

3 November 2014

Mr John Stanton
Chief Executive Officer
Communications Alliance Limited
PO Box 444
MILSONS POINT NSW 1565

Dear Mr Stanton

Proposed changes to operational codes and guidelines

The Telecommunications Industry Ombudsman (TIO) welcomes the opportunity to respond to the proposed changes to six operational codes and the draft Industry Guideline on Customer Authorisation.

We set out our responses to the proposed changes to the following codes and guidelines in the attached **Appendix**:

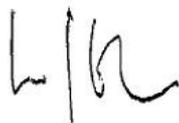
- Local Number Portability (LNP) Code
- Mobile Number Portability (MNP) Code
- Emergency Call Service Requirements Code
- Pre-selection Code
- Unconditioned Local Loop Service – Ordering, Provisioning and Customer Transfer (ULL) Code
- draft Industry Guideline on Customer Authorisation.

Our responses should be considered in conjunction with our submission on the proposed changes to the Telecommunications Consumer Protections Code (TCP) 2012.

We trust our responses will assist Communications Alliance in its consideration of the proposed changes to these codes and guidelines.

If you require further information, please contact David Brockman, the TIO Executive Director – Industry, Community and Government on 03 8600 8700 or by email (david.brockman@tio.com.au).

Yours sincerely



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Appendix: Responses to proposed changes to operational codes and guidelines

Table 1 Conversion of existing code obligations into a new Customer Authorisation Guideline	
<p>Proposed changes</p> <p>Clauses from industry codes that relate to minimum requirements for customer authorisation are proposed to be converted and amalgamated into a new Customer Authorisation (CA) Guideline.</p>	<p>Affected codes:</p> <ul style="list-style-type: none"> • Mobile Number Portability (MNP) Code • Local Number Portability (LNP) Code • Pre-selection Code • Unconditioned Local Loop Service – Ordering, Provisioning and Customer Transfer (ULL) Code
<p>TIO response</p> <p>We agree that combining all customer authorisation requirements into a single document is useful to providers.</p> <p>However, the draft Industry Guideline on Customer Authorisation does not have the same standing and compliance requirements as current Code obligations. If the consequences for non-compliance are reduced, this may result in reduced incentives for compliance.</p> <p>The conversion of Customer Authorisation code obligations into a voluntary guideline may be counter-productive to improving industry practices for several reasons:</p> <ul style="list-style-type: none"> • In our various submissions to the initial Telecommunications Consumer Protections (TCP) Code review in 2010-11, and in subsequent reviews of the LNP Code and MNP Code, we recommended stronger measures to prevent unauthorised ports. We continue to receive complaints regarding unauthorised transfers and inadequate consent. Some complaints of this nature have resulted in systemic investigations as providers have demonstrated a lack of compliance with the current industry codes. Substantial detriment can be caused to consumers (including small businesses, and elderly and vulnerable consumers) when numbers are ported without proper authority or informed consent. • The recent changes to convert the Customer Authorisation obligations in the LNP Code to guidelines were premised on the continued existence of primary obligations around authorisation and informed consent in the TCP Code. The authorisation and informed consent clauses in the TCP Code are now proposed to be removed. This creates a compliance gap in Customer Authorisation obligations relevant to transfers. • The Customer Authorisation obligations in the MNP Code continue to play an important role in ensuring proper authorisation and informed consent prior to a port. Converting these obligations into a guideline reduces the obligations on gaining service providers and losing service providers (for clawbacks) to ensure that a port is authorised before it takes place. <p>As proposed, some of the affected codes do not require compliance with the Customer Authorisation Guideline at all (for example, the ULL Code), while other codes require</p>	

compliance in part only (for example, clause 4.2.2 of the MNP Code). The proposed changes to the MNP Code, LNP Code, Pre-selection Code and ULL Code relating to Customer Authorisation obligations present an opportunity to have a consistent approach to compliance across all codes, including the TCP Code. A preferred approach is to retain the relevant authorisation and informed consent obligations in the TCP Code, with a requirement for compliance with the TCP Code obligations included in the other codes.

A number of guidelines issued by Communications Alliance are at present only available to providers who are current members of Communications Alliance. If guidelines are going to be issued, it will be important that these are made publicly available to service providers, consumers and the community more broadly, in the same manner as these rules are currently publicly available through the affected codes.

Draft Industry Guideline on Customer Authorisation

We are mostly satisfied with the content of the draft Guideline. However, the draft Guideline currently does not include standardised record creation and retention rules. Including this requirement would enable providers to demonstrate compliance with the Guideline, as per their code obligations, when called upon to do so.

Recommendation

We recommend retaining the relevant authorisation and informed consent obligations in the TCP Code and including a requirement for compliance with the TCP Code obligations in the affected codes.

Alternatively, if the Industry Guideline on Customer Authorisation is introduced to replace the authorisation and informed consent obligations in the affected codes, we recommend that:

- each of the affected codes include an obligation for providers to adopt and comply with all requirements in the Guideline, and
- the Guideline includes standardised record creation and retention rules for Customer Authorisations.

Table 2 Removal of clauses relating to obligations under legislation

Proposed changes	Affected codes and clauses:
<p>These clauses are proposed to be removed from the affected codes to reduce duplication of the Australian Consumer Law cooling off provisions.</p>	<ul style="list-style-type: none"> • Definition of 'invalid ULL transfer' in ULL Code • 3.3.16, 12.1.1 and 12.1.3 of Pre-selection Code • 4.1.10(e) of LNP Code • 4.17 and 3.5.5 of MNP Code

TIO response

These code clauses do not duplicate cooling off obligations under the Australian Consumer Law.

The Australian Consumer Law has the effect of prohibiting the transfer of services during the cooling off period. The affected code clauses provide clear examples of required provider conduct where the legislation otherwise states the prohibition only in general terms.

For example, although the Australian Consumer Law prohibits an unsolicited transfer from occurring during the cooling off period, it does not mean this does not occur. This scenario is a clear example of what would constitute an unauthorised port, and industry codes such as the LNP Code and the MNP Code provide a valuable level of assistance to providers to rectify unauthorised ports.

This level of specificity is important because:

- The telecommunications industry is a diverse one in terms of the size of providers and the resources at their disposal. Smaller providers and some of the larger ones may sometimes not have the time or resources to identify and then apply general legal obligations in the context of the telecommunications industry.
- Even where providers have dedicated legal or compliance teams with a strong understanding of legal obligations, there is no guarantee that all staff have a similar understanding, as they are likely to be less familiar with or able to interpret a wide range of legislation.
- Many providers and their front line staff are unlikely to see that their actions or conduct amount to a breach of legal obligations, without the specificity or examples set out in these codes.

Retaining specific examples of what constitutes an invalid or unauthorised port with clear direction to the relevant provider to undertake an immediate reversal, would assist industry resolve these types of complaints more expeditiously.

Recommendation

We recommend retaining these code clauses in the ULL, MNP, Pre-selection and LNP Codes.

Table 3 Conversion of existing code obligations into guidelines

Proposed changes	Affected codes and clauses:
It is proposed that the obligation for industry to provide users of pre-paid calling cards with information about how they can access emergency services be removed from the Emergency Call Service Requirements (ECSR) Code and placed within the Pre-Paid Calling Card (PPCC) Guideline.	<ul style="list-style-type: none"> • 4.5.6 of ECSR Code
TIO response	
The current ECSR Code ensures information about Emergency Service Numbers and Organisations is provided to those using calling card services. Inclusion of this requirement in the ECSR Code reflects that the information is important, and providing it	

to consumers enhances public safety through promoting awareness about how to access emergency services.

The Guidelines do not have the same standing and compliance requirements as current Code obligations. If the consequences for non-compliance are reduced, this may result in reduced incentives for compliance.

Recommendation

We recommend retaining this clause in the ECRS Code.

Table 4 Changes on how information is provided

Proposed changes	Affected codes:
<p>A number of clauses proposed to be changed relate to the level of prescriptiveness in how information is provided to consumers.</p>	<ul style="list-style-type: none"> • MNP Code • LNP Code • Pre-selection Code • ULL Code
<p>TIO response</p> <p>Some clauses that require a provider to give information to the consumer in writing, and through any other means agreed between the parties, are proposed to be removed.</p> <p>Although the proposed changes will streamline the affected codes, it is important that consumers' specific information needs are met in a consistent way across all providers and at particular points in the consumer-provider relationship.</p>	
<p>Recommendation</p> <p>We observe there is, in some cases, a strong case to retain provisions that codify for providers the requirements for providing information in specific form. We recommend that these generally be retained in the clauses in each of the operational Codes dealing with the provision of that information.</p> <p>To the extent that some general rules can replace these tailored provisions in certain cases, we recommend additional guidance be included in the operational Codes that set out matters such as when information may need to be provided in a specific manner, for example by giving a consumer information in writing upon request if this is the consumer's preferred communication method, or in circumstances when a consumer's service may be impacted in some way.</p>	