

## **Supplementary Prior Permissions Notice – Changes to Prior Permission for Premium Rate Services used in Television Broadcasting**

**For the attention of all service providers operating services which are promoted on television (other than by commercial advertising), however transmitted, and which provide a facility for interaction or the provision of information whether in the form of votes entries bids or otherwise howsoever.**

The following supplementary Notice DOES NOT apply to services which are classed as the following:

- Quiz TV
- Live Services
- Pay per Play

As such, providers who operate services which are promoted on television which fall under the definition of one of the three service categories above (and in the case of Live Services, already hold an appropriate Prior Permission) should disregard this Notice.

A Notice was issued on 19 February 2008 to inform all service providers who provide Broadcast PRS services (as defined in bold above) that from 18 March 2008 no such services could be provided without PhonepayPlus' Prior Permission.

For ease of reference, the 18 February 2008 Notice is attached to this document at Annex A.

### **What has changed?**

Earlier this year, PhonepayPlus received an approach from various industry representatives, and broadcasters with an interest in PRS to clarify various conditions in the 19 February 2008 Prior Permission Notice. Clarity was sought particularly around the issue of when providers would be expected to refund consumers in the event of a vote or competition entry arriving outside times when an SMS-based mechanic was open.

In light of these discussions, PhonepayPlus took the opportunity to review all the conditions of Prior Permission set out in the 19 February 2008 Notice. Following this review, the PhonepayPlus Board has decided to alter some of the conditions, and add some new ones, in order to provide greater clarity to those wishing to provide Broadcast PRS using an SMS-based mechanic.

These changes have been discussed with Ofcom, who has confirmed that the changes will not impact on its current framework for the regulation of broadcasting which include the use of premium rate services.

## **The Changed Conditions**

Condition number i) in the February 2008 Notice reads as follows:

*Service providers must ensure that all valid responses sent by viewers are available in sufficient time to be fully considered and reflected in any outcome of an event*

This will be changed to read:

*Service providers must ensure that all valid responses sent by viewers are available in sufficient time to be fully considered and reflected in any outcome of an event. In circumstances where the consumer has been clearly informed of the time period in which responses will be valid, any responses received outside this time will be considered invalid and will not need to be considered in the outcome of an event.*

Condition number ii) in the February 2008 Notice reads as follows:

*Calls and SMS entries must not be charged or counted as a relevant entry before lines have been announced as opened or be charged or counted as a relevant entry after an announcement that lines are closed has been made. Immediately after an announcement that lines are closed has been made, the lines must be closed provided that calls made but uncompleted at the time of the closure announcement must be allowed to be completed.*

This will be changed to read:

*Calls and SMS entries which are received before lines have been announced as opened, or after an announcement that lines are closed has been made, should be considered invalid and not be counted, except that calls which have already commenced at the time of a closure announcement must be allowed to be completed and counted. It is acceptable for such invalid entries to be charged, provided that:*

- *The risk of being charged for invalid entries is clearly communicated to the viewer*
- *Consumers whose votes/entries are invalid should be clearly informed that their entry is invalid and whether a charge has applied*
- *Invalid entries have not been received after lines have been announced as closed as the result of technical failure*

*Technical failure, as referred to above, is defined for the purposes of this Notice as any failure in the technology used by a network, service provider or other party involved in the delivery of a vote/entry as part of a Broadcast PRS event, which causes that vote/entry to be delayed where it would otherwise have arrived within the time period when lines were open.*

Condition number v) in the February 2008 Notice reads as follows:

*Phone lines must not remain open when programmes are repeated.*

This will be changed to read:

*Phone lines must not remain open when programmes are repeated, except where votes or entries would still be considered valid.*

### **The New Condition**

In addition to the changes above, a new condition will be added to the existing conditions set out in the 19 February 2008 Notice. This will read as follows:

*Service providers must ensure that sufficient time is allowed between the closure of each access platform used and the relevant competition entry/vote counting process to allow for valid responses to be considered and reflected in the outcome of the event. Where multiple entry platforms are used and different closure times apply, this must be clearly communicated to consumers during any call to action.*

A list of conditions for Broadcast PRS as they now look, following the changes and addition, is attached at Annex B to this Notice.

### **Next Steps**

PhonepayPlus will issue revised Prior Permission certificates to service providers who have already been granted Prior Permission to provide Broadcast PRS. Any enquiries about this change should be directed to [compliance@phonepayplus.org.uk](mailto:compliance@phonepayplus.org.uk).



**Prior Permissions Notice  
For the attention of all service providers  
operating Premium Rate Services used in  
Television Broadcasting**

**Issued by PhonepayPlus on 19 February 2008**

## **Notice**

In accordance with paragraph 5.1.1 of the PhonepayPlus Code of Practice 11<sup>th</sup> Edition (“the Code”) PhonepayPlus now gives Notice that from the **18<sup>th</sup> day of March 2008** no Broadcast Premium Rate Service (“BPRS”) as defined below may be provided unless the relevant service provider (as defined in the Code) has the written permission of PhonepayPlus to provide BPRS.

## **BPRS Definition**

“Premium rate services which are promoted on television (other than by commercial advertising), however transmitted, and which provide a facility for interaction or the provision of information whether in the form of votes entries bids or otherwise howsoever.”

## **Background**

On the 15<sup>th</sup> May 2007 PhonepayPlus published a consultation document “Introducing Prior Permission for Premium Rates Services used in Television And Radio Programmes”. That consultation paper was a response to problems of which PhonepayPlus and Ofcom had become aware from the middle of February 2007 in respect of premium rate services used for voting and competition entries on mainstream television channels. PhonepayPlus is publishing the results of that consultation simultaneously with the publication of this Notice. The conclusion reached by PhonepayPlus having duly considered the results of the consultation carried out is that it is necessary to bring into effect a prior permission requirement for BPRS. In order to enhance consumer protection a number of conditions will be applied to permissions which are granted.

## **Conditions**

It should be noted that a breach of any condition imposed in connection with a permission granted by PhonepayPlus in accordance with the Code will be a breach of the Code (paragraph 5.1.3 of the Code).

The consultation carried out by PhonepayPlus set out a number of conditions which appeared to it to be necessary for inclusion in the grant of prior permission. The majority of conditions contained within the consultation will be applied to permissions. Some will not particularly in the light of the changes being made by Ofcom to broadcasters licences in connection with BPRS.

The conditions which will apply to all services are set out in the annex to this Notice. Additional conditions may apply if that is necessary in respect of particular services which may be provided.

The conditions fall into 3 categories:-

- (i) **Connectivity and capacity**  
These deal with the handling of peak traffic where the service provider uses arrangements with additional parties for the provision of capacity. It also addresses the completion of calls made prior to the time of line closure.
- (ii) **Conduct**

It must not be possible for calls to be made prior to lines being announced as open or to be made after lines have been announced as closed. These conditions also deal with the selection of winning entrants and customer service arrangements.

(iii) Coherence

It is required that contractual arrangements between service providers and others in the value chain must clearly identify who is responsible for each activity involved in the provision of the service. Arrangements once made can only be changed with the involvement of senior people within the relevant organisations. There must be proper training as to PhonepayPlus requirements and there must be procedures to deal with problems which are predictable in the provision of BPRS.

### **Next Steps**

Service providers which already provide BPRS should submit their applications to PhonepayPlus by **18 March 2008**. Application forms can be found on the PhonepayPlus website at the following address:

[http://www.phonepayplus.org.uk/service\\_providers/setting\\_up\\_services/application\\_forms/st\\_art\\_sp.asp](http://www.phonepayplus.org.uk/service_providers/setting_up_services/application_forms/st_art_sp.asp)

Service providers should enter their registration number, then select “Apply for Prior Permission” on the following screen. Applications should be submitted as soon as possible in order to ensure that service providers are able to continue to provide BPRS.

### **Exemptions**

Certain limited categories of service which fall within the definition of BPRS but which do not appear to PhonepayPlus to require prior permission in accordance with this Notice may be identified and published by PhonepayPlus from time to time. Categories of service exempt from the requirement to obtain prior permission in accordance with this Notice (for reasons set out in the PhonepayPlus publication concerning the results of its consultation) are:-

- Quiz TV
- Live Chat
- Pay per Play

## **BROADCAST PREMIUM RATE SERVICES**

### **ANNEX TO NOTICE TO THE INDUSTRY**

Conditions which will apply in all prior permission certificates provided to providers of Broadcast PRS will include:-

#### Connectivity and capacity

- i. Service providers must ensure that all valid responses sent by viewers are available in sufficient time to be fully considered and reflected in any outcome of an event.
- ii. Where a service provider has made arrangements for the handling of excess peak traffic by third parties, these arrangements must ensure that all valid responses so handled are treated equally with those received by the service provider.
- iii. Red button interactive calls made prior to the time announced for line closure must repeat the relevant competition entry/vote count process.

#### Conduct

- iv. Calls and SMS entries must not be charged or counted as a relevant entry before lines have been announced as opened or be charged or counted as a relevant entry after an announcement that lines are closed has been made. Immediately after an announcement that the lines have been closed has been made the lines must be closed provided that calls made but uncompleted at the time of the closure announcement must be allowed to be competed.
- v. Phone lines must not remain open when programmes are repeated.
- vi. Winning entrants for competitions must be randomly selected from all correct entries unless there is a tie breaker or totally skill based outcome.
- vii. Customer service arrangements for handling participant enquiries must be in place.

#### Coherence

- viii. Contractual arrangements between service providers and any parties with which they contract in respect of the provision of the relevant Broadcast PRS must clearly and coherently identify which party is responsible for the performance or management of each activity associated with the service.
- ix. There must be no amendments to operational systems or procedures relating to the service without senior management authorisation. The service provider's procedures must identify senior management positions within its organisation with the power to authorise such changes.
- x. All staff, whether internal or employed by contractual partners, must have the PhonepayPlus Code of Practice drawn to their attention and have suitable training.
- xi. Procedures must exist for the backup of all operational systems and to deal with predictable problems inherent in providing Broadcast PRS.
- xii. Subject to reasonable notice from PhonepayPlus, service providers must make provision for PhonepayPlus staff and/or its agents to visit their premises from which they provide any relevant service and have

access to any documents or records relevant to the provision of the service.

General Conditions

On the grant of any prior permission by PhonepayPlus additional conditions deemed necessary in the light of the particular service provisions applicable or imposed. All PhonepayPlus permissions are subject to amendment or withdrawal.

## **LIST OF BROADCAST PRS PRIOR PERMISSIONS CONDITIONS FOLLOWING CHANGES IN 19/08/ 2010 NOTICE**

### Connectivity and Capacity

- i) *Service providers must ensure that all valid responses sent by viewers are available in sufficient time to be fully considered and reflected in any outcome of an event. In circumstances where the consumer has been clearly informed of the time period in which responses will be valid, any responses received outside this time will be considered invalid and will not need to be considered in the outcome of an event.*
- ii) *Calls and SMS entries which are received before lines have been announced as opened, or after an announcement that lines are closed has been made, should be considered invalid and not be counted, except that calls which have already commenced at the time of a closure announcement must be allowed to be completed and counted. It is acceptable for such invalid entries to be charged, provided that:*
  - *The risk of being charged for invalid entries is clearly communicated to the viewer*
  - *Consumers whose votes/entries are invalid should be clearly informed that their entry is invalid and whether a charge has applied*
  - *Invalid entries have not been received after lines have been announced as closed as the result of technical failure*

*Technical failure, as referred to above, is defined for the purposes of this Notice as any failure in the technology used by a network, service provider or other party involved in the delivery of a vote/entry as part of a Broadcast PRS event, which causes that vote/entry to be delayed where it would otherwise have arrived within the time period when lines were open.*

- iii) *Red button interactive calls made prior to the time announced for line closure must repeat the relevant competition entry/vote count process.*

### Conduct

- iv) *Where a service provider has made arrangements for the handling of excess peak traffic by third parties, these arrangements must ensure that all valid responses so handled are treated equally with those received by the service provider.*
- v) *Service providers must ensure that sufficient time is allowed between the closure of each access platform used and the relevant competition entry/vote counting process to allow for valid responses to be considered and reflected in the outcome of the event. Where multiple entry platforms are used and different closure times apply, this must be clearly communicated to consumers during any call to action.*
- vi) *Phone lines must not remain open when programmes are repeated, except where votes or entries would still be considered valid.*

- vii) Winning entrants for competitions must be randomly selected from all correct entries unless there is a tie breaker or totally skill based outcome.
- viii) Customer service arrangements for handling participant enquiries must be in place.

#### Coherence

- ix) Contractual arrangements between service providers and any parties with which they contract in respect of the provision of the relevant Broadcast PRS must clearly and coherently identify which party is responsible for the performance or management of each activity associated with the service.
- x) There must be no amendments to operational systems or procedures relating to the service without senior management authorisation. The service provider's procedures must identify senior management positions within its organisation with the power to authorise such changes.
- xi) All staff, whether internal or employed by contractual partners, must have the PhonepayPlus Code of Practice drawn to their attention and have suitable training.
- xii) Procedures must exist for the backup of all operational systems and to deal with predictable problems inherent in providing Broadcast PRS. Subject to reasonable notice from PhonepayPlus, service providers must make provision for PhonepayPlus staff and/or its agents to visit their premises from which they provide any relevant service and have access to any documents or records relevant to the provision of the service.

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