COMMUNICATIONS
ALLIANCE LTD

Submission to the Federal Government Red Tape Reduction/Deregulation Process

Version 1 – 19 December 2013

Red Tape Reform Framework

The Government's 'red tape' reduction program is a welcome opportunity to cut business costs and increase operational flexibility. This will enhance the telecommunications industry's ability to deliver cheaper and more innovative solutions for our customers.

Communications Alliance members believe the time is right to significantly reduce the regulatory burden in Australian telecommunications. Over the years there has been an accumulation of regulation that sought to tackle the perceived problems of the day, or was put in place to foster competition in the early period of market liberalisation. With the passage of time, the development of competitive markets and the maturation of industry practices, many of these issues should no longer be areas of concern for regulation. This legacy regulation needs to been streamlined or removed.

The focus of red tape reduction should be the elimination of regulation that is getting in the way of delivering better service for consumers and regulation that is no longer relevant. Wherever possible (and particularly for operational areas) there should be industry self-regulation.

With this in mind we believe that there are five categories of necessary regulatory reform. These will be discussed in more detail after a view on appropriate methodology is presented.

NB: This document is Version 1 of the Communications Alliance submission and represents progress made within the available initial consultation timeframe. Work is continuing within Communications Alliance on these issues and we plan to provide an updated document early in 2014 that will include further work on costing methodologies.

Methodology

Communications Alliance recognises the importance of seizing the near-immediate opportunity to undertake 'quick win' reforms in areas where valuable deregulatory action can be undertaken relatively simply, without undermining interconnected pieces of the regulatory framework.

A proposed list of items that may be suitable for early action for consideration is at Appendix A.

To pursue the medium-term strategy, Communications Alliance proposes that an efficient and effective "first principles" approach to determining an appropriate consumer safeguards regulatory regime in the transition to an NBN environment could be to consider existing consumer protection regulations within an analytical framework such as outlined below:

a. Identify the **underlying policy intent** of the regulation; and

b. Identify the **original context** which led to the regulation's construct; then

c. Determine whether the underlying **policy intent still requires regulation during the transition to a competitive NBN world**; then

d. If it does, determine whether the regulation's **construct remains efficient**:

i. If the regulation's underlying policy intent still requires regulation and the regulation's construct remains efficient, retain the regulation.

ii. If the policy intent still requires regulation but the regulation's construct is no longer efficient, determine:

1. how the underlying policy intent could be more appropriately addressed going forward; and

2. how and when the existing regulation can be repealed.

e. If the underlying policy intent no longer requires regulation, determine how and when the existing regulation can be repealed.

An efficient regulation should be simply defined as one that produces social benefit that outweighs its cost, and has the greatest net benefit relative to alternatives.

Further, the proposed "first principles" approach to consideration of the appropriate consumer safeguards regulatory regime should be driven by the following four strategic guidelines:

a. Competition is the best safeguard for consumers

b. Outcomes-focused policy must be pursued

c. Regulatory certainty is critical

d. Transitional regulatory arrangements must be in alignment with the NBN future

The four categories of necessary regulatory reform are now considered in more detail.

1. Refresh and modernise consumer protection requirements

1.1 Create a unified and coherent set of consumer protection customer information requirements

Currently, regulated requirements to inform customers about certain matters to do with their telecommunications services have accumulated over a long period of time, and are scattered throughout legislation, Ministerial Directions, subordinate instruments and Industry Codes. Further, these requirements are not co-ordinated, nor calibrated to ensure efficient communication or to optimally address the needs of the customer.

There is a clear opportunity to review this melange of requirements to create a better experience for consumers and lower cost and administrative burden for communications providers. It will require some bold thinking to agree and establish a new framework.

The principle should be that customers have access to the information they need, when they need it, to make informed choices about matters to do with their communications needs.

A life-cycle view of customer interactions should be taken, with information categorised according to importance at each point of interaction. Consideration must be given to what can be provided in the ordinary course of communication between providers and customers and what should be regulated.

Regulations should generally be agnostic as to methods of information delivery or access, timing and messages, given the increasingly diverse range of communications channels between consumers and suppliers (e.g. newspaper public notices are outdated yet still required in some cases). In some cases, prescription will be needed where the method of communication is a specific concern (e.g. mobile roaming spend notifications).

An overall picture should be established that will allow decisions to be made to prioritise, avoid information overload and remove inefficient and wasteful communication requirements. It can also provide a framework for assessing any future communications needs against the context of existing information flows.

For its part, Communications Alliance recognises that there is a number of Industry Codes that contain a range of consumer information and authorisation requirements, and that there is an opportunity to streamline and consolidate them within the Telecommunications Consumer Protections (TCP) Code.

This initiative should be accompanied by similar actions within the bureaucracy, and importantly the work to establish the principles and framework for efficient communications should be co-ordinated across the policy department, regulators, consumer groups and industry. A shared view of priorities should be established and a transition timetable developed.

Communications Alliance has developed a spread-sheet containing a catalogue of information requirements which shows there are some 352 requirements, contained in some 48 documents which should be considered for review.

Recommended action:

Agree on the removal of duplicated and/or unnecessary information provision requirements, and the creation of a simpler and more logical framework of information for consumers.

Rationalise and consolidate the information provision-related requirements within Communications Alliance Codes.

Outcome:

A more useable framework of information provision to consumers that better meets consumer needs, eliminates 'information overload' and reduces costs for industry.

1.2 Price Cap and Price Control arrangements

The current price cap and price control arrangements have their roots in the arrangements designed in the late 1980s for application in the emerging competitive environment ushered in by the 1991 Telecommunications Act. In practical terms, they do not constrain Telstra's choices nor deliver benefits to consumers and have not done so for a number of years; having been overtaken by the marketplace effects of competition. Attachment 1 provides a more detailed analysis which argues that these arrangements have served their purpose and should be repealed.

Recommended action:

Repeal price cap and price control arrangements

Outcome:

Reduced industry costs, with no detriment to consumers

1.3 Customer Service Guarantee, particularly in NBN environment

The Customer Service Guarantee has served as a back-stop protection for consumers connecting to fixed line telephone services. It was devised when fixed line services were the dominant form of telephony and its parameters were designed around the performance standards of the universal service provider. It is a complex and intrusive piece of legislation that drives high administrative costs.

It is proposed that the Customer Service Guarantee in its current form be repealed. It should be replaced by a high level obligation on retail service providers to offer a contractual guarantee package of their own design – covering service connection and fault rectification - which is made publicly available to allow consumers to take this information into account in the service and service provider choice that they make. RSPs should be allowed to differentiate themselves on the basis of quality, invest in quality as a means of achieving competitive advantage, but also, if they wish, offer lower quality services at lower prices to reach customers with lower willingness to pay. Customers are familiar with comparing and making decisions to purchase products with different prices, quality, warrantees and guarantees. Indeed, this is a feature of almost every competitive market in Australia.

Recommended action:

Repeal current Customer Service Guarantee framework and replace with a requirement that RSPs offer a transparent contractual guarantee framework to customers around service connection and fault rectification.

Outcome:

Creation of competition around customer guarantees – greater visibility and choice for consumers, while retaining assurance on connection and rectification.

1.4 Pre-selection

The pro-competition policy intent of pre-selection on legacy copper networks and the benefits it continues to drive, albeit limited, means that it should remain in place during the transition to an NBN environment. However, pre-selection capability on new networks can be expensive to implement on NBN-based fixed, wireless and satellite networks, with no material benefit. For this reason, pre-selection obligations should not be imposed on NBN-based networks, nor on other next-generation fixed access networks.

Recommended action:

Limit pre-selection obligations to legacy copper networks.

Outcome:

Reduced cost and complexity in the development of service offerings on next-generation networks, generating benefits for consumers.

1.5 Duplication of privacy obligations

Duplication and inconsistency across various legislative instruments relating to privacy obligations has resulted in an excessive regulatory burden for the telecommunications industry.

This is evidenced by the problems caused when service providers are required to comply with multiple layers of privacy regulation overseen by more than one regulator and more than one EDR scheme.

At present, industry participants are required to comply with the requirements of Part 13 of the Telecommunications Act, as well as the requirements of the Privacy Act. Additionally, privacy principles are contained within many industry Codes, such as the Telecommunications Consumer Protections Code 2012.

Recommended action:

The requirements of the Telecommunications Act and the Privacy Act should be aligned and any duplication repealed.

1.6 Priority Assistance

The current arrangements for Priority Assistance are anachronisms that need to be re-considered coincident with the advent of the NBN. These arrangements include a high degree of prescription that Telstra operates under through its licence conditions. Future arrangements should consider changes that have

occurred to availability and use of telecommunications products since priority assistance was introduced in 2002. Any requirements for priority assistance in the future should be based on a simplification of the processes through a central offering at a wholesale level by NBN Co.

While the policy objective of this regulation will retain relevance going forward, it could ultimately be more appropriately met by placing a licence condition on NBN Co with respect to expedited repair timeframes for Priority Assistance customers.

Recommended action:

Consider options for reform of priority assistance, based on the objectives of process simplification for service providers, recognition of the beneficial impact of next-generation technologies and retention of protection for priority assistance customers.

2. Review, update and rationalise operational and technical regulation

2.1 Streamline operational and network codes

Communications Alliance proposes to streamline its operational codes to ensure that they deal purely with operational matters.

Part of this rationalisation will include reviewing all customer authorisation and information provision obligations in operational codes with the intent to consolidate all such obligations in the TCP Code.

In this context it is unlikely that these codes will need to be registered when the review is completed as they would then deal exclusively with inter-operator issues and not deal with consumer protection issues such as customer authorisation requirements. This will simplify compliance and give clear delineation for any future operation codes required to support NBN operational activities.

In addition, with the expected passing of the Telecommunications Legislation Amendment (Consumer Protection) Bill 2013 currently before Parliament, it will be possible to amend Codes where required, including to simplify obligations. Communications Alliance suggests that the ACMA develop an expedited process to both register and deregister Codes.

2.2 Numbering Plan

Communications Alliance proposes that the Numbering Plan become a self-regulatory plan owned and operated by industry, not a legislative instrument. The overall objective should be to ensure that industry can manage numbering resources for the delivery of services to customers and that this is achieved in the most cost-effective and least disruptive way possible.

2.3 Untimed Local Calls

Access to untimed local calls for over 99% of the Australian telephone users is guaranteed under Part 4 of the *Telecommunications (Consumer Protection and Service Standards) Act 1999 ("CPSS Act")*.

The price control requirement that Telstra charge a maximum of 22c for untimed local calls from home phones on its most popular line rental plan, (and the associated requirement for other providers offering a Standard Telephone Service (STS) to also provide the option of untimed local calls) has been overtaken by competition-driven market developments.

These provisions no longer serve any meaningful purpose as a protection against consumer detriment.

Modern calling plans typically see local calls charges significantly below 22c and in many cases local call charges are simply included within plan value at no additional cost to the consumer.

Recommended action:

Repeal the untimed local call requirements under Part 4 of the CPSS Act.

Outcome:

Reduced costs for industry, no detriment to consumers.

3. Reduce the burden of reporting requirements, via a scheduled review in cooperation with the ACMA

Telecommunications remains a heavily regulated and policed industry in terms of the quantum of monitoring and reporting obligations. Even following the review of the Trade Practices Act and its subsequent updating to the Competition and Consumer Act 2010, many of these obligations from the original telecommunications regime from the early 1990s still remain in place today.

It is noted that the telecommunications specific provisions of the Competition and Consumer Act 2010 are to be reviewed mid-2014 and that this review will afford an opportunity to fully test the ongoing relevance, utility and effectiveness of the regulatory regime in general and the various reporting and recording obligations that are embedded in that Act in particular.

There is currently a wide scope of regulatory obligations, imposed by both the Australian Competition and Consumer Commission (ACCC) and the Australian Communications and Media Authority (ACMA) on Australian telecommunications service providers. Additionally, many telecommunication providers are also signatories or participants in other self-regulatory arrangements, industry working groups and related consumer advocacy groups. Each of these activities will incur costs for participation, such as membership contributions, levy payments, licensing fees, and other related costs.

There is a tendency for reporting obligations to manifest and remain as they are generally seen as non-intrusive. However, despite some efforts to streamline reporting requirements in the telecommunications sphere there remain a number of obligations whose time has passed, or whose implementation is too expansive.

Recommended action:

Industry to work with regulators, focusing on the most burdensome existing requirements. Regulators to be required to argue for retention of any existing reporting requirements on the basis of demonstrable relevance and tangible benefit to consumers and/or public policy-making.

Outcome:

Reduced administrative/oversight burden and costs for regulators.

Reduced costs for industry.

4. Streamline the industry payments regime (carrier licence fees, number tax, USO)

The incidence of fees and charges imposed by Government on various telecommunications activities tends to be discriminatory in effect and difficult to justify in aggregate.

As a general point, aggregate costs imposed on industry through licence fees should decrease to reflect reductions in Government administrative costs and and regulator costs achieved through deregulation.

Further, any fines levied on industry via the courts or as a result of enforceable undertakings should be considered for diversion to fund co-regulatory efforts (e.g. the operating costs of the industry-funded compliance monitoring body, Communications Compliance Ltd) and the development of consumer codes.

The activities funded via add-ons to the Universal Service payment collection method, such as the national relay service, need to be reconsidered for value and efficiency. The principles of promoting universal access are not in dispute, it is whether these arrangements are promoting the best use of available technology and better access to information about choices. For example, the mobile carriers have for four years been willing and prepared to support SMS access into the emergency service consistent with Government policy, but the institutional and bureaucratic arrangements which are stuck in concepts of "standard telephone service" have been an impediment that have thwarted this policy objective.

Experience in other countries and jurisdictions indicate that access to emergency services needs to be extended further than just via voice services. Current legislative provisions don't clearly support this.

5. Review and rationalise institutional arrangements (ACCAN, ACMA, ACCC, Privacy Commissioner, TIO, TUSMA)

It is an appropriate juncture to review the structural and institutional arrangements that have evolved over time and review for efficiency and effectiveness. In some instances it may be more efficient to reduce or remove program funding, or in others, it may be more appropriate to consider the on-going necessity of the organisation.

Regulatory Overlap and Administration: In more general terms, the overlap between the industry specific consumer protection functions and programs administered by the ACMA and the economy wide consumer protection functions administered by the ACCC under the Australian Consumer Law appears ripe for rationalisation. The current ACMA scope and functions were designed prior to the advent of the new national approach to consumer protection law sponsored by the States and Commonwealth via the COAG process.

TUSMA: The Telecommunications Universal Service Management Authority is a case in point. It is not clear that a separate Authority and administrative structure is a cost effective and efficient method of administering a small number of contracted arrangements, especially when the are several industry regulators and a policy department, each of which administers some other industry-specific contracts or aspires to.

ACCAN: Communications Alliance believes that options should be considered to improve the efficiency and cost-effectiveness of ACCAN, and to improve the ability of that organisation to represent the interests of the majority of Australian telecommunications consumers.

The approximately $2million annual operating cost of ACCAN is funded by the industry, but ultimately borne by consumers. Concerns have been raised that while ACCAN strongly advocates on behalf of the specific interest groups within its membership, such as the disabled, vulnerable and indigenous, it is not necessarily well placed to represent the concerns of the vast majority of Australian telecommunications consumers.

The focus of the proposed review should include:

- opportunities to achieve ACCAN's mission more cost-effectively;
- the effectiveness of ACCAN's research program; and
- whether consumer representation could be better achieved by incorporating the existing ACCAN functions within an existing broader consumer body.

Recommended action:

Industry to work with DoC and other stakeholders on the issues outlined above.

Outcome:

Clearer delineation of regulatory responsibilities

Reduced regulatory framework costs

More effective and efficient representation of consumer interests

5.1 Code overlap

Communications Alliance consumer codes, and other telecommunications-related consumer codes, should be reviewed to remove any overlaps with other laws or Acts put in place since the code was drafted.

5.2 Institutional arrangements

Government should strive for a clear demarcation in the roles and responsibilities of regulators and Authorities with the aim to remove overlap in legislation and to ensure demarcation in institutional arrangements.

APPENDIX A
Proposals for short-term deregulation reform

Telecommunications (Customer Service Guarantee) Record-Keeping Rules 2011

Telecommunications (Customer Service Guarantee – Retail Performance Benchmarks) Instrument (No. 1) 2011

		Response
1.	**Description of relevant regulation**	The ACMA instituted the *Telecommunications (Customer Service Guarantee Record-Keeping) Rules 2011* for eligible CSPs to keep records, and provide to the ACMA bi-annual reports, to enable the ACMA to: • monitor and enforce compliance with the benchmarks set out in section 117B of the *Telecommunications (Consumer Protection and Service Standards) Act 1999*; and • monitor and report on industry performance against the *Telecommunications (Customer Service Guarantee) Standard 2011* (CSG Standard) The Rules require eligible CSPs to: • retain records in relation to compliance with the CSG Standard and the *Telecommunications (Customer Service Guarantee – Retail Performance Benchmarks) Instrument (No. 1) 2011* (Retail Performance Benchmarks); and • prepare and provide the ACMA with reports in a specified format.
2.	**Policy underlying regulation**	The original intention as stated in the Explanatory Statement of the *Telecommunications Legislation Amendment (Competition and Consumer Safeguards) Act 2010 p7*: "The Customer Service Guarantee (CSG) requires telephone companies to meet minimum performance standards or provide customers with financial compensation when these standards are not met. However, compliance reporting undertaken by the ACMA over a number of years has highlighted variations in industry performance in meeting the CSG requirements. The trends suggest the existing arrangements are not providing sufficient incentive for the industry to maintain or improve service quality."
3.	**Reasons regulation is no longer needed/could be amended**	The Record Keeping Rules and the associated Retail Performance Benchmarks do not meet their policy objective of improving service quality performance for the following reasons and therefore should be removed:

		• The majority of CSPs reported in the ACMA's annual report 2012-13 exceeded the benchmark of 90% across connections, faults and appointment keeping (with the exception of Telstra in some connection criteria) suggesting there is not an industry performance issue in the first place.[1]
		• The threat of infringement penalties by not meeting the Retail Performance Benchmarks has contributed to the following industry behaviour rather than an ability to improve performance standards:
		  o An increase in the number, the breadth and the length of MSDs requested by the predominant wholesale network provider when extreme weather events occur. In order to avoid similar penalties all retail CSPs have followed suit;
		  o An increase in the number of waivers requested of customers in relation to their rights under CSG[2];
		• An increase in the number of instances where failure to meet CSG performance measures were wholly or partly attributed to acts or omissions by another CSP
		• Since the original implementation of the CSG Standard in 1999, the complexity of arrangements between the end-user, retail CSP, wholesale CSPS and wholesale network providers has increased. With the continued rollout of the NBN, retail CSPs will become increasingly reliant on wholesale network providers to connect and rectify services on their networks. In the absence of a interrelated 'Wholesale Performance Benchmark' (which was part of the original policy objective of the *Telecommunications Legislation Amendment (Competition And Consumer Safeguards) Bill 2010* but not implemented), retail CSPS remain obligated to pay compensation to end-users but with very limited ability to influence the quality and timeliness of CSG performance. Therefore the objective of motivating retail CSPS to improve performance by increasing reporting obligations and penalising failure to meet benchmarks is extremely flawed.
		• There is a decreasing dependence on the standard telephone service as the sole and/or primary service for consumers leading to an irrelevant imposition of regulation on the fixed telephony industry. Mobile, VOIP and OTT services will only increase in social importance and dependence in comparison to standard telephone services subject to the CSG Standard which have

[1] ACMA, *Communications Report 2012-2013*, Tables 3.7 and 3.8, pp66-67.
[2] Ibid, p65.

		been in steady decline year on year. • Successful removal of the CSG Standard itself would make both the Retail Performance Benchmarks and the Record Keeping Rules redundant. The Retail Performance Benchmarks only apply to CSPS with more than 100,000 CSG-eligible standard telephone services on a national basis. We understand the only CSPs currently eligible are iiNet, Optus and Telstra[3] leaving the tail end of the industry not having to report on performance. Primus, on currently yearly trends, is likely not to be eligible in the next ACMA reporting period[4]. Therefore this regulation does not address industry-wide performance as stated in the initial objectives.
4.	**Proposal to remove or amend (if amend, please describe amendment)**	Propose to remove regulation. Alternatively, if the CSG Standard remains in place, limit the obligation to meet retail performance benchmarks (and to report in accordance with the Record Keeping Rules) to the Universal Service Provider.
5.	**What impact removal/amendment will have on industry**	• Ongoing administration costs to retain records and provide reports to the ACMA. These include system costs to address any amendments the ACMA have made to either the benchmark criteria or the RKR reports. This has occurred once already. • Removal of financial threat of penalty infringements: o $510,000 where a benchmark is missed by less than two percentage points o $1,020,000 where a benchmark is missed by two percentage points or more but less than five percentage points, and o $1,530,000 where a benchmark has been missed by five percentage points or more.
6.	**What impact removal/amendment will have on consumers/individuals**	None. The impact of removing the mandated Retail Performance Benchmarks and associated Record Keeping Rules would be felt by industry only. Given the current focus of CSPs to improve customer experience to attract and keep their customer base, Optus does not believe this removal would impact the incentive to maintain adherence to timeframes at the current benchmark levels.

[3] ACMA, *Explanatory Statement to Telecommunications (Customer Service Guarantee – Retail Performance Benchmarks) Instrument (No. 1) 2011 (Amendment No. 1 of 2012),* p3

[4] ACMA, *Communications Report 2012-2013*, Tables 3.5, p65.

APPENDIX B
Item 1.1

Mandatory customer information requirements

Purpose of regulation
The many mandatory requirements to give customers certain information about telecommunications services or associated Government requirements were designed to ensure providers give customers information relevant to their purchasing decisions or on-going use of services. The rules were initially targeted at subject matter where there was limited commercial incentive for providers to inform customers, but over the years this scope has expanded to include requirements relating to matters that regulators or policy departments think are important, at times and using methods that have not been tested for effectiveness.

Why is reform appropriate?
The cumulative effect of the many layers of mandatory information has led to an information overload for customers, an administrative and compliance maze for providers and significant doubt whether the objective of informing customers is being met. There is substantial accumulated administrative and communication cost to providers.

Each issue of the day for consumer protection has been seen as the "most critical" for customers to be pushed information about, has typically been considered in isolation, and judgement made which do not necessarily have regard to the cumulative information load, cost, effectiveness and sun-setting options. Very few requirements have ever been removed.

With the relatively recent advent of the overarching new Australian Consumer Law and the new Telecommunications Consumer Protections Industry Code there are now overlapping and potentially duplicative layers of legislation, instruments and industry codes operative in this area. There is scope to remove regulation, reduce cost and administrative burden and maintain consumer protection objectives. A full listing of regulation in scope for review is outlined below.

Communications Alliance commitment
Communications Alliance is committed to working with the ACMA to identify redundant customer information obligations. By 30 June 2014, we aim to have reviewed all consumer and operational codes and to simplify them where required.

We ask that the Minister direct the Department of Communications and the ACMA to work with industry in undertaking an expedited review of customer information requirements in Codes and legislation.

Impacted stakeholders
Carriers, carriage service providers, customers, regulators.

Recommendation
The project should have a two-stage approach:

Phase 1: identify redundant regulation that could be an item for repeal for the first Regulation Repeal Day, as announced by the Minister to be held in early 2014.

Phase 2: A three part process should be undertaken:

(a) Identification and prioritisation of what an 'ideal' set of customer information principles, requirements, timing and communication options looks like.
(b) Removal of the existing set of rules from legislation, regulatory instruments and industry Codes, replaced by the 'ideal' set of requirements in a new chapter of the TCP Code devoted to this subject, or acknowledgement in a Guideline that they are an existing requirement under the Competition and Consumer Act.
(c) The establishment of a framework that ensures any new proposals to mandate information be pushed to telecommunications customers be evaluated in light of the existing stock of prioritised obligations, communication methods and sources available to consumers.

In addition, analysis to be undertaken of any overlap in obligations under legislation, including:

- Privacy Act 1988
- Australian Consumer Law
- Telecommunications Act 1997

Benefits and protections

The overarching principle would be to replace the current ad hoc, out-dated and overlapping requirements with a new set of rules that reflect the principle that customers should have access to the information they want, when they want it, and in a form that is useful. The objective would be to maintain the existing level of obligations where they continue to be relevant, but remove and not replace any that are no longer relevant or effective.

Sources of current information obligations that need to be analysed and rationalised
Legislation

- Telecommunications Act 1997
- Telecommunications (Consumer Protection and Service Standards) Act 1999
- Competition & Consumer Act 2010
- Privacy Act 1988
- Australian Communications & Media Authority Act 2005
- Telecommunications Universal Service Management Agency Act 2012
- Broadcasting Services Act 1992
- Copyright Act 1968
- Spam Act 2003

Authority Determinations / Standards

- Telecommunications (Standard Form of Agreement Information) Determination 2003
- Telecommunications (Customer Service Guarantee) Standard 2011
- Telecommunications Service Provider (Mobile Premium Services) Determination 2010 (No. 1)
- Telecommunications Service Provider (Mobile Premium Services) Determination 2010 (No. 2)
- Telecommunications (Service Provider – Identity Checks for Pre-paid Public Mobile Telecommunications Services) Determination 2013
- Telecommunications Numbering Plan 1997
- Telecommunications (International Mobile Roaming) Industry Standard 2013

Communications Alliance Industry Codes

- C513:2004 Customer and Network Fault Management Industry Code
- C515:2005 Pre-selection – Single Basket/Multi Service Deliverer Industry Code
- C522:2007 Calling Number Display Industry Code
- C525:2010 Handling of Life Threatening and Unwelcome Calls Industry Code
- C536:2011 Emergency Call Services Requirements Industry Code
- C540:2013 Local Number Portability Industry Code
- C555:2008 Integrated Public Number Data base (IPND) Industry Code
- C564:2011 Mobile Phone Base Station Deployment
- C566:2005 Rights of Use of Numbers Industry Code
- C569:2005 Unconditioned Local Loop Service (ULLS) Ordering, Provisioning and Customer Transfer Industry Code
- C570:2009 Mobile Number Portability Industry Code
- C609:2007 Priority Assistance for Life Threatening Medical Conditions Industry Code
- C617:2005 Connect Outstanding Industry Code
- C625:2005 Information on Accessibility Features for Telephone Equipment Industry Code
- C628:2012 Telecommunications Consumer Protections Industry Code
- C637:2011 Mobile Premium Services Industry Code

Communications Alliance Industry Guidelines

- G505:1998 Development of Telecommunications Industry Consumer Codes
- G516:2004 Participant Monitoring of Voice Communications
- G517:2004 Monitoring of Voice Communications for Network Operation and Maintenance
- G538:1999 Interconnection Model
- G562:2000 Electronic Customer Authorisation
- G563:2001 Supporting Arrangements for the supply of DSL Customer Equipment
- G567:2010 Switchless Multibasket Billing Redirection
- G571:2002 Building Access Operations and Installation
- G572:2007 Unconditioned Local Loop Service – Fault Management
- G574:2009 Mobile Number Portability – Customer Information
- G579:2009 Mobile Number Portability – Operations Manual
- G586:2006 Disability Matters: Access to Communication Technologies for People with Disabilities and Older Australians
- G597:2005 Pre-selection – Operations Manual
- G611:2002 Privacy Protection in ACIF Publications
- G612:2012 Customer Requested Barring
- G616:2013 Acoustic safety for Telephone Equipment
- G627:2011 Operational Matrices for Reporting on Accessibility Features for Telephone Equipment
- G630:2006 Accessibility of Payphones Industry Guideline
- G636:2007 Accuracy of geographic numbering records
- G639:2012 Mobile Premium Services Mandatory Information Industry Guideline
- G640:2009 Prepaid Calling Card Industry Guideline

Internet Industry Association Industry Codes

- IIA Content Codes 2005
- IIA Content Services Code 2008
- IIA Spam Code 2005
- IIA iCode (eSecurity Code) 2013
- IIA Interactive Gambling Industry Code 2001

Other

- Privacy Regulations
- Credit Reporting (Privacy) Code
- Copyright Regulations 1969
- Copyright Amendment Regulations 2004
- ADMA Direct Marketing Code of Practice 2006

Item 1.2

Telstra Carrier Charges – Price Control Arrangements, Notification and Disallowance Determination No.1 of 2005

Scope of the regulation
The Minister has the power to regulate Telstra's retail prices under Part 9 of the *Telecommunications (Consumer Protection and Service Standards) Act 1999*. Over time a number of additional obligations have been added such as metro-rural price parity on Telstra's pre-select product – HomeLine Part.

The current price control determination (PCD) commenced on 1 January 2006 and has been subject to a number of reviews. Following the most recent review by the Department of Communications in 2012, the Minister extended the operation of Telstra's price control arrangements until 30 June 2014.

In recognition of the transition of Telstra's services over time onto NBN, the 2012 review amended the PCD excluding NBN based services from the remit of the price controls – the exception being local call price regulation on voice only NBN based services.

Purpose of the regulation
This regulation was designed to place retail price controls on Telstra's fixed voice services (including directory assistance), initially to emulate the effects of competition in the retail voice market and then retained to ensure that productivity gains from competition were shared with consumers.

More recently retail price control have been used to drive other social policy objectives, such as rural/metro price parity and making telephone services available to low-income Australians.

Reasons regulation is no longer needed
Retail price regulation on Telstra is redundant because there is a significant amount of competitive pressure in the fixed voice market from fixed voice competitors and fixed voice substitutes (e.g. mobiles and VoIP). This competition is driving lower fixed voice prices. The fact that fixed voice prices are declining and Telstra retains a large price control surplus evidences that it is competition, not retail price controls, that are driving prices down.

Since 1 January 2006, Telstra's price control surplus (the shortfall in revenue Telstra could have recovered if services were priced to the amount permitted by the price controls) has been around $39m per annum. This has resulted in a cumulative surplus of $293m. In other words, retail competition required Telstra to forego over $293 million dollars of revenue allowed under the price controls.

The PCD is legacy regulation and has been removed or wound back in most telecommunication markets where access regulation is present. Retail price controls were removed from BT in the UK over six years ago.

Proposal to remove or amend
The retail price controls should be repealed in their entirety. However, it is recognised that there are community sensitivities in the pricing of local calls, Directory Assistance and payphone calls. These requirements may well be delivered by the market, and any concerns could be addressed through separate non-regulatory arrangements.

Impact of removal on industry
The PCD constrains Telstra's retail pricing flexibility and innovation. In addition it imposes regulatory overhead in the form of direct reporting costs, regulatory oversight costs and auditing costs, as well as a complex reporting regime that as an unintended consequence dictates Telstra's internal management reporting of service revenues.

It also indirectly constrains the flexibility of all market participants to innovate with pricing structures, denying consumers the benefit such innovation may deliver.

The ACCC is likely to support the removal of retail price controls, as they are not necessary in a market in which basic wholesale inputs are regulated. In its report of December 2011, the ACCC advocated removal of some parts of the price controls.

Impact of removal on consumers/individuals
The current retail price controls adversely impact retail customers as they constrain Telstra's ability to offer innovative and simple product solutions. There is little financial benefit to customers of the price controls given that Telstra's prices substantially undercut the prices allowed under the controls.

Low income groups and regional community groups may raise concerns with price control removal specifically around the cost of access, local call pricing and metro-regional price parity. As outlined above, these concerns should be addressed though separate, non-regulatory arrangements.

Item 1.3

Customer Service Guarantee

Telecommunications (Customer Service Guarantee) Standard 2011

Purpose of regulation
The *Telecommunications (Customer Service Guarantee) Standard 2011* (the ***CSG***) was introduced in 1998 and prescribed performance standards on retail service providers (***RSPs***) in relation to the connection and fault rectification of voice services (together with certain enhanced call handling features), and the making of appointments in relation to those activities. RSPs are required to provide customers with an automatic monetary rebate where a performance standard is breached.

The Explanatory Memorandum (***EM***) to the *Telecommunications Bill 1996* describes the intent or purpose of the CSG Standard as follows:

"The CSG is not intended to address every individual service difficulty that may arise, but is intended to supplement other customer complaint mechanisms. The CSG is intended to guard against poor service in key problem areas and provide a streamlined means for compensating consumers where set standards in those areas are not met. Matters not covered by the CSG are addressed by other more appropriate mechanisms either in statute, licence condition or under the [then] proposed industry code-standard regime in Part 6…"

The EM goes on to state that the primary intention of the CSG is:

"…not to benefit customers financially, but to provide carriage service providers with an incentive to meet performance standards…".

Why is reform appropriate?
Reform of the CSG is appropriate for the following reasons:

- The importance of the CSG has significantly declined due to dramatic changes in telecommunications technology since 1998. This has resulted in changes to the way that consumers use telecommunications services and a marked reduction of reliance on fixed line voice services.

- There is now a significant amount of competition in the market for voice services (including the use of substitute technology such as mobile and VoIP) compared to 1998.

- The CSG is based upon the technology of Telstra's *public switched telephone network* (the ***PSTN***), the level of service that has traditionally been offered over this network and Telstra's historic role as the primary provider of PSTN services. The move towards provision of fixed telephone services via the National Broadband Network (***NBN***) highlights that the industry is further moving away from the landscape in which the CSG was drafted.

- The requirements of the CSG are now essentially more than 10 years old and have therefore been superseded by the telecommunications needs of consumers in 2013, namely the:

    - Increasing use of mobile voice, SMS and data;

- Widespread use of the internet (both fixed and wireless broadband), including VoIP services; and

- Increasing demand for 'telecommunications bundles' that offer significant cost savings and other benefits.

Proposed regulatory reform

For the reasons set out above, Communications Alliance considers that the CSG has outlived its usefulness and should therefore be removed. RSPs should have the freedom to determine their own customer service commitments and guarantees in order to differentiate themselves in an increasingly competitive telecommunications environment.

Impact of proposed reforms on consumers

Communications Alliance does not consider that removal of the CSG will have any detrimental impact on consumers. The competitive market will continue to ensure that consumers can choose the RSP who they believe will offer those services with the best combination of price, customer support and features.

Anticipated reduction in regulatory costs

It is difficult to precisely calculate the costs/benefits that would be obtained from removal of the CSG. However, Communications Alliance estimates that significant cost savings would be obtained in the following areas:

- Simplification of CSG connection and fault rectification processes;

- Reduced IT costs; and

- Efficiencies gained from improved call handling in 'front of house' areas.

Item 1.4

Pre-selection

Scope of the regulation
Pre-selection is designed so that customers could pre-select an alternative carrier to supply STD, IDD, FTM and operator calls (pre-selectable calls) instead of their primary carrier, and line rental and local calls would continue to be supplied by the primary carrier. Pre-selection was made mandatory by Part 17 of the *Telecommunications Act 1997* and two regulations were made in 1998 to implement it: *the Telecommunications (Provision of Pre-selection for a Standard Telephone Service) Determination 1998* and the *Telecommunications (Provision of Pre-selection for Specified Carriage Services) Determination*.

Purpose of the regulation
Pre-selection was designed during the nascent stages of telecommunications competition to foster greater competition in the voice services market by allowing customers to select an alternative carrier to supply a portion of their voice service.

Reasons regulation should be amended
Less than 1% of PSTN services on Telstra's network are supplied to other carriers using standalone pre-selection via HomeLine Part or BusinessLine Part (that is, to supply only STD, IDD, F2M and operator calls). Customers have abandoned the concept of standalone pre-selection, as it would mean they have multiple carriers and bills for different PSTN services. Instead, customers choose a single supplier to supply the broader bundle of PSTN services. Indeed, there are a larger number of PSTN and ISDN services supplied by wholesale customers that bundle pre-selection with line rental and local calls.

However, the pre-selection obligations would apply not only to PSTN, but also new networks even those with no wholesale services. The cost of implementing pre-selection capability to the NBN is unnecessary.

Proposal to amend
Part 17 of the *Telecommunications Act 1997* should be amended so pre-selection obligation only apply to STS offered over legacy copper PSTN and ISDN networks. Maintaining the regulation on legacy networks is necessary as pre-selection forms part of the ACCC's declaration of PSTN originating access services and that many wholesale customers still use the capability to supply the full bundle of PSTN and ISDN services to their customers.

Impact of amendment on industry
Building pre-selection capability into a fixed wireless network, for example, would cost approximately $5m. The key components of the cost to comply with pre-selection requirements are:

- Fixed network costs including solution redesign, introduction of new codes to support the pre-selection service on the network, and update to billing processes;
- Mobile network costs including change to network terminals to support new plans and code, platform upgrade and solution redesign; and,

- Internal costs including customer communications, update to front of house and support processes, labour for solution implementation and redesign of current fax solution to allow compatibility with pre-selection.

Under pre-selection regulations, carriers must build pre-selection capability for any new network platforms they build to supply Standard Telephone Services, unless they have an exemption. This represents a "regulate everything by default, then wind back later" approach, which is costly for the following reasons:

- Carriers building any new network platform used for the supply of STS would have to incur considerable expense to build pre-selection capability.

- Instead, carriers are more likely to not use new platforms for the supply of STS, for example a fixed wireless service, which reduces customer choice and is detrimental to customers.

- Alternatively, carriers can seek exemptions from pre-selection regulation, but this imposes a significant red-tape burden on industry and government in terms of submissions, analysis and regulator interaction.

Impact of removal on consumers/individuals
Pre-selection regulation currently imposes significant cost on consumers by stifling product flexibility and innovation to the detriment of customers. Amendment to the regulation will reduce this impact.

Item 1.5

Duplication of Privacy Obligations

Purpose of regulation
Telecommunications service providers handle personal information about their customers in order to supply them with services.

The handling of personal information by telecommunications service providers is governed by both the *Telecommunications Act 1997* (Telecommunications Act) and the *Privacy Act 1988* (Privacy Act), as well as other industry-specific instruments, such as licences and codes. The Telecommunications (Interception and Access) Act 1979 effectively governs privacy aspects related to the content of communications, either passing over a network or being stored awaiting delivery to the customer.

On 27 November 2012, the Federal Parliament passed substantive amendments to the Privacy Act, which will come into effect on 13 March 2014.

Why is reform appropriate?
Duplication and inconsistency across various legislative instruments relating to privacy obligations has resulted in an excessive regulatory burden for the telecommunications industry. This is evidenced by:

- The compliance burden and cost caused by duplication and/or inconsistent privacy requirements; and
- The problems caused when service providers are required to comply with multiple layers of privacy regulation overseen by more than one regulator.

Part 13 of the Telecommunications Act creates offences for the use or disclosure of any information or document which comes into their possession in the course of business, where the information relates to: the contents or substance of a communication that has been carried by carriers and CSPs (delivered or not); the contents or substance of a communication that is being carried by a carrier or CSP; carriage services supplied, or intended to be supplied, by carriers and CSPs; or the affairs or personal particulars of another person.

At present, industry participants are required to comply with the requirements of Part 13 of the Telecommunications Act, as well as the requirements of the Privacy Act. Additionally, privacy principles are contained within many industry Codes, such as the Telecommunications Consumer Protections Code 2012.

Streamlining requirements relating to the collection, use and disclosure of personal information within the telecommunications industry will significantly reduce the burden on industry. As such, industry contends that the requirements of the Telecommunications Act and the Privacy Act should be aligned and any duplication repealed[5].

A number of inquiries have considered the interaction between the telecommunications industry-specific regulation and the Privacy Act. In 2005, the Office of the Privacy Commissioner (OPC) considered the interaction as part of its review of the private sector

[5] For example telecommunications companies must already keep records of any disclosures of customer information to law enforcement agencies authorised under Part 13 of the Act or Chapter 4 of the TIA Act for each financial year and lodge the Section 308 report form with the ACMA by the end of August. This is duplicated in clauses 6.64 and 6.65 of the draft APP Guidelines require APP entities to make a written note of the use or disclosure relating to 'enforcement related activities' (APP 6.5).

provisions of the Privacy Act. The Australian Law Reform Commission considered its interaction in its Report – Australian Privacy Law and Practice (ALRC Report 108).

Recommendation

The requirements of the Telecommunications Act and the Privacy Act should be aligned and any duplication repealed.

Item 2.3

Untimed Local Calls

Purpose of regulation
Part 4 of the *Telecommunications (Consumer Protection and Service Standards) Act 1999 ("CPSS Act")* requires all carriage service providers who provide a Standard Telephone Service (STS) to make available to a customer an untimed local call option. A related obligation to the requirement to offer an untimed local call is the *Telstra Carrier Charges – Price Control Arrangements, Notifications and Disallowance Determination No.1 of 2005* ("Telstra Retail Price Controls") that caps the untimed local call at 22c.

The untimed local call obligation was designed – in an era pre-dating the emergence of effective competition in the Australian telecommunications marketplace - to guard against concerns that a move to timed local calls would see average telephone usage costs increase and lower income consumers particularly disadvantaged.

Although the untimed local call obligation only applies to Telstra, as a major player in the market for fixed voice services, this drives consumer expectations for the rest of the market.

Why is reform appropriate?
These provisions have long been overtaken by market development driven by the emergence of a strongly competitive market in Australia for all telecommunications services.

Modern calling plans typically see local calls charges significantly below 22c. Furthermore, the trend in retail pricing now is towards local calls being an inclusion into capped fixed line plans.

The untimed local call requirement increases the operating costs of service providers while preventing innovation within the market. For example, if service providers could offer timed local calls without having to offer untimed local calls, they could have in market mobile telephony like offers where there is a single timed price point for any call made within Australia.

CA acknowledges that there reform in this area is sensitive. However, service providers should at least have the ability to put into market options to customers that offered timed local calls. This would allow customers with the choice of choosing plans with untimed local calls or plans with timed local calls. They could consequently choose the plans that suited them best.

Recommendation

Amend the requirement in Part 4 of the CPSS Act so service providers are required to make at least one offer available with an untimed local call. This would allow service providers to also have in market others offers with timed local calls that were not required to give the customer the option of an untimed local call.

Item 3

Reduce Monitoring and Reporting Obligations

BACKGROUND – Telecommunications Red Tape
It is noted that the telecommunications specific provisions of the Competition and Consumer Act 22010 are to be reviewed mid-2014 and that this review will afford an opportunity to fully test the ongoing relevance, utility and effectiveness of the regulatory regime in general and the various reporting and recording obligations in particular. Given the divergent industry interest around the costs and benefits of the regime, then that mid-year review is the more appropriate forum to consider reform of the competition framework.

Nevertheless, it is recognised that there is currently a wide scope of regulatory obligations, imposed by both the Australian Competition and Consumer Commission (ACCC) and the Australian Communications and Media Authority (ACMA) on Australian telecommunications service providers. Additionally, many telecommunication providers are also signatories or participants in other self-regulatory arrangements, industry working groups and related consumer advocacy groups. Each of these activities will incur costs for participation, such as membership contributions, levy payments, licensing fees, and other related costs.

The legislative obligations currently canvassed within the scope of this review include operational information submitted annually to the ACMA under a section 521 notice to support its reporting under section 105 of the Telecommunications Act 1997.

Published by:
COMMUNICATIONS
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