

18 December 2013

Mr Malcolm Turnbull
Minister for Communications
Parliament House
Canberra ACT 2600

By email: deregulation@communications.gov.au

Dear Mr Turnbull,

Deregulation: Initiatives in the Communications Sector

Thank you for your invitation to provide our views on deregulation in the communications sector. The invitation has now encouraged us to also begin questioning the many new and ad-hoc reporting requests that we continue to receive from various agencies. We have not noticed any reduction in requests from agencies, despite this Initiative. We suggest that it would be useful to reinforce to agencies that not only should old, stale red tape be considered for termination, but that they should also carefully consider any new requests.

We have set out our proposals for areas of immediate reform in table 1.

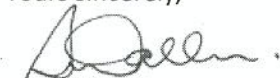
We have also set out our views on areas that are overdue for strategic regulatory reform beyond the initial Regulation Repeal Day in table 2.

In relation to measuring and quantifying costs of regulation, this is a complex task which will take considerable internal analysis. The elements do include, as you have suggested, administrative costs and substantive compliance costs. The question of delay costs is not as of the same relevance to iiNet.

If you have any queries about any of the matters set out in the attached tables, please let us know.

We look forward to working with you and your Parliamentary Secretary, Mr Paul Fletcher on this critical regulatory reform agenda.

Yours sincerely,



Steve Dalby
Chief Regulatory Officer

Table 1 - Stage 1 - redundant regulation

Redundant customer information requirements		
1.	Description of relevant regulation	<i>Telecommunications (Standard Form of Agreement Information) Determination 2003</i> (the SFOA Determination).
2.	Policy underlying regulation	To ensure consumers are informed about the terms and conditions of their telecommunications services and associated costs.
3.	Reasons regulation is no longer needed / could be amended	<p>On 2 October 2013, the ACMA revoked the <i>Telecommunications Service Provider (Premium Services) Determination 2004 (No. 1)</i> (the Premium Services Determination).</p> <p>The reasons given for the revocation of the Premium Services Determination included the relatively low numbers of complaints about premium services and that the protections offered by the Premium Services Determination are now available through other regulatory measures, such as the <i>Telecommunications Consumer Protection Code</i> (TCP Code). iiNet believes that these reasons equally apply to the SFOA Determination.</p> <p>The SFOA Determination was made well before the TCP Code). The TCP Code has been described as world's best practice¹. It provides a comprehensive framework for telecommunications specific consumer protection. This includes requirements to provide a range of information to consumers to ensure that consumers make informed decisions about their telecommunications services and have clear information on the costs and terms and conditions applicable. The customer information requirements in the TCP Code makes the SFOA Determination redundant and superfluous. In particular, the Critical Information Summaries required by the TCP Code make the requirement to prepare a summary of the SFOA and to distribute this every 2 years redundant.</p>
4.	Proposal to remove or amend	The SFOA Determination should be removed.
5.	What impact removal / amendment will have on industry	Industry will be relieved of the costs of complying with unnecessary regulation, leading to costs savings and increases in efficiency.
6.	What impact removal / amendment will have on consumers / individuals	There will be no detriment to consumers as the TCP Code provides sufficient obligations regarding the provision of information to consumers. Consumers will benefit from reduced and unnecessary documentation at the point of sale.

¹ Speech by Chris Chapman, Chairman ACMA, at Communications Alliance - Comms Essentials seminar July 2013

Redundant customer information requirements (cont.)		
1.	Description of relevant regulation	Section 24 (1)(a) and section 25 of the <i>Telecommunications (Customer Service Guarantee) Standard 2011</i> (the CSG Standard)
2.	Policy underlying regulation (as apparent to iiNet)	To inform consumers when a service provider relies on an exemption under section 21 of the CSG Standard (mass service disruptions).
3.	Reasons regulation is no longer needed / could be amended	The notification requirements in section 24 of the CSG Standard are onerous and require four separate notifications (to the TIO, to ACMA, a notice on the service provider's website and a notice published in a national newspaper). The requirement to publish a notice in a national newspaper can be traced back to earlier versions of the CSG Standard that were developed before internet use was widespread. iiNet believes that this notification requirement is out dated and, given the other notification requirements in section 24 of the CSG Standard, unnecessary.
4.	Proposal to remove or amend	Remove section 24(1)(a) and section 25 of the CSG Standard.
5.	What impact removal / amendment will have on industry	Industry will be relieved of the costs of complying with unnecessary regulation, leading to costs savings and increases in efficiency.
6.	What impact removal / amendment will have on consumers/individuals	Given the other notification requirements, and the nature of the notification requirement (a public notice in a newspaper which is unlikely to be read by the majority of affected consumers), any detrimental impact to consumers is likely to be minimal.
Unnecessary reporting obligations		
1.	Description of relevant regulation	<ul style="list-style-type: none"> Section 105 of the <i>Telecommunications Act 1997</i>; and Section 151CM of the <i>Competition and Consumer Act 2010</i> (collectively referred to as the Ministerial Reporting Obligations)
2.	Policy underlying regulation (as apparent to iiNet)	To allow the Minister to be informed about key issues. The ACMA is required to report on all significant matters relating to the performance of carriers and CSPs with particular reference to customer satisfaction, consumer benefits and quality of service. Pursuant to this obligation, the ACMA issues a notice to carriers and carriage service providers each year. The ACCC is required to report to the Minister each year on charges paid by consumers. Pursuant to this

		obligation the ACCC has made record keeping rules that require specified carriage service provider to provide information on an annual basis to the ACCC.
3.	Reasons regulation is no longer needed / could be amended	iiNet does not believe it is necessary to burden industry with annual reporting obligations to two separate regulators, just to keep the Minister informed. iiNet believes that these reporting obligations are out-dated and are not required in a digital age where a vast amount of information about telecommunications services and the prices paid for them is publicly available. Furthermore, a variety of statistical information about customer satisfaction and complaints is published by the Telecommunications Industry Ombudsman. iiNet believes that unless it can be shown that the information gathered pursuant to these obligations is used on a consistent basis for purposes other than providing a report to the Minister, there is little justification to retain these reporting obligations and they can be removed.
4.	Proposal to remove or amend	Even if there is a justification to continue to require the ACMA and the ACCC to provide an annual report to the Minister, these obligations should not require individual industry participants to be bound by annual reporting obligations. These reporting obligations should be removed.
5.	What impact removal / amendment will have on industry	Industry will be relieved of the costs of complying with unnecessary regulation, leading to costs savings and increases in efficiency.
6.	What impact removal / amendment will have on consumers/individuals	There would be no detrimental impact to consumers.
Lodgement of SFOA & variations		
1.	Description of relevant regulation	Lodgement of SFOA & variations: <u>Section 481</u> of the <i>Telecommunications Act</i> requires iiNet to lodge its SFOA (and any subsequent variation) with ACMA as soon as practicable after the agreement or variation comes into force.

Table 2 - Stage 2 longer-term proposals

Revoke the CSG		
1.	Description of relevant regulation	<i>Telecommunications (Customer Service Guarantee) Standard 2011</i> (the CSG).
2.	Policy underlying regulation	To set performance standards for the standard telephone service and provide incentives for service providers to meet those standards.
3.	Reasons regulation needs to be reviewed	<p>The origins of the CSG can be traced back to a time when carriage services consisted of little else other than the standard telephone service and competition in telecommunications markets was non-existent or in its infancy. Developments within the industry have removed the justification for the CSG. These developments include:</p> <ul style="list-style-type: none"> • increased competition - i.e. if a service provider does not meet minimum standards, an alternative provider will be available to do so; • increased substitution of fixed voice services with mobile services; and • increased use of Internet services with a value add VoIP service. <p>Together with reporting requirements that are required under Telecommunications (Customer Service Guarantee) Record-Keeping Rules 2011, the CSG provides a very onerous compliance burden for industry. Furthermore, the monopoly wholesale provider NBN Co does not accept full liability to provide secondary damages to retail service providers, which further demonstrates the redundancy of the CSG.</p>
4.	Proposal to review	The CSG and the CSG Record Keeping Rules should be removed.
5.	What impact review will have on industry	Industry will be relieved of the significant costs of compliance, leading to costs savings and increases in efficiency.
6.	What impact review will have on consumers / individuals	The Universal Service Obligations will still provide a safety net and minimum performance standards where no competitive services are available. The relevance the performance standards continues to decline meaning that any benefit to consumers that remains from the CSG does not outweigh the considerable burden placed on industry from the CSG and the CSG Record Keeping Rules.

Rationalise reporting obligations		
1.	Description of relevant regulation	The telecommunications industry is subject to a wide range of reporting obligations. These include the provision of information as well as the confirmation of compliance.
2.	Policy underlying regulation	To keep the Minister and/or regulators informed of compliance.
3.	Reasons regulation needs to be reviewed	<p>A meaningful and thorough exercise of relieving unnecessary regulatory burden must include a review and rationalisation of reporting obligations.</p> <p>A key source of burdensome reporting obligations are the record-keeping obligations made by the ACCC pursuant to the <i>Competition and Consumer Act</i> including:</p> <ul style="list-style-type: none"> • <u>Infrastructure record keeping rules</u> • <u>Division 12 Record Keeping Rule</u>
4.	Proposal to review	Reporting obligations should only be maintained where it is established that the information obtained by the regulator is essential in achieving one of the primary objectives of the legislation.
5.	What impact review will have on industry	The removal of unnecessary reporting obligations will relieve industry of the costs of compliance, leading to costs savings and increases in efficiency.
6.	What impact review will have on consumers / individuals	The removal of unnecessary reporting obligations will not have any detrimental impacts on consumers.
Rationalise consumer protection obligations		
1.	Description of relevant regulation	<p>Carriage service providers are required to comply with a myriad of telecommunications specific regulation that has the purpose of protecting consumers.</p> <p>This regulation is in addition to generally applicable consumer protection regulation, such as the Australian Consumer Law. Different types of obligations can be identified. For example, some obligations may require the provision of information to consumers, while other obligations may impact on how the service provider provides the service. Sources of these obligations include primary legislation, Determinations and Standards made by the ACMA and industry codes.</p>

2.	Policy underlying regulation (as apparent to iiNet)	To provide adequate protections to consumers.
3.	Reasons regulation needs to be reviewed	<p>A meaningful and thorough exercise of relieving unnecessary regulatory burden must include a review and rationalisation of the myriad of consumer protection obligations that apply to the telecommunications industry.</p> <p>Reducing the number of sources of consumer protection obligations and overlapping obligations will likely reduce compliance costs and reduce confusion in the industry. It need not result in the removal of substantive protections that are deemed to be necessary to protect consumers.</p>
4.	Proposal to review	Where possible, the relevant obligations could be consolidated into the TCP Code where those obligations are within the scope of the TCP Code. This process will cut down any unnecessary overlap between current regulations and will make achieving compliance simpler by reducing the number of different instruments that need to be considered.
5.	What impact review will have on industry	Reducing the amount and complexity of regulation will reduce the costs of compliance, leading to cost savings and increases in efficiency.
6.	What impact review will have on consumers / individuals	As stated above, a rationalisation of telecommunications specific consumer protection regulation should not have a detrimental impact on consumers.
Rationalise obligations to protect privacy		
1.	Description of relevant regulation	The telecommunications industry is required to comply with the Privacy Act 1988. Part 13 of the <i>Telecommunications Act 1997</i> also contains provisions that are relevant to the protection of privacy of individuals, as does the <i>Telecommunications (Interception and Access Act) 1979</i> . The TCP Code also has provisions relating to protecting the privacy of an individual.
2.	Policy underlying regulation (as apparent to iiNet)	To protect the privacy of individuals.
3.	Reasons regulation needs to be reviewed	Having multiple sources of obligations relating to the same subject matter leads to overlap of obligations and increases complexity and the cost of compliance. In particular, including privacy obligations in the TCP Code means that industry

		<p>can be required to respond to two different regulators and the TIO concerning the same incident¹.</p> <p>One specific example of duplicate regulation is in the Australian Privacy Principles and the requirement to make a written note of the use or disclosure relating to 'enforcement related activities' (APP 6.5).</p> <p>Currently, ISPs must already keep records of any disclosures of customer information to law enforcement agencies authorised under <u>Part 13 of the Act</u> or <u>Chapter 4 of the TIA Act</u> for each financial year and lodge the <u>Section 308 report form</u> with the ACMA by the end of August.</p>
4.	Proposal to review	<p>The telecommunications specific regulation relating to the protection of privacy should be reviewed and refined to remove unnecessary overlap with the Privacy Act 1988. An outcome where only one regulator can investigate the same incident should be achieved.</p> <p>The requirements of the Telecommunications Act and the Privacy Act should be aligned and any duplication repealed.</p>
5.	What impact review will have on industry	Industry will be relieved of the costs of complying with unnecessary regulation, leading to costs savings and increases in efficiency.
6.	What impact review will have on consumers / individuals	There is no detrimental impact on consumers. The refinement of overlapping obligations and reduction in complexity is likely to benefit consumers.
Part 22 of the Telecommunications Act 1997 - Numbering		
1.	Description of relevant regulation	Part 22 of the <i>Telecommunications Act 1997</i> and the Numbering Plan.
2.	Policy underlying regulation (as apparent to iiNet)	<p>The primary objectives of the Numbering Plan are to:</p> <p>(a) Establish a framework for the numbering of carriage services in Australia; and</p> <p>(b) establish a framework for the use of numbers in connection with the supply of such services; and</p> <p>(c) specify the numbers for use in connection with</p>

¹ For example in July 2012 AAPT's servers containing personal information were hacked leading to a data

		the supply of carriage services to the public in Australia; and (d) establish a framework for the allocation and portability of numbers.
3.	Reasons regulation needs to be reviewed	The ACMA has already identified that the Numbering Plan is in need of reform ² .
4.	Proposal to review	The review of the Numbering Plan should be broadened to include consideration whether industry rather than the regulator could perform the functions under the Numbering Plan.
5.	What impact review will have on industry	The regulation relating to numbering may become more streamlined and less burdensome.
6.	What impact review will have on consumers / individuals	More streamlined and less burdensome regulation relating to numbering is unlikely to have any detrimental impacts on consumers.
Review of Customer Information Obligations		
1.	Description of relevant regulation	Customer Information obligations.
2.	Policy underlying regulation (as apparent to iiNet)	The various mandatory customer information obligations were designed to ensure customers were given information relevant to their purchasing decisions or ongoing use of services.
3.	Reasons regulation needs to be reviewed	Information overload for consumer, a significant compliance and administrative burden and challenge for industry. It is unclear whether increasing the volume of information leads to consumers making informed decisions. There is a range of duplicated and overlapping obligations including in the new TCP Code, Australian Consumer Law and instruments and industry codes. Regulators are also issuing confusing directions to service providers, simultaneously demanding that more information be included but that document sizes must be reduced.
4.	Proposal to review	<ul style="list-style-type: none"> • Development of a framework for customer information requirements, including what customers need to know at certain points in the customer life cycles. • Removal of the existing set of rules from legislation, regulatory instruments and industry Codes, replaced by the 'ideal' set of

² See: <http://www.acma.gov.au/Industry/Telco/Numbering/Numbering-Plan/numbering-plan-consultation-numbering-i-acma>

		<p>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.</p> <ul style="list-style-type: none"> The establishment of a process that ensures any new proposals to require information to telecommunications customers be evaluated in light of the new framework and sources of information already available to consumers.
5.	What impact review will have on industry	Industry will have worked together to find a smarter way to get the right information to consumers at the right time. This approach will lead to considerable costs savings from reduced compliance costs and clearer understanding of the customer information requirements. More flexible communication options to suit different audiences and points in the customer life cycle.
6.	What impact review will have on consumers / individuals	Customers who are better informed at relevant points of time in both purchasing decisions and ongoing use of communications services.
Other regulation that could be consolidated in the TCP Code		
1.	Description of relevant regulation	<ul style="list-style-type: none"> Telecommunications Service Provider (Mobile Premium Services) Determination 2010 (No. 1); (if this is determined to be necessary) Telecommunications (International Mobile Roaming) Industry Standard 2013;
2.	Policy underlying regulation (as apparent to iiNet)	To provide protections to users of mobile services.
3.	Reasons regulation is no longer needed / could be amended	Reducing the number of sources of consumer protection obligations and overlapping obligations will likely reduce compliance costs but need not result in the removal of substantive protections that are deemed to be necessary to protect consumers.
4.	Proposal to remove or amend	The subject matter covered by these Instruments comes squarely within the subject matter of the TCP Code. In light of this, the independent existence of the Instruments is unjustified, as the protections they afford could simply be included in the TCP Code. Legislation that is currently before Parliament ³ , if passed, will allow industry codes to

³ Telecommunications Legislation Amendment (Consumer Protection) Bill 2013.

		be amended. This will allow the TCP Code to be more dynamic and deal with changed circumstances as required without the need for the enactment of additional regulation such as the Instruments.
5.	What impact removal / amendment will have on industry	Achieving compliance will be simpler as there will be fewer sources of obligations.
6.	What impact removal / amendment will have on consumers/individuals	There will be no detrimental impact on consumers. Making it easier for industry to achieve compliance by consolidating regulation will likely have beneficial impacts for consumers.