

Ms Maddock,
Deputy Chair,
Australian Communications and Media Authority

c/o - Kath Silleri
Manager, Consumer Interests
Via email: kath.silleri@acma.gov.au

February 2006

Dear Ms Maddock,

Re: ACMA Consumer Consultative Forum

The Consumers' Telecommunications Network, the Australian Consumers' Association, TEDICORE, SETEL and Consumer Law Centre Victoria have prepared this collective response to your letter date 10 January 2006 regarding ACMA's Consumer Consultative Forum (CCF) which is intended to assist ACMA perform its functions in relation to matters affecting consumers.

We would like to thank the ACMA for putting forward this proposal and we look forward to working closely with ACMA towards ensuring that the ACMA Consumer Consultative Forum is an effective process for both the consumer organisations and ACMA. We believe that consumer consultation is an important part of the ACMA's role as an effective regulator and we would like to build on the past success of the ACA consultative processes as ACMA moves forward into its new regulatory space of communications and media addressing the challenges that convergence is raising.

This response is informed by discussions and debates about consumer participation and consultation that have occurred over the past two years in the lead up to the creation and formation of ACMA. The response is also informed by the many years of practical experience our consumer organisations have had working in several different consultative processes both regulatory, self-regulatory and carrier specific.

Different Roles of Consumer Consultation Models

It is the view of consumer organisations that the role of the ACMA CCF is quite distinct to other consultative processes in the industry. This is because the ACMA CCF must primarily provide input on enforcement activities, regulatory instruments, ACMA's reporting functions and powers, ACMA's consumer education function and ACMA research. The ACMA CCF must be the primary interface for dialogue with the regulator and focus on regulatory matters first and foremost.

In contrast, the role of ACIF Consumer Council is to provide a forum for industry and consumers to work together to provide pro-active self-regulatory solutions to consumer concerns and issues. In this way the ACIF Consumer Council assist ACIF's in its primary function, which is to resolve the "hard"

issues before they escalated and require government action or intervention. Whilst ACIF is the primary interface of dialogue between industry representatives and consumers, there will always be some issues which are not amenable to self-regulation. In these instances consumers need to consult directly with ACMA, and the CCF can perform this function very effectively just as the ACA CCF did in the past.

Additionally the role of carrier specific consumer consultation is to give feedback on specific products and services as well as fulfil some licence conditions (as per Telstra). Carrier specific consultation is very distinct from both the ACIF Consumer participation which must be cross industry and the ACMA consumer consultation.

Addressing Broadcasting Issues

Consumer organisations welcome this useful opportunity to think afresh about the kind of consultation needed to best meet the needs of ACMA and telecommunications consumers. However, we would like to also highlight the need for the ACMA CCF to also begin to address the needs of broadcasting consumers as well. Already we have many examples of areas where consumer organisations are involved in issues related to broadcasting. CTN and TEDICORE have worked on pay TV, mobile premium content and captioning to name a few relevant matters. Major issues about content are being discussed by a broad range of consumer groups and these issues are not covered in self regulatory forums such as ACIF. We want to take advantage of the expertise in ACMA on media and broadcasting and ensure that the ACMA CCF can assist ACMA in some of its functions relating to broadcasting and consumers.

In preparing this response, consumer organisations have also taken into account experiences on the previous ACA CCF, ACA advisory committees, the function and relevance of the ACIF Consumer participation processes and overseas models such as the Ofcom Consumer Panel in the UK.

ACMA Non-Consumer Committees

TEDICORE and CTN have experience participating in the non-consumer ACMA Advisory committees such as CTRAC, NAC, ESAC and AUSTAG. SETEL has participated in CTRAC, NAC and AUSTAG. All three organisations have found this interaction with the regulatory authority and industry representatives in these forums invaluable in finding workable resolutions. Notably these committees were only ever advisory in nature as accountability for regulatory decisions still rests ultimately with the ACA (now ACMA) Board. We support the continued use of these advisory committees and encourage ACMA to continue to support consumer organisation involvement in them.

Overseas Comparisons

It may also be useful here to highlight some key characteristics of the Ofcom Consumer Panel. There is NO self -regulatory model equivalent to ACIF in the UK; the quoted OFCOM example is best compared to Consumer Participation with ACMA rather than ACIF in terms of regulatory responsibility and function.

- The OFCOM Consumer Panel (CP) has an MOU in place with the OFCOM Board, and a dedicated point of contact through a Board Member to facilitate communication.
- The OFCOM CP meets 11 times per year (meeting in London & regional cities) with sitting fees of £1,000.00 per day per member.
- In addition OFCOM CP has an independent budget providing additional funds for travel, research, publications and ancillary operational expenses, which is supported by secretariat and administrative assistance from OFCOM of 5 staff dedicating part of their time to these activities.
- The OFCOM CP has 12 Members (from 8 sectoral and 4 regional categories) who are individual applicants and not peak body representatives, with no reporting requirements back to their constituencies.
- The OFCOM CP Chair and Deputy Chair are also funded beyond sitting fees in a cost per day ratio that reflects a commitment of 50% P/T (or FTE) from the Chair and 25% P/T (or FTE) from the Deputy.

Whilst consumer organisations in Australia would encourage a similar level of investment by ACMA into resourcing for its CCF, it needs to be highlighted that the Ofcom Consumer Panel is a very different body to the proposed ACMA CCF. It meets more frequently than is proposed by ACMA for the CCF and it also is not based on peak body representation, which is perhaps its greatest weakness.

Proposed Representation on ACMA CCF

The ACMA CCF membership selection process must have input from consumers to ensure that peak national bodies covering all significant sectors are represented. There is a need to be careful to make sure that there is no contraction of consumer representation and we maintain the broadest possible base for input of consumer views.

Whilst ACMA CCF needs appropriate members from consumer sector there is also a point to ensuring other consumer groups can attend as observers from time to time.

Industry participants whilst welcome should be observers only, because this forum needs to be driven by consumer organisations and therefore the observers would not be present at caucuses or have a right to a vote.

Selection of an ACMA CCF Chair

The role of the ACMA CCF must be specified to clarify expectations on the position. The Chair should be a ACMA Board member and consideration should be given to also appointing a Consumer Co-chair.

Proposed Role of ACMA CCF

The Terms of Reference should be developed with a view to the perspectives of ACMA and consumers and should be finalised and endorsed at the first face-to-face meeting by the CCF. Consumer interest in the CCF extends well beyond the self-regulatory arena so a separate process must be maintained.

Proposed Meeting format

We believe that ACMA CCF can provide greater input into planning regulatory reviews.

The role and extent of participation by other bodies (ACCC, TIO, AMTA, ACIF). Must be clear at the outset and their contributions limited to 25% of meeting time in total.

Also we believe that it would be useful to retain the process of getting briefings from consumer organisations about their constituency and their key communications concerns as well as written updates from each constituency of consumer side.

The format must also retain a Consumer Caucus (this could be held via a teleconference the week before to ensure maximum ACMA/Consumer dialogue time).

The ACMA CCF meetings could also be used for specific reporting to CCF on major items such as Section 105 Report.

Proposed Congress and Meeting Frequency

We support the following arrangements:

- Support at least 2 meetings per year – schedule 2 full days face-to-face each meeting. Other teleconference meetings will need to be resourced by ACMA (particularly prior to face-to-face meetings) in order to scope issues for discussion and when other issues arise. A Business Sub- Committee of consumer representatives (supported by ACMA secretariat) should be convened to assist setting agenda and list of issues for discussion.

- ACMA regular briefings via teleconference followed by a general discussion for consumers.
- Monthly briefings sent to consumer members tracking the key issues of concern. Work information links harder to keep members advised on issues and progress. Timetabled to be sent out on the months when meetings wont occur.
- Support Consumer Conference. Planning committee is required and must have consumer involvement. Role for industry bodies to participate. Timing – after 2nd meeting, late in year (November). ACMA should report at the conference on research it has conducted.

Additional Training and Resources

We proposed the following:

- ACMA will need to establish an adequate secretariat specifically for the CCF.
- Induction process for new members and on-going training on new technology and information about emerging policy areas for existing members. Some members will need skilling-up on media/broadcasting and others will require briefings on telecommunications issues.
- Consumer Training program similar to the international training program which occurs for regulators overseas would be advantageous. This must be an on-going role to ensure consumer representation is sustainable.
- Provide resources for members of CCF to consult with their constituencies more effectively about telecommunications issues. This is particularly relevant to those that receive no funding under existing program or which rely significantly on voluntary contributions.
- Provide resources and mechanisms for encouraging other consumer organisations to play a role in providing feedback into ACMA consultation processes.

ACIF Consumer Council & the ACMA Consumer Consultative Forum

We also wish to address some of the discussion relating the current debate about duplication of consumer representation particularly between the ACIF Consumer Council (CC) and the ACMA CCF. It is the view of consumer organisations that there is no duplication between the previously known ACA CCF and the ACIF Consumer Council. Every consumer organisation represented on each body is there for specific reasons aiming to achieve

sometimes very different outcomes from their respective involvement in ACMA and ACIF.

Importantly, we also want to point out here that consumer organisations are vitally aware that ACMA and ACIF have different roles, accountabilities and jurisdiction as discussed earlier. It is for this very reason that even the agendas of the ACIF Consumer Council and the ACA CCF do not overlap.

This can also be said about the two carrier specific consultation processes that Optus and Telstra operate to meet their need to be in touch with grassroots consumer sentiment. Telstra also uses its consultative process to fulfil some of its licence conditions.

ACMA's focus is on government regulation and enforcement activities, and ACIF as an industry body is focused on self-regulatory outcomes. These functions are quite separate and require discrete forms of consumer consultation.

Consumer Organisations do believe that there must be good communication between both bodies and a clarification of the ACMA and ACIF roles from the outset with all ongoing and new participants. It is essential that this clarity of roles is reinforced and developed and maintained in an on-going capacity by both ACMA and ACIF staff and consumer organisations participating in each forum. This could be assisted by sharing information about the work plans between the ACMA CCF and the ACIF Consumer Council. This process would address the real issue of co-ordination outside of whether the some of the same consumer organisations are represented on each body.

It is the view of the groups that participate in ACIF and ACMA processes that there is a clear and coherent approach from consumer organisations who co-ordinate as much as possible through the Consumer Telecommunications Forum meetings organised by CTN. However, consumer organisations have found that for many reasons, including the very complexity of consumer issues, resolution of concerns is not always speedy.

It must also be noted that this apparent lack of visibility of the action by ACIF and ACMA on some issues means that the same consumer concerns are raised time and time again by multiple consumer organisations in informal and formal processes with both ACMA and the ACIF. It must also be remembered that we are dealing with multiple layers of accountability and opinions from consumers, government, regulators and industry and to some extent the same hot topics are likely to be discussed in forums across the entire industry. This is not duplication but a function of democracy.

More co-ordination of the ACMA and ACIF work plans, including research being undertaken and transparency about which agency is taking responsibility of which issues would greatly assist and save considerable time for both industry and consumers. This would be a far greater advance in operational efficiency for consumer consultation than a reshuffle of the organisations involved in both forums and the frequency of meetings held.

Conclusion

Consultation with consumers needs to adopt the federal government's inclusive consultation guideline to ensure that venues and meetings of ACMA CCF are accessible. "Inclusive Consultation: A practical guide to involving people with disabilities"
http://www.facs.gov.au/disability/cds/pubs/ic/ic_index.htm

The main focus of the ACMA CCF should be on the future interests of consumers in a converged environment.

We believe that ACMA is the best organisation to bring together the two divergent streams and we look forward moving into this new environment working closely with ACMA.

Yours Sincerely,

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SETEL

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