

COMMUNICATIONS
ALLIANCE LTD



CONVERGENCE REVIEW INTERIM REPORT

COMMUNICATIONS ALLIANCE SUBMISSION
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INTRODUCTION

Communications Alliance welcomes the opportunity to provide this submission in response to the Convergence Review Interim Report recommendations.

Communications Alliance recognises the importance and complexity of the tasks being undertaken by the Convergence Review process and has been active throughout the process, having submitted to date:

1. comment on the Draft Terms of Reference in February 2011;
2. a study on **Regulation in the Digital Economy** (commissioned through the Institute for a Broadband Enabled Society (IBES) in May 2011;
3. comment on the Framing Paper in June 2011
4. a study on the **Future of the Universal Service Obligation** (with IBES) in August 2011; and
5. comment on the Detailed Discussion Papers and a study on **Content Regulation in the Digital Economy** (with IBES) in November 2011.

Communications Alliance has been appreciative of the highly consultative methodology that the Review Panel has maintained throughout its work, and the many opportunities for stakeholders to contribute to the debate and deliberations on how best to construct a robust regulatory framework for the convergent environment.

About Communications Alliance

Communications Alliance is the primary telecommunications industry body in Australia. Its membership is drawn from a wide cross-section of the communications industry, including carriers, carriage and internet service providers, content providers, search engines, equipment vendors, IT companies, consultants and business groups.

Its vision is to provide a unified voice for the telecommunications industry and to lead it into the next generation of converging networks, technologies and services. The prime mission of Communications Alliance is to promote the growth of the Australian communications industry and the protection of consumer interests by fostering the highest standards of business ethics and behaviour through industry self-governance. For more details about Communications Alliance, see www.commsalliance.com.au.

EXECUTIVE SUMMARY

Communications Alliance applauds the efforts of the Convergence Review Panel to distil into a succinct package of recommendations the results of many months of detailed effort, and acknowledges that these issues are complex and dynamic.

Communications Alliance has mixed feeling about the recommendations contained in the Interim Report.

We see strong merit in some elements of the recommendations but are concerned that some of the proposals presented – albeit outlined only at a high level at this stage – may prove difficult to successfully implement and/or might not generate optimal outcomes.

Elements of the recommendation that Communications Alliance supports strongly include:

- the proposed move to a market-based approach to spectrum allocation; and
- recommendations around the removal of specific regulations (although as detailed later in this paper, we believe the prospective list at Appendix 1 needs to be expanded to also focus on redundant regulation in the telecommunications sector).

One element of the recommendations that causes significant concern for Communications Alliance is the proposal to expand Australian content requirements to cover new digital platforms. Communications Alliance believes that this recommendation has the potential to undermine the growth of the Australian digital economy, place Australian online content businesses at an international disadvantage and potentially deter the supply of some sources of content to Australian consumers.

In addition, Communications Alliance views with some wariness the proposal to create a new 'super regulator' for the digital economy (although admittedly some of this concern flows from the fact that the detail of this proposal is understandably not fully developed at this point). The breadth of the rule-making powers and other authority that may be vested in this new regulator will warrant close investigation, and seems potentially inconsistent with the Convergence Review's Guiding Principle 1; that where regulation is required, it should be the minimum needed to achieve a clear public purpose.

1. A New Regulator for the Digital Economy

Communications Alliance understands the underlying rationale for recommending the creation of a new independent regulator for content and communications.

In the absence of a fully developed proposal, however, we must reserve judgement on whether a new regulator is needed and would likely be effective.

Although the Interim Report is not explicit on this point, it is assumed that the Australian Communications & Media Authority (ACMA) would be replaced by the new regulator. Noting, however, the similarities between the role of the proposed new regulator, and the ACMA's existing charter, there is a question as to whether reform of some elements of the ACMA's operations and responsibilities is not a more sensible and manageable option.

The recommendation also raises questions about, for example, the relationship between the new regulator and the Telecommunications Industry Ombudsman (TIO), the Australian Competition and Consumer Commission (ACCC) and Australian Press Council (depending on the eventual breadth of the definition of a Content Service Enterprise).

Given the Convergence Review's stated aim of reducing regulation, the breadth of rule-making powers and other authority that might be vested in a new regulator is an area that will warrant close investigation. Communications Alliance submits that the Committee's final report should provide more detailed analysis of the perceived need for the additional powers contemplated by the Interim Report, including an analysis of the clear public purpose sought to be achieved by the additional regulation (Guiding Principle 1).

We look forward to the more detailed material flagged to be included in the Convergence Review Final Report, and to a robust discussion on these topics.

2. Proposed Expansion of Australian Content Requirements

Communications Alliance supports the contention that there is cultural benefit in the consumption of Australian content,

The Interim Report's proposal to capture new, non-traditional generators of digital content under the banner of Content Service Enterprises (CSEs) and to make them subject to obligations in relation to Australian content raises serious concerns on many levels:

- The proposal fails to recognise the critical differences between online content providers who can exercise control over the content that is made available online, and online content platforms/hosts, who have no knowledge of the content uploaded by others to their services until it is drawn to their attention. This distinction has been recognised in the European Union's Audio-Visual Media Services Directive, and we encourage the Committee to amend its proposal to recognise this distinction in the Australian context.
- The proposals may put Australian content businesses at a significant disadvantage in comparison to their international competitors
- Although the Panel's Committee's statements that small players and providers of user generated content are not designed to be caught by the proposals, the distinction between 'large' and 'small' players in the Interim Report is concerning as it may discourage start-ups from growing too big, or deter innovative content businesses from originating in Australia
- The proposal may put Australia at risk of missing the full benefit of the growth of the digital economy. The uncertainty generated by lack of clarity about which businesses are 'in' and 'out' of the proposed regulatory regime could in our view severely hamper the growth of the digital economy.

There is a risk also that attempts to impose Australian content requirements on international content suppliers might deter the supply of some sources of content to Australian consumers.

We recognise that the parameters and threshold criteria as to which entities would qualify as CSEs are not yet developed, and believe it is imperative, should the proposal progress, that these be subject to further evidence-based analysis and wide consultation. It may be difficult to determine where to 'draw the line' in an environment of disintegrating boundaries. Australia's newspaper and magazine-based companies, for example are becoming major generators of digital content – will they be CSEs, and if so, what are the 'freedom of the press' implications?

In addition, the distinction between 'large' and 'small' players does not take into account of the critical distinction between those players who have knowledge and of the content that is made available online and those who merely host content that is made available online by others.

Communications Alliance's principal concern is the risk that the broadened reach of Australian content obligations would impose old-style requirements on emerging digital platforms, would stifle the growth of innovative new content sources, and would place Australian content entrepreneurs at a global competitive disadvantage. This would be a result that is entirely inconsistent with the Government's broader policy goals as set out in the National Digital Economy Strategy.

The beauty of the digital economy is the explosion of new content types and sources it engenders. We believe that converged regulatory framework should celebrate and support that growth. We submit that much more detailed evidence and analysis is required about any specific concerns the Committee may have about the availability of Australian content online before the case has been made out for this proposal.

As outlined in more detail in our November 2011 submission to the Convergence Review, Communications Alliance believes that the "Subsidy Only" option outlined in the Convergence Review's detailed discussion paper on Australia content, warrants further examination.

3. Proposed Market-Based Approach to Spectrum Allocation

Communications Alliance applauds the Interim Report recommendation that Australia move to a common and consistent approach to the allocation and management of both broadcasting and non-broadcasting spectrum.

In particular, the move to a market-based pricing approach for the use of spectrum – and which provides greater transparency around the allocation of spectrum for public policy reasons - will generate a far more economically rational spectrum regime.

Communications Alliance expects the explosive growth in mobile data demand and usage will continue. The Federal Government's decision to allocate additional spectrum in the 700MHz and 2.5GHz bands to address this demand and underpin the roll-out of next-generation mobile services is therefore sensible and warmly welcomed.

Nonetheless, we believe that demand for mobile broadband spectrum will outstrip current estimates and that vigorous efforts will be needed to clear additional spectrum for this purpose in coming years.

Such efforts will necessarily involve hard decisions about how to access additional spectrum – decisions that will require a close examination of the current spectrum allocations for purposes including broadcasting and defence.

The Convergence Review recommendation is a solid start toward equipping Australia's spectrum managers to more effectively and transparently cope with these challenges.

As outlined in earlier Communications Alliance submissions, we should also not overlook the potential for the National Broadband Network (NBN) to free up spectrum capacity through off-loading wireless traffic onto fibre-backhaul paths. This potential will grow as the NBN rollout gathers pace, and should be factored into forward-thinking on spectrum issues.

We encourage the Committee to continue to consider how spectrum policy can promote innovation in the use of spectrum for new devices and purposes (for example, enabling the appropriate use of spectrum sensing technologies).

4. Redundant Regulation

Communications Alliance has applauded the stance of the Review Panel that - as stated in the Foreword of the Interim Report - its "starting point" is to encourage innovation and remove unnecessary regulation.

Appendix 1 of the Interim Report provides a list of regulation that would be removed as a consequence of the report's recommendations being implemented and notes that the Convergence Review Final Report is expected to include additional proposals for removing regulation.

The regulatory candidates in Appendix 1 are all broadcasting-related regulation.

Communications Alliance believes it is important that telecommunications regulation - both newly created and legacy - also be examined and considered for removal if it imposes ongoing burdens on the telecommunications sector without generating equivalent benefits. In some cases such regulation will make it more difficult for telecommunications players to maintain the agility and innovation-focus that will be necessary to fully reap the benefits of convergence and the growth of the digital economy.

Many examples of redundant regulations in the telecommunications arena have their origins in a PSTN-dominated, monopolistic environment of 20 or 30 years ago.

The emergence of a mature and highly competitive telecommunications sector, coupled with the advent of the National Broadband Network (NBN) as a universal non-discriminatory access provider, means that the environment changes fundamentally, and some of the existing regulation becomes less relevant, less effective or anachronistic.

Following are some examples of existing regulation that is approaching its use-by date, or might already have slid beyond that point. Communications Alliance would be pleased to supply more detailed information to the Convergence Review Panel on these and other relevant pieces of regulation.

Untimed Local Calls

Many customer service plans today treat local telephone calls as a piece of 'included value' in a product bundle. Many plans include local calls as a 'free' component. Increasing use of Voice over IP (VoIP) services dispenses with the concept of a local call altogether. These trends - combined with ongoing fixed-to-mobile substitution - will continue until, soon, telephony is just another application on the information super highway.

The ongoing requirement for untimed local calls dates back to political factors stemming from the Federal by-election in the seat of Adelaide in February 1988. Twenty four years later, untimed local calls are still a mandatory feature of the Australian telecommunications landscape – long after technologies, products, customer usage and preferences have moved on.

Standard Telephone Service

The Australian regulatory regime continues to be based around regulating a “standard telephone service”. In many instances it assumes a one-to-one relationship between infrastructure and service delivery. This is a thing of the past. A new nexus needs to be identified.

Pre-selection

Pre-selection dates back to the introduction of fixed-service competition in the early 1990’s. It allows customers with a standard telephone service to choose a different service provider to supply their national long-distance calls, international calls and calls to mobile numbers. It was designed to overcome the bottleneck control of Telstra over local access and to give a ‘leg-up’ to new entrants.

In future, NBN Co will be responsible for providing network access on a non-discriminatory basis, thus removing at a stroke the main rationale for pre-selection. Furthermore, consumers connected to the NBN will have the luxury of multiple ethernet ports on their network termination device (NTD) in-home to connect to numerous service providers if they so choose. In these circumstances it seems pointless and inefficient to mandate continued pre-selection.

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