



25 September, 2014

Assistant Manager
Department of Communications,
38 Sydney Ave, Forrest ACT

By email: telcolicensing@communications.gov.au

Dear Louise Taylor,

ACCAN would like to thank the Department of Communications for the consultation paper on the proposed changes to allow wider access to private network infrastructure.

1. What large private infrastructure networks exist?

Although we are aware of the existence of large private networks, ACCAN is not able to comment on where they have been deployed.

2. What benefits may accrue from facilitating greater infrastructure sharing along the lines proposed ?

Past consultation with our members especially those who reside in rural and remote areas of Australia have revealed much support for expansion of access to private communications networks.. These members are also keen to ensure non-metro consumers have reliable, affordable telecommunications products and services and they believe that access to private networks will enhance connectivity.

ACCAN would like it noted that it is however difficult to make a complete assessment of the situation regarding private network infrastructure without access to further information on the availability, capability and type of private networks already deployed. This ACCAN submission is made on the basis of the information we have available to us, we are however aware this may not present a full picture.

3. Is the proposed exemption a practical and useful approach ?

Within the scope of the limitations outlined above, there are some consumer concerns that may need to be taken into consideration with the proposed exemption. As long as these potential consumer concerns are taken into consideration then the use of an exemption could well be a useful approach.

4. If not are there alternatives to the exemption model outlined that should be considered ?

If other alternatives are raised in the consultation process we would be happy to provide further feedback from the consumer perspective about any potential implications from their implementation.

5. What risks may arise from the proposed exemption ?

As highlighted in the discussion paper, there is a possibility that connectivity or service issues could arise from the use of private networks for public services and this has the potential to cause problems for the telco service providers involved. ACCAN believes that the ramifications for consumers relying on these services should also be considered especially considering that there may be service difficulties as a result.

The government consultation paper on this matter specifically mentions that the infrastructure used in these arrangements will not be owned by a carrier. It also notes that terms and conditions of access and use would be purely on a commercial basis between the contracted parties and therefore outside the scope of the telecommunications specific processes under Part XIC of the *Competition and Consumer Act 2010*¹. ACCAN notes also the concern raised that private owners may operate and maintain their infrastructure on a different standard than that required by a carrier and this may lead to issues with service quality, reliability and long-term continuity². It was noted that residual private capacity may also be limited.

ACCAN is concerned that this may lead to a situation where customers of the participating carriers are not able to access accurate and up-to-date information about the quality of networks being used in their area. This may occur in two ways - firstly, at point of sale and secondly in case of a fault or service interruption after purchase.

In relation to point of sale section 4.1.3 of the Telecommunication Consumer Protections Code may offer some assurances for consumers in that they specify the provision of all relevant technical information be available online and upon request (this includes the availability to check roaming coverage and network quality)³. Similarly section 4.1.4 states that if the consumer identifies a specific usage need that would require a particular level of coverage, capacity or speed that it must be the supplier must indicate if they have an appropriate product for that need, provide information on that offer and allow the consumer reasonable information for them to assess the suitability of that offer⁴.

These provisions could minimise any detrimental impact on customer experience, however, it is far more likely that issues will occur during periods of outages or general reduction in service quality. As it is the responsibility of the private network owner to maintain and service their network, not that of the carrier, there is the potential for confusion surrounding the arrangements to correct or fix problems for customers experiencing network issues. For example, a customer calling about network

¹ <http://www.zdnet.com/t-mobiles-uncarrier-7-rewrites-the-rules-on-cellular-data-including-in-flight-coverage-7000033543/>

² <http://www.zdnet.com/t-mobiles-uncarrier-7-rewrites-the-rules-on-cellular-data-including-in-flight-coverage-7000033543/>

³ http://www.commsalliance.com.au/__data/assets/pdf_file/0017/33128/TCP-C628_2012_May2012-Corrected-July12.pdf

⁴ http://www.commsalliance.com.au/__data/assets/pdf_file/0017/33128/TCP-C628_2012_May2012-Corrected-July12.pdf

reductions such as reduced speed or outages, may be informed there are issues on a private network that they are connecting on, but that the carrier has no indication of what the issues are or when they might be rectified. This is particularly an issue for customers of smaller carriers who have waived their rights under the Customer Service Guarantee. It is also more of a concern if any of these customers have nominated for priority assistance.

In light of this it is important to examine whether specific disclosure of the use of these networks and the possible service issues that could arise might add some transparency to this process.

6. Would inclusion of open access condition mitigate risk for carriers ?

Currently there is no indication of limitations within the context of the paper. As it stands these exceptions appear to apply to the whole country not just areas without fixed line access. In light of this ACCAN would like to submit a question to the Department as to whether widening these exceptions may lead to major carriers cherry picking areas slated for NBN roll-out and how this might effect companion on this basis.

7. Should the proposed exemption be limited, for example by inclusion of a competition test or geographic limitation?

There is not enough information available in the proposal to judge if there will be competition issues as yet. However ACCAN would like to get further clarification in the following areas.

The proposal raises some questions in regards to the Nominated Carrier Declaration (NCD). The NCD process is precautionary, in that it currently gives ACMA the power to reject an application under s82 if it believes that the accessing carrier would not be in a position to comply with the operational obligations. ACCAN is unsure if the ACMA has used this power in the past (it has been in place since 1997) and if so what the circumstances were. We would welcome further clarification on this issue. Similarly the NCD process also restricts the nomination to a single carrier (s81). There may be circumstances where a private network owner wishes to provide access to its network carriage units (i.e. communications links) by multiple carriers, where at present this can only happen if the private network owner (apart from the special exemptions like defence, transport and electricity suppliers) is itself a carrier.

Conclusion

ACCAN would like to reiterate our support in general for this proposal and the measures it contains to attempt to provide a streamlined process to facilitate coverage and service expansion in rural and remote areas. If a more comprehensive record of existing private networks was provided we would be in a much better position to make suggestions on the impact that this proposal may have on increasing service access across Australia. As this is one of the goals of this paper ACCAN is happy to support the proposal in a general context and encourages the department to consider the possible impact of some of the points made above when more information is available.

Penney Wood
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