

GCap Media plc Response to ICSTIS Consultation “Introducing Prior Permission For Premium Rate Services Used In Television And Radio Programmes” (the “Consultation”)

Introduction

GCap Media plc (“GCap Media “or “We””) is a radio licence holder and broadcaster in the UK. We have for some years used premium rate services in our competitions and programming and have always striven to abide by all Ofcom and ICSTIS guidelines and codes. We have followed carefully the recent industry and press focus on premium rate services which has been principally targeted towards television; television is a far higher user of premium rate services than radio.

Our responses to the questions posed by the Consultation are as follows.

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

We believe that the definition of “Broadcast Premium Rate Services” is not sufficiently clear and is too broad. In particular, the phrase “premium rate” needs further clarification. For example, we are aware that there are a number of new and existing telephone numbers which are due to come under the remit of ICSTIS shortly – will these come within the definition? Also, it is not clear whether there is a threshold above which ICSTIS now considers anything to be premium rate – is it 10p?.

We run a number of different services, some of which are clearly premium rate within the currently available guidelines, but there are others which are not currently regulated by ICSTIS but cost more than 10p and may be regulated by ICSTIS in the future. Furthermore, all text shortcodes are classified as premium rate and are regulated by ICSTIS but if we were to stop the text bouncebacks which listeners receive (and which are the subject of the additional charge of 25p) would this fall outside of the definition of “premium rate” and therefore not require prior permission?

Additionally, we believe from the Consultation that advertising premium rate numbers would be excluded from the prior permission regime – we agree with this on the assumption that the exclusion covers a radio station’s own advertising for services which they may provide such as weather or travel which are reached via a premium rate number or text shortcode.

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?

We do not receive the high volume of calls or SMS that TV services do and so have not encountered issues relating to not having enough time to process entries in the allotted time.

In our experience, the number of calls/SMS received outside the permitted times are small provided that adequate information is given as to when lines open and close. The ideal way to manage this issue would be to have a mechanism which gives a busy or engaged tone and no bounceback in relation to SMS outside of these times so that no charge is made to the listener.

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?

We do broadly agree with your proposed conditions in relation to connectivity and capacity. However, in relation to SMS entries, listeners are accustomed to receiving bouncebacks in response to their SMS indicating receipt and if this was stopped, listeners may not realise that their entry has not been successful. To send a bounceback to say that the entry was not valid and to enter during the permitted times involves a charge. There would therefore be a cost to the service providers/broadcasters if we were required to inform listeners of this without charging.

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?

We do agree with your proposed conditions for prior permission in relation to conduct. Our only comment relates to having an independent third party verify any prize of £5,000 or more. We regularly have prizes of this value and significantly above and this requirement would undoubtedly involve a cost to us. We already carry out significant post prize due diligence. We would need more information as to what verification may be needed and would prefer to raise the threshold significantly above £5, 000 (perhaps £50,000) before being liable for any cost.

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?

We agree fully with your proposed conditions for prior permission in relation to cost and conditions.

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?

We agree fully with your proposed conditions for prior permission in relation to coherence.

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

We do agree that there are the same inherent risks in radio as in television. We believe that it is on a smaller scale purely because there is nowhere near the amount of activity as in television and we believe that as there is less volume of entries, the risk of call/entry/count urgencies is lower although still possible.

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?

We do agree that the definition of Broadcast PRS should extend to radio subject to the concerns raised in the answer to question 1 and further clarification as to the type of services that would be excluded from the requirement to have prior permission to operate.

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?

We do not have any direct involvement in Call TV Quiz Services.

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?

We can see the similarities in risk associated with these kinds of services and therefore agree that they should be included with the need to obtain prior permission.

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?

Our comments relate to the points we have made in relation to question 1 in that it depends what is considered to be “premium rate”. We often have listeners interact with stations, requesting songs or similar. If national rate lines and texts are included in the “premium rate” definition this would potentially have a cost effect to the business.

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?

If they are similar to competitions and carry similar risks then we agree that they should be included. If however, it is simply a donation line and has no interaction associated with it then we believe that the current regulation and legislation adequately covers this type of service.

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?

We have no objections to excluding chat services from the prior permission regime.

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?

We do not believe that the provision of information services such as news, travel, weather or similar services should fall within the definition as they do not carry the associated risks that competitions do.

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?

We agree that the primary focus of obtaining prior permission should be on the service providers alone. As broadcasters we would expect them to manage the permission process as part of their service to us and we would want them to take on the administrative burden of this. They are also better placed to answer questions about the service itself.

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

We welcome the proposals that the service providers would obtain a blanket licence for each information provider which would cover all services it then provided for that customer. Obviously, we take our obligations very seriously in relation to adhering to the ICSTIS Code and would work with the service providers (as we already do) to ensure conditions were met but we would not want to take on the administrative burden of applying for permission.

Our only concern would be any cost implications that may be passed onto us by our service providers for the permission process.

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?

As mentioned above, we take our obligations seriously but would want to maintain the existing position of the service providers being directly responsible to ICSTIS with us applying to ICSTIS for them to deal with us directly where it is necessary. This would allow the service providers to handle the initial relationship (which would obviously be in conjunction and consultation with us) and for us to get involved only if required to do so.

If you have any questions in relation to the above, please contact Victoria Davies on 020 7054 8164.

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