10th April 2013

Manager, Consumer Interests Section

Australian Communications and Media Authority

By email: consumer.interests@acma.gov.au

To the Manager, ACMA Consumer Interests Section

ACCAN thanks the ACMA for the opportunity to again comment on the Telecommunications (International Mobile Roaming) Industry Standard 2013 (the Standard).

The purpose of this Standard is to give consumers using roaming services information about costs when they need it most – when they are overseas. Telecommunications companies large and small should be prepared to actively provide information to consumers about the cost of their most expensive service. The requirement of sending an SMS with pricing information to consumers while they are travelling is not an onerous regulatory requirement; it is about fulfilling the consumer right to information. A consumer’s right to adequate, timely information[[1]](#footnote-1) is especially important for products, like global roaming services, where there is a high likelihood of financial detriment and bill shock. The communications industry has recognised the importance of information in the Telecommunications Consumer Protection (TCP) Code.[[2]](#footnote-2) Compared to the original draft of the Standard issued by the ACMA in December 2012 the current draft fails to meet the reasonable needs of consumers.

**All consumers should receive an SMS with cost information by 2014 – not the current date of 2016**

Under the current draft Standard, a large section of the market will not be receiving essential cost information in a reasonable time. The Standard requires that Mobile Network Operators (MNOs: Telstra, Optus and Vodafone) send an SMS to customers outlining the maximum charge information for roaming services in the country they are in by 23 August 2013.[[3]](#footnote-3) However, Mobile Virtual Network Operators (MVNOs: providers who resell Telstra, Optus or Vodafone services) will not be required to SMS cost information to roaming consumers until 23 May 2016.[[4]](#footnote-4)

Since ACCAN’s last submission to the ACMA, new statistics have been released indicating that significantly more consumers are using a mobile service from an MVNO. Roy Morgan Research found that as of December 2012 13.5% of mobile phone consumers received their service from an MVNO.[[5]](#footnote-5) This equates to approximately 3.9 million mobile services.[[6]](#footnote-6) This statistic is part of an overall trend where many consumers are moving their mobile service to a MVNO.

Research also demonstrated that consumers using MVNO services were more price sensitive, with 59.6% of respondents stating that they use an MNVO because of the cheaper rates offered (compared to 22.2% of MNO customers who chose their service because of cheaper rates).[[7]](#footnote-7) Cost information is important to all consumers but appears to be a particular concern for MVNO customers. With this information in mind, the ACMA should reduce the timeframe for MVNOs to send SMS messages with roaming cost information. ACCAN believes all consumers should receive this SMS by August 2013.

From discussions with ACMA staff, ACCAN understands that the 2016 date was chosen to accommodate the needs of smaller MNVOs who may only have tens of customers per year travel overseas and use roaming services. ACCAN maintains that cost information is an essential part of a service. If small providers are unable to issue cost information about their most expensive service in a timely manner, there is a question as to whether they should be offering these services in the first place.

The current standard does not give appropriate consideration to consumer detriment compared to industry detriment in setting the 2016 date. If consumers do not receive timely information about roaming costs, there is a great risk of financial detriment. Knowing that roaming services are expensive is not enough; consumers need accurate price information to compare all the options available to them. This consumer detriment needs to be weighed against the regulatory burden on MVNOs. If an earlier date of 2013 or 2014 was put in place, smaller MVNOs may not be able to offer roaming services and may lose tens or dozens of customers to other providers.[[8]](#footnote-8) Further evidence of industry detriment if a 2013 or 2014 date was in place, to ACCAN’s knowledge, has not been provided.

The need to reduce the timeframe for MVNO SMS services is also important because interim information requirement provisions for MVNO customers will not provide roaming information at the critical point of consumption (when consumers are overseas). Section 6(2) states that before 26 May 2016 MVNOs have to provide roaming information “prior to agreeing to provide an IMR service to a customer”. For most consumers, this will be at the point of sale, well before an overseas trip is planned. For other consumers, they will receive information once when first activating roaming services, possibly for one of many trips taken over a typical two-year mobile phone contract.

Finally, the failure to make sure all CSPs offer an SMS to roaming customers by August 2013 goes against the intention of the Standard and the public expectation that all travellers, regardless of which CSP they use, would be covered. On releasing the Direction to create the Standard, Minister Conroy stated that:

*“I am, therefore, directing the Australian Communications and Media Authority to put in place an industry standard for mobile roaming so that consumers know exactly how much they will be charged when they make a phone call, send a text message, or surf the internet, wherever they may be overseas.”[[9]](#footnote-9)*

Minister Conroy’s public statement gave the impression that all consumers would be covered by the standard. The Minister also indicated that the Standard would be in place within 12 months[[10]](#footnote-10) again, with the implication that it would be operational for all consumers in 12 months. The Direction allows for the Standard to commence at different times for “different locations or different services” but does not allow different classes of providers to have different implementation dates.[[11]](#footnote-11)

**Consumers must be able to opt-out of roaming services immediately**

Section 7(2) of the Standard requires that when a customer requests the deactivation of roaming services that CSPs deactivate roaming "as soon as practicable, and in any event within 24 hours." A 24 hour delay leaves significant scope for consumers to accumulate a high roaming bill, leading to bill shock and financial detriment. It is extremely easy for consumers to unknowingly use hundreds or thousands of dollars of roaming services in just a few hours.[[12]](#footnote-12)

Previous versions of the draft have required that when a customer asks a CSP to deactivate roaming services that it is done immediately.[[13]](#footnote-13) Because of the potential financial detriment to consumers, section 7(2) should be amended so that CSPs must act on deactivation requests immediately. If some concession needs to be made to allow smaller MVNOs slightly more time to enact requests, 7(2) should be amended so that MNOs must complete deactivation requests immediately and MVNOs should complete deactivation requests within an hour. MVNOs who are unable to complete deactivation requests immediately should notify consumers at the time of their deactivation request of the time it will take for deactivation to be complete and steps consumers can take to deactivate roaming features on their handset. Consumers should not incur any roaming charges after sending a deactivation request. Similar measures have been used to regulate other telecommunications services and this provides a strong incentive for providers to deactivate services as soon as possible.[[14]](#footnote-14)

**Definition of real-time defies common understanding of “time”**

Section 3 of the Standard defines a real-time estimate as usage or charging information that is up to 48 hours old. Getting beyond the absurdity of defining “real-time” as anything occurring within two days, this definition creates potential for service providers to claim that their mobile roaming services offer “real-time” notifications when, using a reasonable understanding of the term, this may not be the case. Such claims could be considered misleading or deceptive under Australian Consumer Law. This definition also goes well beyond the TCP Code which, although it allows a 48 hour time delay for usage notifications, does not define “real-time” as within 48 hours.[[15]](#footnote-15)

It should be noted that Section 8(2) of the Standard does not require CSPs to provide immediate notifications, as 8(2)(b) allows for situations where there is a delay in the CSP receiving usage information. The Standard must be amended so that “real-time” is defined only as information provided immediately or with a small, reasonable delay in the case of technical difficulties. A reasonable delay should be based on the size of the MVNO and the number of links between an MVNO and the original wholesaler. Any delay should not be more than 3 hours.

**Further clarification to definition of “significantly higher charges” required to prevent CSPs opting-out of warning messages**

Section 3 of the Standard defines significantly higher charges as “charges which are more than 10% greater than the charges that would apply for the equivalent service in Australia.”[[16]](#footnote-16) This definition is then used to allow CSPs to omit sending consumers a warning that “Significantly higher charges may apply” if they determine that no significantly higher charges will apply.

A roaming service actually offers multiple services with a variety of different charges, for example, for SMS in country, to other countries, for calls, for data, for voicemail access. This is already recognised in the Standard.[[17]](#footnote-17) It is unclear whether CSPs will be able to omit the warning message if only one service has no significantly higher charge within the total roaming service they offer. For example, if a service offers affordable SMS messages to Australia but charges significantly higher rates (greater than 10% of domestic rates) for calls and data while roaming the current draft Standard could allow the CSP to omit a warning message about significantly higher charges. The wording of 5(3) needs to be more specific to make the intention of the provision clear.

Section 5(3) also allows a CSP to determine if no significantly higher charge will apply. This drafting is less effective than an objective test that no significant higher charge will apply. Section 5(3) of the Standard should be amended so it reads: “The second sentence of the warning message required to be sent by paragraph (1)(a) or (2)(a) may be omitted if no significantly higher charge will apply to all services outlined in the definition of maximum charge information.

**Other changes required to increase consumer protection:**

1. Spend management tool requirements have been significantly reduced.[[18]](#footnote-18) The revised draft of the Standard has deleted the requirement for pre-paid spend management tools and restricts other spend management tools to products acquired on or after 1 March 2012. All consumers should be able to monitor spending, especially when using expensive roaming products. The Standard should include the spend management tools from the original draft.[[19]](#footnote-19)
2. Section 6(7) of the Standard gives MVNOs 24 hours to provide specific cost information when consumers request it. At the very least, 6(7) should be amended so that MVNOs must provide one method, for example online information, where customers can instantly receive accurate information about roaming costs.
3. The text that must be sent to consumers when they land in another country has been reworded with weaker language. The current draft warns consumers that “Significantly higher charges *may* apply” when it is extremely likely that higher charges will apply.[[20]](#footnote-20) With the inclusion of a provision to remove this warning (5(3) of the Standard), the warning message should accurately warn consumers that higher charges will apply.
4. Sections of the Standard use non-specific and undefined terms to describe CSP requirements that will make it difficult to accurately determine if a breach of the Standard has occurred. These sections are as follows:
	1. 6(6): Requires CSPs to take “All reasonable steps” to supply information “as is reasonably required”
	2. 8(3)(a) and 8(3)(b): CSPs must notify customers using their spend management tool “as soon as is reasonably practicable”
	3. 8(6): requires CSPs to take “all reasonable steps” to supply information “as is reasonably required”

These sections should be amended so measurable timeframes or benchmarks are included.

1. Section 8(7) requires that spend management tools must be “easily accessible.” This term should be clarified in the definition section so that easily accessible means both easy to find and accessible to people with disability.

ACCAN understands that the requirements of the Standard will result in some additional costs for CSPs. These costs must be considered alongside the significant revenue generated for CSPs by international roaming services.[[21]](#footnote-21) With roaming services, CSPs extend a line of credit without reasonable limit to their users, without any consideration of the impact of high bills on a consumer, a consumer’s preferred spending limit or their capacity to pay. Because of this, CSPs have a responsibility to provide information to their customers about risk as soon as possible. ACCAN hopes that the Standard is amended to reflect this responsibility that CSPs have towards their customers.

ACCAN considers the concerns outlined in this submission to be serious. We ask that a formal meeting takes place between ACCAN CEO Teresa Corbin and ACMA Chair Chris Chapman before the Standard progresses further. ACCAN will be in touch to arrange this meeting.

Kind regards,

Erin Turner

Policy and Campaigns Officer

CC: Chris Chapman, Chair, Australian Communications and Media Authority

1. See United Nations (2003) *UN Guidelines for Consumer Protection*, New York: articles 15, 22, 23. [↑](#footnote-ref-1)
2. Communications Alliance (2012), *C628:2012 Telecommunications Consumer Protections (TCP) Code*, General rules 3.2.1 “A Supplier must provide accurate, relevant and current information to Consumers in a timely manner.” [↑](#footnote-ref-2)
3. Current draft IMR Standard, s5(1)(b) [↑](#footnote-ref-3)
4. Current draft IMR Standard s6(1)(3) [↑](#footnote-ref-4)
5. Roy Morgan Research (2013), “Virtual mobile networks gain a million customers in 3 years”, last accessed 9 April 2013: <http://www.roymorgan.com/news/press-releases/2013/2037/> [↑](#footnote-ref-5)
6. Based on statistics sourced from ACMA (2012), *Communications Report 2011-12*, Ch1, p1. [↑](#footnote-ref-6)
7. Roy Morgan Research (2013), “Virtual mobile networks gain a million customers in 3 years”, last accessed 9 April 2013: <http://www.roymorgan.com/news/press-releases/2013/2037/> [↑](#footnote-ref-7)
8. Estimates based on ACCAN’s discussion with the ACMA. [↑](#footnote-ref-8)
9. See <http://www.minister.dbcde.gov.au/media/media_releases/2012/130> [↑](#footnote-ref-9)
10. Ibid. [↑](#footnote-ref-10)
11. Australian Communications and Media Authority (International Mobile Roaming Industry Standard) Direction (No.1) 2012, Cth, s5(4). [↑](#footnote-ref-11)
12. See case studies 3, 4, 6 and 8, TIO (2013), *Submission on the draft International Mobile Roaming Standard*. [↑](#footnote-ref-12)
13. See second revised draft (provided February 2013) of IMR Standard 7(3). [↑](#footnote-ref-13)
14. E.g. Mobile Premium Services see: Communications Alliance (2011) *C637:2011 Mobile Premium Services Code*, s 7(1)(2)(c). [↑](#footnote-ref-14)
15. Communications Alliance (2012), *C628:2012 Telecommunications Consumer Protections (TCP) Code,* relevant sections 6.5.2c (allows for a 48 hour delay for spend management notifications) and 6.5.4(a)(i) (gives 48 hours as an example of something which is near real time). [↑](#footnote-ref-15)
16. Current draft IMR Standard, s3. [↑](#footnote-ref-16)
17. See definition of maximum charge information, Current draft IMR Standard, S3 [↑](#footnote-ref-17)
18. Current draft IMR Standard s8(4) [↑](#footnote-ref-18)
19. Original draft IMR Standard (issued December 2012) s9(5) [↑](#footnote-ref-19)
20. Current draft IMR Standard s5(1)(a) [↑](#footnote-ref-20)
21. [http://www.itwire.com/your-it-news/mobility/57569-mobile-data-roaming-worth-$35-billion-by-2017](http://www.itwire.com/your-it-news/mobility/57569-mobile-data-roaming-worth-%2435-billion-by-2017) [↑](#footnote-ref-21)