TELCOMMUNICATIONS CONSUMER PROTECTIONS CODE (C628:2012)

EXPLANATORY STATEMENT

Introduction

This is the Explanatory Statement for the revised Communications Alliance ***Telecommunications Consumer Protections (TCP)*** Industry Code (C628:2012) (the Code).

This Explanatory Statement outlines the purpose of the Code and the factors that have been taken into account in its revision.

The Code is to replace the C628:2007 ***Telecommunications Consumer Protections (TCP)*** Industry Code published by Communications Alliance in September 2007.

The *Telecommunications Act 1997* (Cth) (the Act) encourages self-regulatory processes. Communications Alliance has been at the forefront of these processes and has worked closely with suppliers, regulators, the Telecommunications Industry Ombudsman (TIO) and consumer groups to develop industry codes of practice that promote the efficiency and growth of the telecommunications sector and provide appropriate protections for residential and small business consumers of telecommunications services in Australia.

Background

The existing TCP Code (C628:2007) was developed in 2007, and was the result of a consolidation of six individual codes into one single code. It is accompanied by the Telecommunications Consumer Protections Industry Guideline (G631:2007), designed to aid in interpreting the Code rules and to provide examples of how a supplier may choose to comply with the rules of the Code.

Under the provisions of the existing Code, the 2007 Code and the Guideline were subject to review 2 years from the date of the Code being registered by the ACMA. The existing Code was registered in May 2008 and, accordingly, a review of the Code began in May 2010, leading to a decision to revise the Code. The revision was conducted through a Code Revision Steering Group comprised of an independent Chair, representatives from the regulators, industry, consumer groups and an observer from the Department of Broadband, Communications and the Digital Economy (DBCDE). In addition, six Working Committees – each made up of industry and consumer representatives – were appointed to revise individual chapters of the existing Code and to report to the Steering Group.

The revision of the Code and Guideline coincided with the *Reconnecting the Customer* public inquiry undertaken by the Australian Communications and Media Authority (ACMA). Many of the recommendations made in the ACMA's *Reconnecting the Customer* final public inquiry report (published in September 2011) have been incorporated into the revised Code.

As a registered Code, the ACMA may direct any carriage service provider or business supplying goods or services for use in connection with the supply of a listed carriage service to comply with the TCP Code. The Code is enforceable by the ACMA.

Current regulatory arrangements

Section 112 of the Act outlines the intention of Parliament that the telecommunications industry develops industry codes relating to telecommunications activities. Section 113 lists examples of the matters that may be dealt with by the development of an industry code. The list includes the areas covered by the existing (and revised) Code.

The Telecommunications (Consumer Protection and Service Standards) Act 1999 (Cth) requires carriers and carriage service providers to enter into and comply with the TIO Scheme. This scheme is an avenue of last resort for the handling of end-user complaints about carriage services. Subject to the consent of the TIO, this Code confers powers on the TIO to handle complaints about matters arising under the Code.

The existing Code sets out community safeguards in the areas of:

- Customer information on prices, terms and conditions
- Consumer contracts
- Billing
- Credit management
- Customer transfer
- Complaint handling
- Code administration and compliance

Why current regulatory arrangements are inadequate

Industry and consumer groups believed that the existing TCP Code did not adequately address a variety of old and newly-arisen consumer issues and that action was needed to improve customer satisfaction and thereby reduce customer complaint volumes.

In addition, the commencement of the new Australian Consumer Law (ACL) (i.e. Schedule 2 of the Competition and Consumer Act 2010) on 1 January 2011 suggested an alignment of the obligations under the ACL and the TCP Code would be beneficial.

The existing Code Administration and Compliance Scheme (CACS) was deemed to be inadequate in achieving compliance. It applied to only a limited number of industry participants (i.e. Telstra, Optus, VHA, Powertel and AAPT, as only those organisations are signatories to one or several Codes), it has not been used in the past and no monitoring or reporting activity has been undertaken in the past few years. (Communications Alliance will withdraw the CACS upon registration of the revised TCP Code.)

In September 2011 and as a result of the *Reconnecting the Customer* public inquiry the ACMA found that the existing Code is not operating to provide appropriate community safeguards or otherwise operating to regulate adequately participants in the telecommunications industry to which it applies. The ACMA therefore issued a notice under subsection 125(1) of the Act requesting that Communications Alliance, as the association that developed the existing TCP Code, address those deficiencies within 150 days of the notice, i.e. by early February 2012.

How the Code builds on and enhances the current regulatory arrangements

The revised Code will provide additional protection for consumers in their dealings with the telecommunications industry and ensure outcomes that should improve the customers' telecommunications experience. Existing provisions have been tightened and/or made clearer and new obligations have been added to the revised Code.

The revised Code builds on the structure of its predecessor (and simplifies it) but takes a different approach in that it stipulates desired consumer outcomes which are to be achieved through specified supplier actions (i.e. as laid out in more detailed code provisions). The revised Code also uses simpler language and places additional emphasis on accessibility of information for all consumers in their dealings with the telecommunications industry.

Due to its new approach of consumer outcomes and supplier actions in combination with simplified language, maintaining a separate Guideline has been deemed unnecessary and the existing Guideline will be withdrawn upon registration of the revised Code.

What the Code will accomplish

The revised Code will further enhance existing community safeguards via the introduction of new requirements on suppliers. Simplification of language and of the Code's structure will assist suppliers in interpreting and implementing Code rules and will also allow interested consumers to more easily understand their rights and obligations. An introductory statement to the Code sets out the key commitments of suppliers to consumers and provides a brief summary of each of the Code's chapters. These benefits are also targeted at further reducing the numbers of complaints made to suppliers and the TIO.

Anticipated benefits to consumers

In addition to the aforementioned increased accessibility of the Code itself through a simplified language, structure and the inclusion of an introductory statement, consumers are anticipated to benefit from the various enhanced requirements in the Code, in particular from:

- Advertising
    - provision of more and clearer information about products – before the point of sale – the "Plan Essentials" summary of offer document
    - additional provisions around unit pricing information in advertisements and the content of advertising
    - stronger controls on telecommunications product advertising and the phase-out of the term "cap" for non-hard-cap plans;
- Billing
    - a reduced back-billing period
    - a widening of billing provisions to also apply to pre-paid services
    - a right to free-of-charge historic billing information for 24 months
    - additional bill content and itemisation provisions, including the total amount of the bill for each of the two previous billing periods for included value plans
- Expenditure management tools
    - mandatory voice/SMS and data usage notification requirements, incl. requirements around usage information delay
- Financial hardship
    - increased obligations on suppliers concerning customers who experience financial hardship
- Transfer
    - clarifications of informed consent in the context of changing suppliers

  - requirements around post-customer-transfer notifications
  - provisions covering customer transfers resulting from mergers
- Complaint handling
  - a streamlined definition of complaint to exclude initial fault and service calls (unless they are lodged as a complaint)
  - tighter timeframes for complaint acknowledgement and resolution
  - obligations to advise customers of complaint outcomes
  - a more explicit promotion to customers of the alternative dispute resolution services offered by the TIO
  - the obligation for suppliers to give customers a unique complaint reference number or identifier, to make it easier to track the progress of resolution of a specific complaint
- Compliance
  - the creation of a strong new independent body – Communications Compliance – to monitor the performance of suppliers in complying with the Code
  - the obligation for Communications Compliance and industry to develop metrics within 6 months of TCP Code registration and for suppliers to report against those metrics
  - mandatory compliance attestations (for large suppliers certified by an external assessor)

Anticipated benefits to industry

It is anticipated that industry will benefit from the clarification of obligations in the revised Code as well as the alignment of the Code with the new ACL. Importantly, it is also anticipated that the tightened and new provisions of the Code will increase customer satisfaction and, as a result, increase customer retention, reduce bad debt and customer management costs. Increased accessibility to the Code will also benefit industry customer service and regulatory staff.

Anticipated costs to industry

Industry participants will incur initial and ongoing costs in relation to compliance with this Code. These will include (but are not limited to) significant costs associated with the introduction of additional pre-sales information provision requirements, the realisation of voice/SMS and data usage notifications and changes to bills and billing systems as well as the complaint handling processes.

New suppliers will need to ensure that compliance with the Code is built into their processes and systems.

Delayed Implementation

Several of the improved consumer protections included in the Code require a substantial industry wide investment and change in suppliers’ procedures and systems before they can be implemented. These changes to suppliers' processes and systems will take considerable time, effort and resources, so a reasonable transitional period before implementation was considered necessary to ensure that suppliers have sufficient time to develop and implement the required processes and systems and so e comply with the provisions of the Code when it takes effect.

Clause 1.5 of the Code provides that some Code rules will only take effect at differing points in time after registration by the ACMA and therefore the Code will be implemented in a number of stages. Immediately upon registration the Code will become effective with the exceptions of:

- For the purposes of Chapter 9, the Code Compliance Framework will not commence until that date which is 6 months after the date of registration of this Code with ACMA.
- The obligations under clause 4.1.2, Summary of Offer, will not commence until that date which is 6 months after the date of registration of this Code with the ACMA.
- The obligations under clause 4.2.5, Standard Charges in Advertising, will not commence until that date which is 8 weeks after the date of registration of this Code with the ACMA.
- The obligations under clause 5.3.1 (n), relating to the provision of the total amounts of each of the two previous Billing Periods, will not commence until that date which is 6 months after the date of registration of this Code with the ACMA.
- The obligations under clause 6.5.2, Usage notifications, will not commence until:
    - in respect of clauses 6.5.2(a) and (b), internet data and mobile data, that date which is 12 months after the date of registration of this Code with the ACMA, and
    - in respect of clause 6.5.2(c), mobile voice and SMS, that date which is 24 months after the date of registration of this Code with the ACMA or 1 March 2014, whichever date occurs later.

  The notification regimes covering mobile voice and SMS services have a longer maximum implementation period (24 months) than applies to data usage notifications. This reflects the fact that the system change requirements to enable the notification capability for mobile voice and SMS are typically more complex than for data services, and many smaller providers will take time to be able to comply with this element of the Code.