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Dear Christiane

Telecommunications Consumer Protection Code Consultation

Internode would like to thank Communications Alliance Ltd for the opportunity to comment on the proposed new Telecommunications Consumer Protection Code (**Draft Code**).

Internode is Australia's largest privately owned ISP, providing quality broadband and telephony services to over 200,000 residential and business customers throughout Australia.

As a participant in the code redrafting process, Internode appreciates the significant efforts of the Steering Group and Working Committees in negotiating and preparing the Draft Code.

Whilst Internode is broadly supportive of the vast majority of changes to the Draft Code, it considers that a number of important matters warrant further attention or reconsideration before the Draft Code is submitted to the ACMA for registration.

This submission discusses the most significant issues identified by Internode in its review of the Draft Code. Various less significant drafting and practical issues identified during Internode's review have been omitted, however Internode would be willing to discuss these items informally with the Communications Alliance and the drafting committees.

1. General Comments

Internode considers that the following elements of the Agreement require further consideration:

a. Powers of Communications Compliance

Internode generally supports the formation of the new code compliance body "Communications Compliance" (**CC**), provided that this body is appropriately governed and does not have excessive powers.

At this point in time it is not possible to assess the extent of the CCs powers, as its constitution and operating plan have not yet been made available for comment (and in any event such documents would be subject to change from time to time).

Internode is also concerned about the extent of the CC's powers to order targeted investigations using external consultants at the expense of the supplier. Such power should be subject to reasonable limitations

Internode considers that:

- *the Draft Code should expressly state that both of these new documents (including subsequent amendments) will be developed in consultation with industry participants and other stakeholders in the Code; and*

- *the drafting of clause 9.7 and 9.7.1(a) is likely to be too broad, and the requirement to comply with directions of the CC should be appropriately limited. This would be improved by deleting references to the operating plan in both paragraphs and replacing the words “assist the CC to perform” “co-operate with the CC as it performs” in the first paragraph.*
- *the drafting of clause B.1.6 of appendix 2 should clarify that:*
 - *suppliers will be afforded an opportunity to respond to and remedy alleged issues before costly targeted investigations begin;*
 - *any proposal of a targeted investigation must be based on reasonable grounds and must relate to material non-compliance with the code;*
 - *the use of external consultants should only occur as a last resort; and*
 - *a Supplier will not be in breach of the code if it rejects a proposed investigation (noting that the CC will retain the right to refer the matter to the ACMA); and*
- *the Code should provide a process to resolve disputes between suppliers and CC.*

b. Roles of the CC, TIO and the ACMA

Internode is concerned about the potential overlap of powers between CC, the TIO and the ACMA. Under clause 1.6 of the Draft Code, there is a conferral of powers to the TIO in relation to investigating, determining and giving directions in relation to complaints by end users, including code compliance matters. Similar powers are given to CC in part 9 of the Code and Appendix 2.

It is crucial that enforcement actions relating to the Draft Code are applied in a fair and consistent manner. Internode considers that the overlap of powers leaves significant potential for inconsistencies in the approach to enforcement measures, as well as unnecessary inefficiency in dealing with multiple organisations in relation to the same subject matter.

Internode considers that Communications Compliance (with appropriate governing structures and powers), would be the most appropriate organisation to undertake investigations and enforcement in relation to code compliance matter. This would allow the TIO to maintain its intended role as independent dispute resolution service for individual disputes, rather than functioning as a regulator or a code compliance enforcement body. For this reason, Internode proposes that clause 1.6 of the code is amended to clarify:

- *that the TIO’s role is to deal with individual complaints from consumers. Internode suggests that the words “including compliance with the Code by those industry participants to whom the Code applies” are deleted from clause 1.6;*
- *the TIO’s powers to investigate, make determinations, and give directions to participants must relate only to individual complaints; and*
- *systemic non-compliance issues are matters that must be referred to Communications Compliance to investigate in the first instance.*

Internode also notes the importance of the proposed memoranda of understanding between the ACMA and the CC in the context of dealing with the potential overlap of functions relation to Code compliance matters. Internode may comment on that relationship in detail during any consultation processes in relation to those Memoranda.

c. Duplication of Existing Legal Requirements

Internode has some concerns in relation to the numerous obligations in the Draft Code that duplicate existing legal requirements.

Some examples of duplication appear in the following clauses:

- Clause 4.2 – many of these obligations repeat existing statutory requirements or requirements of regulators; and
- Clauses 4.3.4, 4.3.5 and 4.3.7 – these clauses repeat basic principles of contract law and/or existing statutory obligations.

Although the Draft Code clarifies that it does not take priority over statute or requirements of regulators, Internode remains concerned about:

- the potential for confusion where inconsistencies arise between statutory, common law or other regulatory directions/obligations and those similar obligations as stated in the Draft Code; and
- the potential for divergence in the future, if legislation or regulator requirements change and the Code is not immediately updated to reflect such change;

Furthermore, the unnecessary addition of such material to the Draft Code may also take some focus away from important new obligations.

Internode considers that the compliance with law requirement in clause 3.4.1 is sufficient, without the need to repeat or summarise existing legal requirements throughout the Draft Code.

d. Obligations vs aspirational statements

Internode considers that the Code should clarify the enforceability of:

- the higher level “outcome” statement at the beginning of each section; and
- the detailed obligations that follow such statement.

Internode considers that The Draft Code should clarify that a supplier will be compliant if the supplier:

- *achieves the relevant outcome, even if some of the specific actions were not taken; AND/OR*
- *take all specific actions listed underneath the outcome statement (ie the suppliers will be deemed to have achieved the outcome).*

e. Dispute resolution matters

Internode has some concerns about provisions in Chapter 8 which require suppliers to prematurely suggest external dispute resolution options such as the TIO processes (eg clause 8.2.1(a)(ix) and 8.2.1(c)(ii)). In Internode’s view, the premature referral of an end user complaint to a third party is likely to result in a less efficient management of the issue. A

supplier's own complaint handling processes must be allowed reasonable timeframe to resolve any issues before referrals take place.

Internode notes that Otelo, the office of the UK Telecommunications Ombudsman, requires that unless a supplier agrees that the dispute cannot be resolved, the consumer must wait for eight weeks before applying to Otelo.

Internode submits that the TIO should not be referred to or mentioned to customers before a supplier has had a reasonable timeframe to resolve the complaint. This will reduce the large number of minor complaints unnecessarily being referred to the TIO and improve the efficiency of complaint handling across the industry.

f. Volumetric Comparative Data and Unit Pricing

Internode has significant concerns in relation to the proposal to include volumetric comparative data in advertisements such in the form of:

- number of calls of a certain length (eg 2 minutes)
- number of sms messages; and
- any estimated usage of data for any telephone or Internet plan (which is of particular relevance to Internode).

There is significant potential for such figures to be misleading. Any estimated usage is highly unlikely to reflect what a consumer will actually experience in relation to a plan/product. Providers may also choose to adjust flagfalls, call and data charging rates specifically to achieve more attractive figures for these advertising requirements, but with little or no additional value for the customer.

Internode considers that volumetric comparative data and unit pricing provisions should be deleted from the Draft Code.

g. Consultation on Documents to be developed

A number of key documents are yet to be released (such as the operating plan and constitution of Communications Compliance (CC), and the various Memoranda of Understanding with other organisations such as the TIO). The release of such documents is likely to add to the list of high level issues that should be the subject of further discussions with the industry.

2. Comments on specific draft code provisions

a. Plain Language Requirements

Draft Code Reference: 3.1.1, 4.1.1.1(a) and 4.1.2(d)(i)

Requirements for suppliers to use simple plain language are vague and not measurable. In some circumstances the requirement of this clause may be unreasonable and inappropriate for example, where it is necessary to use technical terms to explain technical aspects of a service or a fault in a service to an inquiring customer. Internode considers that all obligations should be clear, concise and measurable in order to give suppliers and consumers certainty.

Internode recommends that the requirement for plain language throughout the draft code is replace with an obligation to explain technical or legal terms as appropriate.

b. Applicability of Guideline:

Draft Code Reference: 3.3.2

The obligation created by this clause is not clear. The clause requires suppliers to 'have regard' to ACIF G586:2006 Disability Matters: Access to Communications Technologies for People with Disabilities and Older Australians Industry Guideline when providing information to consumers with disabilities. Are suppliers required to comply with this guideline?

Internode considers that this clause should be amended so the obligation on suppliers is clear.

c. Disclosure of Principal Carrier

Draft Code Reference: 4.1.3.1(j)

This clause requires suppliers who are acting as resellers to disclose the name of the principal carrier whose network is being used to provide the service. This is problematic for two reasons:

- the wholesale supply contract the supplier has with the principal carrier may prohibit the supplier from disclosing the identity of the principal carrier to the supplier's customers; and
- in some circumstances there are multiple carriers involved.

Internode considers that it is likely that this obligation was introduced to deal with mobile phone coverage disclosure issues. Internode therefore suggests that this obligation is limited to mobile telephone and mobile data services.

d. Billing Enquiries from Mobile Telephones

Draft Code Reference: 5.2.8

This clause requires suppliers to provide telephone access for billing enquiries at untimed call rates for mobile telephones.

This requirement is not feasible and should be removed from the code. Proposed reforms may make this feasible in future, at which time the code may be amended.

e. Billing Processes for Disabled Persons

Draft Code Reference: 5.3.4

This clause requires suppliers to ensure billing processes meet the needs of people with a disability. Whilst Internode encourages improving access to services for disabled persons, the obligation created by this clause is unclear and potentially very wide.

This clause also references the Information on Accessibility Features for Telephone Equipment Industry Code (C625:2009) and accompanying Guideline (G627:2011) however Internode considers that these are not relevant to billing.

Internode recommends that:

- *the referenced documents are deleted as they are not relevant; and*
- *this clause is amended so the obligation on suppliers to meet the needs of disabled customers is subject to a reasonableness requirement to deal with cases where certain methods of facilitating access for disabled persons would cause unreasonable hardship.*

f. Credit Assessment Requirements

Draft Code Reference: 6.2.1(a)

This clause may oblige suppliers to undertake external credit assessments of its potential customers via a third party such as Veda Advantage. Internode's view is that third party external credit assessments of potential customers should be voluntary.

Internode considers that this clause should be amended to clarify that there is no obligation on suppliers to undertake third party external credit assessments of its potential customers.

g. Limitations on Suspension or Termination of Services

Draft Code Reference: 6.8

The clause appears to have been drafted predominately from a credit management perspective It requires suppliers to give customers adequate notice regarding a decision by the supplier to restrict, suspend or disconnect their service, and sets out the allowable circumstances for disconnecting, suspending or restricting a service without first informing the customer. It follows that this clause should only relate to and be limited to actions taken as part of credit and debt management, as the clause has not considered other legitimate reasons for immediate suspension or termination of a customer's service, such as:

- requests by law enforcement, regulatory or other authorities;
- in instances where there is the a material risk of harm to the supplier or other persons;
- to protect the suppliers network in circumstances where the customer's service or use of the service poses a material risk to the supplier;
- in circumstances where the supplier reasonably suspects that the customer has materially breached the supplier's acceptable use policy; and
- in circumstances where the supplier reasonably suspects that the service has been or is being used for criminal activity.

Internode recommends the following changes to this clause:

6.8 Suppliers must ensure Customers are given adequate notice regarding a decision by the Supplier to Restrict, Suspend or disconnect their Telecommunications Service for credit and/or debt management reasons.

6.8.1(a) Pre-conditions for disconnection, suspension or restriction for credit and/or debt management reasons: only disconnect, Suspend or Restrict a Telecommunications Service for credit and/or debt management reasons, without first informing the Customer, if:

h. Financial Hardship

Draft Code Reference: 6.15(a)(ii)

This clause may contain a typographical error. The word "and" at the end of the clause requires the supplier to satisfy (i), (ii) and (iii) before resuming credit management action. This is unreasonable in our view because paragraph (iii) requires that the customer agree that the financial hardship arrangement is unable to be completed. Some customers will never agree to this and the supplier must have the right to resume credit management action in reasonable circumstances.

Internode recommends that the word "and" be changed to "or" so that the supplier may resume credit management action if any of (i), (ii) or (iii) occur.

i. Transfers

Draft Code References: 7.11(1)(a)(vii) and 7.2

Clause 7.11(1)(a)(vii) potentially devalues a supplier's business by reducing its ability to effectively transfer its customer base with the sale of their other business assets. Furthermore, it is not clear whether the customer's right of termination contained in the clause is without penalty to the customer. Would normal contract break fees, early termination fees or customer equipment payout fees (e.g. for mobile phone handsets or other equipment purchased over the life of the customer's contract) be payable upon the customer's election to terminate?

Internode suggests that clause 7.11(1)(a)(vii) either be deleted in full or amended so that it is clear that if the customer elects to terminate under the clause any applicable contract break fees, early termination fees or customer equipment payout fees would apply to the customer.

Internode considers that transfer consent requirements in clause 7.2 should be revisited with a view to ensuring that the consent requirements in clause 7.1 of the LNP Code are consistent (ideally these related requirements would not appear in two separate documents).

j. Complaints handling process

Draft Code Reference: 8.1.1(a)(vii)H and 8.1.1(b)(vii)

This clause requires suppliers to implement and maintain a complaint handling process that is accessible including recognising and servicing the needs of consumers with disabilities, consumers suffering hardship and consumers from non-English speaking backgrounds.

Internode supports moves by the industry to accommodate the above categories of consumer where this does not cause unjustifiable expense or hardship to suppliers. The obligation created by the clause is unclear and potentially very wide. For example, Internode considers that a supplier should not be required to translate documents for all non-English speaking customers, unless those persons are a target market of the supplier.

Internode suggests that the words "and servicing" be deleted from clause 8.1.1(a)(vii)H and adding a "where reasonable" qualification. For example, where a supplier is aware that a significant percentage of its customers have a particular kind of disability or where a supplier markets a particular product to a particular group of non-English speaking people then it is reasonable for that supplier to document its complaint handling process in an appropriate format for those groups.

Internode would welcome any discussion with Communications Alliance or the drafting committees to clarify any of the matters discussed in this document. Internode looks forward to further dialog and participation with Communications Alliance in relation to the development of the Draft Code.

Yours faithfully
Internode Pty Ltd



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