

Telstra submission to the Senate Committee on Environment and Communications inquiry into the feasibility of a prohibition on the charging of fees for an unlisted (silent) number service

28 March 2013

Executive Summary

Telstra welcomes the opportunity to engage in further discussion on the question of charges for unlisted (silent) number services. Telstra has a longstanding commitment to customer privacy, and recognises that there have been some community concerns associated with the fee for our unlisted number service (Silent Line). Consequently, Telstra recently announced a process that exempts the most vulnerable people in society from the Silent Line fee in circumstances where Silent Line is critical to their safety.¹

It is Telstra's view, on balance, that the Government should not intervene to prohibit the charging of fees for an unlisted (silent) number service. This position takes into account the need to deliver on customers' expectations of privacy and the quality and price of Telstra's services, while also meeting Telstra's regulatory obligation to produce and deliver the White Pages directory and its commercial obligation to shareholders.

Telstra believes that the charging of fees for unlisted number service does not unduly inhibit the privacy of telephone subscribers, and is consistent with the policy driver behind Telstra's White Pages carrier licence condition (CLC)², which serves the public benefit of a comprehensive national public number directory. A balance must be struck in government policy between public and private benefits, and the evidence in relation to Silent Line is that the current modest fee helps strike that balance very well.

A balance must be struck between public and private benefits

The number of Silent Line residential customers has remained consistent at 16 per cent of the residential fixed line customer base for the last four years, demonstrating a stable balance between public and private interests in relation to the economic and social benefits from the availability of directories information and the interests of individuals who wish their contact information to remain private.

The public good is served by Telstra's White Pages CLC and the modest charge for Silent Line, both of which underpin a comprehensive national directory. Individual interests are served by the existence of the Do Not Call Register (which removes a major potential driver of directory unlisting by preventing telemarketing calls), the fact that directory unlisting is available to any fixed line customer for a modest fee, and Telstra's move to formalise a Silent Line fee exemption for vulnerable customers from May 2013.

Telstra's right to charge for a commercial service should not be removed

The concept that a service should necessarily be free because part of that service relates to privacy is flawed. There is a risk that privacy-related services that are made free to the consumer by regulation may be withdrawn from market altogether because they generate losses for the service provider, or, if they must be provided by regulation, will no longer benefit from the commercial incentive to respond to customer need.

It is not reasonable to require Telstra to subsidise two competing social policies in the form of the White Pages directory and unlisting from that directory. As the White Pages must be provided free to the consumer, Telstra should be allowed to continue charging its current modest fee for Silent Line.

Prohibitions on charging overseas were made in different circumstances

In its report into this matter the Australian Law Reform Commission (ALRC) argued there was no evidence of detriment to the effectiveness of national directories in Europe following the European

¹ See <http://exchange.telstra.com.au/2013/02/26/telstra-to-review-silent-line-fees/>.

² Clause 9 of *Carrier Licence Conditions (Telstra Corporation Limited) Declaration 1997*.

Directive to prohibit unlisting charges in 2002.³ However, the United Kingdom (UK) national directory is now 66 per cent unlisted and consequently of greatly reduced social utility.⁴ The European Directive was driven by a concern about government access to basic personal information that has never been a serious issue in Australia or the UK. However, unlike Australia the UK has not had an effective means of preventing telemarketing calls, and may have benefitted from the large amount of unlisting as a consequence.

The payment of a fee does not unduly inhibit the privacy of telephone subscribers

Telstra does not believe the payment of a fee unduly inhibits the privacy of telephone subscribers. The fact that a customer is listed in a directory is a product of Telstra's White Pages CLC and is not a breach of privacy under Australian law. Directory unlisting is an enhancement of personal information protection that is available for a modest fee in the same manner as similar services including post office boxes.

The efficacy of the national public number directory would be seriously undermined

The purpose of a national public number directory is to publish the basic contact information of all fixed line telephone subscribers in order to facilitate connections between them. Users consult the directory when they know there is a good chance of finding the fixed number listing they need. Encouraging customers to remove themselves from the directory via a prohibition of the current modest fee will detract from this purpose in proportion to the percentage of unlisted numbers.

³ Paragraphs 72.244 and 72.256 of ALRC Report 108.

⁴ See https://www.btwholesale.com/pages/static/Products/IT_Services/Directory_Solutions/featuresandbenefits.htm

Telstra's view on unlisted number charges

In Telstra's view the Government should not intervene to prohibit the charging of fees for an unlisted (silent) number service. Telstra believes the charging of fees for Silent Line does not unduly inhibit the privacy of telephone subscribers, and is consistent with the policy driver behind Telstra's White Pages CLC, which serves the public benefit of a comprehensive national public number directory. A balance must be struck in government policy between public and private benefits, and the evidence in relation to Silent Line is that the current modest fee helps strike that balance very well.

Telstra's directory unlisting service is a commercial service called Silent Line

Telstra's Silent Line service consists of:

- directory unlisting, and
- Calling Line Identification (CLI) Line Block.

Directory unlisting prevents the inclusion of a customer's listing in the White Pages or its disclosure via any of the directory assistance voice services provided by Sensis. CLI Line Block prevents a caller's number from being displayed to the other party before, during or after a call. Telstra makes great efforts to ensure that the listings of Silent Line customers are not inadvertently disclosed, and expends considerable resources and bears considerable risks in doing so.

A balance must be struck between public and private benefits

Individual liberty is balanced against the public benefit in every functional society as underpinned by the rule of law. From time to time the optimal balance may shift as changes in standards, culture and technology add weight to one side or the other. It may sometimes be tempting to ascribe more importance to new or changing factors in isolation than they deserve in the context of the overall policy equation. The privacy of personal information and the public good of a national directory are opposing factors in one such equation.

Telstra's White Pages CLC embodies the government's view that a comprehensive national directory is a necessary public good. If the government believed there were no longer any public benefits deriving from the provision of the directory, the CLC would be removed. It has not been removed despite the many alternative sources of directories information that have arisen over recent years.

Telstra's fee for Silent Line limits take-up to customers who derive a specific utility from the service. At \$2.93 per month (inc. GST) the fee is just high enough to prevent most people from making an unthinking or reflexive choice to unlist, but modest enough to be readily paid by the few who really want or need to be unlisted. This effect has been consistent: Silent Line customers have accounted for a steady 16 per cent of Telstra's fixed line residential customer base each year for the last four years for which historical data is readily available. The Silent Line fee has remained unchanged since 1996 apart from the introduction of the GST.

Meanwhile, the Do Not Call Register (DNCR) has been extremely successful in preventing the use of public directories for telemarketing purposes.⁵ As such it has removed the single most important general driver of directory unlisting: the ability to avoid telemarketing calls. Once registered on the DNCR a customer can remain listed in the White Pages directory without fear of being disturbed by telemarketers regardless of whether or not the White Pages is the source of the telemarketer's sales lead.

⁵ At 16 October 2012 the DNCR had more than eight million numbers listed. See http://www.acma.gov.au/WEB/STANDARD/pc=PC_600068.

From May 2013 Telstra will introduce a formal program to waive the fee for customers facing a demonstrated security threat in recognition of the elevated importance of the service for those customers.⁶ This fee exemption removes the only potential barrier posed by the fee to the effective management of personal information in a situation where that management is critical to an individual's personal safety. Silent Line is a discretionary service for most fixed line customers, but Telstra recognises it is not discretionary for customers facing a security threat.

The considerations in favour of the public good of a national directory are the existence of Telstra's White Pages CLC and Telstra's modest charge for Silent Line. The interests of individuals are represented by the Do Not Call Register (DNCR), the right of all customers to remove their listing from the directory for a modest fee, and Telstra's fee exemption for customers facing a security threat. The stability of Silent Line subscriptions at a relatively low level demonstrates that the tension between these competing factors is close to optimal.

Telstra's right to charge for a discretionary commercial service should not be removed

The concept that a service should be free just because it relates to the protection of personal information is flawed. Certainly individuals should be able to make their own choices about the how their personal information is treated and should not be prevented from doing so, but it does not follow that a service that enhances the protection of personal information should be provided free of charge. Any commercial service that is not required to be provided by law would presumably be withdrawn from market were charging for it prohibited.

Consider the example of post office boxes, which are similar to Silent Line in providing a discretionary enhancement to privacy by withholding an individual's street address. If Silent Line should be free to the customer, why not post office boxes (or any other commercially-provided privacy-enhancing service)? In the absence of any real policy justification, the practical answer is that post office boxes are not required to be provided by law and so would not survive the prohibition.

Silent Line is a service which bundles two privacy-enhancing elements (directory unlisting and CLI blocking) within a robust and reliable delivery framework. Telstra commits significant resources to providing the service and ensuring the systems and processes are in place to maintain its integrity.

It is not reasonable to require Telstra to subsidise the cost of two social policies that undermine each other. Telstra is required by its CLC to subsidise the cost of delivering the White Pages. If charges for directory unlisting are prohibited and Silent Line becomes a tool of social policy, Telstra would also be required to subsidise the costs of delivering the competing social policy obligation, being the provision of directory unlisting. Government has chosen the paramount social policy in the White Pages CLC. The other should be allowed to make a reasonable return.

Prohibitions on charging overseas were made in different circumstances

The ALRC has quoted European Union (EU) legislation as evidence that unlisting charges can be prohibited without causing deleterious effect.⁷ However, the ALRC does not acknowledge that what is right for some countries is not necessarily right for others, even within the EU itself. Furthermore, the ALRC ignores evidence of the impact of free unlisting in the United Kingdom, which is subject to the directory unlisting law as a member of the EU. Unlisted residential numbers in the UK now account for around 66 per cent of numbers in the residential number database.⁸

⁶ See <http://exchange.telstra.com.au/2013/02/26/telstra-to-review-silent-line-fees/>.

⁷ Paragraphs 72.244 and 72.256 of ALRC Report 108.

⁸ See https://www.btwholesale.com/pages/static/Products/IT_Services/Directory_Solutions/featuresandbenefits.htm

Much of the policy rationale behind privacy regulation in the European Union derives from a belief that the institutions of government cannot be trusted to treat personal information with the respect it deserves even when the practical implementation of that respect is codified by law. For example, the collection of full census data in Germany was prohibited by Germany's Constitutional Court 1983. For Germans, concern about the risk of government abuse of personal information clearly outweighed the public benefits that flow from government access to basic information about its electors.⁹

In the UK, where the European Directive¹⁰ has necessitated the imposition of free directory unlisting, the Telephone Preference Service, the British version of Australia's Do Not Call Register, has been ineffective in preventing telemarketers from using the national directory to create marketing lists.¹¹ In that context, directory unlisting provides a needed defence against telemarketing calls, albeit only partial (as telemarketers can source leads from elsewhere) and overly blunt (at 66 per cent unlisted the national directory is much less effective). Such a defence against telemarketing is unnecessary in Australia as the Do Not Call Register is highly effective.

Response to inquiry terms of reference

As stated above, it is Telstra's view that a prohibition on the charging of fees for an unlisted (silent) number service is unnecessary and inappropriate in the Australian context. The reasons for this view are explained further below against each of the inquiry's terms of reference.

ALRC recommendation 72.17 of Report 108: Australian Privacy Law and Practice

The ALRC asserts that "charging for an unlisted number . . . is a financial impediment to accessing a service that will help to protect privacy . . . particularly for individuals on fixed or low incomes."¹² It also expresses concern "about the needs of those who have experienced family violence, and who need to ensure that the perpetrator is unable to contact them", in which case unlisting "is not a privacy protection for which an individual in such a situation should be charged."¹³

It may be narrowly accurate to say that charging for a service is an impediment to accessing a service, but it does not follow that a charge should therefore be prohibited, even where the service has the effect of enhancing the customer's privacy. A modest charge that is reasonable on other grounds does not constitute an insurmountable or even an unreasonable barrier to access. For most people directory unlisting is not critically important and not prohibitively expensive.

⁹ Germans feared surveillance and felt that a statistical census was an unjust invasion of privacy. See http://cms.uni-kassel.de/unicms/fileadmin/groups/w_030405/Ehemalige_Mitarbeiter/Dr._Christoph_Schnabel/Hornung_Schnabel_Data_protection_in_Germany_I_CLSR_2009_84.pdf.

¹⁰ Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications).

¹¹ The UK Information Commissioner's Office did not have suitable powers to act against infringements of the Telephone Preference Service rules until the end of January 2012. See http://www.ico.org.uk/news/latest_news/2012/ico-statement-unwanted-marketing-calls-spam-text-messages-02072012.aspx. The TPS itself acknowledges the consequences of its lack of powers to pursue breaches here: <http://www.tpsonline.org.uk/tps/stillgetcalls.html>.

¹² Paragraph 72.255 of ALRC Report 108.

¹³ Paragraph 72.258 of ALRC Report 108.

Telstra agrees that customers who have experienced family violence and need to ensure the perpetrator is unable to contact them should not need to pay for directory unlisting, because in that circumstance it may be that a charge does present a meaningful barrier to a critical service. For that reason Telstra has announced the offer of a fee exemption for customers facing a security threat from May 2013.¹⁴

Whether the payment of a fee unduly inhibits the privacy of telephone subscribers

Telstra does not believe the payment of a fee unduly inhibits the privacy of telephone subscribers. There is no convincing argument that a customer's control of their personal information is lost merely because they are listed in a directory. Directory unlisting is an enhancement of privacy that is available for a modest fee in the same manner as like services including post office boxes.

Directory unlisting is an enhancement of privacy because for most people the public availability of their street address and phone number information is not particularly intrusive. This is clear from the fact that 84 per cent of residential fixed line subscribers believe unlisting is not worth the charge of around \$35 per year (inc. GST). Public figures with more reason to unlist can treat the modest fee for Silent Line as a professional expense.

The likely economic, social and public interest impact for consumers and businesses, carriage service providers and the White Pages directory producer

The risk for all stakeholders is that customers reflexively accept the offer of free unlisting without regard to the broader consequences. In the similar UK market residential directory unlisting has risen to 66 per cent since unlisting fees were prohibited in 2002. The question is then whether unlisting in Australia would reach similar levels if prohibited here too despite Australia's much more effective Do Not Call Register.

The impact of a dramatic rise in unlisted numbers would be felt most critically by consumers, who as individuals may see no disadvantage in being unlisted, but who in aggregate will suffer from a reduced ability to make social connections. Other sources of social connection, such as social media, are not widely patronised across all demographic groups and certainly do not provide the kind of comprehensive social coverage that was the original purpose of national telephone directories.¹⁵ Discretionary commercial offerings that may enter and leave the market at will are not substitutable for a permanent national directory provided in fulfilment of a statutory mandate.¹⁶

A prohibition on charging a fee for Silent Line would mean that Telstra would be unable to recover the cost of providing the service directly from the customers who use it. The costs would then be borne by the entire customer base and/or Telstra's shareholders, or a combination of both. This would be contrary to the government's principles of competitive neutrality and for the cost of its public policy to be borne by the government and not the private sector.

The implications of a prohibition for the efficacy of the national public number directory

The purpose of a national public number directory is to publish the basic contact information of all fixed line telephone subscribers in order to facilitate connections between them. Users consult the directory when they know there is a good chance of finding the fixed number listing they need. Encouraging

¹⁴ See <http://exchange.telstra.com.au/2013/02/26/telstra-to-review-silent-line-fees/>.

¹⁵ The most highly penetrated social network, Facebook, is reportedly used by less than half the population and no more than 75 per cent of the internet population, and is under-represented in the oldest and youngest demographics. See for example <http://www.socialmedianews.com.au/facebook-australia-2012-infographic/> and <http://www.socialbakers.com/facebook-statistics/australia>.

¹⁶ Consider for example the fortunes of Myspace, the online social network that dominated the market in 2009 but has since been almost completely supplanted by Facebook and other social media sites. For more details on the decline of MySpace, see for example http://www.businessweek.com/magazine/content/11_27/b4235053917570.htm and <http://www.theatlantic.com/technology/archive/2011/01/the-rise-and-fall-of-myspace/69444/>.

customers to remove themselves from the directory without good reason via a prohibition of the current modest fee will detract from this purpose in proportion to the percentage of unlisted numbers.

The relationship between an increase in unlisted numbers and a decline in the national directory's ability to facilitate connections is not likely to be linear. The national directory will become ineffective as soon as users think it more likely than not that the listing they need will not be found there, because at that point they will cease to use the directory. Although we cannot know exactly where this tipping point lies, it must be reached before all numbers are unlisted.