



**INDUSTRY GUIDELINE DR G609:2017 PRIORITY ASSISTANCE FOR LIFE
THREATENING MEDICAL CONDITIONS**

Submission by the Australian Communications Consumer Action Network to
Communications Alliance

28 July 2017

About ACCAN

The Australian Communications Consumer Action Network (ACCAN) is the peak body that represents all consumers on communications issues including telecommunications, broadband and emerging new services. ACCAN provides a strong unified voice to industry and government as consumers work towards availability, accessibility and affordability of communications services for all Australians.

Consumers need ACCAN to promote better consumer protection outcomes ensuring speedy responses to complaints and issues. ACCAN aims to empower consumers so that they are well informed and can make good choices about products and services. As a peak body, ACCAN will represent the views of its broad and diverse membership base to policy makers, government and industry to get better outcomes for all communications consumers.

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Introduction

The Australian Communications Consumer Action network (ACCAN) thanks Communications Alliance for the opportunity to respond to the INDUSTRY GUIDELINE DR G609:2017 PRIORITY ASSISTANCE FOR LIFE THREATENING MEDICAL CONDITIONS.

Discussion

ACCAN has a number of procedural concerns regarding the development of the guideline and this public consultation.

We note that there has been no public review of the Code C609:2007 Priority Assistance for Life Threatening Medical Conditions (the Code). The Terms of Reference charge Communications Alliance Priority Assistance Working Committee 69 with undertaking a review of the Code. This review has been undertaken without any public consultation and without any consumer representative involvement.

The Terms of Reference also mandate the replacement of the Code with the draft guideline. Unlike the process for developing and registering an industry Code set out in Section 117 of the Telecommunications Act (1997) (the Act)¹ there is no similar process for de-registration of a Code. Section 122A of the Act provides the Australian Communications and Media Authority (ACMA) the authority to de-register a Code but fails to include any guidance on this process.² Without an appropriately stringent and transparent process to de-register a Code there is greater potential for consumer detriment. As such ACCAN sees the development of this guideline and associated public consultation as premature, bypassing essential public review prior to proposing deregistration of a fundamentally important consumer protection Code.

ACCAN recommends a formal public review of C609:2007 Priority Assistance for Life Threatening Medical Conditions be undertaken, with consumer consultation, prior to any consideration of the Code de-registration. Additionally, ACCAN is concerned that while the Code was developed in cooperation between industry and consumer groups, this draft guideline has been developed without any consumer involvement.

Priority Assistance, as a Telstra licence condition, was introduced in 2002 in order to provide telephony consumers who have life-threatening medical conditions a more robust, timely and reliable standard telephone service³. The Code was developed in 2003 to provide the same protections for customers of other providers offering a priority assistance service. ACCAN asserts that the fundamental foundation of Telstra's licence condition and the related Code is to provide ongoing certainty and safety for both consumers and the Australian community as a whole.

Noting that the catalyst for the introduction of Priority Assistance services was the tragic loss of a child's life whose family's home phone was out of service, community expectation is for Priority Assistance services to be maintained at the highest level. This expectation needs to be assured

¹ http://www.austlii.edu.au/au/legis/cth/consol_act/ta1997214/s117.html

² http://www.austlii.edu.au/au/legis/cth/consol_act/ta1997214/s122a.html

³ <https://www.legislation.gov.au/Details/F2014C01074>

through appropriate compliance and enforcement mechanisms. ACCAN is adamant that the draft guideline does not meet this expected level of certainty and consumer protection. In the draft guideline Explanatory Statement this lessening of consumer certainty is clearly articulated. In one sentence there is a reference to “minimum standards” for providers when notifying their customers that the provider does not offer Priority Assistance:

“The Guideline also sets minimum standards, regarding information provided to Customers for Suppliers who do not offer Priority Assistance”

and then goes on to state that this is only a “recommendation” for providers:

“The Guideline recommends that Suppliers who do not offer Priority Assistance inform Customers and prospective Customers of this fact.”

ACCAN understands that there has only been limited uptake of voluntary Priority Assistance services by providers other than Telstra since the introduction of the Code in 2003 and that currently there are no providers offering new Priority Assistance services other than Telstra. While competition and consumer choice are fundamental aspects of a well-functioning market, ACCAN has concerns that this draft guideline fundamentally undermines consumer certainty with little evidence that it will provide greater consumer choice. ACCAN does not consider the lessening of provider obligations for Priority Assistance customers as being in the best interest of consumers and the community as a whole.

Specific issues with draft guideline

Legislative Change?

Section 112(1) of the *Telecommunications Act 1997* states that telecommunications industry Codes should be developed by industry and that these codes apply to provision of related telecommunications services.⁴ ACCAN sees the Code as a necessary self-regulatory instrument in the context of Section 112.

Currently, Schedule 2 Part 6 of the *Telecommunications Act 1997* obliges providers offering Priority Assistance services to meet all obligations outlined in the Code.⁵ It is unclear to ACCAN how this draft guideline would be positioned in regard to the legislation. ACCAN is opposed to any potential mirroring of the Code with a guideline that does not have the same obligations for priority assistance services.

This raises additional concerns about a potential two-level scheme of Priority Assistance; allowing providers to offer Priority Assistance services that meet the best-practice aspirations of the proposed guideline with no regulatory oversight, while Telstra customers have a higher level of protection and certainty under Telstra’s licence condition and related Priority Assistance Policy.⁶

This inconsistency is further highlighted in the Explanatory Statement which states that the purpose of the guideline is to:

⁴ http://www.austlii.edu.au/au/legis/cth/consol_act/ta1997214/s112.html

⁵ http://www.austlii.edu.au/au/legis/cth/consol_act/ta1997214/sch2.html

⁶ <https://www.telstra.com.au > Consumer Advice > Customer service>

“b) provide for consistency between Telstra's Priority Assistance Policy, which was amended to include a pre-registration scheme (and other smaller changes), and the Code rules;” when the guideline does not meet the requirements outlined in either Telstra’s Licence Condition Priority Assistance requirements or those outlined in the Priority Assistance Code.

In addition to our comments above regarding providing information about Priority Assistance services, there are legislative questions in relation to the following guideline clause:

“4.10.4 Any CSP that offers a STS and does not offer Priority Assistance should advise all new and existing Customers that it does not provide Priority Assistance.”

Whereas, Schedule 2 Part 6 of the Telecommunications Act obliges providers who do not offer priority assistance services to inform prospective customers of this and also let any prospective customer know which providers do offer a priority assistance service⁷.

This raises questions and uncertainty about the obligation for providers to inform customers under the draft guideline about alternative providers who do offer a priority assistance service as well as questions about the need to make legislative changes to the Act if the Code should be de-registered.

Accountability and complaint handling

ACCAN is concerned with the wording used in the draft guideline, specifically the use of the term “should” in place of the term “must”. Common understanding of the different intent of these two terms is that “should” implies a best-practice aspiration, whereas “must” implies a determined obligation.

Changing the wording in the guideline in this manner lessens consumer certainty and protection. Additionally, the use of the term “should” in the draft guideline creates a number of questions about monitoring and complaint handling.

Currently, as a Code registered with the ACMA there are clear obligations on providers who are offering Priority Assistance services to their customers. These obligations can be monitored and when necessary can be enforced by the regulator. Furthermore, when a consumer’s complaint regarding Priority Assistance services has not been resolved to the consumer’s satisfaction the consumer has the right to escalate their complaint to the Telecommunications Industry Ombudsman (TIO). It is unclear to ACCAN how this monitoring or complaint handling procedure would be maintained under the draft guideline. This is of particular concern given the consistent number of issues raised in complaints to the TIO regarding Priority Assistance services.

Provisional Priority Assistance Customers

ACCAN is concerned by the ambiguity of several of the draft guideline sections regarding provisional Priority Assistance customers – customers who are not registered Priority Assistance customers but have a bona fide need for immediate Priority Assistance services. While the Code clearly articulates the obligation of providers in this instance, as indicated by:

⁷ http://www.austlii.edu.au/au/legis/cth/consol_act/ta1997214/sch2.html

“2.4.1 Suppliers offering Priority Assistance must ensure that the highest level of service practically available at the time is given to Provisional Priority Customers or Priority Customers.”

the draft guideline does not mandate the same level of service. For example, it states:

“4.12.7 In some circumstances, the Supplier should (in lieu of offering an Interim Service) provide Priority Assistance equivalent service connection or fault rectification timeframes for the Customer's nominated STS.”

It is unclear to ACCAN what guarantee this clause provides for the provision of an urgent Priority Assistance request. Given that Priority Assistance by definition is a service intended to protect lives, there is no place for ambiguity. It is also unclear to ACCAN how this ambiguous terminology is to be interpreted uniformly across consumer, industry and complaint handling bodies.

Clause 4.10.4: As highlighted above this clause in the draft guideline does not meet the requirements set out in Schedule 2 Part 6 of the Telecommunications Act. ACCAN recommends that this clause be amended to include the requirement that providers who do not offer a Priority Assistance service must notify customers of other providers who do offer a Priority Assistance service.

Clause 4.10.5: This clause in the draft guideline omits a fundamental aspect of information that must be provided to customers requesting a Priority Assistance service; that being the process involved in becoming a Priority Customer. ACCAN recommends that this clause be amended to include the same wording as in clause 4.10.8 of the Code.

Finally, ACCAN notes that there is no requirement in the draft guideline for providers to maintain record-keeping procedures. Record-keeping as required in Clause 5.1.1 of the Code enables ongoing tracking of Priority Assistance services, information about the ongoing need for Priority Assistance services, and necessary information for appropriate complaint rectification processes. ACCAN recommends that the draft guideline be amended to include the same wording as in clause 5.1.1 of the Priority Assistance Code.

Conclusion

ACCAN opposes replacing the current C609 Priority Assistance Code with the draft guideline. In background information provided to ACCAN by Communications Alliance relating to this public consultation, it was stated that no provider has voluntarily offered a Priority Assistance service since the introduction of the Code in 2003. ACCAN is aware of at least one provider offering Priority Assistance under the Code – iPrimus. Given the limited availability of standard telephone services in the Australian telecommunications market this is to be expected, with only Telstra resellers and limited Optus fixed telephony networks available.

ACCAN questions if the impetus for this proposed de-registration of the Code is motivated by the capability for all providers to now offer Priority Assistance services over the NBN. As already stated, ACCAN supports a competitive telecommunications market, acknowledging that competition provides greater consumer choice and potentially lower prices. However, ACCAN does not see a need to downgrade consumer certainty and safety as an appropriate by-product of greater choice. Given the imperative life-saving potential of the current Code, which has supported a robust, reliable and enforceable mechanism for more than a decade, ACCAN sees no value in de-registering the current Code and replacing it with the draft guideline.