

**Introducing Prior Permission for Premium Rate
Services Used in Television and Radio
Programmes**

Response from PNC Telecom

June 2007

Introduction

PNC Telecom Services welcomes the opportunity to respond to the ICSTIS consultation regarding the introduction of a prior permission regime for premium rate services on television and radio. As a network operator with Broadcast clients who have not been caught up in the recent media frenzy we feel that we are in a strong position to comment on the proposals.

General Comments and Overview

Whilst we note that whether prior permission is introduced or not is largely dependent on the Ofcom enquiry into the use of premium rate services in television, we feel that, overall there is not a need to bring in this requirement. We believe that the current Code provisions are adequate to capture all the areas that ICSTIS has considered in its consultation document and this slightly knee-jerk response is now too long after the media coverage to achieve the high profile political result that ICSTIS appears to be aiming for.

We would ask what ICSTIS is seeking from this exercise and what additional benefit prior permission may achieve? If it is simply to get a snapshot of the market this is only a short term gain as contracts and players will change quickly, as will service types and offerings.

PNC believes that broadcasters are best placed to self-regulate the output on their channels and that requiring service providers to obtain prior permission will not give them any extra leverage in this area, given their position in the value chain. It was the Broadcasters who failed to recognise the importance of premium rate regulation and who put pressure on service providers to produce revenue despite tight margins. The regulatory clout needs to come from another body than ICSTIS if, indeed, it is needed. Our answers within this consultation should therefore be taken in the overall context that we do not believe that prior permission is required for these services.

ICSTIS seemed to side with the media as soon as the issues became public, it failed to communicate clearly on behalf of the industry and it failed in its role and responsibility to represent the market that it is paid by to regulate.

Answers to Consultation Questions

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

As a further category of service that would presumably fall within section 7 of the Code, this appears adequate. However, ICSTIS refers to excluding "traditional" premium rate services, without referring in more detail as to what these may comprise. On page 13 there is a reference to excluding "commercially advertised" services. We assume that the aim is to exclude non-editorial content and 121 services, but this is not made clear.

Perhaps the definition should read:

"...(prs) which are promoted on television or radio, other than live 121 chat or within advertising breaks and which provide..."

Despite this definition including the word "votes", there does not seem to be any further reference to a vote service throughout the consultation document. This is surely one of the most high profile and popular use of PRS on television at present, yet it apparently causes no issues, and there is no in-depth discussion of it (see also answer to Q14).

Other than to capture a category of service which may require prior permission, there does not seem a need to define this type of service.

Connectivity and capacity

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?

Aside from the recent media coverage which largely presented this as a service provider problem, despite it being the broadcasters who make the bulk of the money and exert the pressure, PNC is not aware of any significant problems.

Although there is lengthy consideration of the merits of "cutting" the lines when closed, ICSTIS does not progress to any proposed conditions about this. Nevertheless we feel that if a presenter has stated that lines are now "open" or "closed", it should be clear to consumers that calls outside of these times will not be counted and "buyer beware" applies.

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?

Yes, agreed.

Conduct

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 agree broadly with the conditions set out for Conduct. However, the second point on Terms and Conditions is unclear. We do not think that there should be a need to amend a service during the course of its operation and we do not understand why ICSTIS would find this acceptable. There is no discussion of this in the preceding text and it

does not fit with the Code provision for competitions which prohibit changes to conditions due to lack of entries or similar.

It is not clear whether the customer services arrangements (which are a Code requirement already) are intended to be in place during the broadcast of the programme or whether a 9.00-5.00 option is acceptable.

Cost and Conditions

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?

As all the cost conditions are Code requirements anyway, it does not seem to serve any purpose to set these as conditions within a prior permission. The second bullet refers to fixed-line operators charging set-up fees; we believe that the principle culprits here are the mobile networks who routinely charge above the advertised cost for calls to premium rate services.

We have referred elsewhere to the role that ICSTIS needs to assume to help ensure pricing transparency. To suggest in the pricing help note that the wording "network extras apply" is adequate to inform members of the public what a call will cost them is not sufficient to make cost information "abundantly clear" as has been required for some services by ICSTIS. It is our opinion that the issues that the mobile mark-up cause need to be taken up direct by ICSTIS with the mobile operators. This is creating a two tier regulatory approach and needs to be addressed. Additionally we feel that a two tier approach to regulation by ICSTIS appears to be continuing with print media companies expected to present full terms and conditions within newspapers and magazines, whilst broadcasters are able to present a reduced detail. Although now with the partial benefit of hindsight, it seems that the recent issues have arisen in part as a result of ICSTIS failing to apply the same rigorous regulation to broadcasters that it has done with small operators and the print media companies as the PRS industry developed. The failure to apply the lessons learned in this market to the broadcast arena has, we feel, contributed to the consumer harm that has occurred. Bearing in mind the scale of revenues generated and the speed of adoption by broadcasters we feel that ICSTIS should take some responsibility for the current situation. On the whole responsible PRS survive and information providers will have suffered as the result of the irresponsible actions and ignorance of a small number of broadcasters and production companies through whom a lack of concern to establish best practice occurred.

Coherence

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 are not happy with the set of conditions laid down for coherence. We do not believe that contractual arrangements between broadcasters and others are an issue for ICSTIS.

We do not accept that ICSTIS should have the right to walk into a company's premises and ask for copies of documents. ICSTIS has the power to ask for virtually any information it chooses under paragraph 8.1.3 and failure to provide this would be a breach of the Code. There does not seem a need to back this up with visits in person.

It is not clear where bullet points 2, 3 and 4 are meant to bite, is it on the service provider or the broadcaster? Other than training on the ICSTIS Code as required, we do not believe that it is for ICSTIS to tell businesses how to operate their internal systems.

Section 4

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

If ICSTIS decides to impose this degree of regulation on prs on television it follows that it should apply to radio as well.

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?

If the risks are there, then the regulation should be as well.

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?

The requirement for call TV quiz services to obtain prior permission only applies where there is a live element. For these, it would seem sensible to include any further provisions that are agreed to be specific to broadcast prs.

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?

Agreed

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?

Agreed

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?

Agreed

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?

Agreed

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?

There does not seem to be a specific consideration of the vote services that are widespread on various reality and audience participation TV shows at present. Although these have not caused comment in the media in recent months it is unclear why such a large sector is not considered, unless ICSTIS is viewing them as falling within charitable services, due to the percentage payments to charity that some of these make. The issue last year with a Big Brother contestant being returned to the house after being voted out highlights the concern that actions by the Broadcaster can bring the PRS industry, and the service providers in particular, into disrepute.

Therefore we believe this sector must be included in ICSTIS' considerations and that to leave it out would inevitably lead to some future issues arising as a direct consequence. We see no reason why it should not be regulated effectively, regardless of whether some or all of the revenues generated are paid to charities.

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?

Although the Code requires that it is the service provider who obtains permission, as previously stated, it is the Broadcaster (IP or content provider) who governs the relationship and the service provider will be required to bow to the pressures that they exert. This does not sit comfortably within the Code and the suggestion that the service provider should give an IP undertaking in advance of any potential Code problems does not fit the initial purpose that paragraph 8.1.4 was intended for.

To this end we support the proposal put forward by the NOC that a "service promoter" role needs to be included and recognised within the ICSTIS Code.

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

There needs to be absolute clarity about how many permissions will have to be sought by a service provider – is it one per Broadcast partner? ICSTIS refers on page 17 to repeat documentation being provided for new IPs (Broadcasters), without stating whether this would be a new (paid for) permission.

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 indicated by various answers above, PNC does not believe that the Code is currently designed to act primarily on IPs, yet in this value chain the onus is on the Broadcaster to provide the service that it valued by the consumers, hence they are the ones who hold the control over their service provider partners.

Conclusion

In producing this consultation document it appears that ICSTIS has ignored many of the lessons learnt from the experience of regulating “traditional” and print media premium rate services and assumed that a different set of regulations need to apply to broadcast prs. We do not accept that this is the case and believe that the recent set of high profile issues have been caused by mis-management rather than through willful action and the industry is rapidly sorting out the issues without the need for heavy handed regulation.

PNC does not believe that a prior permission regime is appropriate for these services, rather, ICSTIS should encourage the market to grow responsibly within the provisions of the 11th Code of Practice, subject to broadcasters being covered under the Code.