



MPS Comment
TISSC
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Haymarket
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Via email: tissc@tissc.com.au

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Re: Mobile Premium Services Draft Code of Practice

Thank you for the opportunity to comment on the above Code.

The Consumers' Telecommunications Network (CTN) is a national peak body of consumer and community organisations, and of individuals representing community interests who participate in developing national telecommunications policy. CTN's members are national and state organisations representing consumers from non-English speaking backgrounds, deaf consumers, indigenous people, low income consumers, people with disabilities, young people including children, pensioners and superannuants, rural and remote consumers, women and consumers in general.

CTN advocates policies for better access, quality of service and affordability of telecommunications facilities for all residential consumers, and our approach to the proposed Code focuses on these values.

Overview

Before turning to the substantive aspects of the Code, we wish to comment generally on premium mobile services available in the marketplace and the kinds of problems consumers are having with them. A collection of case-based evidence is building of undesirable consumer experiences. These experiences include financial problems arising from the use of premium services, (specifically unexpected high bills), inadequate product disclosure (including misleading product advertising and pricing, specifically for subscription services) and problematic content (including adult content, and content that provides little perceived value to the consumer). There is a strong undercurrent of concern among consumer groups that questions the quality and value of premium mobile services in the market today. Government and the industry are well positioned to address these concerns through this Code.

CTN recognises, though, the complex environment that emerging mobile premium services have created, with the convergence of technologies and content leading to a complex web of product offerings, commercial relationships, government policy, and legal/regulatory frameworks. Accordingly, we recognise the importance of the

proposed Code as a precedent-setting regulatory instrument as matters of convergent content and mobile technologies become more prevalent in Australia.

In a big-picture sense, CTN supports the Code as a foundation for the protection of consumer rights in the use of premium mobile services. The value of the Code lies in the provision of guidelines as to information given to consumers regarding services and their cost, the provision of guidelines on advertising and promotional issues, and attempts to set out a framework for dispute resolution.

However, the Code will require improvement if it is to ensure access to high quality, safe and affordable mobile premium services to consumers. As it stands, the Code leaves unresolved fundamental issues regarding potentially deceptive and misleading subscription services, spending caps, content regulation, vulnerable consumers, complaints handling, consumer education and Code adherence. Furthermore, aspects of the Code need to be clarified and extended regarding provision of information to consumers (specifically 'stop' functions), protection of minors, the complaint handling process, and enforcement of the Code. The Code is also vague in many of its clauses and would benefit from better definition of key terms and firm statements.

Issues that need further consideration and action

As stated above, CTN would like to highlight a number of issues that need further consideration and action:

- **Deceptive and Misleading Subscription services:**

Much frustration emanates from cases in which consumers are unknowingly signed-up for a subscription service, leading to undue costs and stress. Consumers demand proper product disclosure in order to make informed purchasing decisions, and the code does not go far enough to address this. Part of this issue is covered in the Code through on going 'subscription confirmation' messages, but more definitive *preventative* measures need to be taken. Specifically, products that carry subscriptions need to be overtly labelled and advertised as such. A clause in Section E of the Code (Advertising) needs to be added to stipulate this – advertising should be made to present subscription services in a specified section. CTN would like to further highlight the importance of this issue in regard to emerging services such as mobile television that may increase the size of the subscription-based market.

- **Protection for Disadvantaged and Vulnerable Consumers**

CTN is concerned with the lack of clear explanation of the cost and conditions associated with the use of premium rate services and the disproportionate effect this has on vulnerable and disadvantaged consumers. Caseworkers who help consumers seeking assistance are seeing an increase in complaints about services that seem designed to target and exploit people with particular vulnerabilities. There is an onus on the industry to ensure their products are safe for *all* end users, but particularly vulnerable ones. Services such as psychic lines,

for example, are expensive and may adversely affect people who are vulnerable to addiction, for instance. We think the Code may benefit from stricter rules against unconscionable conduct, in conjunction with capping of premium rate services.

- Spending Caps:

The receipt of unexpectedly high bills and related billing complaints have been key problems for consumers and their use of premium mobile services to date. The Code should adopt an objective of ensuring that premium mobile services are affordable to the Australian public. Key to this is the stipulation that consumers must have the ability to place spending caps on their use of premium mobile services. In addition, Industry should also be made to offer stipulated caps on services.

- Content Regulation:

Acknowledging mobile phones continue to grow in popularity as a medium where cultural products are consumed, the Code does not directly address the need to assess the cultural impact of premium mobile services beyond limiting adult services. As stated in Section A.2 (d) of the Code, an objective is, “ensuring that the content of mobile premium services reflects the contemporary attitudes of Australian society”. CTN suggests that the Code should aim to ensure content that reflects and *enriches* Australian society. While acknowledging that content regulation is often subjective, the Code can include clauses committing the industry to specify how each of their premium mobile services meets these criteria. The code can also commit the industry to engage in serious research into the effects of the consumption of premium mobile services.

- Complaint Handling:

Consumers have long advocated a ‘one-stop shop’ for complaints and the system the Code suggests may create considerable confusion. It can be anticipated that there may be some overlap in the complaints received by the Telecommunications Industry Ombudsman and TISSC, and there needs to be a process for both bodies to communicate and ensure complaints are being dealt with by the appropriate body. The complaints process outlined in the Code is very complex. To be truly effective, the system needs to be user friendly, with as few delays and complicated determinations as possible. More specific comments are listed in the next section.

- Consumer Education:

This is an issue that is vital to the successful implementation of the Code. If the Code is to meet its objectives, consumers need to be aware of their rights and the laws/regulations in place in the industry. This task is even more important when considering the complexity of the industry and the complexity of the Code (specifically the complaint handling process). The Code needs to stipulate that a

professional public awareness campaign needs to be launched, monitored and maintained in order to achieve this.

- Code Adherence:

At the Sydney public consultation, there was concern expressed that service providers and carriers may not have the systems and technology in place to adhere to the clauses of the Code, specifically age verification services and chat room moderation. The readiness of industry to meet the Code needs to be strongly considered before the code becomes registered. In the cases where industry is not ready, support and expertise need to be leant and shared. Furthermore, TISSCC itself must be resourced enough to carry out its functions – specifically the handling of escalated complaints and monitoring of advertising (F.1.6).

Comments on Specific Code clauses

The following comments pertain to specific clause in the Code:

SECTION A: Introduction

A.1 Scope

- To whom the Code applies: The opening statements that specify to whom the Code applies will be vital to monitor and adjust as the industry grows. As it stands, this statement should be expanded to definitively state the different types of companies and relationships involved in the provision of premium mobile services and state the applicability of the Code to each. An appendix depicting these relationships may be appropriate.
- TISSCC as the escalated complaints handling body: This section is out of place at the start of the Code and should be moved to Section F (Escalated Complaints Procedures and Remedies).
 - A.1.1 a) ii) CTN suggests the period be reduced to 14 calendar days.
 - A.1.3
 - The footnote should be more prominent
 - b) Should include product websites and information packs
 - Include a point recommending that consumers keep their own records of their engagement in the complaint handling process.

A.2 Objectives

- D) Should be amended to “ensuring the content of mobile premium services reflects and enriches the values and cultures of Australian society.”

- An object should be added to say “providing consumers with protection and information to make premium mobile services affordable.”

A.3 Definitions and Abbreviations

- Definitions referring to the Determination should be given in full.
- Parental guidance service: This definition needs to be clarified with more details. Who and how is this determined?

SECTION B: General Code Rules

B.1 The list of legislation and codes of practice that industry members should be aware of is very useful. CTN supports further steps through the Code to ensure more successful compliance with these other responsibilities.

B.2 The definition of out of date material needs to be clearer. In its current state it will be hard to enforce.

SECTION C: Premium SMS or MMS

C.1.2 Suggest the level be \$5 and a point be added “how to stop the service”

C.1.4.2 Consumers responding to an error message should not be charged at all.

C.2.1.1 Add a point “A statement identifying the service as a subscription service”.

C.2.2.1 Add a point “identifying the message as a subscription confirmation message”

C.2.3.1 The “generic stop command” needs to be defined.

C.2.3.4.2 Confusing as to why a telephone request to unsubscribe must be acted on the next business day versus 24 hours, as stipulated for text message requests.

C.3.1.3 Suggest a period of 14 days

C.4.1 CTN question whether the measures laid out here are will be effective enough in the protection of minors.

SECTION D: Proprietary Network Services

D.2.2.1 There should be no charge to consumers to unsubscribe from a service.

SECTION E: Advertising Rules

- Cost information should be clearly labelled next to the service offered.

E.1.12 These types of offers should be prohibited. The footnote description should be added to the Definitions Section of the Code.

SECTION F: Escalated Complaints Procedures and Remedies

F.1.1 There should be a more definitive statement about which organisations can make an escalated complaint, corresponding to the types of organisation listed in the introduction to section A.1.

F.1.5. In order to make the escalation process more efficient, CTN suggests that TISCC produce a standardised document on which carriage service providers record customer complaints, or at least report complaints to TISCC.

F.1.9 There needs to be stronger wording committing to a time frame for the resolution of escalated complaints. CTN suggests within 60 days.

F.1.11 TISCC should also report all remedies provided for complaints. Furthermore, it should be made more clear what ACMA will be mandated to do with regards to public disclosure of escalated complaints statistics. Either TISCC or ACMA should report statistics to the public.

F.3.5 Complainants should also be given an opportunity to make representations to the Arbitrator before the Arbitrator makes a decision.

F.3.10 The Complaint should also be notified of the right to an appeal of the determination.

F.3.13 This clause is confusing. Its inclusion appears to undermine the integrity of handling process.

F.4 Consumers should be allowed to appeal a determination at no cost (related to clause F.4.5.a)

F.6.4 Content service providers should be made to offer an explicitly stated correction on their website for any print ads that cannot be retracted.

F.7.2.1 The fine structure for breaches of the Code is too lenient. Fines should be proportionate with the seriousness of the breach of the Code and constitute a *significant* financial penalty.

F.7.3 Remedies should include determinations in which the Arbitrator can award compensation to consumers for losses, costs of lodging a complaint, or time taken in resolving a complaint.

F.7.7 Refunds should be offered to consumers in a way that does not place the onus on consumers to initiate a refund.

Conclusion

CTN supports the Code as a step towards better protection for premium service users, who have to-date been offered high-cost products without reciprocal safeguards from risk. The Code will be greatly improved when it is amended to address our concerns over potentially deceptive subscription services, unconscionable conduct, spending caps, content regulation, complaints handling, consumer education and Code adherence. Similarly, when aspects of the Code- specifically the provision of information to consumers and the complaint handling process- are clarified, CTN believes the likelihood of the success of this code to be significantly higher.

We hope these comments are of use to you. Should you wish to discuss this response in more detail please contact myself or Sarah Wilson at the Consumers' Telecommunications Network on 02 9572 6007 or at ctn@ctn.org.au.

Yours sincerely,

A handwritten signature in black ink that reads "Teresa Corbin". The signature is fluid and cursive, with a long horizontal flourish at the end.

Teresa Corbin
CTN Executive Director

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