



The Global Voice of Mobile Entertainment

# **MEF Draft Code of best practice for Participation TV Services in the USA**

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DRAFT MEF

## Introduction to MEF

MEF is a global trade body which, since launching in 2000, has actively promoted the mobile entertainment industry as an identifiable and significant sector, with specific commercial structures and interests. By bringing together thought-leaders from across the value chain, MEF has created a focal point for the industry to work together on global issues and local priorities to accelerate the industry's growth.

We have close to 150 members spanning the whole range of mobile entertainment activities including the music, film, TV and video companies who create and package content; the publishers, retailers, service providers and technologists who sell and deliver it; and the network operators who get it to your mobile phone.

MEF also has representation in the Americas, Asia and Europe, providing local member benefits, such as workshops, panel discussions and localised initiatives<sup>1</sup>.

## Remit

This Code of Practice (Code) applies only to 'Participation TV Services' operating in the United States of America, paid for using the mobile handset. At this time, the definition of participation TV only covers TV shows where viewers are asked to text in votes<sup>2</sup> or enter into sweepstakes. Most participation TV services charge a premium rate levy however; many services also charge standard rates or provide free routes of entry. This Code covers all charging tiers.

This Code contains provisions to provide a self-regulatory framework for such services in their entirety – their content, promotion and overall operation.

## Responsibilities

Responsibilities for services in this Code are assigned to those who provide the networks which carry the services (wireless carriers), those who provide the services which the networks carry (service providers) and those who provide the content (broadcaster or producer).

## Principles of good regulation

This Code has been written with regard to the five principles of good regulation<sup>3</sup>, namely:

- Transparency
- Accountability
- Proportionality
- Consistency
- Targeting

## Compliance/Monitoring

All companies are strongly advised to ensure that their services are monitored by a reputable third party to ensure compliance and deal with any potential issues.

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<sup>1</sup> For more details, please visit [www.m-e-f.org](http://www.m-e-f.org)

<sup>2</sup> Votes would also cover polls which do not have a critical outcome to a show in terms of eliminating a contestant, but will still ask viewers to participate in a 'vote'.

<sup>3</sup> This list has been devised by the 'Better Regulation task Force' in the UK but the principles apply universally to all forms of self/co or state regulation. For more information please visit: [www.brc.gov.uk](http://www.brc.gov.uk).

## **A responsible approach to compliance**

The parties to this Code recognise that:

- A self regulatory approach will be effective in adapting to the fast moving environment of mobile technology and services and will enable the various parties to react quickly to issues.
- If consumers are to use interactive mobile entertainment services with trust and confidence it is important that they have available all the key relevant information about a service as part of their consideration of the call to action. In essence, the consumer must be able to make an informed choice as to whether or not to take part in the participation TV service.
- These would include any key terms and conditions such as any restrictions relating to the age of the participant or setting out clearly the closing date and or time for participating.
- Any claims, offers or enticements to attract consumers to engage in a the service should not mislead them by stating an untruth or half-truth or through failing to state or not make sufficiently prominent an important term or condition likely to affect their decision to use the service.
- Pricing information will need to be easy to locate, read, understand and be presented in a way that follows convention and is unlikely to cause confusion.
- All the parties in the value chain should be aware of the role and responsibilities that they have to consumers and their responsibilities towards other parties in the value chain.

## **Raising awareness and education**

The parties involved in the provision of P-TV services should collectively:

- Be able to provide advice and effective access to information regarding the use of the mobile phone as a means for participating in TV and/or radio broadcasts. For example, wireless carriers provide their customers with dedicated customer care lines.
- Support different means of providing participants with customer care help facilities and provide information on who to go to if the customer has a query.
- Work effectively with regulators and policy makers to ensure that they have an appreciation of the technologies employed in providing P-TV services.

## 1 General Provisions

- 1.1 Services and promotional material must comply with the relevant US legislation and must not contain anything which is in breach of the law, nor omit anything which the law requires. Services and promotional material must not facilitate or encourage anything which is in anyway unlawful.
- 1.2 In addition to legal requirements, all services and promotional material must adhere to the wireless carrier service requirements as all services must be approved by each carrier before going live.
- 1.3 Sweepstakes must also comply with US sweepstakes rules and regulations, including registration where relevant, and the offering of free method of entry.

In addition, it should be ensured that:

- The correct cost message is aired
- The closing date and time is clearly stated
- A fair selection of winners from all valid entry methods
- Winners are not chosen BEFORE the competition closes
- An adequate prize winner management process is in place to ensure fairness and transparency

### 1.4 Fairness

Services and promotional material should not:

- a) mislead, or be likely to mislead in any way,
  - b) take unfair advantage of any characteristic or circumstance which may make consumers vulnerable.
- 1.5 All key terms and conditions such as any restrictions relating to the age of the participant or the closing date for participating should be made clear on all promotional material.
  - 1.6 All terms and conditions/FAQs and customer care information should be made available on an obvious website and it should be equally obvious to a participant how to view the information. It is therefore a requirement to provide a very easy 'help' message route for the viewer which contains all relevant information needed to seek help or full terms and conditions.
  - 1.7 Any claims, offers or enticements to attract consumers to engage in a the service should not mislead them by stating an untruth or half-truth or through failing to state or not make sufficiently prominent an important term or condition likely to affect their decision to use the service.

Non-exhaustive examples include:

- If broadcasters reserve the right to remove significant blocks of votes or entries deemed to be unfair attempts at changing the outcome, this should be made available within the terms and conditions. If there is a low limit to the number of entries or votes, such as 10 per number or 10 per day, this should be communicated in the promotional material.
- If the show is being repeated ensure that some prominent text shows that the voting or entry period has closed.
- State clearly when entry or voting periods are closed and no more votes or entries will be counted. Ensure that the systems are switched off or capable of being switched off to ensure no consumers are charged a premium for trying to enter after the voting or entry period has closed.
- If it is not possible to switch off systems of entry, then refunds to those consumer that enter should be made with an explanation of why their vote or entry could not be counted.

## 1.7 Services should not encourage unauthorised use

- All terms and conditions should state that the bill payer's permission should be obtained before taking part in the service<sup>4</sup>.
- Some carriers require the use double opt-ins for non-subscription services.

## 2 Pricing information

Pricing information will need to be easy to locate, read, understand and be presented in a way that follows convention and is unlikely to cause confusion. In 2005, the FCC Extended Truth-in-Billing Rules<sup>5</sup> to Wireless Carriers. This Code takes the Truth-In-Billing rules into account.

- 2.1 All parties should ensure that all users of the participation TV show are fully informed, clearly and straightforwardly, of the cost of using the service prior to incurring any charge.
- 2.2 Written pricing information should be easily legible, prominent, horizontal and presented in a way that does not require close examination. Spoken pricing information should be easily audible and discernable.

### • Television

All promotions using the medium of television are subject to the pricing information being spoken as well as visually displayed. The charges information should be displayed directly in relation to the advertised number and in close proximity. All costs should be displayed in text format for the duration of the use of the number.

Non-exhaustive examples of good practice can be found in **Appendix B** (to be added later)

Services which are subscription based (information based services on P-TV services) should use the term "This is a "daily/weekly/monthly" subscription service" in a stationery position and placed on screen for the duration of the advertisement.

Voting/Competition Services which are subsequently promoted or aired should carry the word "Recording" to denote that the programme is recorded and clearly state that the voting/entry mechanism is not open to entry by Consumers.

### • Print media

For all officially endorsed print advertising, textual pricing information should be displayed in numerical format and it should not require close examination and pricing should be displayed in close proximity in relation to the advertised number. The pricing information should state: "\$0.XX per vote plus standard text message rates apply".

Costs should be associated with the number advertised. They should not be displayed separately or form part of any "Terms and Conditions" applicable to the service.

### • Radio

It is incumbent on the promoter of the TV show to ensure that the consumer is made aware of the price on all radio promotional material. Radio advertising should clearly state the price. Radio presenters should

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<sup>4</sup> This is because there are other methods of entry advertised alongside the text route.

<sup>5</sup> For more details on the Truth in billing rules see Appendix A.

be made aware of their responsibilities in ensuring correct pricing is provided whenever there is a call to action.

The responsibilities for providing correct pricing/charging are as follows:

- The *broadcaster or producer* should ensure that the presenter clearly states the costs of interacting every time the number is shown on the TV screen. For example by stating: “\$0.XX per vote plus standard text message rates apply”.
- The *broadcaster* should ensure that the correct pricing is shown with clear instructions on how to take part in the service.
- The *aggregator* should ensure that the correct pricing tariff is attached to the mobile short code so that the charges levied correctly correspond to the stated price of taking part in the service.
- Any supplementary advertising placed by the broadcaster/service provider in publications should ensure that the pricing is clear and the chargeable tariff is correct. State that the information is correct at the time of publication.
- To avoid any confusion, the pricing information should be in close proximity to the number displayed or the call to action.
- The participant should be provided with a cost warning after spending \$20 (in any one month) per service even though the carriers apply daily, weekly or monthly spend limits to their customers.

### **3 Contact information**

For all promotions, it should be clear to the consumer how to contact the most relevant party to resolve issues such as enquiries or complaints. It is important that adequate arrangements are put in place for consumers to be able to contact the provider of the service in relation to the TV show in case they have an enquiry or a complaint. In the case of Participation TV, the easiest route to make contact for consumer will be the provision of either of a ‘customer service’ telephone number or the name of a website containing the telephone number.

- Carriers require service providers to provide a toll-free helpline and an e-mail address for customer care. This information should be available in a standard rate MT if a consumer sends the word ‘help’ to the relevant shortcode.

Contact information should consist of the following:

(i) application provider company name;

(ii) telephone helpline number (excluding international free phone) or non-premium local access rate helpline number. Contact details can be provided via an advertised URL.

#### **Operation of helpline**

- Any customer service helpline should be suitably resourced and responses provided in an expeditious manner consistent with other customer service helplines.
- Consumers should be able to submit queries and complaints about the service through submission of an e-mail, or by calling the toll-free number.

## 4 Refunds

At the heart of much consumer legislation are requirements that a product should be of satisfactory quality, be as described by the promotion or advertisement and it should be fit for purpose.

All parties should ensure that there is an effective mechanism in place for the consideration of refunds and their payment where justified.

- By being more transparent to the consumer and dealing quickly and efficiently with requests for refunds, confidence in the mobile payment mechanism will be increased.
- The payment to the consumer will be made by the wireless carrier who will deduct the cost of the refund from the money paid to the aggregator and so on.
- Processes should be put in place for the networks to liaise closely with the aggregators and wireless carriers to provide refunds.
- The meaning of a refund includes the total cost of taking part in a service – not just a portion. It does not include compensation.
- Records should be kept to ensure that any future claim by the same claimant may, depending on circumstances, be reduced or rejected.

## 5 Use of the word Free

No service should be promoted as being free unless it can genuinely be acquired for free.

## 6 Processes for managing risk

Processes should be put in place to ensure clear lines of communication between all parties in the event of technical/regulatory problems occurring at the time that the P-TV show is aired.

1. If the effect of any issues will not have a significant impact on the outcome of the TV show, then any votes not counted will be announced and all affected consumers will receive a full refund from the most appropriate party with an explanation as to what happened.
2. If the issue is likely to have a significant impact on the outcome of the TV show, then the named individuals from the various stakeholders will:
  - Make a joint decision to delay the results of the show being presented until such time that all the votes have been counted
  - Make a public statement explaining what has happened
  - Deal effectively with any enquiries or complaints that may be received
  - Be prepared to substantiate the process and ensuring that the vote counts are correct
  - a. It may, in an extreme situation, be necessary to require consumers to re-cast votes. All consumers who have entered and whose votes have not been counted should be offered a full refund.
  - b. Under no circumstances will a result be presented to the public without each of the named parties providing their positive consent. This consent cannot be unreasonably withheld.

Examples of good practice in terms of processes are attached in **Appendix C** (to be added if required)

## Truth-In-Billing

The FCC has adopted Truth-in-Billing rules to improve consumers' understanding of their telephone bills. Among other things, the rules require that a telephone company's bill should:

- (1) be accompanied by a brief, clear, non-misleading, plain language description of the service or services rendered;
- (2) identify the service provider associated with each charge;
- (3) clearly and conspicuously identify any change in service provider;
- (4) contain full and non-misleading descriptions of charges;
- (5) identify those charges for which failure to pay will not result in disconnection of the customer's basic local service; and
- (6) provide a toll-free number for customers to call in order to lodge a complaint or obtain information.

The Commission also determined that all telecommunications providers should use standard labels on bills when referring to line item charges relating to federal regulatory action, such as universal service fees, subscriber line charges, and local number portability charges.

For more details on Truth-In-Billing, please go to [www.fcc.gov](http://www.fcc.gov)