



Deregulation: Initiatives in the Communications Sector.

Response by the Australian Communications Consumer Action
Network to the Government review of communications regulation

18 December 2013

About ACCAN

The Australian Communications Consumer Action Network (ACCAN) is the peak body that represents all consumers on communications issues including telecommunications, broadband and emerging new services. ACCAN provides a strong unified voice to industry and government as consumers work towards availability, accessibility and affordability of communications services for all Australians.

Consumers need ACCAN to promote better consumer protection outcomes ensuring speedy responses to complaints and issues. ACCAN aims to empower consumers so that they are well informed and can make good choices about products and services. As a peak body, ACCAN will represent the views of its broad and diverse membership base to policy makers, government and industry to get a better outcomes for all communications consumers.

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ACCAN thanks the Government for the opportunity to put forward the consumer perspective on the review of regulatory provisions affecting the communications industry.

Our approach

As the peak organisation representing consumer interests in the communications market, our priority is to ensure that consumer interests are taken into account in any regulatory revisions contemplated by the Government. The long term interests of end users are of course a key tenet of the Telecommunications Act, and the delivery of sustainable outcomes for the community is underpinned by effective consumer consultation.

We acknowledge that there is a need for an audit and regulatory review in a rapidly changing sector such as communications, where regulations developed for one set of circumstances can be superseded by new provisions as new products come on the market and consumer behaviour changes.

Consumer protections play an important role in supporting a fair market that is sustainable in the long term. Accordingly, we urge the Government to take account of the broader remedial costs to the community as a whole when markets fail consumers¹. The Government must ensure the scope of the cost of impacts from regulation remain broad and consistent with the objectives of communications policy, in particular fostering the interests of end-users, balanced with delivering an efficient and competitive market, while promoting the availability and affordability of services. Any rationalisation of regulatory provisions impacting consumer protection must ensure that consumer confidence in a fair market is maintained, while delivering savings to industry. This approach can benefit both the demand and supply side, and ensure a more productive market place.

Methodology

ACCAN has contracted the Communications Law Centre to undertake a three step process, consisting of:

- A review of all relevant consumer protection legislation, regulations, determinations, codes and guidelines, to identify the source of the protection and its coverage.
- A rearrangement of the data to clearly identify instances of overlap and duplication in consumer protections.
- Identification of those protections of fundamental importance to consumers, what protections should be retained, and in what form, what protections might be changed and what protections are no longer necessary in the new communications environment.

An ACCAN expert group has been formed to consider the report and recommendations of the Communications Law Centre review, and the recommendations presented below reflect the outcome of this work. There has not been time to do a full consultation with members, although we have circulated the Minister's letter to our members and invited initial feedback. We expect as this work progresses there will be further opportunity to consult more broadly.

Additionally, our response is informed by ongoing discussions with the telecommunications industry.

¹ For example, the individual customer and small business costs associated with complaints resolution, significant costs to industry in internal complaints handling, costs of TIO complaints resolution, inquiry and regulatory costs for government.

A. Proposed short term reforms

The following are suggested as possible areas for short term reform.

1. Pre-Selection – Part 17 Telecommunications Act (TA)

Policy underlying regulation

This requirement assisted in the introduction of competition in telecommunications.

Reasons regulation is no longer needed

According to ACMA reports, is now rarely used by consumers. We note pre-selection will not be appropriate in an NBN environment, but are aware that a small percentage of business customers still use this facility. For this reason, we suggest that the application be limited to areas where the PSTN is delivered over the copper network.

Proposal

Part 17 should be amended so that its scope is limited to areas where the PSTN is delivered over the copper network.

Impact on consumers

There will be no impact on consumers, as the small percentage of business customers will still be able to pre-select while connected via the copper network. We understand that this represents substantial future savings to industry as it avoids having to configure pre-selection to an NBN environment.

2. Advanced Mobile phone System - Part 19 TA

As the Advanced Mobile Phone Systems was phased out in 2000, these provisions are obsolete and should be removed.

There is no consumer or industry impact that ACCAN is aware of associated with removing Part 19.

3. Standard Form of Agreement – Part 23 TA (and accompanying *Telecommunications (Standard Form of Agreement) Determination 2003*)

Policy underlying regulation

To provide customers with information about the terms and conditions of the agreement they are entering into with their telecommunications provider.

Reasons regulation is no longer needed

The requirements for information provision under the Act and Determination have been superseded by information requirements in the Critical Information Summary in Section 4 of the Telecommunications Consumer Protections Code C628: 2012.

Proposal

Both Part 23 and the Determination should be removed.

Impact on consumers and industry

The Critical Information Summary provides customers with a succinct and easy to understand summary of the key features of their agreement. This has removed the need for providing the Standard Form of Agreement (SFOA), so there is no consumer detriment associated with removing Part 23 and the Determination. ACCAN understands that this change would represent considerable savings for the telecommunications industry.

4. Protection for consumers against failure by a CSP to provide standard carriage services – Part 7 Telecommunications (Consumer Protection and Service Standards) Act (T(CPSS)A)

Policy underlying regulation

The substantive provisions of Part 7 were introduced as a pre-cautionary measure in the context of full and open competition in 1997. Part 7 is a consumer protection measure to prevent residential customers from losing prepaid money where their carriage service provider is an unknown new market entrant, and becomes insolvent².

Reasons regulation is no longer needed

To our knowledge, Part 7 has never been used. In two notable instances where carriage service providers have collapsed (One Tel, and more recently Kogan), former customers were picked up by other providers through industry arrangements.

More relevant protections for consumers are the Universal Service Obligation for all Australians to have reasonable access to the Standard Telephone Service (Part 2, T(CPSS)A), as well as Telstra licence conditions requiring it to offer low income measures to its customers³.

Proposal

Our suggestion is that Part 7 should be removed.

Impact on consumers and industry

There is no consumer impact associated with removing Part 7. As the provision has not been used, it is unlikely that there will be a significant impact on the industry.

² Explanatory memorandum, Telecommunications Bill 1996.

³ Clause 22, Carrier Licence Conditions (Telstra Corporation Limited) Declaration 1997

5. Prohibition on provision of sex services over the STS unless requirements are met – Part 9A T(CPSS)A

Policy underlying regulation

This is essentially a restriction on the provision of content accessed via the standard telephone service accessed via a 190 prefix. The policy objective is to protect minors from sexually explicit content delivered over the standard telephone service.

Reasons regulation is no longer needed

There is significant overlap with the content standards in Schedule 5 of the Broadcasting Services Act (BSA).

Proposal

ACCAN considers Part 9A should be removed, and the BSA amended to address commercial content services delivered over the standard telephone service, either in Schedule 5 (on-line services) or a new schedule.

Impact on consumers and industry

There is no consumer detriment involved in these suggested amendments. There may be some cost savings involved for industry.

6. Distribution of Alphabetic Public Number Directory to all end users of an STS – Clause 9 Carrier Licence Conditions (Telstra Corporation Limited) Declaration 1997

Policy underlying regulation

Under clause 9 (9) Telstra is required to supply a directory to customers as a book or if the customer agrees, in another form. The policy objective is to ensure that Telstra maintains an updated directory and supplies it to its customers and those of other providers.

Reasons regulation is no longer needed

As consumers increasingly access directory information online via <http://www.whitepages.com.au/>, and do not want or need hard copies, the requirement should be modified to reflect changing technology and consumer behaviour.

Proposal

ACCAN considers Clause 9 should be modified to require the provision of public number directories on demand. Hard copy directories should, however, be available on an opt-in basis for those who still want them.

Impact on consumers and industry

There is no consumer detriment involved in this modification. ACCAN understands this modification may represent considerable savings for Telstra.

7. Provision of Low Income Measures – Clause 22(4) and (5) TLC

Policy underlying regulation

Under these licence conditions, Telstra is required to obtain Ministerial approval for the composition of the Low Income Measures Assessment Committee (LIMAC) and for the LIMAC annual report.

Reasons regulation is no longer needed

It would assist the Committee to remove the requirement for Ministerial approval both in replacing Committee members and in addressing issues identified in an unapproved annual report.

Proposal

Our recommendation is that the requirements for Ministerial approval should be deleted from Clauses 22(4) and (5).

Impact on consumers and industry

There is no consumer detriment associated with this recommendation – in fact by streamlining appointments and reporting, removal of these requirements would assist Telstra and members of the LIMAC to operate more efficiently and effectively.

B. Identification of areas for longer term reform

The following are suggested as possible areas for longer term reform.

1. Universal Service Provision and Standard Telephone Service (STS) definition

The universal service obligations (USO) in Part 2 T(CPSS)A include a description of the STS as the service to be provided and includes elements of affordability and accessibility. The structure of the industry will fundamentally change as the local access infrastructure provider moves from Telstra (as the USO provider) to NBN Co ownership. In recognition of this, the USO was to be reviewed in 2018. That review should now be rescheduled to coincide with the release of a definitive plan for the structure of the NBN.

The USO is the primary policy vehicle for the provision of at least the STS to regional, rural and remote Australians. In addition, Telstra's licence conditions, Clauses 18, 23, 29, 30 and 32, require it to:

- Provide services including the internet to extended zones
- Provide mobile phone services to towns with populations over 500
- Provide mobile coverage in selected population centres and on selected highways
- Maintain local presence in rural and remote Australia

These overlapping requirements for geographic accessibility should be part of the review of the USO.

Currently, the definition of the STS in sections 6 and 6A T(CPSS)A is in terms of a voice service or its equivalent. Because this Government's policy is for universal access to broadband, the definition of the service to be universally supplied should be changed to be a minimum quality and speed of transmission service. This would allow greater choice in how consumers access voice and other communications services of their choosing. The affordability elements of the USO are discussed below.

2. Price Controls – Part 2, Division 11 and Part 11 T(CPSS)

With the introduction of competition, the Government imposed a price control regime on Telstra and provided for Ministerial imposition of price controls on the USO provider – which never happened. The rationale for price controls was to ensure that Telstra's rebalancing of its prices to address a competitive environment did not impact too severely on consumers. These policy decisions were made at a time when there was less competition and there may now be opportunities for further streamlining.

ACCAN welcomes the Department of Communications' examination of the future of price controls and any resulting recommendations on the continuing utility of price controls in a competitive environment.

3. Affordability and Low Income Measures

A recent study partially funded by ACCAN, *Anglicare Victoria's Hardship Survey 2013*⁴ highlighted the importance of ensuring that people on low incomes have access to at least basic communications platforms. The major findings of the Study include:

- Telecommunications are not universally accessible
- Deprivation of home internet (49.2%) and mobile internet (56.1%) were unacceptably high
- Too many clients with home internet relied on a dial-up/phone service, particularly in non-metropolitan areas
- Almost half (45.2%) of clients with mobile phones used it as their only form of telecommunication
- Two-thirds (66%) of mobile phone users had difficulty paying their account and 61.7% of clients with a pre-paid account ran out of credit sooner than expected

Currently, the needs of people on low incomes are addressed through the low income measures Telstra must provide under Clause 22 of its licence. Affordability of communications must continue to be addressed in the changing communications environment. However, the mechanisms for provision of that support should be reviewed, with consideration for alternative arrangements to encourage more industry wide support for low income measures.

4. Service Quality

The quality of service is important, particularly for people with disabilities whose equipment may rely on minimum quality levels. The Market Clarity study, *Small Business Service Use and Experience*⁵

⁴ <http://accan.org.au/our-work/research/711-affordability-for-low-income-consumers>

⁵ <http://accan.org.au/our-work/research/535-small-business-telecommunications-service-use-and-experience>

funded by ACCAN also highlights significant small business difficulty with customer service quality and resolving issue through complaint mechanisms.

Currently, there are a range of mechanisms to address the overall customer experience of communications including the following:

- Part 5 T(CPSS)A the Customer Service Guarantee (and *Telecommunications (Customer Service Guarantee) Standard 2001*) on connection and fault repair times
- Ss 12 EB and EC T(CPSS)A that allow the Minister to set standards and benchmarks for the CSG on both retail and wholesale providers
- Clauses 24-28 TLC set extensive requirements on Telstra under its Network Reliability Framework
- ACIF Code C519 Code on quality standards for the STS but now out of date as it applies to circuit switched calls and non IP based communications

Once the new framework for the NBN is established the various provisions for service quality should be reviewed to ensure a minimum service quality customers should be able to expect, including expectations for reasonable connection and fault repair times.

5. Priority Assistance

Clause 19 TLC requires Telstra to provide priority assistance for people with a life threatening medical condition for both service connection and repair times. The Priority Assistance Code also sets out obligations on CSPs who provide priority assistance on standards they must meet for connection and fault repair. However, the obligations on Telstra are not the same as those set out in the Code. Both should be reviewed to ensure that customers can expect the same level of priority assistance service regardless of providers. In order to ensure that there is no erosion of this important protection for vulnerable consumers, in principle ACCAN supports an approach where the higher of the two existing sets of obligations prevails.

6. Privacy Protections

Privacy protection, particularly on-line privacy, is of increasing importance to consumers. In the recent OAIC Report *Community Attitudes of Privacy Survey 2013*⁶, of the 26 categories of privacy risks, the top three areas identified as of concern across all age groups were about the internet and online services.

Privacy protections in telecommunications is scattered amongst different legislation, licence conditions and codes. The most obvious duplications and contradictions between Part 13 of the TA and the Privacy Act 1988 were identified by the ALRC's 2008 Report 108, *For your Information : Australian Privacy Law and Practice*. Other legislation relevant to privacy protection in communications includes the *Do Not Call Register Act 2006* Cth and the *Spam Act 2003* Cth.

The Integrated Public Number Database (IPND) is another part of the privacy matrix. Telstra must provide it under Clause 10 TLC; CSPs must provide their public number information to the IPND under Part 4, Schedule 2, TA; Part 13 TA provides both protection of the IPND data and for an IPND Scheme to be established by the ACMA; and an IPND Code provides further details of its

⁶ <http://www.oaic.gov.au/privacy/privacy-resources/privacy-reports/oaic-community-attitudes-to-privacy-survey-research-report-2013>

establishment and operation. Other pieces of the privacy matrix include the Calling Number Display Code and the Participant Monitoring Guidelines.

A final part of the privacy matrix is complaint handling. Research funded by ACCAN, titled *Communications Privacy Complaints: In Search of the Right Path*⁷ suggests that the OAIC handles fewer privacy complaints than the TIO or the ACMA, takes longer for complaints to be handled and does not have the range of remedies that are available to the TIO. A review of the handling of privacy complaints must also be addressed.

Currently, the Department is reviewing the IPND, and elements of the Do Not Call Register scheme are also under review. ACCAN believes that, once amendments to the Privacy Act take effect in March 2014, it will be timely to have a larger review of all of the various privacy protections in telecommunications, including provisions for privacy protections, and the transparency and accountability for those protections. There may be overlaps and duplication of regulation where rationalisation would benefit all stakeholders.

7. Consumer Information Provision

Provisions of both legislation and codes require that a range of information is given to consumers. The ACCAN report *Information Seeking Straight Answers: Consumer Decision-Making in Telecommunications*⁸ documents the difficulties consumers face in understanding and taking account of all the information they are presented with. The findings of that report include the following:

- Decision making is complex
- Bundles: be clear and genuine about what's on offer
- Simplify terms and conditions and use a single page critical information sheet
- Develop consumer-friendly trials of unit pricing and conduct further research into how consumers use unit pricing
- Telcos should have the hard conversations with consumers about the information they want.

The abolition of requirements for the Standard Form of Agreement has already been proposed. ACCAN supports the ACMA's review of industry consumer information requirements, and anticipates participating in this process.

ACCAN also supports proposals for a longer term review of industry reporting requirements generally, but notes the valuable role of data published by the ACMA as a basis for policy development, and in ensuring transparency and accountability in the communications sector.

C. Measuring and quantifying the cost of regulation

ACCAN is not qualified to comment on approaches to measuring the cost impacts of regulation from an industry perspective. However, we urge the Government to assess costs on a broad and long-

⁷ http://accan.org.au/index.php?option=com_content&view=article&id=55:communications-privacy-complaints-in-search-of-the-right-path&catid=97:phones&Itemid=230

⁸ <http://accan.org.au/files/Reports/Seeking%20Straight%20Answers%20Report.pdf>

term basis, rather than focus on short-term expediency with potentially deleterious consequences in the longer term for the community as a whole, including government and business.

Need for cost benefit analysis approach

We agree that there is a need to assess the potential and actual benefits of regulation against any cost or complexity. However, a narrow focus on cost only could result in two unintended consequences. Firstly, it could result in overlooking low-cost but pointless regulations, and secondly, high cost but necessary restrictions might be unhelpfully removed. A broad approach is needed to give equal weight to the benefits of removing regulation, as well as the costs to industry.

ACCAN's role is to identify and articulate the value and benefits for consumers when consideration is given to remove or simplify regulation, so that the market can continue to deliver fair, reliable products to end users.