

9 March 2007

Mr Nick McClintock
Manager - Emerging Issues Section
Networks Competition Branch
Department of Communications,
Information Technology and the Arts (DCITA)
PO Box 2154
Canberra ACT 2601



Dear Mr McClintock

Telecommunications (Customer Service Guarantee) Direction No. 1 of 1999 (Amendment No.1 of 2007).

Thank you for providing us with the opportunity to comment on the *Telecommunications (Customer Service Guarantee) Direction No. 1 of 1999 (Amendment No.1 of 2007)*. Our comments are set out below.

Please let us know if you have any queries regarding these comments.

We look forward to working with you to ensure a practical and efficient outcome for the industry.

Yours sincerely

Anne Hurley
Chief Executive Officer
Communications Alliance Ltd

**COMMUNICATIONS
ALLIANCE LTD**

Level 9
32 Walker Street
North Sydney
NSW 2060 Australia

P.O.Box 444
Milsons Point
NSW 1565

T 61 2 9959 9111
F 61 2 9954 6136
TTY 61 2 9923 1911
www.commsalliance.com.au
ABN 56 078 026 507

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Submission to Department of Communications,
Information Technology and the Arts (DCITA)

Telecommunications (Customer Service Guarantee)
Direction No. 1 of 1999 (Amendment No.1 of 2007).

March 2007

Telecommunications (Customer Service Guarantee) Direction No. 1 of 1999 (Amendment No.1 of 2007)

Submission by Communications Alliance

Communications Alliance is pleased to have this opportunity to provide comments to the Department of Communications, Information Technology and the Arts (DCITA) on the *Telecommunications (Customer Service Guarantee) Direction No. 1 of 1999 (Amendment No.1 of 2007) (Amending Direction)*.

Communications Alliance Ltd represents over 100 members participating in the Australian telecommunications sector. Our membership includes telecommunications carriers, both large and small, ISPs and other carriage service providers, equipment manufacturers and organisations with close relationships to the sector. Our mission is to promote the growth of the Australian communications sector and the protection of consumer interests by fostering the highest standards of business ethics and behaviour through industry self-governance.

Communications Alliance has been actively involved on matters relating to Voice over Internet Protocol (VoIP) and has created Working Groups to discuss key issues. The established Working Groups have expended a great deal of effort to progress the VoIP market in the convergence era. Communications Alliance has also taken a pro-active role as an information provider by preparing fact sheets and brochures about VoIP for industry and consumers.

Our comments are set out below and focus on the following areas, namely:

- The historical precedent upon which the Government is trying to apply the CSG to VoIP;
- Problems concerning which elements of a telephone service should apply to the CSG;
- Complexity in Contractual Relationships and Fault Rectification in the Supply Chain;
- Regulatory Burden and the absence of a Regulation Impact Statement; and
- Objectives of long-term interests of end-users.

Application of legacy legislation to an emerging service

The Customer Service Guarantee (CSG) was developed to apply to a Public Switched Telephone Network (PSTN) service and therefore does not naturally fit with an Internet Protocol (IP) service. The applicability of the CSG to VoIP services is central to this issue. We submit that legacy legislation should not be extended to an emergent technology service before undertaking a wider analysis of the objectives for so doing and of any unintended consequences it may have on the industry. In particular, an analysis of whether it meets the long-term interests of end-users (see further paragraph 1.5) and any consequences for industry by way of increasing compliance costs and impacting competitive market entry (see further paragraph 1.4).

Problems concerning which elements of a telephone service the CSG should apply to

A significant potential problem is confusion about which features of a telephone service the CSG should apply to. Further clarity on this aspect is required, particularly in light of DCITA's policy objectives to provide greater certainty for consumers and industry in the application of the CSG.

Recommendation 16 of DCITA's Examination of Policy and Regulation relating to Voice Over Internet Protocol (VOIP) Services report issued in November 2005 considered the applicability

of the CSG in the delivery of a VoIP service. In an attempt to clarify the relationship between VoIP and the CSG, DCITA has created a new definition for VOIP CSG Service.

It is accepted that attempting to define a CSG VoIP service is not an easy task. The anomalies created by this new definition are many and complex, bringing into question the rationale of attempting to apply the CSG to any products offered within the scope of the VoIP arena and the perceived benefits for industry and consumers.

Complexity in Contractual Relationships and Fault Rectification in the Supply Chain

One of the complex issues arising from the draft Amending Direction is the existence of a “contractual relationship between the entity that supplies the VOIP service and the entity that supplies the Internet access service over which the VOIP service operates.” The term contractual relationship is not defined in either the draft Amending Direction or Explanatory Statement which causes confusion over what is covered by the term and its intended application. It is understood that a contractual relationship could exist between multiple parties involved in delivering the VoIP service to the consumer, making it difficult to pinpoint to which entity the CSG would apply.

The IP environment increases the complexity of the supply chain particularly when one considers the array of hardware and software options available to users wishing to access and make use of a VoIP service. A consequence of this is likely to be difficulties in the area of fault handling in terms of identification, rectification and determination of which entity has responsibility for the fault. It is possible that fault could lie with equipment manufacturers, software suppliers, ISP's or CSP's but it will be extremely difficult to determine this or the contractual relationship between distinct entities. Add to this the requirement to perform this task in a timely manner and the merit of having any VoIP service fall within the realm of the CSG is further questioned.

Regulatory Burden and the Absence of a Regulation Impact Statement

The Office of Best Practice Regulation (OBPR) has taken the view that it is unnecessary to produce an RIS to accompany the draft Amending Direction. It is our submission that this decision should be re-considered . The Best Practice Regulation Handbook was issued by the OBPR in Decembers 2006. The Handbook sets out new requirements for undertaking an RIS and also provides a step by step process for any government entity considering whether an RIS is necessary. The following steps determine whether an RIS is necessary as follows:

- Step 1
 - Analyse the problem (self assess)
- Step 2
 - Undertake a preliminary assessment (self assess)
- Step 3
 - Consult with the OBPR
- Step 4
 - Determine the appropriate level of regulatory analysis¹

¹ User's Guide to the Best Practice Regulation Handbook, Office of Best Practice Regulation November 2006

Step 4 of this process determines the need for an RIS and/or a Business Cost Calculator report in terms of compliance costs and competition impacts for all 'proposals with regulatory and quasi-regulatory obligations being brought to the Cabinet by ministers.'

New providers may be deterred by the additional regulatory burden that arises from having to comply with the CSG or having a contractual relationship with an entity that falls under the CSG. These matters, together with the lack of clarity surrounding the type of service covered by the CSG, have the strong potential to become barriers to entry for new providers and could also result in inhibiting the development of new services and/or bringing new products to market.

It is our submission that because of the potential impact on compliance costs and competition for the industry that an RIS is warranted and we urge DCITA to consider taking this step.

The objective of the long-term interests of end users

Section 3(1) of the *Telecommunications Act 1997* provides that the main object of the Act is to:

"provide a regulatory framework that promotes:

(a) the long-term interests of end-users of carriage services or of services provided by means of carriage services; and

(b) the efficiency of international competitiveness of the Australian telecommunications industry²

In a speech to the industry at the Australian Telecommunications Users Group, 2007 Annual Conference Senator Coonan stated:

"We regulate to protect consumers and to ensure they have affordable access to essential telco services. It really is as simple as that... Australia's regulatory regime promotes the long-term interests of consumers. It does this by encouraging competitive markets and investment in new infrastructure."³

The Minister also said that:

"These particular provisions were specifically introduced to allow the ACCC to make decisions before an investment is made; or before a service is regulated."

The basis upon which the objectives of the long-term interests of end-users would be met by extending CSG obligations to VOIP is not clear. It is submitted that further examination and articulation of how the proposed Amending Direction would meet the legislative objective is required before it is implemented.

Conclusion

It is our submission that the proposal to extend the current CSG obligations to VOIP services would result in the application of legacy regulation to an emerging service. Such a step could well have deleterious consequences for the industry by way of raising regulatory compliance costs and impacting new and competitive market entry.

The particular features of the VOIP service which would carry CSG obligations are not well delineated. Further, in light of the complexities of the operating environment of multiple

³ The Minister for Communications, Information Technology and the Arts, Senator Helen Coonan address to the Australian Telecommunications Users Group "The Australian Broadband Guarantee". Sydney 8 March 2007

providers delivering the service to customers, there could be significant adverse impacts on fault handling in terms of identification, rectification and determination of which entity has responsibility for the fault.

In light of these potential impacts from the proposed Amending Direction, and the lack of clarity as to how the proposal would deliver the legislative objective of the long-term interests of end-users, it is submitted that the proposal should be re-considered and, at a minimum, an RIS be undertaken.

We would welcome the opportunity to meet with the Department to discuss this matter further.