



Consumer safeguard instruments

Universal Service Payphone Standards, Performance Benchmarks, Locations Rules, Consultation Requirements and Complaint Rules

Submission by the Australian Communications Consumer Action Network to the Department of Broadband, Communications and the Digital Economy



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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 activate its broad and diverse membership base to campaign to get a better deal for all communications consumers.

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Introduction

The Australian Communications Consumer Action Network (ACCAN) is pleased to have the opportunity to comment on the five proposed payphone instruments that will be created in fulfilment of the *Telecommunications (Competition and Consumer Safeguards) Act 2010*. We note that the second reading speech for the Bill states:

“The strengthening of the consumer safeguards contained in this bill will ensure that consumer are protected and service standards are maintained at a high level during the transition to the NBN”¹

ACCAN's view of the proposed instruments is that they fail to achieve this goal.

In some instances the instruments enshrine lower standards on Telstra than currently exist. In other instances the instruments create new regulatory obligations on Telstra (as the universal service provider) that fall short of community expectations.

Of great concern is the failure to adequately address the needs of regional Australia

Before the instruments are instruments are tabled in Parliament we believe that, at a minimum, the following changes must be adopted:

1. A nation-wide maximum fault repair standard of 10 days.
2. A nation-wide performance benchmark for fault repairs of 80% in the interim period and 90% in the subsequent period.
3. A mandatory ACMA review of any proposed payphone removal.
4. Revised definition of net social benefit to be used in payphone location and removal.

It is worrying that these instruments appear to have been drafted in order to compensate Telstra for the inadequacies of its payphones services rather than legitimate communication needs of the Australian public.

Response to consumer safeguard instruments draft.

1. Benchmarks and Standards

1.1 Performance benchmarks and timeframes for rural and remote consumers.

Payphones are a valued service and are particularly significant to communities in rural and remote Australia due to lower population density, greater distance to alternative sources of communications and poor mobile coverage.² Within rural areas payphones are especially

¹ Albanese, Anthony (2010) *Hansard House of Representatives*, 20 October 2010, p859

² See Finding 2.4.3 of the Regional Telecommunications Review (2008), Commonwealth of Australia, Canberra. p 206



important to Indigenous Australians, travellers and people residing in campsite or caravan parks who are less likely to have other communication devices.³

Despite rural Australia’s heavier reliance on payphones, it is rural areas which in recent times have had the most payphones removed. 7.4% of all Telstra payphones were removed in 2009-2010, 1536 payphones in total. Rural Australia had disproportionate removal rates, with 10.6% of all Telstra rural payphones being removed in that year.⁴

The draft determinations formalise poor service for rural and remote consumers. Time frames for installation and repair only appear to reflect the difficulty to the Universal Service Provider (USP) in providing services. Cost to the USP is not balanced with the importance of payphones to consumers. ACCAN believes that consumers in rural and remote areas should receive the same level of service as their metro counterparts.

Recommendations

- **The time frame in section 9(3)(b) of the Payphone Performance Standards Determination (installation in a minor rural area) be changed to from 6 to 3 months**
- **The time frame in section 9(3)(c) of the Payphone Performance Standards Determination (installation in a remote area) be changed from 9 to 3 months**
- **The maximum time frames to repair a payphone fault or service difficulty in section 10(2) of the Payphone Performance Standards Determination be changed to consider the importance of payphones to rural and remote consumers. Transitional time frames should be set at 15 working days for all areas. After this, the maximum time frame for all areas should be 10 days.**

A related concern is the performance benchmarks in section 9(1) of the Payphone Performance Benchmarks Instrument, below:

Geographic area	Initial benchmark period	Subsequent period
Urban	90%	90%
Rural	80%	90%
Remote	70%	80%

In 2005-2006 over 95% of payphones were repaired within the timeframe of 1,2 and 3 days in metro, rural and remote areas respectively.⁵ Payphone repairs were more likely to be completed on time in remote areas (repaired within benchmark 97% of the time) than in metro areas (repaired within benchmark 95.7% of the time). There is no reason this high standard cannot be replicated from 2012 onwards, especially considering that Telstra has removed thousands of payphones in rural and remote areas since 2006 and will be repairing fewer phones across the board.

³ Ibid

⁴ Figures obtained by comparing 2008-9 final payphone numbers in the three geographic areas with 2009-10 removals in the geographic areas, information sourced from ACMA (2009) Communications Report 2008-09, pp122-125 & ACMA (2010), Communications Report 2009-10, pp 79-84.

⁵ See ACMA, *Payphone Statistic*, available at: http://www.acma.gov.au/WEB/STANDARD/pc=PC_310280

Recommendation:

- **That payphone performance benchmarks specified in 9(1) of the Payphone Performance Benchmarks Instrument are altered to offer equivalent service to rural and remote consumers. ACCAN recommends that the following benchmarks are adopted:**

Geographic area	Initial benchmark period	Subsequent period
Urban	90%	90%
Rural	80%	90%
Remote	80%	90%

1.2 Clarifying performance exclusions

Section 5(1)(b) of the Payphone Performance Standards Determination states that a USP does not have to comply with the standards if there are circumstances beyond its control. This includes situations “in connection with the migration of services to the national broadband network, the modification, maintenance or upgrade of a facility or network that is used to supply the payphone or a payphone carriage service”.

The language in this exception provides no duration and is so broad as to negate the entire performance standards policy intent. Given that migration to the NBN could be interpreted as occurring across the country for the next ten years or more, and various modification, maintenance and upgrade works could be interpreted as occurring across the country constantly, ACCAN is concerned that this exception could be used to prevent performance standards applying to certain payphones for an unreasonably long period of time. If the exception is intended to apply only for the few hours when an area is disconnected from copper and prior to the NBN fibre being activated, or for specific types of short-term maintenance work, it should be re-worded accordingly.

Recommendation:

- **That the exception relating to migration of services to the National Broadband Network in section 5(1)(b) of the Payphone Performance Standards Determination be removed or be reworded only to apply to the small window of time when an area is disconnected from copper and prior to the NBN fibre being activated or for maintenance of a certain defined duration.**

1.3 Reporting to the ACMA

Section 5(2) of the Payphone Performance Standards Determination states that the USP must notify the ACMA on a quarterly basis (or longer if agreed) of the instances and circumstances when compliance with payphone standards was not possible. ACCAN is concerned that this reporting time frame will mean that when a payphone performance exception is applied incorrectly, the regulator will not be aware of it for several months. It is reasonable to expect that the USP will notify the ACMA immediately of where they are reasonably unable to comply with the performance standards. The USP should also provide in-depth quarterly reports to the ACMA, with the data of all exceptions presented so the



ACMA can monitor exception trends and determine if any other actions need to occur to ensure that payphones are operational.

Recommendation:

- **That the USP immediately notify the ACMA of any instances where they are reasonably unable to comply with the payphone performance standards.**
- **That the USP report quarterly to the ACMA of when the payphone performance standard exceptions were applied. The ACMA should use this data to monitor long-term trends.**

1.4 Critical faults

Section 10.5 and 10.6 of the Payphone Performance Standards Determination clarifies what can be considered a fault. If one payment mechanism is not operating but others are available it will be considered a non-critical fault. In other words if payment cannot be made by cash but can be made by payphone card or vice-versa then it is considered 'non-critical' and time frames for repair do not apply. No clear time frame for a non-critical fault repair is provided, meaning that payment faults could continue indefinitely and the community cannot insist on repair.

Payphones are used in emergencies and by people without access to other forms of communications.⁶ It is reasonable to presume that the 28% of people who used a payphone in the past year to make an important call⁷ did not plan ahead, purchasing a phonecard to make the call. Pre-paid phonecards are often only available to purchase during business hours from selected outlets, making a payphone with phonecard-only payment virtually useless out-of-hours unless the consumer was able to plan ahead. Considering that payphones are often used when another device (such as a mobile) isn't working or for personal emergencies, it is essential that multiple payment options are available most of the time.

Recommendation

- **That payment faults are included in the critical faults list in section 10(5) of the Payphone Performance Standards Determination**

2. Improving Community Consultation

2.1 A genuine definition of net social benefit

Sections 6(4) and 6(5) of the Location of Payphones Determination refer to 'net social benefit' as a measure to determine if a new payphone should be installed. The Determination uses the same definition in assessing removal requests in 20(1)(b)(i).

In ACCAN's view, 6(5) is completely unacceptable in its current form.

In assessing whether a payphone would not deliver a net social benefit to the local community, the USP must have regard to matters that are entirely unrelated to social benefit.

⁶ ACMA, (2011), *Numbering: Implications of research into consumer issues*, p77 available at: http://www.acma.gov.au/WEB/STANDARD/pc=PC_312527

⁷ Ibid, 28% of consumers had used a payphone for an 'emergency call' in the past year, in this case 'emergency' does not necessarily mean a call to emergency services such as 000 (a free call), but also includes personal emergencies like running late to work.

Commercial viability, projected revenues in line with maintenance costs, and any funding provided by the Commonwealth simply should not have any bearing on this assessment of social benefit and there is no sound basis for their inclusion. They are commercial considerations for the USP. If commercial considerations are intended to determine whether a payphone is installed in a new location, it should be explicitly stated. Accordingly, 6(5) (a), (b) and (c) must be deleted.

In addition, there are locations such as national park entrances, hospitals and nursing homes where the community benefit should be the overriding consideration. An additional item should be added to the circumstances listed under 6(5)(d) stating: *the extent to which the payphone at the new payphone location will benefit the community in circumstances of personal distress or medical emergency or other emergency situations such as natural disasters.*

Recommendation

- **That section 6(5)(a), (b) and (c) be deleted.**
- **That section 6(5)(d) have additional circumstances added to give weight to locations such as national parks, hospitals and nursing homes.**

2.2 Improving community consultation requirements

Currently, there is a view in the industry that payphones are less and less popular. However, Telstra is trialling 'webphones' in Melbourne.⁸ Payphone units of the future could be community access points for the internet, SMS and phone services. Given the importance of internet access to social participation⁹ it is important that we begin to think of a payphone as offering more than a standard phone service. Community webphones could be an important part of a digitally-inclusive Australia. Payphones are not obsolete remnants of Australia's past, but a building block in our communications future.

Location consultation requirements in 5(2)(b) of the Determination specify that the owners or occupiers of each residential and business premises within 50 metres of the proposed site are notified of the location proposal in writing. ACCAN submits that key community organisations beyond the very small 50 metre radius have an active interest in payphone location.

Recommendation:

- **That a subsection be added to 5(2) of the Public Consultation on the Location or Removal of Payphones Determination:**
5(2)(c) Health and community facilities within a 1 km radius for metro payphones, 50km radius for rural payphones and 100km for remote payphones.

Health and community facilities should include religious organisations, schools and public facilities like swimming pools, scout halls, RSL clubs and sports clubs. This wider

⁸ See: http://www.arnnet.com.au/article/395616/pienetworks_strives_replace_telstra_payphones_internet-enabled_webphones/

⁹ Teresa Corbin (2011), *Presentation: Broadband for all*, ACCAN available at: <http://accan.org.au/files/Our%20Broadband%20Future%20Presentations/Session%20%20Teresa%20Corbin.pdf>



consultation requirement will ensure that community groups whose members are likely to use the payphone are properly informed.

The consultation requirements for payphone removal are disappointing compared to location consultation. Section 9 of the Determination requires that a notice is displayed on or near the payphone. While there is an obligation for the USP to inform the relevant local government body and place a notice in local newspapers, ACCAN is concerned that community groups in the vicinity of the payphone will not be directly informed of the removal.

Recommendation

- **That an addition is made to Section 9 of the Public Consultation on the Location or Removal of Payphones Determination requiring the USP to provide written notification to health and community facilities within a 1 km radius for metro payphones, 50km radius for rural payphones and 100km for remote payphones for any proposed payphone removal.**

Section 6(3) and 16(4) of the Public Consultation on the Location or Removal of Payphones Determination state that in making a final decision for payphone location and removal respectively 'a primary universal service provider must take into account all the submissions received regarding the proposal'. It is not clear what weight community concerns will be given in determining the final decision. A USP is faced with an inevitable conflict of interest in making a final decision, as they weigh up their own commercial needs with community concerns. In the interest of accountability, there needs to be a mandatory review of all payphone location and removal decisions by an independent body.

Recommendation

- **That a subsection is added to sections 6 and 16 of the Public Consultation on the Location or Removal of Payphones Determination requiring the ACMA to review all final decisions relating to location and removal of payphones within 20 working days of the final decision being announced by the USP. The ACMA should pay particular attention to how commercial and community concerns are balanced in a final decision.**

Commercial concerns have greater weighting in the process of considering payphone removal. In order for a payphone to be removed ACCAN believes two or more of the criteria listed should apply to 20(1)(b) of the Location of Payphones Determination.

Recommendation:

- **Section 20(1)(b) of the Location of Payphones Determination be amended to read 'two or more of the following criteria applies'.**

2.3 Improving complaints processes

5(3)(b) of the Payphone Complaints Rules Determination specifies that complaints can only be made in writing. We refer to the guiding principles outlined in the Australian Standard AS ISO 10002-2006 in Complaints Handling which includes the principle of accessibility. This means options for making complaints should include by telephone, in person or in writing.

Given the importance of payphones to rural and remote communities who can have lower-quality access to the internet to make online complaints, it is especially important for payphone users to have access to a complaints process by telephone.

Based on information from the Telstra website, it appears that consumers can currently make a complaint about payphones by phone.¹⁰ There is no reason to wind back this existing practice.

Recommendation

- **That complaints and submissions to any payphone removal or location consultation can be made in writing or by phone.**

3. Other matters

3.1 Appropriate languages

Section 8(5) of the Payphone Performance Standards Declaration requires that operating instructions must include three out of a list of four languages other than English; Mandarin, French, Spanish, and Japanese. These languages do not reflect those most spoken in Australia. Examining ABS data and taking into consideration the primary language of persons who are less likely to also have survival English, ACCAN recommends that the following four languages are used; Arabic, Mandarin, Vietnamese and Spanish.¹¹ If these languages are not used, the USP should use four languages that are found in the top ten languages spoken in Australia. If the Government takes seriously the need to support Culturally and Linguistically Diverse groups in Australia, the instruments should be altered to reflect the needs of the Australian community.

Recommendation:

- **Section 8(5) of the Payphone Performance Standards Declaration is amended so that operating instructions for payphones must include three of the following four languages; Arabic, Mandarin, Vietnamese and Spanish.**

3.2 Community phones

Community phones supplied by Telstra to Indigenous communities under funding arrangements with the Commonwealth are not covered by the consumer safeguard instruments but are the responsibility of the DBCDE which determines phone repair and other standards by individual contracts with providers (usually Telstra).¹² ACCAN has not seen these contracts so is unable to say if these phones are required to be repaired at an equivalent standard to other payphones. There is no transparency as to the standards and benchmarks applied to these phones; the guidelines available at the DBCDE website specify

¹⁰ See Telstra website, How to make a complaint: <http://telstra.com.au/abouttelstra/commitments/telstra-complaints-policy/index.htm> & Payphone Enquiries/Applications: <http://telstra.com.au/abouttelstra/commitments/payphone-services/enquiries/index.htm>

¹¹ See Australian Bureau of Statistics, (2006), *Top 15 languages spoken at home, Australia - 1996 Census - 2006 Census*, available at: <http://www.abs.gov.au/ausstats/abs@.nsf/7d12b0f6763c78caca257061001cc588/5a47791aa683b719ca257306000d536c!OpenDocument>

¹² Department of Broadband, Communications and the Digital Economy (2011), *Indigenous Communications Program: Community Phones Element Program Guidelines*, available at: http://www.dbcde.gov.au/_data/assets/pdf_file/0010/119557/ICP_Telephone_Guidelines_FINAL_28-01-2011.pdf

no time frame for fault repairs.¹³ Under the current arrangements there is no guarantee of equivalent service for these phones.

Recommendation

- **That community phones supplied by Telstra to Indigenous communities are guaranteed equivalent performance and repair standards as specified in the Instruments.**

3.3 TTY payphone location requirements

ACCAN is extremely concerned about the requirements for TTY payphone installation, particularly the way they differ from standard payphone installation. The Location of Payphones Determination states in 12(b) that a TTY payphone can only be placed in a requested location if:

- iv. the place or area is a place or area that is not at a high-risk of vandalism or misuse of a TTY payphone.

This is not a requirement for standard payphones. The description of 'high-risk of vandalism' is broad and ACCAN is concerned that it could lead to TTY phones not being located in areas with a perceived risk of vandalism, such as public housing areas or low-income communities.

This requirement is particularly unsuitable for TTY phones as people with a disability are more likely to live in low-income communities. The Productivity Commission's Inquiry into Disability Care and Support found that people with disabilities are among the most financially disadvantaged groups in Australia due to additional costs of living associated with their condition and general poor employment outcomes. Linked to this, the report found that people with a disability are much more likely to live in public housing than the general community.¹⁴

If the Instruments come into force with the different requirements for TTY and standard payphones, there is a risk of discriminating against people with a disability. Article 9 section 1 of the Convention on the Rights of People with a Disability, to which Australia is a signatory is relevant in this regard.¹⁵

Recommendation:

- **The requirement that TTY payphones be placed in areas not at high-risk of vandalism in section 12(b) of the Location of Payphones Determination is removed.**

¹³ Ibid

¹⁴ Productivity Commission (2011), *Disability care and support, Inquiry report*, pp114-117 available at: <http://www.pc.gov.au/projects/inquiry/disability-support/report>

¹⁵ Article 9.1 of the Convention on the Rights of People with a Disability states that "States Parties shall take appropriate measures to ensure to persons with disabilities access, on an equal basis with others... to information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public, both in urban and in rural areas." <http://www.un.org/disabilities/convention/conventionfull.shtml>