



Senator John Cherry
Chair
Senate Environment, Communications,
Information Technology and the Arts Committee
Parliament House
CANBERRA ACT 2600

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Dear Senator Cherry

On 13 December 2004 the Australian Communications Authority (ACA) was invited to consider making a submission to the Committee's inquiry into the Australian Communications and Media Authority (ACMA). This letter and its attachments constitute the ACA's submission.

The ACA supports the proposed merger with the Australian Broadcasting Authority (ABA) to form ACMA because the merged Authority will be better placed to regulate converging communications and broadcasting technologies and services. There are numerous synergies between the planning, licensing, monitoring and compliance activities of the existing bodies which can be better realised in a single agency.

Within the frameworks established for broadcasting and telecommunications and radiocommunications by existing legislation there is already substantial cooperation between the ABA and the ACA in such areas as: spectrum planning (eg. for coordination of activities on the edges of the Broadcasting Services Bands, non-broadcasting use of the BSBs and broadcasting use of other spectrum); investigation of interference and reception issues; licence condition enforcement; licence allocation and fee collection; content access issues on mobile and satellite services; Internet content and Spam issues; and provision of consumer information. The merger should enhance the coherence of approaches to these issues while ensuring that specific legislative requirements relating to individual service types are maintained.

The object is to establish the best possible administrative arrangements for all aspects of communications law. This object will be supported by exploiting the economies of scope that can be achieved through the concurrent undertaking of regulatory activities.

The role and functions of the ACA would be well-known to the Committee and I do not need to set them in out in detail. Attachment A outlines main roles and functions in a generally accessible manner.

The Authority's powers derive primarily from the Acts which it administers:

- *Radiocommunications Act 1992*;
- *Telecommunications Act 1997*;
- *Telecommunications(Consumer Protection and Service Standards) Act 1999*;
- *Spam Act 2003*;
- related taxes and charges/levies legislation and other subordinate legislation.

In general terms those powers include the ability: to determine standards; to require industry to develop a code or standard; to give directions to carriers and carriage service providers; to allocate and revoke licences; to make spectrum plans; to conduct public inquiries and investigations; to obtain information, including documents and oral or written evidence; to apply to the Federal Court to issue mandatory or restraining injunctions; and to initiate proceedings to recover civil penalties imposed by the provisions of legislation. These powers will transfer to ACMA following passage of the merger legislation.

For a straightforward description of those ACA powers that relate to radiocommunications and telecommunications I would commend to the Committee The Australian Communications Law Centre Guide "Australian Telecommunications Legislation" 3ed (2004) ISBN 0 86840 774 7. Chapters 2, 6 and 7 in particular deal with activities relevant to the ACA. Attachment B discusses the ACA powers in relation to Spam which are not covered in the referenced publication.

In pursuing the objectives of the legislation it administers, the ACA has sought to apply a consistent approach which is readily understood by stakeholders and which encourages participation in the consultative processes established under legislation. The ACA's statement of regulatory philosophy has been released for public consumption and is at Attachment C for reference.

In the second half of 2004 the ACA supported work undertaken by a group (Consumer Driven Communications Group) of consumer representatives to consider how the effectiveness of consumer participation in regulatory and self-regulatory processes could be improved. This group has released its final report containing a series of wide-ranging recommendations, many of which fall outside the scope of the ACA (or ACMA). While the ACA supported the process to produce the report, the recommendations only reflect the views of the group members and have not been endorsed by the ACA. Where the recommendations bear on areas within ACA responsibility they will be considered in the formulation of future administrative arrangements consistent with legislative and policy requirements, and within the powers already given to the ACA.

The ACA has no objection to this submission being published. If the Committee requires clarification of any aspect of this submission the ACA will be happy to assist. In writing its report the Committee may find it useful to refer to material available from the ACA website - www.aca.gov.au.

May I suggest that the ACA appear before the Committee simultaneously with DCITA and the ABA.

Yours sincerely



Dr Bob Horton
Acting Chairman

31 January 2005

Australian Communications Authority (ACA)

Established in July 1997, the ACA falls within the portfolio of Communications, Information Technology and the Arts. It exercises powers under the *Telecommunications Act 1997*, the *Telecommunications (Consumer Protection and Service Standards) Act 1999*, the *Radiocommunications Act 1992*, the *Spam Act 2003* and other related legislation.

The ACA works closely with the communications industry to achieve active self-regulation, while ensuring industry compliance with licence conditions, codes and standards and monitoring the effect of regulations to ensure they are responsive to the community's needs. The ACA also regulates use of the radiofrequency spectrum to minimise interference, which can disrupt communications.

On 11 May 2004, the Government announced its intention to merge the ACA and the Australian Broadcasting Authority (ABA) to form a new communications and media regulator called the Australian Communications and Media Authority (ACMA). The Authority will be better placed to regulate converging communications technologies such as 3G telephony and digital broadcasting.

Main functions of the ACA

- Represent Australia in international regulation of communications
- Manage access to the radiofrequency spectrum through radiocommunications licensing
- Resolve competing demands for spectrum through price-based allocation methods
- Investigate and help in resolving radiocommunications interference
- License telecommunications carriers and ensure compliance with licence conditions and carriage service provider rules
- Regulate industry compliance with consumer safeguards, standards and codes of practice
- Administer legislation relating to powers and immunities of carriers in constructing telecommunications facilities
- Report on telecommunications industry performance
- Administer the Telecommunications Numbering Plan
- Inform industry and consumers about communications regulation
- Regulate transmission of unsolicited electronic mail

International telecommunications

The ACA represents Australia's communications interests internationally by:

- coordinating and leading Australia's representation at the International Telecommunication Union, including developing Australian and regional proposals;

- and
- contributing to the revision of international radio regulations and preparing Australian proposals for World Radiocommunication Conferences, which are held every two or three years.

The ACA also works through regional forums such as APEC and the Asia–Pacific Telecommunity to promote mutual recognition, harmonise standards and enhance prospects for trade in communications equipment and services.

Spectrum management

The spectrum is the total span of radiofrequencies and corresponding wavelengths. It is vital for delivering a wide variety of communications services to Australians, and as a finite resource the competing interests needs must be managed carefully.

Spectrum used for communications extends from nine thousand Hertz to 300 billion Hertz (9 kHz–300 GHz). Users range from amateur radio enthusiasts, marine, citizen band and two-way radio users, broadcasters, providers of space communications between satellites and ground stations, and mobile and cordless phone users.

The ACA manages access to the radiofrequency spectrum through spectrum planning and licensing, and ensures industry compliance with licence conditions and mandatory standards, including standards covering electromagnetic interference and health issues such as exposure to electromagnetic radiation.

In August 2004, the ACA released its future strategy for managing Australia's radiofrequency spectrum. The document, *From DC to Daylight-Accounting for Use of the Spectrum in Australia*, details what the radiofrequency spectrum is used for, where demand is growing, and what strategies the ACA intends to employ for ensuring fair and equitable access to this valuable resource.

Licensing

Radiocommunications licensing

There are three types of radiocommunications licences.

- Apparatus licences authorise the use of radiocommunications equipment, including aircraft, amateur, broadcasting, and some maritime services, and involve payment of licence fees.
- Class licences are open, standing authorisations to operate particular radiocommunications equipment, provided the device and its operation meet the conditions of the licence. There are no licence fees and class licences do not have to be applied for. Class licences currently cover operation of low power devices such as remote controlled equipment and cordless telephones.
- Spectrum licences authorise the use of spectrum space for any device on any site in that space. They are a tradeable, technology-neutral spectrum access right for a fixed term. Common uses of spectrum licences are for delivery of mobile phone, broadband Internet, wireless local loop and pay TV services.

Telecommunications licensing

Telecommunications carriers must hold a carrier licence. Australia has an open licensing regime for telecommunications and no distinction is drawn on the basis of the technology operated.

Suppliers of carriage services are not required to obtain a licence from the ACA because they use a network unit owned by one or more carriers. Those who resell carriage services are regarded as carriage service providers in specific circumstances, as are Internet service providers. They must comply with service provider rules and meet certain obligations, including those relating to emergency call services, confidentiality, industry codes and standards, interception, operator and directory assistance, number portability, performance reporting and pre-selection.

Codes and standards

The ACA works with the communications industry to develop self-regulation through industry codes and standards. Codes are developed by the Australian Communications Industry Forum and other representative industry bodies in consultation with the ACA, industry and the community. Once the ACA registers a code it may enforce compliance where necessary. The ACA also determines and enforces mandatory industry standards when suitable voluntary codes are either inappropriate or not developed.

Industry codes cover operational and consumer matters. There are registered codes covering issues including billing, calling number display, complaint handling, emergency call services requirements and mobile number portability. A code covering the deployment of radiocommunications infrastructure has also been developed in response to community concern about the siting of telecommunication facilities. It is designed to improve consultation by carriers when planning installations.

The ACA is also involved in a cooperative approach with other government agencies to regulate exposure to electromagnetic radiation from radiocommunications devices.

A full list of codes registered by the ACA is available on the website.

Industry Monitoring & Consumer safeguards and information

The ACA monitors telecommunications industry compliance with:

- the Customer Service Guarantee Standard, which requires carriage service providers to meet minimum performance requirements and pay compensation when these are not met
- legislative provisions relating to telephone sex services
- provision of access to the emergency call services
- the universal service and digital data service obligations
- the Network Reliability Framework
- the *Spam Act 2003* and
- provision of assistance to law enforcement and national security agencies.

Telecommunications numbering

Through the Telecommunications Numbering Plan 1997, the ACA manages Australia's telecommunications number resources to guarantee an adequate supply of numbers for existing and new services.

The Numbering Plan includes rules designed to help consumers make the most of competition in telecommunications. These rules cover the implementation, operation and management of number portability.

Portability means that customers are able to keep their telephone number when changing service provider. Number portability now exists for local, local rate (13 and 1300) and freephone (1800) and mobile telecommunications services.

The ACA recently began a system of online auctions for the allocation of valuable local rate (13) and freephone (180) numbers-so called **smartnumbers™** and the ACA also runs public information campaigns when numbering changes are introduced.

More information

The ACA has consumer and industry fact sheets on a range of topics available from its website – www.aca.gov.au.

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Attachment B

Spam Act 2003

The Spam Act sets out various provisions for regulating commercial emails and civil penalties for contraventions of the Act. The ACA's regulatory powers in relation to promoting responsible practices for sending commercial emails, investigations, information-gathering powers and enforcement are set out in the *Telecommunications Act 1997* (see discussion below).

The ACA's powers set out in the Spam Act are as follows:

Part 4 of the Spam Act allows the ACA to institute legal proceedings for contravention of civil penalty provisions and sets out the pecuniary penalties that are payable. Compensation and recovery of financial benefits may also be applied for. As an alternative to formal legal proceedings, the ACA may use an infringement notice system to impose penalties, similar to on-the-spot fines.

Part 5 of the Spam Act covers applications by the ACA to the Federal Court to grant injunctions for contravention of civil penalty provisions.

Part 6 of the Spam Act provides the ACA with the power to accept enforceable undertakings in connection with a matter relating to commercial electronic messages or address harvesting software; see section 38. The ACA has the power to apply to the Federal Court for various orders to address breaches of such undertakings; see section 39.

Part 7 of the Spam Act prescribes some further ACA powers, including the power to issue formal warnings (section 41). Section 42 sets out a series of additional ACA functions relating to community education, research into spam-related matters, and liaising with overseas regulatory and other relevant bodies about co-operative arrangements for spam-related prohibitions and regulation.

Telecommunications Act 1997

In general, as a result of consequential changes to the *Telecommunications Act 1997*, the ACA also has more or less the same regulatory powers in relation to spam matters as if they were telecommunications matters. The main additional points to note are:

- An industry code framework now exists to enable the e-marketing industry to develop codes that relate to using commercial electronic messages for marketing, advertising and promotions. Part 6 of the Telecommunications Act already provided for the development of codes by the telecommunications industry in relation to telecommunications activities. This has been extended to enable the development of codes by the e-marketing industry in relation to e-marketing activities and the ACA's power to register these codes;

- An investigation role and appropriate information gathering powers for the ACA to investigate complaints relating to breaches of the Spam Act and regulations. Parts 26 (Investigations) and 27 (Information-gathering powers) of the Telecommunications Act give the ACA powers to gather information and investigate complaints relating to certain breaches of the Telecommunications Act. These powers have been extended to enable investigations of breaches of the Spam Act and regulations.
- The ACA is now able to obtain monitoring warrants to monitor compliance with the Spam Act and regulations, and search warrants relating to breaches of the Spam Act and regulations. Part 28 of the Telecommunications Act now contains the ACA's powers to seek a search warrant relating to breaches of the Spam Act and regulations and seize various things; see Divisions 3 and 4 of Part 28. In addition, the ACA has powers to seek a monitoring warrant in relation to monitoring compliance with the Spam Act; see Division 5A of Part 28. Powers for inspectors to access computer data relevant to the Spam Act have also now been included in the Telecommunications Act.

Regulatory Philosophy

The Australian Communications Authority (ACA) is responsible for regulating telecommunications and radiocommunications by administering the following:

- *Radiocommunications Act 1992*;
- *Telecommunications Act 1997*;
- *Telecommunications (Consumer Protection and Service Standards) Act 1999*;
- *Spam Act 2003*; and
- subordinate legislation made under these Acts

To achieve its vision of a dynamic, efficient and competitive communications industry that meets the needs of the Australian community and provides appropriate safeguards, the ACA's regulatory practice is based on the following guiding principles.

Independence—The ACA is an impartial regulator that makes decisions in the interests of the whole community.

Neutrality—The ACA encourages innovation with regulation that does not favour a particular technology solution or practice. This allows regulation to be flexible and capable of responding to new technologies and services.

Transparency—The ACA endeavours to consult on matters that are subject to its regulatory decision making. Parties are notified of ACA decisions and the reasons for the decision.

Responsiveness —The ACA takes account of relevant and emerging issues and responds to approaches and enquiries from all parties in a timely way.

Community—The ACA ensures that community safeguards are an integral part of communications regulation.

Stewardship—The ACA guides regulation with a view to minimising the burden on industry, while ensuring that regulatory objectives are achieved.

Self-regulation—The ACA encourages the greatest practicable use of industry self-regulation, while not imposing undue costs on industry, jeopardising consumer safeguards or compromising the effectiveness of regulation.

Public resources—The ACA manages and allocates public resources such as radiofrequency spectrum and telephone numbers using economic tools and principles.

International—The ACA represents Australia in relevant international and regional forums and seeks to ensure harmony with international standards and practices.

Compliance—The ACA encourages industry compliance by providing advice, education, assistance and information. Non-compliance will be actively pursued, where necessary with enforcement action. ACA action will usually be based on a graduated use of regulatory measures using the minimum power or intervention necessary to achieve the desired result.