's interest to ensure that services are reliable and trustworthy as well as entertaining and fun. Ensuring viewers get a fair deal is ICSTIS' absolute priority. However, responsibility for this achieving this does not just rest with us. Premium rate service providers,

programme makers and broadcasters all have a major role to play in this area, and I am pleased that everyone present today wholeheartedly supports this view.”

The immediate and future actions agreed include:

- By the end of Monday 12 March, ICSTIS will write to all broadcasters and their partners confirming their commitment to carry out, as an absolute priority, a review of their current and forthcoming participation TV programming to ensure there is no risk of consumer harm. The letter from ICSTIS will identify the risks which it expects to be covered in each review. The findings of each review are to be reported to ICSTIS within two weeks.
- The introduction of systematic monitoring by ICSTIS and inspections to ensure services are being run as they should.
- ICSTIS expects the publication of complete, accurate and easily understood rules for all competition services.
- The introduction of a licensing regime for all premium rate service providers operating participation TV services within three months. Such a licensing system will define where responsibility for compliance with the ICSTIS Code of Practice lies so that viewers can have absolute confidence in services.
- This arrangement would depend on and be underpinned by all broadcasters fulfilling their duty to ensure that all programmes comply with the ICSTIS Code of Practice, and taking action to demonstrate this.
- As part of establishing a licensing regime, ICSTIS will explore with the industry the benefit of introducing a trust mark or quality standard to build long-term public trust in services.
- An ongoing dialogue with the industry to ensure that the measures implemented are working and are being adhered to.

– ends –

Letter To All Broadcasters And Partners Of 12 March 2007



Clove Building
4 Maguire Street
London SE1 2NQ

Tel: 020 7940 7474
Fax: 020 7940 7456
Press Office: 020 7940 7408
Web: www.icstis.org.uk

12 March 2007

Dear Colleague,

Participation TV: restoring consumer trust and confidence

At our Participation TV Summit on 8 March, all present agreed that ICSTIS would write to broadcasters, who would, in turn, liaise with their partners, confirming the commitment broadcasters gave to carry out, as an absolute priority, a review of their current and forthcoming participation TV programming. This is to ensure that there is no risk of consumer harm. We agreed to set out the risk areas that we expect you to cover in these reviews. It was also agreed that the findings of the reviews are to be reported to ICSTIS within two weeks (i.e. by no later than Monday 26 March 2007). This was one of seven actions which were agreed following the Summit, and, as a reminder, I attach to this letter a full summary of the points which were helpfully agreed in both the short and longer-term to restore trust in Participation TV.

I very much welcome the actions already taken by many broadcasters who, in advance of the Summit, had undertaken such reviews, some using independent external parties. Clearly all parties are keen to ensure that consumers can use this popular means of TV participation with trust and confidence.

In respect of risk areas that need to be covered, we have identified five which derive principally from our Code of Practice (11th Edition). We are not best placed to quantify either the *probability* of these risks materialising, nor can we easily attempt to quantify the *consumer detriment or losses in monetary, reputation or other terms* that may be at stake. Clearly, these can be considerable. We believe that broadcasters and their partners are best placed to undertake such assessments and act on the analysis accordingly.

We have identified risks under the five broad headings set out below. This is not exhaustive and you may know of other issues unique to your company, but we believe it is a good platform for considering the matters:

Connectivity

- Network routing and network congestion causes delays in vote counts for IVR and SMS.

- Peak traffic overflow arrangements are not robust or do not match the potential demand for participation.

Content

- Votes not counted in time for live announcements and assumptions are made in the absence of complete data.
- Entries for competitions not considered even when made before the closing date/time.
- Terms and Conditions are not comprehensive, are unclear, ambiguous or out of date.
- Terms and Conditions are altered mid-way through the service and not communicated, resulting in viewers incurring call costs on an erroneous basis.
- Phone lines remain open when programmes are repeated and it is not made clear that “lines are now closed” on screen.
- In competitions, processes do not exist to minimise the risk of rigging.
- In competitions, fulfilment arrangements for paying prizes are not in place.

Cost

- Pricing information is not displayed in a way that is prominent, clear or accurate.
- It is not made clear that calls from some networks may vary. Most networks now charge set-up fees for all premium rate services and, in the case of mobile networks, the costs will almost certainly vary.
- Services involving a charitable donation do not make clear how much of the premium rate call cost will go to the good cause and do not otherwise accord with charitable law.

Contact

- Data capture issues for participants are defective.
- Customer service arrangements for handling viewer enquiries are not effective.

Value chain responsibilities

- Contractual and other responsibilities as separated between the broadcaster, production company, telecoms service provider and potentially other partners, are not clear, nor are they governed by well-understood processes, procedures or protocols designed to minimise problems.

Separate to this, it will be for each company to determine, having regard to their assessment of risk, how far they may wish to consider retrospectively Participation TV services that have now ended. Evidence of recent problems may prompt such a retrospective assessment and some companies have already factored this into their reviews.

If, as a consequence of undertaking this review, shortcomings are identified which may, or may not, involve breaches of the ICSTIS Code of Practice, I would expect to be notified in your response as to the steps you and/or your partners will take to remedy such problems. Clarity of timescales for making necessary changes will also be required. Clearly, if alleged Code breaches are identified, an investigation by ICSTIS into the nature, type and seriousness of those alleged breaches will be necessary.

So that we might be clear about the scope of your review, when responding it would be helpful if you would provide:

- (i) A list of partners in the Participation TV value chain who were included in your review and their responsibility (e.g. as producers and telecoms service providers).
- (ii) A list of all programmes (current and forthcoming) that were included in your review.
- (iii) Any other aspects that were considered in your review.

I should confirm that the contents of the review response you make will be treated as confidential and that we will apply our Code of Practice provision on confidentiality. This states:

1.5 Confidential information (such confidentially being judged on an objective basis) received by ICSTIS will be kept in confidence by ICSTIS and will not be divulged to any third party other than ICSTIS employees, professional advisers and Ofcom or other proper authority without consent (such consent not being unreasonably withheld or delayed). ICSTIS may divulge such information if it is necessary for it to do so in order to discharge its responsibilities under this Code or for the purpose of prevention of fraud or because disclosure is required by law.

Another action agreed at the Summit was that ICSTIS expects the publication of complete, accurate and easily understood rules for all competition series. In responding to the review, *I would be grateful if you would confirm what steps you may be considering taking to ensure that this is done either by yourselves or by partners.*

Finally, a number of broadcasters and partners helpfully offered the opportunity for us to visit their companies so that we could discuss the detail of your Participation TV operations. I would welcome contact details so that we can pursue this.

I very much look forward to hearing from you and would ask that your responses are sent in confidence to my PA, Dawn Walton, at ICSTIS by 26 March 2007. Dawn can be e-mailed at dwalton@icstis.org.uk or telephoned on 020 7940 7402.

Yours sincerely,

A handwritten signature in black ink that reads "Alistair Graham". The signature is written in a cursive, flowing style.

SIR ALISTAIR GRAHAM
Chairman

Enc.

**SUMMARY OF ACTIONS AGREED
AT THE PARTICIPATION TV SUMMIT
ON 8 MARCH 2007**

- By the end of Monday 12 March, ICSTIS will write to all broadcasters and their partners confirming their commitment to carry out, as an absolute priority, a review of their current and forthcoming participation TV programming to ensure there is no risk of consumer harm. The letter from ICSTIS will identify the risks which it expects to be covered in each review. The findings of each review are to be reported to ICSTIS within two weeks.
- The introduction of systematic monitoring by ICSTIS and inspections to ensure services are being run as they should.
- ICSTIS expects the publication of complete, accurate and easily understood rules for all competition services.
- The introduction of a licensing regime for all premium rate service providers operating participation TV services within three months. Such a licensing system will define where responsibility for compliance with the ICSTIS Code of Practice lies so that viewers can have absolute confidence in services.
- This arrangement would depend on and be underpinned by all broadcasters fulfilling their duty to ensure that all programmes comply with the ICSTIS Code of Practice, and taking action to demonstrate this.
- As part of establishing a licensing regime, ICSTIS will explore with the industry the benefit of introducing a trust mark or quality standard to build long-term public trust in services.
- An ongoing dialogue with the industry to ensure that the measures implemented are working and are being adhered to.

Annex 2

Draft Conditions For Broadcast Premium Rate Services

CORE RISK	CONDITIONS
<p>Connectivity and capacity</p>	<p>There must be sufficient time for all valid responses sent by viewers or listeners to be considered and reflected in any outcome of the event (where there is one) which may then be reported on air.</p> <p>Where arrangements exist for the handling of excess peak traffic by additional parties, these arrangements must ensure that all valid votes and entries so handled are treated equally with those received by the primary party.</p> <p>Red button interactive calls made prior to the time announced for line closure must complete the relevant competition entry/vote count process.</p>
<p>Conduct</p>	<p>Calls and SMS entries must not be accepted before lines have been announced as opened or continue to be accepted after an announcement that lines are closed has been made. After an announcement that the lines have been closed has been made, the lines must be closed.</p> <p>Terms and conditions must be comprehensive, clear and up-to-date, and all amendments made during the service must be appropriately publicised. It must be clear whether and, in which case, how amendments during the course of the service may be made. No amendments should be made retrospectively if they affect the position of existing entrants, including their decision to participate at all.</p> <p>Phone lines must not remain open when programmes are repeated and, in addition, the premium rate number should be obscured where possible.</p> <p>Viewers and listeners must not be led to believe that a recorded programme featuring premium rate participation is being broadcast live.</p> <p>Winning entrants for competitions must be randomly selected from all correct entries unless there is a tie-breaker or totally skill-based outcome.</p> <p>In any competition where a prize is worth £5,000 or more, there must be independent third party verification of the fairness of winner selection.</p>

<p>Conduct (continued)</p>	<p>Pre-broadcast selection of potential competition winners is not permitted unless necessary to prevent a contravention of competition rules or broadcasting regulations.</p> <p>In respect of competition services, records and evidence of winners and the distribution of prizes must be maintained for a minimum period of 12 months from closure of the competition.</p> <p>Customer service arrangements for handling participant enquiries should be in place.</p>
<p>Cost</p>	<p>Pricing information must be displayed in a way that is prominent, clear and accurate.</p> <p>It must be made clear that the cost of calling from different networks may vary including, where relevant, from fixed line operators who can and do charge 'set-up fees' for some premium rate services.</p> <p>Services involving a charitable donation must make clear how much of the call cost will go to charity and must otherwise accord with charity law.</p>
<p>Coherence</p>	<p>Contractual arrangements between broadcasters, production companies, service providers and other partners must clearly and coherently identify which person is responsible for the performance or management of each activity associated with the service.</p> <p>There must be no amendments to operational systems or procedures relating to the service without senior management authorisation.</p> <p>All staff, whether internal or employed by contractual partners, must have the ICSTIS Code of Practice drawn to their attention and have suitable training.</p> <p>Procedures must exist for the back-up of all operational systems and to deal with predictable problems inherent in providing Broadcast PRS.</p> <p>Subject to reasonable notice from ICSTIS, service providers must make provision for Executive staff of ICSTIS and/or its agents to visit the relevant premises from which the service is provided and have access to any records relevant to the provision of the service.</p>

Annex 3

Draft Notice Advising Of ICSTIS' Decision To Make Broadcast Premium Rate Services A Class Of Premium Rate Service That Requires Permission Under Paragraph 5.1.1 Of The ICSTIS Code Of Practice (11th Edition)



DRAFT NOTICE Prior Permission for Broadcast Premium Rate Services Issued by ICSTIS on: xx xx 2007

Introduction

Paragraph 5.1.1 of the 11th Edition of the ICSTIS Code of Practice states that:

"ICSTIS may require that particular categories of service must not be provided without its prior permission for any service within that category. ICSTIS will give reasonable notice of such a requirement and the category of service to which it applies, and will publish a full list of such service categories from time to time. Prior permission may be granted subject to the imposition of additional conditions. Such permission may be withdrawn or varied upon reasonable grounds and with notice in writing."

ICSTIS hereby gives notice that, with effect from **xx xx 2007 (four weeks from the date of issue of this document)**, Broadcast Premium Rate Services will be an additional category of service that cannot be provided without ICSTIS' prior permission. Broadcast Premium Rate Services are defined as:

"premium rate services which are promoted on television or radio and which provide a facility for interaction or the provision of information, whether in the form of votes, entries, bids or otherwise howsoever."

If you are unsure whether your service requires permission or not, you are strongly urged to contact the ICSTIS Executive.

Further information

Contacting the Executive:

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