



The Secretary,
Senate ECITA Reference Committee
Parliament House
Canberra ACT 2600
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April 2005

***Re: Inquiry into the Performance of the Australian Telecommunications
Regulatory Regime.***

Dear Secretary,

Thank you for providing the opportunity to present a submission to the Senate Inquiry into the Performance of the Australian Telecommunications regulatory Regime. As a result of the short time frame preparing this submission CTN's comments relate non specifically to the terms of reference (d), (e), (f), (g) and (k).

Introduction

The Consumers Telecommunications Network (CTN) congratulates the Senate ECITA Reference Committee for addressing this important area of public policy debate which must be resolved before further privatisation of Telstra can even be put back on the table.

We offer these comments as a national peak body of consumer and community organisations, and of individuals representing community interests, who participate in developing national telecommunications policy. CTN advocates policies for better access, quality of service and affordability of telecommunications facilities for all residential consumers.

Consumer Driven Communications (CDC) Project recommendations

The Consumer Driven Communications (CDC) Project delivered to the ACA recently highlighted a number of approaches to regulation of important consumer issues that are relevant to how we believe the regulatory framework can be reformed to provide better consumer protection into the future. In particular, CTN

would like to highlight the following three main themes which reflect current residential consumer sentiments on regulation, competition and community safeguards :

- Consumers seek workable regulation and effective enforcement in the telecommunications industry to ensure that consumers get the products and services they need in an environment with adequate safeguards;
- The concepts of consumer protection and representation need to be elevated to the direct responsibilities of the legislator and regulator (with less emphasis on the self-regulatory processes); and
- The ACA (ACMA) must continue to play a greater role in developing consumer protection mechanisms (for example by giving directions and setting deadlines).

Consumer protection is squarely the responsibility of governments and regulators. At present we see consumers exposed to excessive risk on many fronts as a direct result of the industry's ability to address consumer concerns because of the constraints of their competitive imperatives. Further to this CTN does not believe that satisfactory outcomes for consumers can be achieved through self-regulatory approaches in all instances and we firmly believe there is still a place for strong regulation enforced by a strong and well resourced regulator.

Key Issues for Telecommunications Regulation into the Future

After fifteen years of working with and representing the interests of residential consumers in telecommunications we have gained considerable insight into the expectations of the Australian public and their communications services. The following list of policy areas has been developed through consultation with CTN's network of community organisations and consumer advocates working in the telecommunications policy arena. In particular it is informed by our experience working through the self-regulatory mechanisms in the telecommunications industry. On this basis we believe that we can make sound judgments about what policy objectives require government intervention and/or robust government regulation versus what policy objectives can and is effective at a self regulatory level.

1. Establishing Telecommunications as an essential Service.

- The telephone is no longer considered a luxury – it is an essential not only for contacting emergency services but also for participating fully in society especially on an economic level. Consumers feel that there needs to be a declaration that a telephone is an essential service in addition to the rights already afforded Australians by the Universal Service Obligation.

2. Protecting our network

- Retain majority public ownership of Telstra. But if it is to be sold, we need enhanced consumer protection regulation and we need a thorough review with adequate consultation timeframes in order to produce the best outcomes for consumers, government and industry.
- The customer access network should be run on a not-for-profit basis open to all carriers and service providers. There must be a balance between social and economic policy objectives. CTN has been a supporter of structural separation for several years now and it is our view that accounting separation does not go far enough if the aim of Government is to “future proof” telecommunications in Australia.
- Future infrastructure reviews must be open and transparent. Quite apart from the ability of five yearly reviews to address the issue of “future proofing”, CTN believes that reviews must be more frequent to address technological advances but also to ensure the reviews are proactive. There must also be adequate residential consumer representation on any reviews of infrastructure in the future.
- If consumers are to receive the benefits of competition, social and public interests principles and tests need to be integral to competition policy and regulation. Such tests require extensive public input through an expanded range of public inquiry and consultative mechanisms.
- Public concerns about foreign ownership of Telstra must be addressed in addition to ensuring that there is better protection for the “mums and dads” investors who lost considerably on their purchase of T2 shares.

3. Better infrastructure access and development for all Australians including rural and remote regions

- While we acknowledge that some advances have been made in the area of infrastructure, we believe there are still inherent problems with the sharing of infrastructure that has been publicly funded through Networking the Nations such as mobile towers.
- Ensure equitable access to telephone services for all and encourage competition in the residential market with strict price controls and targeted assistance where necessary. (e.g. Indigenous communities)
- Balance public and private ownership, with support for community based and equitable telecommunications services, throughout all of Australia.

- Ensure that all groups in Australia whether rural or regional or not are taken care of by future competition and ownership arrangements in the telecommunications arena.
- Carriers should be encouraged to invest in network upgrades as part of their licensing conditions
- Funds from any future sale of Telstra should go into a trust fund so that the interest can fund and subsidise infrastructure development in the future. Sale funds should not be used on programs that are unsustainable and short term in their focused.
- Future government policy must redress current areas of inadequacy of the communications networks in Australia and while focusing on newer technologies such as the roll-out of the mobile network access to the plain old telephone service must never be forgotten. This is not about stifling innovation this is about guaranteeing basic access into the future.
- The retirement of debt with funds from the sale of Telstra must not be considered an option as this will not replace the income from annual dividends the government currently receives.
- We must plan for and provide a telecommunications infrastructure which is sustainable in the long term and accessible to all Australians

4. Quality of Service (QOS)

- Establish external auditing and resource the regulator (ACMA) adequately to conduct these audit regularly. Consumers need a transparent and useable mechanism to identify systemic failures sooner rather than later.
- CTN would like to see more results and implementation of the recommendations from the Bessley and Estens Inquiries. Monitoring and reporting is not adequate on its own.
- Improve the Customer Service Guarantee and simplify the arrangements so that more consumers benefit. The CSG must also be better publicized. The question of exemptions and how they are now being applied to VoIP providers also needs to be clarified. Consumers must be consulted and fully informed before exemptions are granted.
- Implement a CSG for internet users not just for broadband users but for dial-up users as well.
- Ensure that the Network Reliability Framework (NRF) continues and is incrementally improved over time.

- Develop QOS benchmarks for mobile phone users.
- Develop QOS for VoIP providers

5. Adopt a Consumer Protection Standard

- The ACA to develop the single Standard using a Customer Lifecycle approach (see CDC Report) to take the place of the current miscellaneous collection of standalone codes. This will link the regulatory requirements to the experience a consumer has in the market. This approach would also serve to eliminate duplication, gaps and overlap between current codes. The clear objective of this work must be improved consumer protection and certainly no derogation from standards embodied in current Codes.

6. Improve Consumer Information and Education Programs

- The ACA should acknowledge that the provision of information must not take the place of regulation and enforcement. The issue of unfair contract terms is a good illustration of the fact that in some cases no amount of information will remedy the problem; instead action is needed to remove those terms from suppliers' contracts.
- Implement the strategies outlined in the CDC report to improve consumer awareness levels into the future. The proposals are based on many years of community sector experience and not only contain costs but a proven to be more effective than expensive advertising campaigns.
- Suppliers use the following techniques to improve the awareness levels of their customers to their rights:
 1. distribute a consumer rights brochure at the point of sale;
 2. insert a summary page about consumer rights in the front of all directories (e.g. white pages);
 3. get customers to sign at point of sale that they have been given and understand information about their rights;
 4. continue to distribute information as bill inserts particularly on any final notices sent;
 5. the contact details of the TIO be distributed with all warning notices and final notices; and
 6. the industry develop a community advertising campaign with consumers about what to do if customers need help.

7. Address consumer concerns about access to the internet and broadband

- We need more equitable opportunity for internet access in Australia in particular to broadband services. The majority of the residential consumers that CTN represent do not have broadband at home and government subsidies and intervention is required to breach the digital divide.

8. Equitable access to basic affordable telephone services for all

- While the recent Price Controls report by the ACCC acknowledges the need to ensure equitable access for low income consumers regardless of the effects of competition in the market, the report does not go far enough to address real affordability issues.
- If Telstra is to be fully privatized they cannot continue to be the only provider that makes attempts to service low income consumers. Every provider should be required to implement financial hardship policies and hard caps on bills based on proper credit assessments should be mandated immediately.
- Remove the GST from residential line rental. Businesses don't pay GST for their phones – and telecommunications is a two-way street between business and consumer. No GST should be charged for provisioning and line rental. Telecommunications is an essential service not a luxury and the GST is adding to the difficulty of making this service affordable for all Australian Consumers.
- There needs to be review into and price limits set should be set on late fees, termination fees, reconnection and other penalty fees, security deposits and other administration charges.

9. Review the Standard Telephone Service

- The ACA should pursue a review of the definition of the Standard Telephone Service. This review should be done with full participation by consumer representatives. The review could consider the implications of the Next Generation Network (NGN) services such as Voice over Internet Protocol and Text over Internet Protocol. In conducting this review, the ACA should investigate the declaration of the standard telephone service as an essential service, with all associated rights and obligations.
- Consideration for the newly defined Standard Telephone Service must also be given to accessibility reflecting ability and ease of use, quality of service and the needs of consumers for affordable and appropriate services and products.

- The option to choose a mobile for a standard telephone service must be seriously considered.

10. Inquiry into Complaints Handling in Australia

- Examine why Australian Consumers find it so difficult to make complaints about their services and why so many never even bother to try and register their dissatisfaction.
- Conduct a thorough audit of compliance with the ACIF Complaints Handling Code in particular the requirement that consumers to be told about the TIO and their right to contact them to assist with the resolution of disputes.
- Through a service provider determination - mandate the definition of a Consumer Complaint and include faults reporting as a part of this definition.
- People are increasingly enraged and alienated by automated systems. User-friendly design should be mandatory.
- Investigate as per the CDC recommendations the impact of convergence on the TIO acknowledging that the expanding the TIO jurisdiction to include pay TV is an absolute minimum reform required.

11. Better control of unconscionable advertising practices, telemarketing and selling practices

- Stringent enforcement of codes of conduct for honesty and non-intrusive telephone, email and SMS direct marketing.
- Accessible, comparable, neutral information about products and services must be made available and service providers may need to be regulated similar to the credit card industry in this regard.
- The Spam legislation needs to be expanded to include telemarketing and codes of practices addressing mobile message spamming must be developed immediately.
- The IPND Standard under development by the ACA must be adopted without any further delays or there is likely to be a consumer outcry about unnecessary delays and lack of transparency.
- There needs to be properly accredited training of retail staff similar to the Responsible Sale of Alcohol.

- There must be a thorough investigation into uninformed consent and policies and procedures implemented in the industry to ensure that all consumers are properly protected and understand their rights before signing a contract.

12. Better service and equipment contracts

- Replacing the SFOA with a model contract is still CTN's preferred option
- In lieu of a model industry contract however- Comprehensive and accurate contract summaries must be provided by phone companies.
- The SFOA Determination must be reviewed in line with the new Consumer Contracts Code and the Code must be registered by the ACA immediately.
- The ACMA must be properly resourced to conduct regular compliance audits of the Consumer Contracts Code.

13. Better Access for People with Disabilities to the benefits of a competitive market

- The Department of Communications, Information Technology and the Arts (DCITA) facilitate the establishment of an independent consumer-managed disability equipment program so that end-users can connect to the standard telephone service regardless of their disability and the service provider they use. This should be included in the *Telecommunications (Consumer Protection and Service Standards) Act 1999* in a similar way to the National Relay Service.
- An independent DEP would ensure that People with disabilities are able to benefit from the right to shop around just as anyone else. This issue has been raised by HREOC and at the previous Senate Inquiry into the Australian Telecommunications Network.
- Telecommunications customer equipment should be designed to ensure that everyone can use it. The current Disability equipment Standard must be expanded as a matter of urgency to prevent Australia becoming a dumping ground for substandard equipment from Europe and the USA where increased regulation is having a substantial impact.
- The National Relay Service must be upgraded without delay as was recommended in the ACIF TATA Project to DCITA in 2004.
- All carriage service providers offering retail services to develop Disability Action Plans, lodge these with the Human Rights and Equal Opportunity Commission and to review them regularly.

14. Payphone provision and emergency access

- Everybody might need a public phone from time to time. Especially in remote areas and tourism locations, payphones can be crucial. We need a public payphone siting policy that includes emergency access.
- The recommendations of the ACA Payphone Review must be implemented completely as soon as practicably possible. Of particular on-going concern is the access by indigenous communities to payphones and also with the proliferation of non Telstra payphones the growing number of phones not accessible by people with disabilities. These are areas that may never be properly serviced by competitive markets
- Ensure that the price of a local call from a payphone is not increased.

15. Reform of the Universal Service Obligation

- In 1994 CTN called for a review of the Universal Service Obligation and argued strongly that a **Universal Communications Service** was more appropriate taking into account concepts of community service obligations from telecommunications, television and radio broadcasting. The point was made that access to interactive communications and a diverse range of information and cultural resources would become essential to participating fully in society. There was a call for policy makers to recognise the natural evolution of universal service to include broadband services across Australia. Reforming the USO cannot in our view be delayed any longer.

16. Review of the provision of Directory Services

Universal Access to public directories is being eroded by competition with no protection in the directory market

17. Enforcement of Community Impact Statements

- The industry should be required to develop community impact statements for all major new products and services in consultation with consumers before their introduction. This should be done in tandem with trials and pilots to ensure that it is as usable and accessible by all sectors of the community as possible and that it does not cause any interference with existing technologies or equipment.

18. Emergency Services

- Maintain one national emergency number regardless of the rollout of new technologies.
- There must be an investigation into the effect of privatization on Emergency services. Other models such as an Independent organization managing the call center addressing the need for transparent funding of the call center and built in redundancies in the network.

- Work with must be done with Emergency Service Organisations to ensure we have the most effective national network of which can respond effectively in a co-ordinated manner.
- The ACA introduces service provider rules that require fixed line carriage service providers to offer priority assistance services.
- Finally CTN members are very concerned about the impact of VoIP on the provision of emergency services. Regulation must ensure that we do not end up with a two tiered system of emergency provision in Australia.

19.Improve the Scheme for Grants for Consumer Advocacy and Research

- DCITA grants for consumer advocacy and research funding program be overhauled to ensure:
 - 1.Scalability - so the funding level grows with the industry
 - 2.Stability – so there is a sustainable funding base for consumer groups
 - 3.Program as well as project based funding for periods longer than 1 year.
- Consumer groups be funded to enable improved co-ordination of input to legislation reviews so that the expertise of groups with specialist knowledge can be shared such as through the Consumers Telecommunications Network (CTN) Consumers Forum.
- Funding also be allocated more specifically to raising consumer awareness and presenting alternative views on issues from a consumer perspective.
- DCITA ensure that in expanding assistance to new groups under the grants for consumer advocacy and research that organizations currently receiving funding continue to be allocated sustainable levels of funding.
- DCITA investigate the possibility of handing control of funding for sitting fees for participation in self-regulatory agencies to the self-regulatory agency.

20. Improving not abolishing Self regulation

CTN members believe that the government need to acknowledge the limitations of self regulation and work within these boundaries. A number of recommendations have been made in the CDC Report about improving self-regulation and compliance with in self regulatory frameworks. These

recommendation demand a well considered response and should be supported by both government and industry.

Conclusion

In conclusion, CTN believes that the public interest is best served by an equitable universal means of access to information and connectivity. This requires, at the very least, some form of universal, basic access to the telephone. It increasingly, also requires access to the internet. CTN's members believe the USO now needs to be extended to broadband services.

The telecommunications infrastructure is a national asset that has been purchased and paid for by all Australians. The siphoning off of this asset into the hands of relatively few Australians is highly questionable as it is unlikely to address the needs of all the residential consumers of today let alone tomorrow. There is an inherent conflict of interest between the provision of an universally accessible national utility infrastructure and profit-motive driven processes.

Should you wish to discuss this response in more detail please contact myself or Sarah Wilson, Policy Officer at the Consumers' Telecommunications Network where we can be contacted on 02 9572 6007 or at ctn@ctn.org.au.

Yours sincerely,



Teresa Corbin
CTN Executive Director

This submission was prepared by Sarah Wilson, CTN Policy Officer & Teresa Corbin, CTN Executive Officer. It has been approved out of session by the CTN Council.