



27 July 2017

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Introduction

ACCAN thanks the Communications Alliance for the opportunity to contribute to its 2017 review of the *Mobile Premium Services Code (C637:2011 Incorporating Variation No.1 – 2014)* ('the Code'). ACCAN believes most of the suggested amendments are useful updates which help clarify consumer protection and privacy obligations.

In particular, ACCAN welcomes the inclusion of the option for End Carriage Suppliers to resolve complaints relating to Mobile Premium Services (MPS) directly with the customer. A recent ACCAN survey¹ shows consumer support for this initiative, with consumers having a strong preference to contact their mobile provider first to dispute third party charges. We also welcome the addition of the term 'Personal Information' to align with the Privacy Act, and the introduction of clause 1.9 concerning the protection of Personal Information by End Carriage Suppliers in circumstances where they are not required to comply with the *Australian Privacy Principles*.

However, ACCAN remains concerned that the Code and double opt-in requirements for Direct Carrier Billing (DCB) do not adequately prevent customers being billed for unsolicited third party services.

Findings of ACCAN commissioned survey

Since our initial submission, ACCAN has commissioned a survey measuring consumer experiences of third party billing among Telstra, Optus and Vodafone customers. ACCAN's survey, conducted between 5 -18 April 2017, focused on respondents' experience of third party billing in the preceding six months. This was in part to assess the effectiveness of the double opt-in step required by Telstra and Optus for Direct Carrier Billing (DCB) that was introduced in mid-2016. The findings of this research provide evidence that there are cases where consumers have received third party billing charges without knowingly subscribing, or have been subscribed by minors who had access to caregivers' phones.

¹ <http://accan.org.au/our-work/research/1400-third-party-charges-consumer-experiences-and-expectations>

The survey findings that raise particular concerns about the effectiveness of current safeguards include the following:

- 12% of respondents had received unexpected third party charges in the last 6 months;
- 70% of unexpectedly charged post-paid account holders only became aware of the charges on receipt of their bill, and 28% of pre-paid customers became aware due to their credit disappearing unusually quickly;
- Most mobile account holders (77%) who had received a confirmation SMS tried to prevent the charge by replying 'STOP'; but despite taking this action, seven out of 10 (or 71%) said they were still charged;
- 37% of respondents who had been unexpectedly charged indicated they were not informed when the charge had gone through; they were not asked to confirm the charge; they did not understand they would be charged, nor the amount; and they did not consent to the purchase;
- 23% of respondents who were unexpectedly charged did not contact the third party provider because they were unable to find contact details;
- 49% of respondents were unaware that their mobile phone account could be used to pay for third party goods or services.

Additionally, the ACCAN survey found many respondents were responsible for multiple services (59% of post-paid and 47% of pre-paid account holders), and 49% of respondents were unaware that their mobile account could be used for third party billing. On top of the poor compliance with existing safeguards and gaps identified above, these figures are concerning because they indicate:

- Third party charges are being incurred by parties who are not the account holder (eg: children, employees using business accounts);
- The account holder is liable for the third party charges;
- The account holder is forced to either pay the charges, or spend considerable time and effort disputing them;
- There is an almost 50% chance that the account holder may be unaware the mobile service can be used for third party billing prior to receipt of the bill or unusually fast credit expiry.

Improved consumer safeguards

Given the results of the consumer survey, ACCAN urges the Communications Alliance to consider a range of responses to introduce stronger regulation of third party billing services. Possible alternatives include:

1. Reintroducing a MPS Compliance Monitoring and Reporting regime requirement in the MPS Code, consisting of independent monitoring to confirm and encourage compliance with the MPS Code, accompanied by published reporting requirements to the ACMA;
2. Revising the scope of the MPS Code to include all forms of third party services under the *MPS Code*;
3. Lowering the spending cap for default third party services to \$0 for both pre-paid and post-paid mobile customers;
4. Making third party charging an opt-in service, requiring account holder activation, rather than the current default requiring customers to opt-out.

1. Re-introduction of MPS Code compliance monitoring and reporting

The findings of the ACCAN survey indicate poor compliance with the MPS Code in the following areas:

- Services may be operating in breach of paragraph 5.1 of the MPS Code, as it appears for 12% of respondents they were supplied without request (5.1.1(a), 5.1.2); charged without request (5.1.1(b)).
- A high number of respondents reported that the STOP mechanism was ineffective, suggesting possible breaches of 7.1.2, 7.2.1, and 7.2.2 of the MPS Code.
- There appear to be deficiencies in the third party contact detail information provided to consumers, as nearly a quarter of respondents gave this as a reason for not contacting the third party provider about their dispute. This suggests potential breaches of 4.1 (registration and customer information requirements); 4.3.2/4.4.1 (helpline to be given in confirmation purchase confirmation message); 6.1.2 (complaint handling and inquiry procedures not accessible).

Since the 2014 amendment to the MPS Code, there has been no requirement for the industry to conduct MPS Code compliance reporting. Our survey findings suggest that there is sufficient Code non-compliance and consumer detriment to warrant the re-introduction of these requirements to encourage better practice across the third party billing sector.

Recommendation 1: That the MPS Code be amended to introduce an explicit requirement that the industry conduct independent monitoring of Code compliance, accompanied by an obligation for publically available reporting on a regular basis to the ACMA.

2. Regulation of all third party billing services under the MPS Code

Consumers and industry both struggle to distinguish MPS from DCB. ACCAN has previously submitted that Direct Carrier Billing (DCB), a service where mobile providers allow third party businesses to bill customers for services via the customer's phone bill, should be regulated under the Code.² DCB operates on a very similar basis to MPS, however is excluded from the current scope of the Code. On the basis of this argument, it seems logical that the two types of third party billing services should be subject to the same type of regulation.

In response to ACCAN's submission that DCB be regulated by the Code, Communications Alliance has cited a low volume of Telecommunications Industry Ombudsman (TIO) complaints about DCB charges as a justification for excluding it from the Terms of Reference of the Code review. ACCAN submits that the TIO complaints data relied upon by Communications Alliance does not represent complaint levels accurately for several reasons:

- The TIO's third party billing complaints have, up until this point, failed to distinguish MPS charges from DCB charges, so the volume of DCB complaints is not accurately measured by the

² <http://accan.org.au/our-work/submissions/1316-review-of-the-mobile-premium-services-code>

TIO under the third party billing category. ACCAN has been advised by the TIO that MPS/DCB complaints are at times categorised as billing issues. This means they are hidden in generic billing complaints data, which comprised 42% of overall TIO complaints in 2015-2016.

Complaints data generically categorised as “billing” fails to accurately reflect the actual volume of MPS/DCB third party billing complaints by consumers.

- Our survey found only a small number of respondents who had received unexpected third party billing charges complained to the TIO (6%).
- By contrast, 52% of respondents who were unexpectedly charged complained to their mobile phone provider, and 15% complained to the third party provider. Mobile phone providers were almost always the first party consumers turn to for resolution of these matters (in 97% of cases).³

These findings indicate that a sizable number of consumers are dissatisfied and complaining about third party billing. The inaccuracy of the complaints data, highlighted by ACCAN’s survey, undermines the Communications Alliance’s justification for excluding regulation of DCB under the Code from the review’s Terms of Reference.

Regulation of DCB services is an important issue because they have far greater audience reach than MPS services. DCB provides access to content that is very popular including the entire Google Play catalogue of movies, TV shows, music and music streaming services, eBooks and high quality apps including games.⁴ DCB also has a very high potential for future expansion in Australia. In the UK, for example, consumers can charge bus tickets and magazines to their phone bills.⁵ If there is no change in consumer safeguards for DCB services, it follows that an increased market for DCB services will proportionally increase the number of people who may be unexpectedly charged for these services.

Communications Alliance has deemed a double opt-in arrangement for DCB services, introduced in mid-2016 by Telstra and Optus, as providing adequate consumer safeguards for DCB charges. But ACCAN’s survey revealed that at least 12% of Telstra, Optus and Vodafone pre-paid and post-paid mobile phone account holders continue to receive unexpected third party charges. When extrapolated across the total number of Telstra, Optus and Vodafone mobile phone account holders, 12% equates to almost 1.9m people receiving unexpected MPS and DCB third party charges on their mobile bills. ACCAN estimates that collectively Telstra, Optus and Vodafone customers may have been charged as much as \$20m unexpectedly for third party services, comprising MPS and DCB, in the six month period covered by the survey.

The ACCAN survey did not distinguish between MPS and DCB services because it was not practicable to do so. From a consumer perspective, the distinction between the two is confusing in practice. Both use 19x SMS for the delivery of service messages; the opt-out response of sending a STOP SMS to a 19x is identical, and both are treated the same for billing purposes. Furthermore, consumer

³ Mobile Third Party Billing: Consumer Experiences and Expectations: <http://accan.org.au/our-work/research/1400-third-party-charges-consumer-experiences-and-expectations>, 5.4.2, 5.4.3

⁴ Optus, Google Play Store Billing, “What stuff can I buy on Google Play?”, available at <<http://www.optus.com.au/shop/mobile/apps/Google-Play-Store-Billing>>.

⁵ Will Hernandez, ‘Boku brings direct carrier billing into the physical world thanks to license’, Mobile Payments Today, 2 October 2014, available at <<http://www.mobilepaymentstoday.com/articles/boku-brings-directcarrier-billing-into-the-physical-world-thanks-to-license/>>.

experience of the sign up process is that there can be many similarities. ACCAN notes that during recent Working Group discussions for revision of the Code, representatives of the telecommunications industry acknowledged that DCB and MPS services are so similar it is virtually impossible to distinguish the two for the purposes of TIO complaints reporting.

Furthermore, there is little transparency about revenue derived from third party billing overall, or of a breakdown of revenue generated from MPS and DCB. However, the impact of the introduction of the double opt-in requirement by Telstra and Optus in 2016 caused a sufficient drop in the revenue of one prominent third party provider/aggregator to necessitate a statement to that effect to the Australian Stock Exchange⁶. This suggests DCB represents a sizable share of the third party market.

Based on the survey results it appears that the double opt-in requirement for DCB is not consistently occurring, given that 70% of post-paid respondents only became aware of the charges when they saw their bills, and 28% of pre-paid respondents became aware due to their credit disappearing unusually quickly. If consumers were attempting to prevent DCB charges by texting STOP there is no guarantee that this would be effective as there is no obligation for DCB services to comply with a STOP request, nor with the other protections available to users of MPS. This calls into question the efficacy of the double-opt in requirement in preventing unexpected third party charges, and strongly suggests further measures are required.

It is interesting to note that despite the introduction of the double opt-in in mid-2016, that this is not regarded as standard industry practice for DCB services. For example, one mobile payment provider is currently promoting DCB as delivering 'easier to opt-in to services – No need for an SMS from the user's handset for permission' as a business benefit. Likewise for consumers, benefits identified are that DCB is 'easy to use – consumers enjoy the benefits of 'click and buy' purchasing without the need to send text messages or receive multiple SMS billing messages'. It is 'a simple and anonymous way of making a purchase'.⁷

Recommendation 2: Consideration is given to widening the scope of the MPS Code to incorporate DCB services.

3. Reducing the default third party services spending cap to \$0

As noted above, one of the findings of the ACCAN survey is that a large number of consumers are responsible for multiple mobile services, indicating that the account holder is not necessarily the user of the service. This finding shows that broad measures are needed to address the detriment experienced.

Currently, Telstra caps the amount consumers spend on Premium SMS and Telstra Carrier Billing at \$100 per month for post-paid customers and \$500 for pre-paid customers, but consumers may also qualify to have other limits applied. ACCAN submits that the third party services spending cap for all mobile customers should be set at the default value of \$0, with customers able to increase their

⁶ See Market Update 17/11/2016 <http://mobileembrace.com/investors-2/>

⁷ See Oxygen8 Australia website: <http://au.oxygen8.com/solutions/mobile-payments/directbilling/>, accessed 26 July 2017

spending limit on request. This approach would provide more adequate control over unexpected third party billing charges from the moment a mobile phone plan is purchased by a consumer.

The implications of the current \$100 post-paid/\$500 pre-paid monthly caps on third party billing charges are best understood when considered in conjunction with survey data on when consumers first became aware of unexpected third party charges. In ACCAN's survey, of the 12% of respondents who had experienced unexpected charges, 70% of post-paid account holders first noticed the unexpected charge on their bill. 28% of pre-paid account holders who had received unexpected charges only realised due to the fact their credit was being used up more quickly than usual.

Consequently, the current third party spending caps mean that 70% of post-paid respondents were potentially exposed to up to \$100 worth of unexpected charges in a month before they were notified in their bill, and 28% of pre-paid respondents were potentially exposed to up to \$500 worth of unexpected third party charges without being informed why their credit was reducing. Setting the default third party services spending cap at \$0 would provide a degree of preventative protection.

Recommendation 3: Consideration is given to lowering the default spending cap for third party billing to \$0 on all post -paid and pre-paid mobile accounts.

4. Changing Third Party Billing to become an 'opt-in' service

ACCAN submits that third party billing services should become an opt-in service that customers have the option to sign up for, rather than a default service included in all mobile telecommunications sales contracts as is currently the case. This proposal is supported by ACCAN's recent consumer survey, which found it to be the top preference for respondents who had experienced unexpected charges.

Recommendation 4: Consideration is given to third party charging becoming opt-in, requiring direct account holder activation with the mobile provider.

Conclusion

ACCAN welcomes most of the amendments to the Code proposed by the review, in particular the introduction of privacy provisions and a reversion to mobile service providers resolving customers' third party billing complaints directly. However, in light of our recent consumer survey research, which suggests Optus, Vodafone and Telstra customers have been charged up to \$20 million in unexpected charges over the last six months, we urge the Communications Alliance to reconsider its draft Code amendments with regard to the proposals above.

Sincerely



Teresa Corbin
Chief Executive Officer