Australian Government
Department of Communications

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Secretary

Ms Christine McDonald
Committee Secretary
Senate Standing Committee on Environment and Communications
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CANBERRA ACT 2600

Submissions to the Inquiry into the Telecommunications Legislation Amendment (Deregulation) Bill 2014 and Telecommunications (Industry Levy) Amendment Bill 2014

Dear Ms McDonald

Thank you for your advice of 12 December 2014 that the Committee has determined it will not hold a hearing for this inquiry. The Department is pleased to provide a written response to the key issues raised in the four submissions received by the Committee.

Submissions from Telstra and the Office of the Australian Information Commissioner (OAIC)

Both submissions are supportive of the current provisions in the Bills, following the Government amendment in the House of Representatives which removed proposed Schedule 5 from the Telecommunications Legislation Amendment (Deregulation) Bill 2014 (the TLA Dereg Bill). The Department is pleased that Telstra has highlighted the extensive consultation undertaken with industry, government and consumer groups during the development of these Bills.

Submission from the Cyberspace Law & Policy Community (CLPC)

The CLPC submission raises a number of issues primarily in relation to potential use and disclosure of information, particularly personal information. Importantly, provisions dealing with use and disclosure of information in the TLA Dereg Bill have been drafted with regards to existing provisions that presently apply under the *Telecommunications Universal Service Management Agency Act 2012* (TUSMA Act).

The CLPC has suggested that there should be a 'privacy impact assessment' associated with these Bills. As part of the Statement of Compatibility with Human Rights (refer pages 6-12 of the revised Explanatory Memorandum) there is already extensive discussion and assessment of relevant provisions in the Bills that engage the right to privacy and the:

- likely extent of information (including personal information) that might potentially be disclosed
- policy rationale behind such possible disclosures versus the individual right to privacy, and
- existing requirements for protection of personal information under the *Privacy Act 1988*.

The CLPC submission raises particular concerns about provisions in the TLA Dereg Bill that allow for possible disclosure and sharing of information between carriage service providers, the Secretary, and other agencies. It is relevant to note that all entities involved (Secretary of the Department of Communications, the Telecommunications Industry Ombudsman, the Regional Telecommunications Independent Review Committee, the Australian Communications and Media Authority, the Australian Competition and Consumer Commission and carriage service providers) remain subject to obligations around the handling of personal information as required under the *Privacy Act 1988*. Carriers and carriage service providers are also subject to specific additional requirements under Part 13 of the *Telecommunications Act 1997*. As such, CLPC's concern that these arrangements could see an increased risk of data breach, identity theft, poor handling of information or inappropriate disclosures is unfounded.

CLPC has also raised a concern that policy objectives proposed to be included at section 13 of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* could be expanded in future by regulations (and this could potentially expand the scope of information that could then be disclosed or shared). However, the process of making any such future regulations would necessarily involve public consultation and Parliamentary scrutiny, and therefore any privacy implications are best considered at that time.

The CLPC has proposed some enhancements to the Bill, including that consumers be proactively and individually notified when any personal information disclosures occur under the TLA Dereg Bill (and potentially have the opportunity to opt out of any such disclosure). The CLPC has also suggested that there be specific provision for a recurrent audit process to test that any personal information obtained under the Bill is being used appropriately, stored securely and destroyed when no longer required.

These suggestions are noted, but the Australian Privacy Principles under the *Privacy Act 1988* already provide a robust set of arrangements for the collection, use, disclosure and storage of personal information, including the security and destruction or de-identification of personal information if it is no longer required. Accordingly, the Department does not consider the suggested enhancements are warranted. Such arrangements are likely to be administratively costly and complex to implement and neither the OAIC nor any other groups with specific privacy or consumer interests have raised similar concerns.

Finally, the CLPC's interest in being consulted in future should the Government progress future deregulation of Part 13 of the *Telecommunications Act 1997* is noted.

Submission from Optus

Optus' submission raises an operational issue arising from the proposed indefinite registration of numbers on the Do Not Call Register (DNCR). Its submission also outlines a number of broader, long standing views held by parts of the industry regarding the financial arrangements and delivery of the Universal Service Obligation (USO), and also calls for ongoing priority to be given to possible deregulation of the Customer Service Guarantee (CSG).

Indefinite registration of numbers on the DNCR

Optus supports the proposed indefinite registration period for numbers on the DNCR, but flags a possible requirement to provide ongoing maintenance (including to remove numbers from the DNCR which are not in service). Without such a requirement, Optus argues that this would over time result in all fixed and mobile numbers, whether used for business or by an individual, to eventually be listed on the DNCR.

While this issue is not directly relevant to the consideration of this Bill, Optus is raising an operational policy issue which requires broader consideration of the operation of the DNCR and whether it could be readily checked against the Integrated Public Number Database. This is a matter which the Government can give consideration to in the longer-term.

Costing, funding and delivery of the USO

The Bills are concerned with delivering deregulatory measures in the communications portfolio that will reduce the compliance costs of both industry and consumers. The Government's announcement in May 2014 that it would abolish TUSMA and transfer its functions to the Department of Communications was clearly stated as being part of broader steps taken by Government as part of its deregulation agenda, and a move to smaller government by consolidating existing bodies into departments. The Government did not indicate that the transition of functions from TUSMA to the Department of Communications would lead to broader changes to existing funding or levy arrangements. These Bills are therefore not an appropriate vehicle to address the complex policy, competition and funding issues raised by Optus on the USO.

Priority for possible deregulation of the Customer Service Guarantee (CSG)

There is continued engagement with a range of stakeholders, including Optus, on deregulation opportunities in the communications portfolio. However, the priority, timing and scope of future deregulation activities go beyond the Bills before the Committee, and are matters for the Government to determine separately.

Yours sincerely

Drew Clarke
23 December 2014