



Communications
Commission
of Kenya

GUIDELINES FOR PREVENTION

OF TRANSMISSION OF UNDESIRABLE BULK POLITICAL

MESSAGES CONTENT VIA CELLULAR

MOBILE NETWORKS

AUGUST 2012

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1 Introduction

1.1 Background

CCK was established under the KICA, to license and regulate telecommunications, radio communications, postal and broadcasting services in Kenya.

Under Sections Section 23 and 25 of the KICA, CCK is mandated to protect the interest of all users of telecommunications services in Kenya with respect to prices and quality and variety and the granting of licenses with conditions including specification of services (Section 25 (3) (a)).

Based upon its mandate to protect consumer interests, CCK in consultation with the NCIC, the IEBC, the RPP, MNOs, CSPs and other relevant stakeholders now issues these Guidelines to prevent the transmission of undesirable content via bulk messages.

1.2 Application of the Guidelines

These Guidelines are issued pursuant to Section 23 and 25 of the KICA and Regulation 21 of the Kenya Information and Communications (Consumer protection) Regulations, 2010 and will apply to licensees, including CSPs and MNOs.

1.3 Effective Date of the Guidelines

The Guidelines will be effective from the issue date.

1.4 Amendments to the Guidelines

These Guidelines may be amended from time to time by the CCK in consultation with the NCIC, the IEBC, the RPP, MNOs, CSPs and other relevant stakeholders **PROVIDED THAT** CCK shall convene a stakeholders' consultation to discuss any proposed amendments to these Guidelines prior to their coming into force.

2 Definitions and Abbreviations

2.1 Definitions

In these Guidelines, unless otherwise stated the following definitions apply:

2.1.1 "Constitution" means the Constitution of Kenya 2010;

2.1.2 "Customer" means a subscriber of on the MNO network.

- 2.1.3 “Political Party” means an association contemplated in Part 3 of Chapter Seven of the Constitution;
- 2.1.4 “Election” means the act of selecting by vote, of a person or persons from among a number of candidates to fill an office or to membership of any political party and includes a presidential, parliamentary or county election
- 2.1.5 “Political Messages” means the transmission of political advertising by Political Parties and other individuals to the general public by bulk SMS or MMS
- 2.1.6 “Political Aspirant” means a candidate for an elective post as contained in the Elections Act.
- 2.1.7 “Hate Message” means a message designed to degrade, intimidate or incite violence or prejudicial action against a person or group of people based on their race, ethnicity, nationality, religion, political affiliation, language ability or appearance.
- 2.1.8 “Content Service Provider” means a person authorised by the Communications Commission of Kenya to provide content services
- 2.1.9 “Mobile Network Operator” means a person authorised by the Communications Commission of Kenya to build and commercially operate Mobile Telecommunications/Electronic Communications Systems

2.2 Abbreviations

CCK	Communications Commission of Kenya
CSP	Content Service Provider
MNO	Mobile Network Operator
NCIC	National Cohesion and Integration Committee
IEBC	Independent Electoral and Boundaries Commission
RPP	Registrar of Political Parties
KICA	Kenya Information and Communications Act, Chapter 411A Laws of Kenya
NCIA	National Cohesion and Integration Act No. 12 of 2008
IEBCA	Independent Electoral and Boundaries Commission Act
PPA	Political Parties Act 2011
SMS	Short Message Service
MMS	Multi-Media Messaging
PC	Penal Code, Chapter 63 Laws of Kenya

3 General

For accountability, Political Messages will only be delivered through licensed CSPs with direct inter-operability agreements with an MNO.

4 Process

- 4.1 Prior to sending a Political Message, CSPs shall make a request to an MNO at least forty-eight (48) hours before sending the message. The application shall include as a minimum, the following information:-
 - 4.1.1 The verbatim content of the Political Message;
 - 4.1.2 A signed Authorisation Letter from the Political Party or individual sponsoring the Political Message in such form as shall be prescribed by the Commission;
 - 4.1.3 Certified copies of registration documentation of the Political Party or identification documentation of the individual, whichever is applicable;
 - 4.1.4 Intended timing of the Political Message.
- 4.2 Prior to sending of any proposed Political Message, an MNO shall vet its content to ensure compliance with these Guidelines. The MNO will notify the requester of its decision within eighteen (18) hours of submission of the request.
- 4.3 The MNO has the right to refuse the transmission of a proposed Political Message over its network that it views not to be in compliance with these Guidelines.
- 4.4 Where an MNO is unable to ascertain through its internal vetting process whether the content of a message is not inflammatory, inciting, hateful or otherwise in violation of the law, they shall refer the content to NCIC for further vetting in line with Section 13 of the NCIA.
- 4.5 The NCIC shall respond to a request by an MNO to vet the contents of a message within twenty four (24) hours.
- 4.6 In the event a Political Message that had already been transmitted elicits an unforeseen negative reaction from the public or any other entity, the MNO shall have the right to stop subsequent transmissions of the message. In this event, the Political Party or individual that sent the message will be required to issue an apology to the recipients of the Political Message forthwith.

5 Content

- 5.1 No Political Message shall be sent out bearing an MNO's or CSP's name, logos, slogans or otherwise appearing to be associated with either the MNO or the CSP.
- 5.2 A Political Message must bear the name of the Political Party or individual disseminating the Political Message.
- 5.3 Political Messages shall not contain offensive, threatening, abusive, insulting obscene or profane language.
- 5.4 Political Messages shall not contain inciting, threatening or discriminatory language that may or is intended to expose an individual or group of individuals to violence, hatred, hostility, discrimination or ridicule on the basis of ethnicity, tribe, race, colour, religion, gender or otherwise.
- 5.5 Political Messages shall not contain attacks on individual persons, their families, their ethnic background, race, religion or their associations.
- 5.6 Political Messages shall be in the English or Kiswahili languages only.

6 Timing

- 6.0 MNOs and CSPs shall only be sent between 0800 hrs and 1800 hrs.
- 6.1 In transmitting Political messages, MNOs and CSPs shall comply with all the law as regards political campaign periods.

7 Unsolicited Messages

- 7.1 CSPs SHALL NOT send unsolicited Political Messages to customers who have not subscribed for the service. CSPs shall ensure that all recipients of Political Messages have opted into the service. Such opt in will require the express consent of the recipients and opt-out procedures must be clearly notified to customers and kept functional at all times.
- 7.2 CSPs must produce evidence of such consent immediately upon request by MNOs or any other concerned governmental body or regulator.
- 7.3 CSPs shall strictly adhere to the law regarding the use of customer databases howsoever acquired.
- 7.4 Any unauthorised use, sharing or sale of existing customer databases for purposes of sending out Political Messages, Poll Tracking and lobby activities may lead to the

immediate suspension of the inter-working agreement between the CSP and the MNO pending legal and/or regulatory determination.

8 Adherence to the Law and Guidelines

- 8.1 CSPs shall take legal responsibility for the content of Political Messages and shall fully indemnify and keep indemnified MNOs against any claims that may arise out of those Political Messages.
- 8.2 CSPs and MNOs shall strictly adhere to the laws, regulations and guidelines relating to elections and political activities which include the Constitution, the KICA, the NCIA, the IEBC, the Media Act, the Elections Act, the PC and the PPA.
- 8.3 Failure to comply with any of these Guidelines may lead to suspension of the interoperability Agreement between the MNO and CSP pending determination by the CCK and/or the Law Court. In addition, such non-compliance shall also be reported to CCK forthwith.

9 Complaints Handling

- 9.1 All disputes between MNOs and CSPs will be settled in accordance with the provisions of the interoperability agreement, the KICA and Kenya Information and Communications (Dispute Resolution) Regulations, 2010.
- 9.2 Complaints from the general public against CSPs or MNOS with regards to Political Messages shall settled by CCK in accordance with the provisions of KICA, the Kenya Information and Communications (Dispute Resolution) Regulations, 2010 and the Kenya Information and Communications (Consumer Protection) Regulations, 2010.
- 9.3 Complaints from the general public against Political Parties or individuals with regards to Political Messages shall be lodged with NCIC for investigation and settled in accordance with the NCIA.

Issued by the Communications Commission of Kenya

Director General

Date

CCK