

Consumers'
telecommunications
network
Representing the Interests of Residential Consumers

The Secretary
Senate ECITA References Committee
Parliament House
Canberra ACT 2600
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20 August 2002

Dear Secretary,

Australian Telecommunications Network

Thank you for providing an opportunity to present a submission to the Senate Inquiry into the Australian Telecommunications Network. Our submission follows, addressing the reference term (d):

Regulatory or other measures which might be required to bring the Australian telecommunications network up to an adequate level to ensure that all Australians may obtain access to adequate telecommunications services.

Appended to this submission are copies of our discussion paper on the proposed further privatisation of Telstra and our submission to the Broadband Advisory Group. These papers address the Inquiry's reference terms (a) and (b) concerning the capacity of the network, particularly in regional and rural areas, and the capacity of the network to provide reasonable access to broadband services.

About Consumers' Telecommunications Network (CTN)

We are a national coalition of consumer and community organisations representing residential consumer interests in telecommunications. CTN is an incorporated non-profit association. Our members include people from regional, rural and remote areas, Aboriginal communities, people with disabilities, Deaf people, pensioners, people from non-English speaking backgrounds, low income households and consumers in general. CTN is funded by the through the program of the Department of Communications, Information Technology and the Arts.

CTN is a democratic association run by its members and largely reliant on volunteers. Our policies are developed through consultation with our members. Our core aims are the promotion of universal, equitable and affordable access to telecommunications services for residential consumers.

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Summary of Recommendations

Equitable provision of good quality telecommunications services are absolutely necessary in a contemporary society such as that in Australia today. Therefore, protection of basic standards for consumer representation, and for infrastructure and basic technology provision and development need to be rigorously ensured. A regulatory environment ensuring 'fair play' by all telcos and other service providers will encourage the production of both quality, and innovation. Therefore we should;

1. **Regulate** for equitable access, technology improvement and 'fair play'.
2. **Invest** in network capacity. We should require investment in network upgrade as a license condition on carriers profiting from the Australian market.
3. **Extend** the universal service obligation and customer service guarantee to data capability and mobile telephony coverage.
4. **Establish** an external audit process to ensure implementation of our basic rights, including the establishment of a transparent and useable mechanism for demonstrating 'systemic failure'.
5. **Open** access to the disability equipment program to all those who need it, regardless of their choice of service provider
6. **Upgrade** the public payphone siting policy to provide public access internet and possibly other communications capacity to maintain an equivalent service to that available to household subscribers.
7. **Protect** electro-magnetic emission levels and equipment safety with independent testing, external audit and public reporting.
8. **Fix** the price of residential connection and access at no more than the reasonable cost of line maintenance and bill or itemise it separately from call charges. People without home phone access who are dependent on payphones provided under the Universal Service Obligation should be charged at no more than the rates that would apply to a home phone.
9. **Provide** affordable access to mobile phones for low-income consumers.
10. **Maximise** reasonable internet and email access for all Australians.
11. **Replace** the Standard Form of Agreement with a 'model contract'

1. Introduction

All Australians, wherever we live or work, whatever our capacities or incomes, have the right to reliable, affordable and useful communications. In addition to the benefits to our communities and economy, we all have the right to participate equitably in the benefits flowing from the sale of Telstra and the development of a competitive market for telecommunications services.

With over ten years of experience in telecommunications advocacy, we have been closely engaged in the processes of privatisation, competition and deregulation in this industry. This experience informs our submission to this Inquiry.

It is our view that the deregulation of the telecommunications market has proved inadequate for the protection of residential consumer interests. This has distorted the growth of a competitive market for residential services. It has also failed to deliver a comprehensive upgrade of network capacity, with the result that a 'digital divide' is emerging.

The correction of these inadequacies and distortions should be a pre-condition for the further privatisation of Telstra.

2. Consumer views of the current state of telecommunications

2.1 The fixed line to the household:

This is an entitlement guaranteed by the Universal Service Obligation and is subject to price regulation. However, residential consumers have experienced a series of price rises in connection and rental fees without gaining any enhancement of the voice-grade service which is the minimum standard. While many households can get reasonable data speed from their line, others cannot, and as data sophistication develops, it is likely that dissatisfaction will also grow. While broadband is generally available, it is costly and requires the purchase and understanding of more complex equipment.

Residential consumers believe that fixed line household access is likely to remain a virtual Telstra monopoly. After the full privatisation of Telstra this will increasingly be an essential service the pricing and conditions of which will be entirely beyond the householder's control. We need to better protect the reliability, affordability and equitable provision of the customer access network. This issue is addressed in full in our privatisation discussion paper.

2.2 Consumer contract terms and conditions:

The consumer does not get adequate information about the terms and conditions of services, including fixed, mobile and internet connections. Providers reserve the right to make changes without giving customers an equivalent opportunity to vary or terminate contracts. Point of sale and advertised information is often incomprehensible or misleading, despite an industry code of practice and the powers of regulatory intervention.

The contract terms themselves are often onerous. Consumers' access to the benefits of a competitive market is impeded by practices such as 'locked in' fixed term contracts with exit penalties, bundled services without adequate flexibility or itemisation, and restrictions on the availability of override and preselection.

2.3 Lack of neutral, comparable advice:

Consumers are being introduced to new and unfamiliar products and services without access to a reliable, neutral source of information to compare plans and prices, to test and negotiate quality of service requirements or to access training and technical support. The Australian Communications Authority (ACA) has produced useful Mobile Phone Toolkits and Internet Service Provider Guidelines but these are essentially just shopping guides that do not impose any obligations on service providers.

2.4 The limits of the 'telecommunications' jurisdiction:

As our society becomes increasingly dependent on an information economy, consumers are increasingly frustrated to find issues and concerns that are not covered by the current regulation of telecommunications and do not seem to be handled adequately in any other fora.

Consumers expect that all elements of their telecommunication experience should be part of telecommunications regulation and are increasingly dissatisfied with the issues that are not included. Handset complaints cannot be dealt with by the Telecommunications Industry Ombudsman except in limited circumstances, nor can the behaviour of dealers and agents. Interactive voice response systems seem to be covered by no regulation at all, with consequent high levels of consumer dissatisfaction. There is at present no complaints handling process for Pay-TV service quality and as bundled household offerings are likely to increase in the market, this has grave implications for the loss of quality control for all our communications services.

3. Consumer protection in self-regulation

CTN has participated in industry self-regulatory processes for the past five years, chiefly through our engagement with the Australian Communications Industry Forum (ACIF). CTN volunteers and staff have been members of the ACIF Board, compliance sub-committees, consumer, operations, network and customer equipment reference panels and numerous working committees formed to draft codes of practice and technical standards.

CTN Council reviewed these activities in November 2001 and concluded that the ACIF has not proved effective as a mechanism for protecting consumer interests. While consumer representatives have formally equal status with industry personnel, in practice our negotiating position has not been sufficiently secure to enable the realistic negotiation of satisfactory outcomes for consumers.

3.1 Shortcomings of the voluntary code development process

The development and implementation of voluntary arrangements appears to be most effective in a peer group whose members have equal or similar status and access to resources. ACIF has done well in carrier-to-carrier arrangements such as number portability and pre-selection but has been less effective in consumer codes.

In consumer protection matters, negotiations have been slow and agreements difficult, if not impossible to achieve. There is a lack of common ground on the extent to which relationships between consumers and service providers should be subject to binding, specific rules or be left to the market where different providers offer their own interpretations of general principles. These differences of approach have proved impossible to resolve within the current framework.

In our experience, consumers have seldom achieved the breadth of scope or measurable standards of performance we have sought from consumer codes of practice. Even when intensive work has been undertaken over long periods, mostly of several years, codes are not widely adopted by service providers, and when they are, inadequate reporting and compliance occurs.

3.2 Enforcing code compliance

The arrangements for demonstration of a 'systemic failure' that would invoke a regulator's power to intervene have not been clear or consistent. Despite several instances of widespread non-compliance with codes that we have brought to the attention of the relevant authorities, we have found that action is unlikely to be taken of any more serious nature than correspondence expressing general concerns. This has not had any noticeable effect on behaviour in the market nor on the pace of development of codes of practice.

Although the legislation provides what appears to be appropriate and adequate powers of regulatory oversight and back-up enforcement, in practice there has been a policy of non-interference with the result that many consumers have become disillusioned with the concept of reliance on corporate 'good citizenship'.

This lack of confidence is emerging in a context where levels of trust in corporate governance generally is at what would appear to be an all-time low throughout the developed world. Our own recent experience with the collapse of One-Tel has emphasised to Australian consumers that we are not immune from the effects of inadequate accountability and compliance enforcement.

3.3 Reform of self-regulatory processes

We have sought reform of ACIF processes to address these issues and welcome the recent establishment of an ACIF Consumer Advisory Council. This has the potential to make consumer input to industry codes and standards development more representative, more effective and more efficient. However, we do not believe that it will overcome the structural tensions inherent in requiring suppliers and consumers to reach agreements about consumer protection matters where compliance with such arrangements will inevitably require resource commitments from 'good' suppliers who will then suffer disadvantage as compared to their non-compliant competitors.

3.4 The need for more active regulatory protection for consumers

Telecommunications is not a market that can rely on a 'buyer beware' approach. The quality and reliability of a service cannot be tested properly prior to purchase. If the service proves to be inadequate the consumer is at a disadvantage in renegotiating or terminating arrangements due to a lack of access to the expertise and information available to suppliers.

It is also in the nature of a network that the communications experience is dependent on a range of factors, the consumer's choice of equipment or service standard being only one element of the end-to-end performance. This is increasingly crucial as we develop a market of many service providers whose technology must effectively interconnect to provide the quality of call carriage the consumer has purchased.

We are also increasingly part of a global market where decisions about design and technology are not only beyond the residential consumer, they are increasingly beyond the reach of the Australian market or even of Australian regulators.

Consumers dealing with multinational companies need to be able to rely on service guarantees and active regulatory surveillance. We should aim to ensure that, as a result of the reforms of the past decade, we do not slide from being a world leader in network ubiquity and reliability to become a fragmented 'backwater' market where sub-standard products and services are dumped and Australian consumer concerns are inaudible in the boardrooms of New York and London.

While ACIF continues to play a valuable role in Australian telecommunications, and CTN intends to continue to contribute to its work, we believe the regulatory underpinning of self-regulation should be enhanced, by means such as:

- a. To mediate and make a determination where agreement is impossible;
- b. To enable access to information currently protected as 'market sensitive' that is necessary for good decision-making in the national interest;
- c. To intervene where the dominant industry bodies currently enjoy unfair advantage;
- d. To intervene where circumstantially marginalised consumers currently endure disadvantage;
- e. To intervene where the areas of consumer representation and protection at all levels of telecommunications goods and services provision, are currently very seriously under-resourced.
- f. To institute safeguards so that the events and circumstances of the collapse of One.Tel do not recur, for example to ensure adequate reporting and accounting standards that provide unambiguous, public, advance warning that a service provider may not be able to maintain adequate service to its customers.

Equitable provision of good quality telecommunications services is absolutely necessary in a contemporary society such as that in Australia today. Therefore, protection of basic standards for consumer representation, and for infrastructure and basic technology provision and development need to be rigorously ensured. A regulatory environment ensuring 'fair play' by all telcos and other service providers will encourage the production of both quality, and innovation.

4. The regulatory framework for consumer protection in telecommunications

While the public policy emphasis has been on the development of an open competitive market and largely voluntary self-regulatory arrangements, the *Telecommunications Act 1997* and its amended version, the *Telecommunications (Consumer Protection and Service Standards) Act 1999* contain a wide range of legislated requirements for consumer protection. These operate as a ‘safety net’ in the event of self-regulatory or market failure, provide assurances of equitable access for certain less commercially attractive customers such as those with disabilities or resident in remote areas, and implement certain public and national interest requirements such as emergency and defence access, numbering and spectrum management, and Australia’s international obligations.

There are also other more general legislative requirements that impact on consumers of telecommunications, including privacy laws, state-based fair trading regulation, and parts of the Trade Practices Act.

Together, these arrangements cover:

- Universal Service Obligation
- Customer Service guarantee – connection and repairs
- Payphones
- Disability Equipment

- Untimed local calls
- “Standard” (voice grade) quality of service
- Emergency call capability
- Law enforcement – interception and monitoring

- Standard Form of Agreement

- Labelling for compliance with equipment standards – the ‘A’ tick
- Disability Standards
- Electro-magnetic Emission standards

- Carrier licensing
- Telecommunications Industry Ombudsman

4.1 The universal service obligation and customer service guarantee

The universal service obligation and customer service guarantee ensure every household’s entitlement to one fixed line service subject to requirements for prompt provisioning and repair. On the whole, these mechanisms have proved to be significantly more effective in protecting consumer rights than self-regulatory codes and standards. However, these rights are limited in scope and do not extend to data capability or mobile telephony coverage.

The failure of the deregulated market in these respects is demonstrated by the findings of the 2000 Telecommunications Services (Besley) Inquiry. The Government has over

the past few years committed large sums of taxpayer funds (at least \$163 million, as announced by the Minister in February, although a number of further commitments have been announced since) to enhancing network data capability and mobile coverage in rural regional and remote areas.

The fact that this expenditure has been required to meet reasonable consumer expectations is evidence of the failure of the competitive market model to adequately meet consumer needs. In view of the highly profitable nature of many larger telcos, particularly Telstra, consumers question the need for taxpayer supplementation of network investment while profits are privatised.

A more equitable investment model would require investment in network upgrade as a license condition on carriers profiting from the Australian market.

The Australian Communications Authority has power to oversight and if necessary enforce the universal service obligation and customer service guarantee as well as provide general reports on service quality and consumer satisfaction. However, it is not resourced to conduct independent testing and is largely reliant on information provided to it by carriers and service providers. Many newer and smaller telcos seem to be able to avoid close scrutiny, adding to consumer uncertainty about signing up to an unknown brand.

The protections provided by the universal service obligation and the customer service guarantee are examples of the success of the regulatory regime. However, as the recent experience of the Boulding family indicates, we cannot rely on promises and announcements from Telstra about its maintenance and fault repair arrangements, especially in non-urban areas where the pressure of cost-cutting to meet commercial objectives must, understandably, be intense.

We must establish an external audit process to ensure implementation of our basic rights. Many consumers are concerned to learn that the details of Telstra's obligation to all Australians are set out in Telstra's own 'marketing plan' rather than in some regulatory instrument. The lack of specificity in this plan and the outcome that no 'wrong' was done despite the Boulding family's persistent lack of service shows that these arrangements are not working effectively.

The Minister has responded promptly to the report of the investigation into this family's tragedy. We welcome the steps that have been taken to provide for prompt attention to the needs of families with serious health problems through tightening Telstra's license conditions. These actions indicate that the current legislation encompasses adequate powers of intervention, in relation to a majority-publicly-owned carrier at least, and that in general, reform is needed not so much in regulatory powers but in intervention policy and practice. However, these changes only address those shortcomings brought to light by this particular incident. We cannot afford to wait for other incidents to occur as our only means of ensuring reliable household connections.

4.2 Numbering, preselection and over-ride

The Australian Communications Authority also supervises numbering, preselection and over-ride provision. Pre-selection and over-ride were originally intended to be compulsory license conditions to enable consumers to take advantage of competition in the market. In practice, however, exemptions appear to be granted on request and widespread use of prohibitive terms in consumer contracts has also limited consumer access to competitive service offerings.

4.3 Emergencies, law enforcement and defence

Provision for emergencies, law enforcement and defence appears to be adequately handled under the current arrangements, again demonstrating that regulation has been more effective than market forces at consumer protection. However, it is unclear to what extent the protections we enjoy today are the legacy of a single, public utility network. As a greater range of new technologies such as voice over the internet come onto the market we may struggle to maintain the reliability we have generally taken for granted.

4.4 Privacy and the public number database

Our individual privacy and in particular, the exposure of public number databases to abuse may also be harder to protect in an increasingly internationalised market where the technology and the sheer size of some telcos, outstrips the capacity of public-interest regulation on a national basis.

4.5 The Disability Equipment Program

In some respects the protection of our entitlements has become 'fossilised' at the technology stage we had reached in 1997. Equipment for people with disabilities has not kept up with new technologies, and in some respects people needing adaptive devices are now further isolated than they were ten years ago, despite the enormous potential of new communications technologies to overcome the barriers of disability.

There would be less need for special equipment to assist communication if standard telephones were designed on universally inclusive principles so that the majority of people could use them. For example, if volume control and hearing aid coupling were incorporated into standard phones, this would reduce demand for assistive listening devices.

Despite disability equipment being provided from the universal service fund, to which all carriers contribute, it is available only to customers of Telstra. This denial of access to choice in the market for people with disabilities is discriminatory. The program should be administered independently of Telstra and available to all those who need it, regardless of their choice of service provider.

4.6 Payphones

Payphones are required under the universal service obligation and are essential for itinerant, low income and isolated communities, particularly remote indigenous communities, as well as providing a useful service for the whole population. However there is no requirement to update the technology. We should ensure that payphones offer, for example, data port connection capacity for internet access.

Payphone provisioning should also be extended to the requirement to provide public access internet and possibly other communications capacity to maintain an equivalent service to that available to household subscribers.

There is also, despite the requirements of the legislation, no mandated public payphone siting policy nor generally available information about how to request the placement or re-location of a payphone. There is a perception that payphone availability is diminishing and will continue to recede as the demands of privatised profitmaking increase.

4.7 Electro-magnetic emissions and equipment safety

The certification of the safety of equipment intended to be plugged into the network is overseen partly by the Communications Authority, partly by ARPANSA and partly by general requirements, for example, electrical safety. As a result of de-regulation these arrangements largely rely on self-attestation. Among some consumers there is a level of discomfort with this level of 'trust'. Attempts to encourage voluntary labelling of mobile handsets with comparable emission level information have not been accepted by the industry. Again, a more active approach to independent testing, external audit and public reporting would be appropriate here.

5. Protection of affordability

5.1 Access pricing

The legislation has provided for price 'caps' on 'baskets' of services for residential consumers. Despite several adjustments of these arrangements and opportunities for public input into the decisionmaking processes, the price of access and call connection has increased. There have been reductions in the most competitive call markets, such as international calls, but many households do not make such calls in sufficient volume to feel that they share in these benefits. Nor have the recent price increases been accompanied by any noticeable improvement in the quality or data capability of the service.

The rationale for 're-balancing' of access charges is that increasing access prices will better enable a competitive market to develop. However, residential consumers have experienced an increase in compulsory fees, regardless of usage, and have noticed increasing Telstra profits. Many households are not offered alternatives to Telstra for their access provision. Consumers who have been able to choose another provider have experienced difficulties with access to disability entitlements, fault repairs and quality of service.

The tendency towards increasing the fixed cost component of the phone bill (line rental) decreases the discretionary spend available to consumers and thus impedes the growth of a competitive market.

The price of residential connection and access should be fixed at no more than the reasonable cost of line maintenance and billed or itemised separately from call charges.

5.2 Arrangements for low income households

Price control arrangements and protection for disadvantaged households have proven to be inadequate.

Increasingly, we are hearing from low-income consumers and their advocates that keeping a home phone connection is essential to health, community contact and workforce participation. Indeed, younger jobseekers are reporting that a mobile phone is vital to enable access to opportunities for casual work at short notice. Young people in particular have been experiencing great vulnerability to unanticipated debt as a result of inexperience and lack of proper advice about affordability. Accurate information is important, but we should also consider the need to go further in providing affordable mobile access.

The results of a recent survey of CTN members shows that, while most Australians have a basic telephone service, there are still some very significant gaps in service. For example, almost ten percent of those in the Northern Territory do not have access to a basic telephone service. Affordability, quality of service, and consumer protection also remain as areas where telecommunications inequity mirrors social inequity in other respects.

In particular CTN spokespeople for member organisations representing the elderly and the disabled are continually saying that their constituents have experienced ongoing difficulty in maintaining adequate telephone connectivity. For these groups, in particular, the telephone and in some cases the internet, provide lifelines for essential services.

Therefore, CTN has welcomed the specific initiatives that have recently been proposed by Telstra to enhance and ensure basic access to the standard telephone service to those least able to afford it and to arrange for a mobile messaging service for those of no fixed address. However, these measures are designed to cover only the needs of the very poorest Australians.

The steep increase in basic line rental rates has also heavily penalised those on the next level of low fixed income who are, in fact, the majority of poorer Australians. As a spokesperson for CTN Member, the Combined Pensioners and Superannuants of NSW (CPSA NSW) put it:

While low-income earners can vary the calls they make they cannot vary the rental on a fixed line. Everyone needs their own phone. They cannot rely on pay phones for emergencies. Pensioners will have the option of lower rental charges but higher call costs, everyone else will be lumbered with higher monthly phone rentals, including low-paid workers.¹

There is also the problem that those who need the low-rate access package pay relatively high call costs. Low income households may also be very telephone dependant and be high usage households (for example, housebound, older people, or people with disabilities, people living in remote areas, who need to shop or access services by telephone).

¹ 'New Telstra package not entirely welcome' in *The Voice of Pensioners* May/June 2002 p.3

For some communities such as some Aboriginal communities, boarding house, hostel and nursing home residents, and caravan park dwellers, the payphone is effectively the home phone, but the charges are higher. If a phone is provided under the USO, calls should be charged at no more than USO rates that would apply to a home phone.

5.3 Mobile phone affordability

Due to increased mobility in society and changing household structures, the affordability of mobile phone access as an alternative to the standard telephone service is also emerging as an issue requiring further investigation. Although some of the current Telstra proposals are designed to alleviate the difficulties faced by those in most extreme circumstances needing mobile phone access, other mobile affordability problems still remain. For example, young people are increasingly becoming caught in untenable debt through the use of mobile phones.

A broad spectrum of low-income and consumers would benefit from more affordable prepaid mobiles. In the current pricing structure, although prepaids are often the option of those with the least disposable income, on a per-call basis they are also one of the most expensive options. In this way, those who can least afford it are locked into the limited choice of a comparatively expensive product.

6. Access to adequate services

We are on the verge of widespread change to our household telecommunications usage, as increasing numbers of Australian households go 'on-line'. While we consider the development of broadband to be of some potential future interest (if prices fall considerably), in the near future most households will be dependent on their fixed line telephone service for both voice and data. This local loop remains a virtual Telstra monopoly and is likely to continue to be a service subject to pricing and conditions of service over which the householder has little or no control.

As more of our information, banking and shopping transactions become data-delivered, the importance of protecting the reliability, universality and affordability of the household service increases.

Income, education, geophysical location and age group divide those with the most access to information, from those with the least access to information. And relative poverty is a major determinant of the relative lack of internet access for poorer Australians. This is clearly demonstrated by a focus on the demographic of the group of those with the *best* access to the internet and other telecommunications services. Approximately 70 percent of the top income group has internet access, compared to only 22 per cent of the bottom income group.

While it is important to implement strategies to encourage widespread take-up of internet, it is equally important to be aware of, and inclusive towards, those who do not have access to or experience of on-line transactions.

For services and amenities publicly funded and intended for universal access, equitable levels of access to information should be absolutely required to be made available through a full array of alternative sources. For example, for broadcasters, the full range of information should be required to be broadcast, (not just that “you can get more on our website...”) and for all other public services and amenities the full range of public information should be available via telephone, post, TTY, fax, email, website, and face-to-face contact.

In summary, although most, but not all Australians have some access to the standard telephone service, a comparatively major step will now be necessary to maximise the chances of reasonable internet and email access for all Australians. Key areas that need addressing will include the following:

- a. Education needs to be restructured so that everyone gains some experience in integrating the internet as a learning tool. While education resources are unequally divided between those already relatively well off and others, any initiatives through an unequal education system can only exacerbate the problems.
- b. Government departments and other public bodies need to themselves act as model users of digital media, whereas current practices actually exacerbate the problems, when, for example, short introductions are given in public broadcast media, which then direct their audiences to websites for further information. This means that those with no Internet access have relatively (and increasingly) impoverished access to information.
- c. Volunteer programs, such as computer clubs, need to be supported and networked by both government and industry so as those who have the technical knowledge and assets have better opportunities to share them.
- d. Industry could develop a greater sense of social responsibility. For example IT industries could invest time and resources into the communities of which they form part. The work that Cisco has recently done alongside the Smith Family is a good example of what can be achieved.
- e. Communities could build their own computing centres, networks, and non-profit ISPs. To a certain extent this is already occurring across, for example, some public library networks. But these initiatives would vastly benefit from more support from both government and industry.

7. The need for a new standard form of contract

7.1 Standard Forms of Agreement (SFOAs)

The legislation allows for Standard Forms of Agreement to be lodged with the Australian Communications Authority, and such lodgment relieves the service provider of the obligation to provide directly to the customer a full description of the services purchased. The Authority does not have a power to supervise or amend the terms of such agreements.

CTN is generally of the view that Standard Forms of Agreement (SFOAs) are anachronistic, inaccessible, and inappropriate for consumer needs in a deregulated competitive telecommunications market. What began as a transitional mechanism to replace the tariff filed by a public utility has become a device that impedes the consumer's ability to understand and negotiate the terms of their arrangements with their service providers.

The industry perspective that SFOAs are too large and complex to be presented to customers during pre-contract negotiations is belied by widespread and established practices in other industries such as real estate, consumer credit and insurance where complex and abstract terms and conditions are routinely provided, and explained, to consumers.

The recent initiative of the Australian Communications Authority to require the provision of summaries of SFOAs to consumers implies an admission of the failure of the SFOAs themselves to convey meaningful information to one party to the contract. The SFOAs should be rewritten in their entirety in plain and brief terms

Further, the SFOA mechanism enables terms and conditions of contracts to be unilaterally changed without proof of the affected customer's knowledge or consent. No business-to-business transaction would tolerate such an oppressive practice.

We believe that the time has come for the abolition of the SFOA in its present form and its replacement with a 'model contract' establishing a benchmark of core terms, equitable conditions and a proper balance of consumer and supplier rights and protections. This model should be brief, clearly presented and capable of being provided to a consumer during pre-contract negotiations.

7.2 Consumer information about contract terms and conditions

The experience of consumers in today's telecommunications market is that the SFOA and notifications of changes to it are virtually unknown. We do not know of any consumer who has ever read a SFOA. We have ourselves found it generally difficult to locate SFOAs on suppliers' websites and have found suppliers' inquiry staff unfamiliar with SFOA terms and even unwilling or unable to supply the document by post.

It appears that in practice, most consumers get their information about the terms, conditions and prices of their services in three ways:

- From advertising
- From the bill (or instructions on the packaging for pre-paid products)
- From verbal advice provided by enquiry and sales staff

In our experience, none of these avenues provides satisfactory quality, completeness or reliability of information. The widespread practice, for example, of suppliers reserving to themselves the right to change prices at any time means that customers seldom have any certainty as to the actual cost to them of the services they are using. At the very least, offers should be dated and indicate a specific length of time for which this offer will remain valid..

7.3 The need for a fair deal for consumers

There is currently a critical unmet need for much more consumer-friendly contracts for the provision of telecommunications goods and services. This is evidenced by feedback from consumer forums at CTN's annual conferences plus feedback from the CTN Membership survey, taken together with the research into consumer contracts conducted by the Consumer Law Centre (CLC). In line with the recommendations of the latter, CTN recommends the following:

- a. Stringent enforcement of acceptable codes of conduct for telephone, email and SMS direct marketing
- b. Stringent enforcement of acceptable codes of conduct for the advertising and marketing of mobile phones.
- c. A requirement that service and equipment providers make available accessible, comparable information about their products and services,
- d. That companies be required to provide comprehensive and accurate contract summaries, including details of the full scope of costs for which consumers may be liable and examples of how contracts clause may operate in practice.
- e. That the supplier's right to unilaterally vary contract terms and conditions become dependent on a consumer's right to terminate that contract - if the new variance is clearly detrimental – with reasonable notice and without penalty.
- f. Clauses permitting the supplier to extend the term of any agreement at any time should not be permissible.
- g. Clear cost and price limits should be set on termination fees, reconnection and other penalty fees, security deposits and price increases. The latter should only be permissible in line with what can be fairly judged to be 'reasonable', for example, in line with a figure such as the CPI.
- h. Prohibit charges where disconnection has been the fault of the supplier and prohibit or limit charges for services such as itemised billing, duplicate billing, connection fees, disconnection fees and payment by direct debit.

CTN together with the Australian Consumers Association, The Communications Law Centre and the Consumer Law Centre Victoria, has recently launched a guide to fair and unfair contract terms for telecommunications contracts. We urge that these be adopted as benchmarks for a revised standard form of agreement. In addition CTN welcomes and endorses the further detailed recommendations of the CLC Report *Unfair Practices and Telecommunications Consumers* (January 2001).

Conclusion

In summary, the areas in critical need of increased attention in terms of concern about equitable, affordable access to adequate telecommunications services are as follows:

The majority of CTN members have clearly stated that they are opposed to the further privatisation of telecommunications in Australia. This is because some form of public access is seen as a crucial element of affordable access to basic telecommunications infrastructure, and most crucially, to also ensure affordable access to the newer forms of communications technologies as they become available. For further detail, see our separate paper on privatisation, attached..

The gamut of measures cited as necessary in order to overcome the digital divide need to be addressed. These are the restructuring of education; the more equitable handling of information by Government departments and other public bodies; and the ongoing work towards supporting volunteer programs such as computer clubs, industry outreach programs and community-initiated developments. For further detail, see our submission to the Broadband Advisory Group, attached.

Access prices for residential households should be capped at an affordable rate that reflects the equity established by the investment of previous generations of taxpayers, the need to cross-subsidise people living in remote areas and people with disabilities, and the facilities required for genuine services competition;

For communities such as some Aboriginal communities, caravan parks and boarding houses, where the payphone is effectively the home phone, costs should reflect that reality and to reflect the USO/CSG obligations. For example, if a phone is provided under the USO, calls should be charged at no more than USO rates that would apply to a home phone.

People with disabilities should have equitable access to the Disability Equipment Program, regardless of whether or not they have chosen to be Telstra customers.

Standard telephone design needs to move to universally inclusive principles so that the majority of people can use them. For example, if volume control and hearing aid coupling were incorporated into standard phones, this would reduce demand for assistive listening devices.

Due to increased mobility in society and changing household structures, the affordability of mobile phone access as an alternative to the standard telephone service is also emerging as an issue requiring regulated consumer protection.

More adequate resourcing for the provision of ongoing, independent, pan-industry consumer oriented information needs to be sought and maintained. This is especially important in relation to the newer technologies and the over-marketing of the newer technologies

Other counter-measures to over-marketing practices need to include stringent enforcement of acceptable codes of conduct for telephone, email and SMS direct marketing; and for the advertising and marketing of mobile phones.

There needs to be a stringent enforcement of acceptable codes of conduct that require service and equipment providers to make available accessible, comparable information about their products and services,

More adequate support for ongoing independent disability representation to government, community and industry needs to be sought and maintained.

The detailed recommendations of the CLC Report *Unfair Practices and Telecommunications Consumers* (January 2001) need to be implemented. In particular contract provisions requiring full disclosure, limiting the supplier's right to unilaterally vary contract terms and clauses permitting the supplier to extend the term of any agreement at any time should not be permissible and clear cost and price limits should be set on extraordinary service fees.

More adequate resourcing for ongoing, independent observation and capacity to feedback into the processes of ensuring that USO and CSG aspects of telecommunications policy are being met needs to be sought and maintained.

There needs to be a re-visiting of the currently unmet need for much more regional consumer representation in Australia, especially following the winding back of the Telstra Consumer Consultative Councils.

As the impacts of full competition in the Australian telecommunications environment continue to have a social impact, there is an associated and increasingly unmet need for adequate resourcing for independent consumer information and representation. CTN has experienced reduced levels of funding over the past five years while the demands and expectations of regulators and industry for consumer input to policy development has increased and become much more complex. We cannot continue to provide the required representation of consumer interests unless the resourcing issues, particularly for volunteer representatives, are comprehensively addressed.

This submission was prepared by Helen Campbell, CTN Executive Officer, with research assistance from Philippa Mansor, CTN Policy Adviser, who also conducted the membership survey from which much of this material is drawn.

It was approved by the CTN Council at its meeting of 19 August 2002.