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Universal Access Section  
Networks Regulation Branch, DBCDE  
GPO Box 2154  
Canberra ACT 2601

Via email

**Submission on Telecommunications (Customer Service Guarantee – Retail Performance Benchmarks) Instrument (No.1) 2011 *Exposure Draft***

ACCAN thanks the DBCDE for the opportunity to comment on this Exposure Draft.

In general terms, ACCAN believes it would be preferable for a wholesale performance benchmark to be introduced at the same time as this instrument. If this is not possible, ACCAN looks forward to a strong wholesale performance benchmark in the near future.

This is a welcome measure that could improve service standards for consumers by introducing real financial consequences for a failure to meet the CSG performance benchmark as measured over one financial year.

We acknowledge that a reasonable balance has been struck in the threshold contained in Clauses 4 and 5 to ensure that the benchmark does not unfairly impact small providers with small numbers of customers.

However, as we stated in our submissions in 2010 on the Competition and Consumer Safeguards Bill, these measures are only as useful as the real world enforcement practices of the regulator. The ACMA has a discretion but no obligation, under this Instrument, to use the civil penalty provisions of the Tel Act to punish failures to meet the benchmarks.

Experience has shown that the prevailing co-regulatory structure commonly results in a ‘wait and see’ approach by the regulator. Historically the regulator rarely uses its powers to impose financial penalties.

In relation to this Instrument, failure by the ACMA to act swiftly and decisively, using appropriately strong financial penalties, will defeat the Government’s policy objectives for this Instrument to deliver “additional benefits to consumers”.

ACCAN therefore submits that the Minister should in this Instrument or a separate Instrument specify circumstances of “serious underperformance” which *must* attract enforcement action to which financial penalties attach. We further submit that the Minister should specify the number of penalty units that should be applied under infringement notices for breaches of this benchmark, as provided for under section 572G(2) of the Tel Act.

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