



12 June 2007

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

RESPONSE BY MOBILE INTERACTIVE GROUP TO PUBLIC CONSULTATION

Dear Mr Harris,

1. Background

Mobile Interactive Group (“**MIG**”) provides premium SMS services to a number of leading broadcasters, production companies and information providers. As such, we have a detailed knowledge of how SMS interaction can be made to work effectively in Television and Radio programming.

Our response takes into account meetings that we have had with broadcasters, production companies and network operators.

2. Form of response

Our response comprises of the following:

- Cover letter: This cover letter includes a summary of the key elements of our response
- **Appendix A** (detailed response to questions): Our response to each of the questions raised in the consultation paper.
- **Appendix B (CONFIDENTIAL RESPONSE) [REMOVED FROM THIS DOCUMENT]:**
 - o **Part 1:** Best practice (MIG’s proposed approach to perceived issues)
 - o **Part 2:** Execution of best practice (MIG’s proposed vote windows etc)
 - o **Part 3:** Example data on live TV interactive events

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3. Executive summary

Our response to key issues covered by the consultation paper is considered here. Where relevant, specific answers to the consultation paper questions (appendix 1) are cross-referenced back to this discussion.

E3.1. Reaction to media coverage

- Caution should be taken not to over-react to press coverage of PRS industry concerns. We would like to remind ICSTIS that a number of significant press stories have been investigated and closed with either allegations proven to be without foundation or contingency measures (eg refunds) found to be appropriate to the circumstances.
- However, the industry appears to be reacting positively to the new challenges of media sensitivity and proposed increased legislation.
- A general consensus has been reached by the UK mobile operators and leading mobile service providers in the broadcast sector as to “best practice” in operating broadcast PRS, including:
 - o Clear indication of mobile operator messaging capabilities (message delivery, latency etc)
 - o Clear policies for refunds in the event of technical failure or delay
 - o The use of MO in preference to MT billing for votes to negate voting fraud
 - o Clarity of pricing
 - o Voting windows
 - o Operational support during large-scale events

E3.2. Is TV and radio a special case?

- The “additional risks” that are identified in the consultation paper as being characteristics of broadcast PRS are risks that are not necessarily limited to television or radio:
 - o *“programmes that can attract large audiences with a high level of public engagement and trust in their premium rate services”* – this may be the case with other high profile events for example, but not limited to, ticket lotteries for mass events and competitions promoted on high-usage web or wap sites (including mobile operator portals)
 - o *“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”* – this may be the case for any interactive event attracting a high audience.
- There are clearly television or radio interactive services that do not meet the definitions above as they do not attract a large target audience and/or do not have a time-critical component. It seems inappropriate to class these as “high-risk” simply because they are promoted on television or radio.
- In addition, some popular non-broadcast PRS services may exhibit the same risks identified above for broadcast PRS (maybe a mass text lottery or ticketing event). Restricting regulation to TV and radio may fail to address all services exhibiting the risks identified.

- Regulation should recognise the ongoing convergence trend in the media sector. A narrow definition of broadcast to include only “television or radio” risks excluding internet, web-TV, web-radio and on-demand services that may have the same additional risks associated with them and may even become indistinguishable from “television or radio” per se as the boundaries are blurred.

E3.3. The role of the service promoter

- The service provider has a clear role in implementing the ICSTIS 11th Code of Practice (“the Code”) however the promoter of a service (refer to definitions below) also has a clear role in ensuring that the consumer is treated fairly. This responsibility should be recognised more formally by ICSTIS, particularly where, otherwise, the SP would be required to take responsibility for areas beyond the operation of premium services.
- For example, the area of fair selection of winners (and independent audit thereof) may be inappropriate for the SP as:
 - o There may entry methods not governed by ICSTIS’ remit over PRS that have to be considered in the fair selection of winners:
 - Web, email and postal routes of entry are often available
 - Paid-for entry routes may include (now or in future), electronic payment schemes such as Paypal or even credit card.
 - o PRS entry-routes (primarily IVR and SMS) may be operated by different SPs for the same competition.
- The promoter of broadcast interactive services already has to comply with the Gambling Act (whether in operating a prize draw, lottery or prize competition) and the Ofcom codes of practice. These regulations appear to be more appropriate to the governance of competitions and equitable treatment of consumers as their remit covers all entry routes, not just PRS.
- We propose that ICSTIS formally recognises the existence and responsibilities in the value chain as follows:
 - o **Service Provider:** does not provide a service to consumers and normally has no direct contact with consumers. The service provider provides a service to the organisation managing the point of sale or customer interface – the Service Promoter – that enables the Service Promoter technically to connect with consumers.
 - o **Information/Content Provider:** generally accepted as being something between a provider of content and a Service Promoter. A Service Promoter may often use multiple Information Providers as part of a total package offered to consumers.
 - o **Service Promoter:** not recognised by the Code but responsible for contact with consumers for promotion and fulfilment. The Service Promoter carries out the following functions:
 - design and construction of service packages
 - media promotion of services and PRS number
 - prime contact for customer service



E3.4. Recognising the importance of contingency planning

- It is important that any new regulation recognises the technical constraints and practicalities of operating PRS services.
- Whilst the ICSTIS proposed conditions are well-intended, they sometimes fail to recognise practical realities.
- We recommend that robust contingency plans (such as refund processes) are recognised as an appropriate method of mitigating technical constraints. Such plans are an important part of ensuring that appropriately-operated broadcast PRS can still provide a good consumer experience where all participants are treated fairly.

E3.5. Independent verification

- Independent verification may assist the rebuilding of consumer trust in broadcast PRS but the industry appears to be addressing this issue already. Industry self-regulation (which may evolve to include a best practice kite mark) means that regulation is not necessarily required to achieve this.
- Where independent audit is implemented, this should adopt standard auditing practice where reliance is placed on verification of processes together with spot checks. It is not necessary for each individual competition to be the subject of independent verification provided that standard processes are adopted and regularly reviewed. Indeed, the cost of independent verification of every competition would be prohibitive for many broadcast PRS services.

Please note that this response contains both confidential and non-confidential elements. **Appendix B is to be treated as confidential** and only for ICSTIS' internal information as this contains commercially sensitive information.

Please do not hesitate to contact me on this matter if you have any further questions.

Yours sincerely,

Richard Mann
Finance Director
Mobile Interactive Group Limited



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APPENDIX A (RESPONSE TO SPECIFIC QUESTIONS)

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

We support a prior permission scheme (or other industry best practice certification) for high-risk events as this is an important step in addressing the recent damage to the public mis-trust of PRS. However, we do not agree that “high-risk” events are necessarily the same as “television or radio” services as explained in “is TV and radio a special case?” (executive summary reference E3.2).

Any proposals need to allow for convergence in the media sector and for the fact that high-profile non-broadcast PRS services may exhibit the same risk factors.

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?

Whilst we have acted as service provider for the SMS entry route for some of the biggest broadcast PRS events, we are not aware of any widespread problems as identified above. This is a reflection of having an effective policy around the management and promotion of such events and contingency plans in place to address problems should they occur.

Appendix B (confidential response) provides information and case studies that support our assessment that latency concerns and message delays are rare and that they can be effectively managed with proper processes.

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?

The proposed conditions attempt to address an important area but need more thought if they are to become a workable requirement.

In particular

- The proposal for 100% inclusion is not practical and the guidance should acknowledge technical limitations and alternative methods of protecting the consumer. Refer to “recognising the importance of contingency planning” (executive summary reference E3.4).
- References to the “primary party” are unique to this recommendation yet there is no attempt to define the term. As discussed in “the role of the service promoter” (exec summary reference E3.3), we believe that regulation relating to fair winner selection should be directed at the service promoter and not the service provider, not least because of the possibility of non-PRS entry methods and the existence of other regulation in this area.
- It is not clear why the proposed condition makes a specific case for Red Button.



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A number of aspects need to be considered here:

1. Viewers do not always follow on-screen instructions
 - a. A small minority of consumers will enter a competition or vote before lines are open or after they are closed.
 - b. It is not currently possible to deactivate a mobile shortcode outside of competition or vote times therefore these consumers will be charged.
2. There may be good reasons to count entries before or after a competition or vote window
 - a. Lines may be opened earlier than promoted for testing purposes
 - b. Lines may be closed later than promoted to enable synchronisation of platforms, to allow for system latency and to account for discrepancies in “real time” broadcasts (refer to (4) below)
 - c. Provided that entries during these periods are given the benefit of the doubt and their entries are treated as valid entries, we cannot see how this is a problem.
3. PRS technology is not 100% perfect
 - a. Technical constraints over any high-capacity platform may mean that 100% success cannot be guaranteed. Indeed, it may not be possible to even measure 100% success due to the points mentioned in (1) above.
 - b. It is important to recognise these constraints. Guidance should therefore require that sufficient time is give for “substantially all responses” to be considered not “all responses” as proposed before Q2 in the consultation.
 - c. Any small minority of entrants that may be excluded due to technical constraints can fairly be dealt with through alternative processes such as a refund policy
4. “Real time” is not truly “real time”
 - a. On air synchronisation is not perfect – there are inherent delays in the broadcast of a live show and these vary between the different, terrestrial analogue, terrestrial digital, satellite and cable broadcast signals. Any timing of event opening and closing must take these inherent delays into account.
 - b. Opening and close times can be pre-configures in some circumstances but, in others, have to take into account live production decisions. In these latter situations, it may not be possible to synchronise timings precisely across the whole interactive PRS technology platforms therefore some contingency has to be allowed for.
5. Service promotion should consider not only the window that a competition or vote is open but also the timing of on-air promotions (“calls to action”) in relation to these open and close times.
 - a. The consultation paper correctly recognises the importance of the timing of vote solicitation on air and not just the open and close times.
6. Consumer protection is ensured through a balance of (a) planning based-on known throughputs, capacity and latency ensuring interactive services are and (b)



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contingency plans, for example refund processes. Refer to “recognising the importance of contingency planning” (executive summary reference E3.4).

Example:

ICSTIS investigated an incident published in the national press relating to a number of votes for Dancing on Ice received late from Vodafone.

Vodafone released the following press statement on the subject:

Vodafone UK has confirmed that due to a technical problem 11,500 text votes for the Dancing on Ice final were not delivered to ITV until Monday morning. These votes represented only a small minority of votes cast by Vodafone customers. All other texts were successfully delivered. The Vodafone customers who were affected received a message to tell them that the vote was too late and Vodafone UK will this week be automatically refunding those customers the cost of their text.

ICSTIS found that no breach of the Code had occurred in this instance and it is clear that processes were in place to remedy any consumers affected by the technical problem experienced.

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?

This area is probably the single area addressed by the consultation paper that is most relevant to current consumer mis-trust of PRS. It is the improper conduct of competitions and not the other identified risks that have led to the significant allegations of consumer harm around GMTV, Richard & Judy and Blue Peter.

ICSTIS is therefore correct to draw attention to this issue but we do not agree with the proposed conditions on independent verification as follows:

- A proposed independent verification process is already being implemented by the industry and regulation is not necessarily required.
- As discussed in “independent verification” (executive summary reference E3.5), reliance on independent verification of processes and spot-checks is more appropriate than real-time verification of all competitions. It is not clear whether this standard auditing approach would be compliant with the proposed conditions.
- No definition of “independent” is proposed and therefore the proposed conditions are unclear.

In addition, we believe that the role of the service promoter needs to be more formally recognised as follows:

- Regulations around proper conduct should be aimed at the service promoter as discussed in “the role of the service promoter” (exec summary reference E3.3). In addition, regulation needs to consider all entry routes for votes and competitions (not just PRS entry routes) and existing regulation outside of ICSTIS’ remit already governs the conduct of such services, particularly on television and radio. It is not clear that ICSTIS should be the primary enforcer of the conditions for conduct.



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We comment further on the proposed conditions as follows:

- *“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.”*
 - o It may not be technically possible to reject entries outside of a competition or vote window.
 - o It may be appropriate, and indeed is surely good practice, to open lines before an event is promoted for testing purposes. There should be no restriction on excluding entries received in this pre-promotion window as it is not clear what this achieves. Indeed, viewers may not know what number to dial/text or what
 - o The number of entries genuinely made outside of an entry window is very small but, provided these are not solicited, there is no damage caused by these consumers being charged.
- *Phone lines must not remain open when programmes are repeated and, in addition, the premium rate number should be obscured where possible.*
 - o Proposed conditions should recognise that it is possible for repeated programmes to validly retain an interactive component. For example, a competition may be re-run or a vote window may remain open (perhaps in the event of a show repeat in advance of the next live episode being broadcast). The proposed conditions should include the caveat “unless interactive elements genuinely remain open to viewers”
- *Viewers and listeners must not be led to believe that a recorded programme featuring premium rate participation is being broadcast live.*
 - o If interactive elements are still genuinely open to viewers, there is no reason why viewers should be warned that the show is recorded. A competition can still be operated on a pre-recorded show and a vote can still be operated if the outcome is still validly taken into account (e.g. for future programming).
 - o The proposed conditions should “unless interactive elements genuinely remain open to viewers”
 - o Note that many leading interactive shows are pre-recorded but the interactive elements are still “live”.
- *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.*
 - o As discussed above, the proposed conditions should specifically allow for standard auditing practice where independent verification reviews (a) standard processes and (b) specific competitions on a spot-check basis but does not necessarily verify every instance of a competition. This approach would be particularly relevant where the same competition and prize mechanic is implemented in each episode of a series of programming.



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- *Pre-broadcast selection of potential competition winners is not permitted unless necessary to prevent a contravention of competition rules or broadcasting regulations.*
 - o This proposed condition is unclear as it would appear that selection of a winner from “yesterday’s competition” pre-broadcast of “today’s show” would contravene the condition whereas this is surely not the intention. The proposed condition should be clarified as “selection of potential competition winners prior to the close of a competition window.....” and need not refer to “pre-broadcast”.
- *Customer service arrangements for handling participant enquiries should be in place.*
 - o This requirements is already covered by the Code and it is not clear why it is re-stated in the proposed conditions. If additional requirements are proposed, they should be stated.

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 believe that the existing pricing information requirements of the Code already deal with these points adequately and that the proposed conditions are therefore unnecessary.

If ICSTIS believes that current standard practice is inadequate, clearer examples should be provided. We perceive the only unsatisfactory element of mainstream broadcast PRS pricing relates to situations where “costs may vary” depending on network provider, a situation that service providers and broadcasters are not able to control. If ICSTIS does not consider that current standard practice is adequate in this area, guidance should be given as to whether the “maximum”, “average” or other price information should be quoted and what assumptions (such as that participants are entering from within the UK) are valid.

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 proposed conditions for coherence are largely sensible but we believe that they only make sense when used as the basis for allocating responsibility to the various elements of the value chain. If responsibility still lies with the service provider, the proposed conditions on coherence have little or no effect. If relevant responsibility is allocated more properly down the value chain, the conditions are more meaningful but we believe that the very act of recognising these responsibilities will make a significant difference and that prior permission is not required to achieve this.



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Whilst clear and coherent identification of responsibilities in the value chain is important, we do not agree that ICSTIS should involve itself in contract detail negotiated between the relevant partners within the value chain. In addition, we do not agree that ICSTIS should have powers to enter premises and sequester records and documentation (from service providers or other parts of the value chain). This would effectively grant ICSTIS powers as a law enforcement agency that appear to be over and above ICSTIS' existing mandate.

We comment further on the proposed conditions as follows:

- *All staff, whether internal or employed by contractual partners, must have the ICSTIS Code of Practice drawn to their attention and have suitable training.*
- This condition should be restricted to "all relevant staff". It is not appropriate for staff unconnected with the provision of PRS services (maybe in a wholly unrelated division of the business) to be required to be trained on the Code.

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

Refer to our response to question 1. We believe that the risks identified are those risks associated with any high-capacity PRS event, whether promoted on television, radio or other media. The same risks exist in radio as in television IF the same services are promoted with the same audience take up.

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?

Refer to our response to question 1. We believe that high-capacity radio and high-capacity television events should be treated the same as any other high-capacity PRS event but that the definition as drafted will (a) unnecessarily cover low-capacity events that do not necessarily exhibit the identified risks and (b) potentially exclude high-capacity events as the definition fails to consider other channels with the same risks, particularly in a converging media industry where the boundaries between television, radio, the internet etc are increasingly blurred.

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?

Where Call TV Quiz Services attract a high level of audience participation, the same risk areas discussed with respect to broadcast PRS exist and these should be addressed appropriately.



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However, there is a danger that separate requirements for Quiz TV Services and Broadcast PRS cause confusion within the industry and the public/press (as happened when the media widely misinterpreted ICSTIS' statement of expectations on Quiz TV as being a reaction to the daytime TV "scandals"). We would therefore prefer one set of conditions / requirements to govern Call TV Quiz Services rather than a fragmented approach taking requirements from a number of different places.

It should not be forgotten that the public and press clearly do not understand the terms "Call TV Quiz Services" and "Broadcast PRS" and the use of such terms should be treated with caution.

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?

As explained in "is TV and radio a special case?" (executive summary reference E3.2), we believe it is more appropriate to define "high-risk" services by virtue of levels of consumer participation rather than simply the channel used to promote them or the mechanic that is used. Auctions are no exception and should only be considered as "high-risk" given the manner in which they are operated, the target audience and likely take-up.

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?

As explained in "is TV and radio a special case?" (executive summary reference E3.2), we believe it is more appropriate to define "high-risk" services by virtue of levels of consumer participation rather than simply the channel used to promote them or the mechanic that is used. Music playlist selections, really just simple voting mechanics, are no exception and should only be considered as "high-risk" given the manner in which they are operated, the target audience and likely take-up.

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?

As explained in "is TV and radio a special case?" (executive summary reference E3.2), we believe it is more appropriate to define "high-risk" services by virtue of levels of consumer participation rather than simply the channel used to promote them or the mechanic that is used. Mechanics involving charitable donation are no exception and should only be considered as "high-risk" given the manner in which they are operated, the target audience and likely take-up.



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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?

As explained in “is TV and radio a special case?” (executive summary reference E3.2), we believe it is more appropriate to define “high-risk” services by virtue of levels of consumer participation rather than simply the channel used to promote them or the mechanic that is used. Chat services, whilst raising additional risks addressed by the current requirement for live services, are no exception and should only be considered as “high-risk” given the manner in which they are operated, the target audience and likely take-up. However, the fact that chat services are more commonly operated on channels with relatively low viewing figures is likely to mean that the identified “broadcast PRS” risks are mitigated.

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?

As explained in “is TV and radio a special case?” (executive summary reference E3.2), we believe it is more appropriate to define “high-risk” services by virtue of levels of consumer participation rather than simply the channel used to promote them or the mechanic that is used. We see no merit in regulating services simply because they are broadcast on television or radio as this will regulate against smaller niche players who may find that the costs of operating any form of PRS participation are prohibitive.

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 do not agree with this approach. As discussed in “the role of the service promoter” (exec summary reference E3.3), we believe that regulation relating to fair winner selection etc should be directed at the service promoter and not the service provider, not least because of the possibility of non-PRS entry methods and the existence of other regulation in this area.

We propose that ICSTIS formally recognises the existence and responsibilities in the value chain, particularly of the Service Promoter as described in exec summary reference E3.3.



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

- Refer to our previous comments.
- In summary, we believe that the effectiveness of the proposed regime would be improved primarily by:
 - o Recognising the role and responsibility of the Service Promoter
 - o Recognising the importance and value of contingency planning
 - o Addressing “high-risk” services in general and not “television and radio” services per se

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?

- We believe that recognition of the Service Promoter’s role and responsibility is absolutely fundamental to way PRS are promoted, operated and regulated and also critical in rebuilding consumer trust in PRS.
- However, there is existing regulation in this area outside of ICSTIS’ remit and it is not clear that additional PRS regulation is the best method of achieving consumer protection.



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Comments on ICSTIS' Business And Consumer Impact Assessment

Service providers

- We believe that ICSTIS has under-estimated the time involved in completing and submitting applications, not least because of the time that the service provider would have to spend verifying those areas more appropriately the responsibility of the service promoter. We would suggest that the first application would take at least five working days, with subsequent applications not showing much time saving compared to the first request.
- Unless a service provider has an in-house qualified solicitor, barrister or accountant, legal costs for certification of applications are grossly under-estimated and may realistically be ten times the proposed figure of £500 per application, although costs are likely to reduce after the first application.

Information providers / broadcasters

- The costs of independent verification do not appear to have been taken into account. We estimate that independent verification of every competition would involve significant set-up costs then ongoing costs per event.
- These costs will necessarily have an impact on the economics of all PRS services and are likely to have a significant impact on (a) charitable donations from PRS services and (b) the viability of many competitions.
- Unless reliance can be placed on verification of processes and spot checks, it is likely that it will not be viable to operate any competition with a prize between £5000 and £10000+. This would cause a significant negative revenue impact on all participants in the value chain.

Small business impacts

- We do not agree that "all [broadcast] businesses are of a relatively substantial size" or the implication that all broadcast PRS services attract a significant audience. We believe that regulation should consider the number of viewers participating in a PRS service. Indeed, there are now hundreds of television channels and radio stations (including internet channels/stations) that would be captured by the proposed regulation and many would likely be prevented from offering any PRS services due to the increased cost of compliance.

Revenue benefits

- No attempt has been made by ICSTIS to quantify the revenue benefit to the industry of the proposed regulation. Examples such as "every 1% movement in response" are useful to assess the scale of the industry but meaningless unless some assessment can be made as to the likely percentage change that the regulation will result in.
- We are not convinced that the proposed regulation will result in increased revenues when compared to the alternative industry self-regulation. In fact, as discussed above, we believe that broadcast PRS will have to be withdrawn in a number of niche areas and this will have a negative impact on revenue for the industry. Obviously, the quoted ICSTIS figures can also be interpreted as "every 1% decrease in response will cost the industry £2.5m".

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APPENDIX B (CONFIDENTIAL RESPONSE)



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