19 December 2013

The Hon Malcolm Turnbull MP
Minister for Communications
Parliament House
CANBERRA ACT 2600

Dear Minister,

Deregulation: Initiatives in the Communications Sector

Thank you for the opportunity to provide comments and suggestions to the Australian Government's deregulation agenda for the communications sector.

Optus welcomes this work and we see a real opportunity to make both short and medium term changes. Such changes will reduce compliance costs, improve outcomes for consumers and reduce regulatory drag on achieving competition objectives critical to the productivity of Australia's economy.

We may be at a point in time that provides a unique opportunity for regulatory reform in the communications sector. A number of factors exist that provide good conditions and incentives to reset the regulatory settings in Australia. These include the global phenomena of convergence, the emergence of 'over-the-top' players creating and serving new markets, the stimuli of the major investment in Australia in mobile networks and the national broadband network. It is no longer adequate to rely on a framework from last century that has at its core an implicit assumption that a fixed line voice service is the basic unit of communications that must be regulated, protected and fostered.

It is timely to return to first principles and look for opportunities to revert as far as practical to 'outcomes-based' approaches to regulation and general consumer law, with communications specific regulation only applied or retained where there is demonstrable market failure and self-regulatory approaches are not able to address the underlying concerns.

The Parliament's policy intention, as enshrined in the *Telecommunications Act 1997*, remains germane; that telecommunications be regulated in a manner that promotes the greatest practicable use of industry self-regulation and does not impose undue financial and administrative burdens on participants in the industry.

In the short term, we see benefits can be achieved in the following areas:

1. Amend or repeal six out-dated ACCC and ACMA telecommunications specific compliance and monitoring reporting obligations;
2. Direct the ACMA to cooperate with industry to review customer information in registered codes and immediately:

a. repeal part 480A of the *Telecommunications Act 1997* to provide summaries of Standard Forms of Agreements (SFOAs) to customers on the basis that the *Telecommunications Consumer Protection Code* (TCP) requires customers be provided with Critical Information Summaries (CIS); and

b. remove unnecessary and costly requirements that stem from the *Premium Services Determination 2004 (No.1)* to provide regular communications to customers on how to bar or set spend limits on premium mobile services to reflect market change and significant reduction in TIO complaints.

3. Remove requirements that duplicate reporting obligations of compliance with captioning targets by subscription television licensees who are resale customers of wholesale provider of these services.
4. Repeal, amend and clarify definitions in a range of mobile deployment regulation to improve efficiency, reduce costs and complexity of mobile network deployment.
5. Remove unnecessary, costly and complex duplication and overlap between *Part 13 of the Telecommunications Act 1997,* the Privacy Act 1988, the *Telecommunications (Interception and Access) Act 1979* and review industry codes that reference these obligations.
6. Repeal the *Customer Service Guarantee Direction No. 1 1999* and related instruments, including record keeping rules and benchmarks that drive significant compliance cost but don't deliver improved service connection times or standards for consumers.
7. Repeal the untimed local call requirements under Part 4 of the *Consumer Protection and Service Standards) Act 1999* Act as market developments mean the provisions no longer serve any meaningful purpose as a protection against consumer detriment.
8. Repeal obligations in *International Mobile Roaming Standard 2013* that commence in September 2014 and May 2016 on the basis that the first round of obligations has achieved the policy intent.
9. Request the ACMA repeal the Spam Code.

There are also a number of major areas that require more complex consideration that we recommend as priorities for the medium term:

1. **Consumer protection**, **customer information and marketing arrangements**: many layers of regulation have built up over time, or are included in legislation designed for the 'fixed line voice' paradigm. There is substantial opportunity for a re-design, removal or simplification of protections that are targeted at current supply and demand arrangements. This includes matters such as preselection, price caps and price controls and directory assistance obligations.
2. **Regulation to protect the potential for competitive market outcomes**: there is substantial scope to refine, reduce and re-target pro-competition regulation towards dominant carrier protections.
3. **Regulatory framework and institutional structures**: There is significant scope to clarify the lines of responsibility between the various regulatory agencies (e.g. ACCC, ACMA, Office of the Privacy Commissioner, TUSMA) and the legislation they administer, with a view to more effective administration with less overlap or duplication.

4. **Spectrum**: the legislation and practical arrangements for the planning and allocation of spectrum are unnecessarily complex, costly for business to engage with and time consuming. Substantial efficiency gains should be achievable and there is scope for Government policy guidance to enhance administrative outcomes.
5. **Charges, taxes, levies and licence fees**: The incidence, variety, scale and scope of the many Government imposts on the communications industry should be reviewed for efficiency and effectiveness. There will be opportunities to remedy distortionary impacts or reduce the aggregate burden.

We have also contributed to the work in Communications Alliance to develop an industry supported view on the opportunities for reform. Indeed, some of the reform opportunities appear in the existing Industry Code structures and we will participate in planned activity in that arena. While it will be an on-going challenge to provide industry-wide perspectives on the size of the cost savings and reduction in administrative burden that can be achieved, we will also support that work.

We also support the reform proposals specific to the mobile sector developed by the Australian Mobile Telecommunications Association.

Driving a reform agenda will require persistence and conviction, and we stand ready to support your work. It is critical that the momentum that has been created is sustained.

Optus would be happy to discuss these views in more detail with you or officials if that would assist.

Yours sincerely

David Epstein
Vice President, Corporate and Regulatory Affairs

ATTACHMENT ONE

PROPOSALS FOR SHORT-TERM DEREGUALTION REFORM: REDTAPE

1. REPORTING OBLIGATIONS – ACCC AND ACMA

Proposal

Repeal or reform six ACCC and ACMA reporting obligations on the basis that data requested:

- can be obtained from an alternate source;
- is out dated, has limited utility for the regulator and drives high compliance costs for industry;
- needs to be more accurately targeted; and
- should revert from annual to special purpose requests.

Background

Telecommunications remains a heavily regulated and policed industry in terms of the quantum of monitoring and reporting obligations. Even following the review of the *Trade Practices Act 1974* and its subsequent revision to the *Competition and Consumer Act 2010*, many of the obligations from the early 1990s when the original telecommunications competition was implemented remain in place today.

Reform is therefore appropriate because more than 15 years after their inception, these monitoring and reporting obligations have served and superseded their purpose. They were introduced to collect information and to provide insights for parliament on the early stages of the operation of the regulatory regime. Many of these monitoring tools are no longer necessary and the value to regulators and cost for industry to comply for the continuation of these mandatory obligations is increasingly being questioned.

There is currently a wide scope of regulatory obligations, imposed by both the Australian Competition and Consumer Commission (ACCC) and the Australian Communications and Media Authority (ACMA) on Australian telecommunications service providers. Additionally, many telecommunication providers are also signatories or participants in other self-regulatory arrangements, industry working groups and related consumer advocacy groups. Each of these activities incurs costs for participation, such as membership contributions, levy payments, licensing fees, and other related costs.

The following list provides an overview of the legislative basis of the telecommunications sector's reporting obligations:

- 1(a) Operational information submitted annually to the ACCC under a section 151CM(1)(a) request to support its Division 12 reporting obligations in Part XIB of the *Competition and Consumer Act 2010*;
- 1(b) and 1(c) Financial reporting submitted annually to the ACCC under a section 151BU request to the 'Regulatory Accounting Framework' and associated 'Record Keeping Rules' under Part XIB of the *Competition and Consumer Act 2010*;

- 1(d) ‘Telstra Accounting Separation Reports’ to the ACCC under Division 6 in Part XIB of the *Competition and Consumer Act 2010*;
- 1(e) Copies of inter-carrier contracts for the supply declared services to the ACCC, including updating the ACCC with copies of any contract variations during the term if the contracts as required under section 152BEA in the *Competition and Consumer Act 2010*;
- 1(f) Operational information submitted annually to the ACMA under a section 521 notice to support its reporting under section 105 of the *Telecommunications Act 1997*.

Provided below are further details of current ACCC and ACMA telecommunications specific reporting obligations and justifications for either the repeal or reform of these obligations.

1(a) Division 12 Report

Description of relevant regulation	Division 12 Report
	This record keeping rule (RKR) requires specified carriers to report on changes in the prices paid for telecommunication services in Australia. First issued in December 2004, revised in April 2009 and August 2010. Division 12 was revised in July 2013 and will apply from 2013-14 reporting period.
Policy underlying regulation	Legislative requirement under section 151CM(1)(a) which requires the Commission to report to the Minister on the charges paid by consumers for listed carriage services, and goods and services for use in connection with a listed carriage service.
	Division 12 RKR requires specified carriers to supply information on fixed-line voice services, mobile services, and internet services. This information includes both revenue and service usage data that is disaggregated into residential, small business and other business segments. Information must also be provided of any material changes to the price and terms and conditions of supply for each of the relevant services (i.e. tariff information). For fixed line voice services, this includes basic access and PSTN services and from 2013-14 this will also include fixed line voice services supplied over VoIP and NBN. For mobile services, this includes mobile service usage (i.e. call minutes and number of calls) disaggregated by prepaid and post-paid services. For 2013-14 and every third financial year, at least 385 sample bills must be provided. For internet services, this includes the number of Service In Operation (SIOs) and total revenue from access and connections.

	This information is also to be disaggregated by DSL, wireless broadband and cable broadband access. For 2012-13 and every third financial year, at least 385 sample bills must be provided. From 2013-14, this will also require information to be provided for NBN fibre broadband and NBN fixed wireless broadband.
	The information requested is not routinely collected and stored. Optus has had to establish separate processes to collect and collate the data with involvement across numerous internal teams. Estimated compliance cost each year of approximately 430 person hours.
Reasons regulation is no longer needed or could be amended	Data collected is increasingly out of line with product structures and plans which increases the complexity of obtaining the required data.
Proposal to remove or amend (if amend, please describe amendment)	Repeal the reporting requirement under 151CM(1)(a) of the Competition and Consumer Act 2010.
What impact removal (or amendment) will have on industry	Reduces compliance costs.
What impact removal (or amendment) will have on consumers/individuals	No direct impact on consumers.

1(b) Infrastructure Record Keeping Rule (RKR)

Description of relevant regulation	**Infrastructure Record Keeping Rule (RKR)**
	This RKR requires specified carriers to report on the locations of their core network and Customer Access Networks (CAN) infrastructure. Information is also required on leased infrastructure and infrastructure operated on behalf of third parties. First issued in December 2007 and revised in March 2013.
Policy underlying regulation	Regulatory obligation relevant to the ACCC's statutory functions as exercised under ACCC's RKR power.
	Infrastructure RKR requires specified carriers to provide information on the Core and CAN networks that it owns and operates. This includes the access media types and geographic extent of each access medium deployed.
	Costs to comply each year include: • internal resources; and • access to licensed software (e.g. MapInfo) Estimated compliance cost of approximately 200 person hours.
Reasons regulation is no longer needed or could be amended	Appears to have limited utility. Collection of this data does not obviate the need for the ACCC to separately collect data as part of its normal inquiries.
Proposal to remove or amend (if amend, please describe amendment)	Remove.
What impact removal (or amendment) will have on industry	Reduce compliance costs.
What impact removal (or amendment) will have on consumers/individuals	No impact on consumers. Information already available on company websites, e.g. mobile coverage maps.

1(c) Regulatory Accounting Framework (RAF) Report

Description of relevant regulation	**Regulatory Accounting Framework (RAF) Report**
	The RAF requires notified C/CSPs to generate and report to the Commission on the retail and wholesale components of the business. This is intended to assist the Commission in a number of its responsibilities under the *Competition and Consumer Act 2010*.
Policy underlying regulation	Regulatory obligation relevant to the ACCC's statutory functions as exercised under ACCC's RKR power. In particular, the RAF specifies that nominated carriers must supply a set of core reports (*capital adjusted profit and loss statements; capital employed statements; fixed asset statements; and WACC report)* and several usage reports *(service usage report; and key network asset usage report)*.
	Cost to comply each year include: • internal resource; • external audit; and • administration (with *hard copy of final RAF report must also be provided each reporting period)* Estimated cost of compliance: • internal: approximately 650 person hours; • external: up to $100,000 to engage audit capability to verify RAF services.
Reasons regulation is no longer needed or could be amended	Appears to have limited utility and in any case has been superseded by other information sources.
Proposal to remove or amend (if amend, please describe amendment)	Remove.
What impact removal (or amendment) will have on industry	Removal of the obligation will result in considerable internal time savings and audit costs.
What impact removal (or amendment) will have on consumers/individuals	No impact.

1(d) Lodgement of Access Agreements

Description of relevant regulation	**Lodgement of Access Agreements**
Policy underlying regulation	Legislative requirement under section 152BEA of the *Competition and Consumer Act 2010* which requires all Carrier and Carriage Service Providers to lodge a copy of all access agreements to the Commission within 28 days after the day on which the agreement was entered into. This also applies for all variation agreements entered into. There is also a legislative requirement under section 152BEB of the *Competition and Consumer Act 2010* that carriers and carriage service providers must also notify the Commission if any agreement that has been given under section 152BEA has been terminated, rescinded or cancelled before the expiry the agreement.
Reasons regulation is no longer needed or could be amended	Costs to comply each year include: • internal resources; • legal advice; • IT system set up costs; and • administrative costs Given the ongoing nature of the lodgement process, it is difficult to estimate the total cost of complying with this obligation. However some significant costs include: • Compilation of Access Agreements (AA) requires input from multiple areas in the business, at least 5-6 core individuals per week; • Internal resources are required for the following: - internal collation of AA within business units, in some cases this also requires time spent to redact information where appropriate; - internal collation of all AAs to be lodged; and - lodgement of AAs to ACCC,

	including updating internal AA register and back up where required. • Estimated cost of compliance of approximately 40 person hours per week. • Additionally, direct costs were also incurred to configure IT systems to provide raw output for lodgement (e.g. collation of extranet orders in Wholesale). This included an upfront implementation cost of approximately $115,000 and several months to complete. Contracts contain significant amount of information that the ACCC has little if any utility for. Information could be obtained in a more targeted manner that would increase its utility.
Proposal to remove or amend (if amend, please describe amendment)	Repeal 152BEA of the *Competition and Consumer Act 2010.*
What impact removal (or amendment) will have on industry	Reduced cost of compliance.
What impact removal (or amendment) will have on consumers/individuals	No impact.

1(e) Proposed Broadband Performance Monitoring and Reporting

Description of relevant regulation	***Proposed*** **Broadband Performance Monitoring and Reporting**
Policy underlying regulation	Proposed program intended to provide visibility of NBN Co's wholesale access services, and its performance as the basis for RSP offers. The ACCC noted that: *"Increasing visibility over broadband service performance at both the wholesale and the retail level would in turn drive network operators and RSPs to innovate and improve the performance of their offerings, and would encourage efficiency."*[1] The scope and funding for the program is still uncertain, with a position paper to be released in early 2014.
Reasons regulation is no longer needed or could be amended	The regulation has not yet been introduced with industry raising significant concerns with the utility and need for the proposed scheme.
Proposal to remove or amend (if amend, please describe amendment)	Do not progress with proposed obligation.
What impact removal (or amendment) will have on industry	None
What impact removal (or amendment) will have on consumers/individuals	None – alternate speed measurement tools are readily available for customers (many at no cost).

[1] ACCC, ACCC response to submissions on the proposed broadband performance monitoring and reporting program, Open Letter, 29 October 2013, p.1

1(f) S 105 Telecommunications Act 1997

Description of relevant regulation	S 105 of the *Telecommunications Act 1997* requires the ACMA to monitor and report annually on significant matters relating to the performance of carriers and carriage service providers with specific reference to consumer satisfaction, consumer benefits and quality of service. Carriers receive an annual S 521 notice from the ACMA to provide telecommunications performance reporting data under section 105 of the *Telecommunications Act 1997.*
Policy underlying regulation	The reporting requirements were implemented to enable the ACMA to table a report to Parliament on the implementation of the new telecommunications regulatory framework in 1997.
Reasons regulation is no longer needed or could be amended	There is no need for parliament to be provided with an annual report on the implementation of a new telecommunications regulatory framework sixteen years after its inception. The telecommunications regulatory framework has evolved and parliament and the Minister have the ability to request special purpose reports from the ACMA on an ad hoc basis if issues arise, for example to test a regulatory instruments effectiveness, review market competitiveness or assess trends.
Proposal to remove or amend (if amend, please describe amendment)	Repeal S.105, 'Monitoring of performance--annual report' and rely on S.105(a) of the of the *Telecommunications Act 1997* where the ACMA must monitor, and report to the Minister on, specified matters relating to the performance of carriers and carriage service providers in accordance with any written direction given by the Minister to the ACMA.
What impact removal (or amendment) will have on industry	Eliminate the est. 300 person hours it takes Optus to complete the report on an annual basis, plus additional costs associated with establishing one off reports that are only produced to meet reporting obligations.
What impact removal (or amendment) will have on consumers/individuals	No impact on consumers.

2. REFORM OF CUSTOMER INFORMATION OBLIGATIONS

2.1 Reform of Customer Information Obligations

Proposal

- Immediately initiate a review of mandatory customer information obligations via a ministerial request to the ACMA to cooperate with Communications Alliance to consolidate and streamline the customer information obligations in ACMA instruments and registered Industry Codes.
- Further, to take two immediate steps to remove redundant regulation of this type by repealing section 480A of the Telecommunications Act, the associated ACMA SFOA Determination (as set out at 2.2 below) and repeal detailed requirement to inform customers of barring options for Premium Services (as set out 2.2 below).

Background

Currently, regulated requirements to inform customers about certain matters to do with their telecommunications services have accumulated over a long period, and are scattered throughout legislation, Ministerial Directions, subordinate instruments, and Industry Codes. These requirements are not co-ordinated, and are not calibrated to ensure efficient communication or the needs of the customer.

There is a clear opportunity to review this amalgam of requirements to create a better experience for consumers and lower cost and administrative burden for communications providers. It will require some bold thinking to establish a new framework. The principle should be that customers have access to the information they need, when they need it, to make informed choices about matters to do with their communications needs. The principle should also support time limitations for customer information obligations where they expire unless clear demonstration of need for inclusion for a further period.

While achieving reform in this space is likely to be a medium term outcome, steps can be taken immediately to initiate the work required to obtain a reasoned outcome. It will require a co-ordinated effort between the ACMA and Communications Alliance and other stakeholders.

It is proposed that the Minister immediately request:

(a) Communications Alliance to review its registered Industry Codes with the objective of consolidating in a consumer code (e.g. the Telecommunications Consumer Protection Code) the key information and customer authorisation obligations that are currently spread across a large number of Codes.

(b) The ACMA establish an expedited Code variation, registration and de-registration process to facilitate the rapid implementation of the streamlining and co-location of mandatory information and authorisation requirements in Industry Codes.

(c) The ACMA to co-operate with Communications Alliance to establish a framework for analysis of the regulatory incidence of customer information obligations at every point in the journey of a customer's interaction with its communications service provider. The framework would be used to inform the efficiency and effectiveness of obligations and to provide an analytical tool within which to consider any new proposal for further obligations. It would ensure a proposal could be considered and prioritised in the context

of an agreed and established framework, allowing appropriate evaluation of the existing load, and also an efficient structure for tracking the sun-setting of requirements.

(d) The ACMA review all its existing instruments that contain customer information obligations for relevance and effectiveness, and that this review be co-ordinated with Communications Alliance work referenced at (a) above and the consideration of a new framework at (c) above.

2.2 Standard Form of Agreement Determination

Proposal

- Remove requirement to provide customers with copies of SFOA summaries by repealing part 480A of the *Telecommunications Act 1997* and the ACMA's SFOA Determination.
- A contemporary rule in the Telecommunications Consumer Protection Code that mandates the provision of critical information summaries makes this requirement redundant.

Description of relevant regulation	**Standard Form Of Agreement (SFOA) Determination** Part 23 of the *Telecommunications Act 1997* introduces the ability for providers to have a standard form contract (Standard Form Of Agreement (SFOA)) with their customers, rather than individually negotiating each contract – something that would be entirely impractical for mass market product offerings. Section 480A introduces the concept of an SFOA Determination, stating that a Determination must be in force at all times (480A(8)), and that the Determination may contain obligations such as requiring: • customers generally to be given specific kinds of information; • specific kinds of customers to be given specific kinds of information; or • providers to publish information about their goods and services, including information on consumer protections under the Customer Service Guarantee (CSG). The *Telecommunications (Standard Form of Agreement Information) Determination 2003* expands on this, and includes matters such as: • requirements on how contractual changes must be dealt with; • that a Summary SFOA must be provided to all new customers and to all existing

	customers every 2 years; • some prescriptive formatting and wording rules for the Summary *(including a two page list of the items that must be included in the Summary, with a note that if all those things don't fit into the Summary they can go somewhere else instead)*; and • that the full SFOAs must be publicly available and provided to customers free of charge.
Policy underlying the regulation	The original policy intent can be traced back to the deregulation of the industry. Until 1999, providers had to lodge price changes to their tariffs with the regulator for approval, prior to implementing them. However from 1999, the environment changed from pre-approval of tariffs, to the use of SFOAs, which were required to be made publicly available and provided to the regulator for information after being implemented. There were rules in the SFOA Determination about how providers had to advise their customers of detrimental changes (to prices or terms and conditions), and there was also an obligation to give a customer a summary of their SFOA. Many of these requirements have since been replaced, or worse have been duplicated, by rules in other pieces of legislation and industry codes, rendering the SFOA Determination obsolete and an ongoing contributor to the regulatory burden on industry and the information overload on consumers.
Reasons the regulation is no longer needed	Obligations in the SFOA Determination have been wound back over time *(*for e.g. the need for prescriptive requirements about notifying customers about detrimental changes to their contract were removed as a result of requirements under the Competition and Consumer Act 2010, and in the Telecommunications Consumer Protections Code), but the remaining obligations in the Determination are now substantially covered in existing legislation and regulation and

	therefore need to be removed. For example: • fairness in contractual terms, and how to handle detrimental changes to standard form contracts are already dealt with in the *Competition and Consumer Act 2010*; • the obligation to provide a summary of contractual terms has been duplicated (and improved upon) by the obligation in the *Telecommunications Consumer Protections Code* to provide a Critical Information Summary (CIS) – which is a two page high-level summary of the customer's pricing plan and key terms and conditions, provided prior to the customer agreeing to the contract, which helps ensure the customer is making an informed purchasing decision; and • providing an SFOA Summary in addition to the CIS is unnecessary, does not help customers to better understand their contract and is a waste of industry resources.
Proposal to remove the regulation	Optus proposes that: • part 480A of the *Telecommunications Act 1997* is amended so that an SFOA Determination is not required to be in place at all times. (That is, repeal clause 480A(8) of the Act.); and • repeal the SFOA Determination.
Impact on industry	• Reduce costs: Optus provides the SFOA Summaries as part of a 'welcome pack' containing a range of mandatory regulatory and legal information (*i.e. there is no business purpose for this mail-out - it is done purely for compliance purposes).* • Current estimates are approximately $100,000 annually. • Removal of this requirement would create significant savings in resources with providers not having to continually maintain and update summaries.

	• Reduce complexity: As noted above, industry is currently subject to multiple obligations across multiple legal and regulatory instruments and multiple regulators when it comes to contracting with its customers. • Removing the SFOA Determination will remove one of those layers. In fact, SFOA Summaries make up almost a third of Optus' SFOA documents so removing them would have a significant and positive impact on our compliance burden and make our contract administration task significantly easier.
Impact on consumers/individuals	• None. Customers have access to the same information in Critical Information Summaries (CIS).

2.3 Premium Mobile Services

Proposal

- In light of reduced customer complaints, changes in market offerings, and increased consumer awareness and ease of access to opt out and spend limit functionality for Premium Mobile Services (PSMS) remove requirement to:
  - send an SMS every six months to Optus' mobile customer base to advise how to bar or opt out of PSMS; and
  - provide details on bills and other prescriptive communication requirements.

Description of relevant regulation	**S.12(4) of the *Telecommunications Service Provider (Mobile Premium Services) Determination 2010 (No.1)*** *[made in accordance with paragraph 3.12 (1) (c) of the Telecommunications Regulations 2001; and section 4 of the Premium Service Determination 2004 (No.1)]* Ensure customers of mobile premium services are aware of how to bar or set spend limits or receiving premium SMS and MMS services (PSMS).
Policy underlying the regulation	The policy was implemented at a time of high levels of complaints about billing and opt-out options for PSMS.
Reasons the regulation is no longer needed	Since the Determination came into force, and as a result of both industry initiatives and the regulations: • PSMS complaint numbers have significantly reduced, (with TIO complaints falling 19% 13,591 in 2008-09 to 2,587 in 2011-12)[2]; • use of the PSMS has been largely superseded by mobile apps; and • consumers have easy access to either opt out or set spend limits for these services. (See for example: http://www.19sms.com.au/ and http://optus.custhelp.com/app/answers/detail/a_id/208) In addition, the majority of Optus' pre and post-paid customer's do not use PSMS which means that the following requirements are irrelevant and probably an irritation to our customers: • advise all customers every six months that they can bar or set spend limits are for them; and

[2] http://ar2012.tio.com.au/statistics/dashboard

	• include information on a customer bills. There is also a requirement to provide information on how to bar PSMS services when a customer receives a bill with a PSMS charge on it.
Proposal to remove the regulation	Amend paragraph 3.12 (1) (c) of the *Telecommunications Regulations 2001* and section 4 of the *Premium Service Determination 2004 (No. 1)]* to direct the ACMA to delete S.12(4) and (5) of the *Telecommunications Service Provider (Mobile Premium Services) Determination 2010 (No.1)*
Impact on industry	Repealing this requirement will remove a cost of $350,000 that Optus incurs every six months to send an SMS to its mobile customer base to advise of the ability to bar or set spend limits for PSMS. It will also remove the additional costs incurred in providing information to customers on how to bar PSMS services when a PSMS charge appears on a customer's bill.

3. SUBSCRITPION TELEVISION COMPLIANCE REPORTING OBLIGATIONS

Proposal

- Remove requirements that duplicate compliance reporting of captioning targets by subscription television licensees who are resale customers of wholesale providers of subscription television services.

Description of relevant regulation	The *Broadcasting Services Amendment (Improved Access to Television Services) Act 2012* introduced new captioning obligations on subscription television licensees from 1 July 2012.
Policy underlying the regulation	The intent of the policy is to set new standards for captioning of subscription television services for deaf and hearing impaired Australians. The obligations set graduated targets and compliance monitoring reporting obligations that subscription television licensees need to meet over time.
Reasons the regulation is no longer needed	The new obligations failed to take into account how the obligations would work in practice in the current subscription television market structure and have created duplicated reporting obligations for resale customers of wholesale providers.
Proposal to remove the regulation	Review captioning obligations in Division 3 of part 9D of the *Broadcasting Services Act 1992 (captioning obligations of subscription television licensees*) to exempt captioning reporting obligations for subscription television licensees who are resale customers of wholesale providers.
Impact on industry	Remove unnecessary costs - estimated at 100 person hours per year incurred by duplicating compliance reporting obligations for subscription television licensees resale customers of wholesale providers of subscription television services.
Impact on consumers/individuals	No impact on consumer's ability to access captioned subscription television services by resale providers of wholesale providers of subscription television services.

4. MOBILE NETWORK DEPLOYMENT

4.1 Mobile Network Deployment: Telecommunications Code of Practice 1997

Proposal

- Repeal and amend two sections of the *Mobile Network Deployment: Telecommunications Code of Practice 1997* that impose out dated and impractical regulatory reporting and notification requirements on carriers.
- Clarify definition of 'Area of Environmental Significance' the *Mobile Network Deployment: Telecommunications (Low Impact Facilities) Determination* to reduce ambiguity.
- Amend definition of low impact facilities to accommodate temporary facilities and make other incremental changes to ensure the Determination achieves its intended objective of achieving a balance between technical efficiency, environmental sensitivity and community amenity.

Description of relevant regulation	**Mobile Network Deployment: Telecommunications Code of Practice 1997** Clause 15 of Part 1 of Schedule 3 of the *Telecommunications Act 1997* authorises the Minister to make a code of practice - *Mobile Network Deployment: Telecommunications Code of Practice 1997.* The Code sets out the conditions carriers must comply with in relation to the Division 1 - 4 of Part 1 of Schedule 3 to the *Telecommunications Act 1997* that authorises a carrier to enter on land and exercise any of the following powers: • inspect the land *(Division 2 of Part 1 of the Schedule)* • install a facility (*Division 3 of Part 1)* • maintain a facility (*Division 4 of Part 1)* In exercising a power, a carrier must comply with the conditions specified in the Part, including: • doing as little damage as practicable • acting in accordance with good engineering practice • complying with recognised industry standards.

Policy underlying the regulation	The Code sets the regulation of mobile network deployment activity in relation to the inspection of land, subscriber connection, low impact facilities, temporary defence facilities, and maintenance of facilities.
Reasons the regulation is no longer needed	The Code needs to be reviewed to reflect changes in the evolution of mobile network deployment activity since it was registered in 2004.
Proposal to remove the regulation	The following carrier obligations in the Code either need to be repealed or amended: • Repeal the requirement for carriers to provide 10 days' notice to the Secretary of the Department of the Environment in relation to activities authorised under the *Telecommunications Act 1997.* (S.2,17, 4.18, 6.17 of the Code) *[Note that The Department of Environment does no longer has a role in reviewing these types of activities]* • Amend the current requirement that permits objections to the commencement of works for telecommunications network deployment activities to be given up to five business days prior to works commencing, to a process where the objection period closes 10 business days after the notice is received. (S.4.33,.6.32 of the Code)
Impact on industry	The suggested repeal and amendment to the Code will achieve more practical and efficient regulation of the rollout of mobile network infrastructure.
Impact on consumers/individuals	Deployment of mobile networks will be able to more efficiency respond to consumer demands for improved network coverage and performance, without affecting opportunities for communities to engage in consultation processes with carriers on proposed new mobile network infrastructure.

4.2 Mobile Network Deployment: Telecommunications (Low Impact Facilities) Determination

Description of relevant regulation	**Mobile Network Deployment: Telecommunications (Low Impact Facilities) Determination**
Policy underlying the regulation	Prior to 1 July 1997, the installation of all telecommunications facilities were exempt from State and Territory laws. The enactment of the *Telecommunications Act 1997* made it mandatory for carriers to comply with State and Territory laws in relation to the installation of certain types of telecommunications facilities. However parliament recognised that some telecommunications facilities and activities were unlikely to cause significant community disruption or significant environmental disturbance and could be exempt from certain State and Territory laws. Therefore the *Telecommunications Act 1997* was amended and the *Telecommunications (Low-impact Facilities) Determination 1997* in-acted to defines what low-impact installation activities may be undertaken in certain areas without reference to particular State and Territory laws.
Reasons the regulation is no longer needed	The practical application of the Determination over time has given rise to a number of issues that impact mobile network rollout activity that either need clarification, or amendment.
Proposals to remove the regulation	• S 2.5 of the Determination defines an 'Area of Environmental Significance' that is intended to exclude facilities from the definition of low impact determination. The definition is unclear, not referenced in other legislation and has created delays in achieving deployment targets as disputes have ended up in litigation. • The Determination's objective is to strike a balance between technical efficiency, environmental sensitivity and community

	amenity. The following amendments should be made to align with these objectives: - Slimline omnidirectional antennas should be encouraged as an alternate to panel antennas in low capacity residential and commercial areas; - The length of permitted excavations associated with trenching for underground cable installations should be increased from 100 to 200 metres to decrease project time and disruption. • Provision should be made for minor increases in dimensions for some low impact facilities should be permitted where current limits are impractical. • Temporary facilities, for increased mobile network traffic for cultural, sporting or seasonal should be included as low impact.
Impact on industry	The proposed amendments will significantly reduce the cost, complexity in the rollout of mobile networks.
Impact on consumers/individuals	The proposed amendments will reduce delays in deployment new mobile network infrastructure to meet growing consumer demand for mobile services.

4.3 *Mobile Network Deployment: Schedule 3 to the Telecommunications Act 1997*

Description of relevant regulation	**Mobile Network Deployment: Schedule 3 to the *Telecommunications Act 1997*** Schedule 3 to the *Telecommunications Act 1997* specifies areas and defines access areas and low impact facilities that, in combination with the *Mobile Network Deployment: Telecommunications (Low Impact Facilities) Determination* and the *Mobile Network Deployment: Telecommunications Code of Practice 1997* govern the ability of carriers to deploy 'low impact' mobile network infrastructure.
Policy underlying the regulation	The policy intent is to provide a legislative framework that permits the deployment of telecommunications facilities and activities that are unlikely to cause significant community disruption or significant environmental disturbance.
Reasons the regulation is no longer needed	Amendments are needed to implement t
Proposal to remove the regulation	• Amend clause 6(5) of Schedule 3 to facilitate the inclusion of the additional category of 'temporary facility' as defined under the proposed amendments to the *Mobile Network Deployment: Telecommunications (Low Impact Facilities) Determination.* • Ensure a carrier's right to access to a property under Schedule 3 is not extinguished by entering a commercial agreement by amending clause 61 of Schedule 3 to provide an exemption from the law of trespass in relation to facilities installed pursuant to Schedule 3.
Impact on industry	The proposed amendments will assist reduce delays in deployment new mobile network infrastructure to meet growing consumer demand for mobile services.
Impact on consumers/individuals	The proposed amendments will assist reduce delays deploying new mobile network infrastructure to meet growing consumer demand for mobile services.

PROPOSALS FOR SHORT-TERM DEREGUALTION REFORM: REFORM

5. PRIVACY

Proposal

- Remove unnecessary, costly and complex duplication and overlap between *Part 13 of the Telecommunications Act 1997,* the Privacy Act 1988, the Telecommunications (Interception and Access) Act 1979 and review industry codes that reference these obligations.

Description of relevant regulation	The handling of personal information by telecommunications service providers is governed by both the *Telecommunications Act 1997* and the *Privacy Act 1988* (Privacy Act), as well as other industry-specific instruments, such as licences and codes, including the *Telecommunications Consumer Protection Code 2012*.
Policy underlying regulation	The overlapping and duplication of privacy obligations for the collection, use, and disclosure of personal information by the telecommunications sector has evolved over time without review. Recent substantive changes to the Privacy Act 1988 that will come into effect on 13 March 2014 are intended to simplify and harmonise privacy law but failed to implement the necessary changes to overcome overlapping and duplicate obligations on the telecommunications sector.
Reasons regulation is no longer needed or could be amended	Duplication and inconsistency across various legislative instruments relating to privacy obligations has resulted in an excessive regulatory burden for the telecommunications industry. This is evidenced by the: • compliance burden and cost caused by duplication and/or inconsistent privacy requirements; and • problems caused when service providers are required to comply with multiple layers of privacy regulation overseen by more than one regulator.

	Part 13 of the *Telecommunications Act 1997* creates offences for the use or disclosure of any information or documents which comes into their possession in the course of business, where the information relates to: • the contents or substance of a communication that has been carried by carriers and CSPs (delivered or not); • the contents or substance of a communication that is being carried by a carrier or CSP; carriage services supplied, or intended to be supplied, by carriers and CSPs; or • the affairs or personal particulars of another person. At present, industry participants are required to comply with the requirements of Part 13 of the *Telecommunications Act 1997,* as well as the requirements of the Privacy Act. Additionally, privacy principles are contained within many industry Codes, such as the Telecommunications Consumer Protections Code 2012.
Proposal to remove or amend (if amend, please describe amendment)	Requirements relating to the collection, use and disclosure of personal information within the telecommunications industry need to be aligned and any duplication removed. This could be achieved by reviewing Part 13 of the *Telecommunications Act 1997* for any duplication and overlap against: • the *Privacy Act 1988;* • the *Telecommunications (Interception and Access) Act 1979;* • review of industry codes that reference these requirements. These changes will also remove the need for the telecommunications industry to be regulated by the ACMA and the Australian Information Commissioner.
What impact removal (or amendment) will have on industry	Simplification of obligations will remove complexity of obligations on industry, while the compliance requirement remains the

	same. That is, the *Privacy Act 1988* contains all of the requirements that have been duplicated in the Telecommunications Act 1997 or industry codes such as Telecommunications Consumer Protection Code.
What impact removal (or amendment) will have on consumers/individuals	The proposed reforms will not remove any privacy rights or protections for individuals.

6. CUSTOMER SERVICE GUARANTEE STANDARD

Proposal

- Repeal the *Customer Service Guarantee Direction No. 1 of 1999* and the Telecommunications (Customer Service Guarantee) Standard 2011 to reduce significant compliance costs for industry as there is no evidence that obligations have a positive impact on improving service connection times or standards for consumers.

Description of relevant regulation	The *Telecommunications (Consumer Service Guarantee) Standard 2011* (CSG Standard) sets minimum performance requirements for CSPs to: • make arrangements with customers for connections and fault rectification to standard telephone services or certain enhanced service features; • connect or rectify a fault or service difficulty; and • keep appointments for connections and rectifications at the customer's premises. Where CSPs fail to meet performance standards, they are obligated to provide specified compensation to the customer as set out set out in section 117A of the *Telecommunications (Consumer Protection and Service Standards) Act 1999.* The Standard also provides for customers to agree for their CSP to waive compliance with these standards.
Policy underlying regulation	The CSG Standard was initiated to protect residential and small business customers from poor connection and fault repair service by their telephone service provider. The underlying policy assumption was that the fixed telephone service was the sole telecommunications service available to customers. It should be noted that the primary policy intention was 'not to benefit customers financially, but provide carriage service providers with an incentive to meet performance standards.'[3]

[3] *Explanatory Memorandum to the Telecommunications Bill 1996*, Volume 1, p134

Reasons regulation is no longer needed/could be amended	The CSG Standard is no longer needed for the following reasons and therefore should be repealed because: • it was implemented at a time when plain old telephone services (POTS) and ISDN services were the norm. ISDN services are no longer relevant to the consumer market. There has been a steadily decreasing dependence on the standard telephone service (STS) as the sole and/or primary service for consumers leading to an overweighted imposition of regulation on the fixed telephony industry in comparison to the value of the consumer protection provided. • The vast majority of customers already have mobile phone services. An increasing percentage of customers choose to have mobile services only. The CSG standard no longer matches the market supply of telephone services. • Mobile, VOIP and OTT services will only increase in social importance and dependence in comparison to STS subject to the CSG Standard which has been in decline for the past decade.[4] • Over 40% of Optus' new standard telephone services are connected over ULL. Industry-agreed operational timeframes to connect these types of services cannot be completed within the timeframes required under section 8 of the CSG Standard. Therefore more services must be agreed with a longer timeframe under section 9 of the Standard, leaving the initial policy objective for these services redundant. This practice will only increase for services connected over the NBN. • Since the original implementation of the CSG Standard in 1998, the complexity of arrangements between the end-user, retail CSP, wholesale CSPs and wholesale network providers has increased. With the continued rollout of the NBN, retail CSPs will become increasingly reliant on wholesale network providers to connect and rectify services on their networks. While the regulatory burden remains on the retail CSPs, the ability for retail CSPs to influence any improvement for the customer in connection, fault rectification and appointment

[4] ACMA, *Convergence and Communications Report 1: Australian household consumers' take-up and use of voice communications services*, p9.

	keeping timeframes is reduced.
Proposal to remove or amend (if amend, please describe amendment)	Repeal *Telecommunications (Consumer Service Guarantee) Standard 2011*. Alternatively limit the obligation to meet retail performance benchmarks (and to report in accordance with the Record Keeping Rules) to the Universal Service Provider.
What impact removal/amendment will have on industry	Administration costs include: • FTE – $240,000 p.a. • Business reporting costs - $9,000 p.a. • Compensation costs (approximately $600,000 p.a.) • Advertising costs to publish MSD notices - $220,000 p.a. **Total per annum = $1,069,000** If the CSG regime were to be amended rather than removed, Optus anticipates internal system costs would be incurred to amend our current CSG system to reflect the amended requirements. Based on previous assessments, Optus calculates this would cost us the same as implementing a new CSG system - $2,300,000 Reporting system maintenance and additional development costs – $20,000 (annualised).
What impact removal/amendment will have on consumers/individuals	There is no evidence that CSG has had any positive impact on improving service connection times or standards for consumers. There is no relationship between the CSG and other policy levers, USO (including green fields) and NBN and industry process that develop practical timeframes for service connections. Consumers will benefit most from a competitive market structure where service providers have the ability to compete on service standards. Optus does not consider that the repeal of the CSG standard will influence the competitive market incentives to maintain adherence to timeframes at the current benchmark levels. Optus and other industry members would continue to have the ability to provide compensation if a customer complains about the standard of service

	they have received. Most customers have a mobile service so removal of the CSG standard will not impact on the ability of those customers to communicate.

7. CUSTOMER SERVICE GUARANTEE RECORD KEEPING RULES

Proposal

- Repeal the *Customer Service Guarantee Direction No. 1 of 1999,* the Telecommunications (Customer Service Guarantee – retail performance benchmarks) Instrument (no. 1) 2011; and the Telecommunications (Customer Service Guarantee) Record Keeping Rules *2011* on the basis that:
    - the ACMA's 2012-13 annual report stated that the majority of Carriage Service Providers exceeded the benchmark of 90% across connections, faults and appointment keeping which suggests there is not an industry performance issue; and
    - the obligations drive high industry costs, and only apply to CSPs with 100,000 CSG-eligible standard telephone services (STS) on a national basis, therefore failing the policy objective of improving service quality performance across the telecommunications industry and the object of the Act not to impose undue financial and administrative burdens on participants in the industry.

Description of relevant regulation	The *Telecommunications (Customer Service Guarantee Record-Keeping) Rules 2011* (Rules) mandates eligible CSPs to keep and submit records on a bi-annual reports to the ACMA to enable: • monitoring and enforcement of compliance with the benchmarks set out in section 117B of the *Telecommunications (Consumer Protection and Service Standards) Act 1999*; and • monitoring and reporting on industry performance against the *Telecommunications (Customer Service Guarantee) Standard 2011* (CSG Standard). The Rules require eligible CSPs to: • retain records in relation to compliance with the CSG Standard and the *Telecommunications (Customer Service Guarantee – Retail Performance Benchmarks) Instrument (No. 1) 2011* (Retail Performance Benchmarks); and • prepare and submit reports to the ACMA in a specified format.
Policy underlying regulation	The original intention, as stated in the Explanatory Statement of the *Telecommunications Legislation Amendment (Competition and Consumer Safeguards) Act 2010,* was to: 'require telephone companies to meet minimum performance standards or provide

	customers with financial compensation when these standards are not met. However, compliance reporting undertaken by the ACMA over a number of years has highlighted variations in industry performance in meeting the CSG requirements. The trends suggest the existing arrangements are not providing sufficient incentive for the industry to maintain or improve service quality." The Record Keeping Rules and the associated Retail Performance Benchmarks should be repealed as they do not meet the policy objective of improving service quality performance for the following reasons: • the ACMA's annual report stated that in 2012-13 that the majority of CSPs exceeded the benchmark of 90% across connections, faults and appointment keeping (with the exception of Telstra in some connection criteria) suggesting there is not an industry performance issue in the first place (with the possible exception of Telstra).[5] Optus believes the threat of infringement penalties by not meeting the Retail Performance Benchmarks has contributed to the following industry behaviour, which is not improving performance standards outcomes for consumers: • An increase in the number, the breadth and the length of Mass Service Disruptions (MSDs) requested by the predominant wholesale network provider (Telstra) when extreme weather events occur. In order to avoid similar penalties all retail CSPs have followed suit; • An increase in the number of waivers requested of customers in relation to their rights under CSG[6]; • An increase in the number of instances where failure to meet CSG performance measures were wholly or partly attributed to acts or omissions by another CSP (i.e. the wholesale network provider). Since the original implementation of the CSG Standard in 1999, the complexity of arrangements between the end-user, retail CSP, wholesale CSPs and wholesale network providers has increased.
Reasons regulation is no longer needed/could be amended	

[5] ACMA, *Communications Report 2012-2013*, Tables 3.7 and 3.8, p 66-67.
[6] Ibid p65.

	With the continued rollout of the NBN, retail CSPs will become increasingly reliant on wholesale network providers to connect and rectify services on their networks. In the absence of a interrelated 'Wholesale Performance Benchmark' (which was part of the original policy objective of the *Telecommunications Legislation Amendment (Competition And Consumer Safeguards) Bill 2010* but not implemented), retail CSPS remain obligated to pay compensation to end-users but with very limited ability to influence the quality and timeliness of CSG performance. Therefore the objective of motivating retail CSPs to improve performance by increasing reporting obligations and penalising failure to meet benchmarks is extremely flawed. There is a decreasing dependence on the CSG standard telephone service as the sole and/or primary service for consumers leading to an irrelevant imposition of regulation on the fixed telephony industry. Mobile, VOIP and OTT services will only increase in social importance and dependence in comparison to standard telephone services subject to the CSG Standard, which have been in decline for the past decade[7]. Successful removal of the CSG Standard itself would make both the Retail Performance Benchmarks and the Record Keeping Rules redundant. The Retail Performance Benchmarks only apply to CSPS with more than 100,000 CSG-eligible standard telephone services on a national basis. We understand the only CSPs currently eligible are iiNet, Optus and Telstra[8] leaving the tail end of the industry not having to report on performance. Primus, on currently yearly trends, is likely not to be eligible in the next reporting period[9]. Therefore this regulation does not address industry-wide performance as stated in the initial objectives.
Proposal to remove or amend (if amend, please describe amendment)	Repeal the *Customer Service Guarantee Direction No. 1 of 1999,* the Telecommunications (Customer Service Guarantee – retail performance benchmarks) Instrument (no. 1) 2011; and the Telecommunications

[7] ACMA, *Convergence and Communications Report 1: Australian household consumers' take-up and use of voice communications services*, p9.
[8] ACMA, *Explanatory Statement to Telecommunications (Customer Service Guarantee - Retail Performance Benchmarks) Instrument (No.1) 2011 (Amendment No. 1 of 2012),* p3
[9] ACMA *Communications Report 2012-2013*, Tables 3.5, p 65.

	(Customer Service Guarantee) Record Keeping Rules *2011* Alternatively, if the CSG Standard remains in place, limit the obligation to meet retail performance benchmarks (and to report in accordance with the Record Keeping Rules) to the Universal Service Provider.
What impact removal/amendment will have on industry	Optus commercial costs to obtain additional appointment records from Telstra for no other purpose than to provide details within the Record Keeping Rules. - $12,500 p.a. Administration costs: RKR Reporting system maintenance and eventual replacement costs - $20,000 FTE: $90,000 p.a. **Total P.A. = $122,500** Removal of financial threat of penalty infringements: • $510,000 where a benchmark is missed by less than two percentage points • $1,020,000 where a benchmark is missed by two percentage points or more but less than five percentage points, and • $1,530,000 where a benchmark has been missed by five percentage points or more.
What impact removal/amendment will have on consumers/individuals	None. The impact of removing the mandated Retail Performance Benchmarks and associated Record Keeping Rules would be felt by industry only. Optus does not believe this removal would influence the incentive to maintain adherence to timeframes at the current benchmark levels.

8. INTERNATIONAL MOBILE ROAMING STANDARD

Proposal

- Repeal obligations in clause 9(3) and clause 8 of the *Telecommunications (International Mobile Roaming) Industry Standard 2013* (the IMR Standard) and the Ministerial Direction to the ACMA on *International Mobile Roaming Industry Standard) Direction (No. 1) 2012* that commence in September 2014 and May 2016 on the basis that the first round of requirements in the IMR Standard that came into effect in September 2013 have achieved the policy intent.

Description of relevant regulation	Obligations in clause 9(3) and clause 8 of the *Telecommunications (International Mobile Roaming) Industry Standard 2013* (the IMR Standard) and the Ministerial Direction to the ACMA on *International Mobile Roaming Industry Standard) Direction (No. 1) 2012* that commence in September 2014 and May 2016 impose prescriptive obligations on how and when mobile carriers must: • contact customers with regard to international mobile roaming; and • enable customers to turn off roaming whilst overseas.
Policy underlying regulation	The rise in smartphone usage has resulted in higher roaming bills for Australians travelling overseas. Complaints to the TIO about roaming 'bill shock' increased by more than 50% in 2010-2011 and almost 70% in 2011-2012. [10] (However, they have now halved, as noted below.) The Minister's Direction to the ACMA was: 'intended to ensure that consumers are provided with easily understood information about IMR services and the ability to stop these services once they are overseas.'
Reasons regulation is no longer needed/could be amended	The first round of requirements in the IMR Standard that came into effect in September 2013 has achieved the policy intent. That is, the introduction of warning, pricing and opt-out messages to Australians roaming overseas is providing easily understood information about IMR services and the ability to stop roaming services from overseas.

[10] ACMA Consultation Paper "International mobile roaming – proposed standard" December 2012

	There is no need to add more prescriptive and costly obligations on the mobile sector that will not improve customer detriment but drive significant costs on the industry. The ACMA's Regulation Impact Statement lists the extremely high costs, with an impact to industry of at least $50 million over 10 years, and an acknowledgement (page 4) that "…consultation with resellers has revealed that the compliance costs associated with [all options considered by the ACMA] are significant enough relative to the size of their IMR operations that it may cause them to exit the IMR market." In real terms, according to the TIO's website[11], there were 2,584 complaint issues about roaming charges recorded during 2010-2011 and 4,292 during 2011-2012. In 2012-2013, TIO complaint issues on roaming have halved. The usage alert and spend management tool requirements in second tranche of the IMR Standard are overly prescriptive and inconsistent with similar requirements in the Telecommunications Consumer Protections Code, creating a great deal of complexity that will cost providers dearly to implement.
Proposal to remove or amend (if amend, please describe amendment)	• Repeal section clause 9(3) of the IMR Standard to remove the multiple alerting obligations and ensure that the exemption in the TCP Code is replicated in the IMR Standard. • Repeal clause 8 of the IMR Standard to remove the prescriptive obligations on how customers must be able to turn off roaming overseas, and allow providers flexibility in the methods they allow their customers to do so. • Make associated changes to the Ministerial Direction to the ACMA on *International Mobile Roaming Industry Standard) Direction (No. 1) 2012* to allow the repeal of the above two clauses.
What impact removal/amendment will have on industry	• Reduction in costs: upcoming expenditure to meet the second tranche of obligations will not be required, with this expenditure diverted to more flexible and innovative options to assist consumers.

[11] http://annualreport.tio.squiz.net/__data/assets/excel_doc/0006/138246/Issues-for-new-complaints.xls

	• Reduction in complexity: the less prescription and the more flexible the requirements, the simpler it will be for providers to implement, and implementation will be delivered in a shorter timeframe.
What impact removal/amendment will have on consumers/individuals	No consumer detriment as the consumer protections that provide usage and spend management will remain in place.

9. FIXED LINE REGUALTION – UNTIMED LOCAL CALLS AND NUMBERING PLAN

Proposal

- Repeal the untimed local call requirements under Part 4 of the *Consumer Protection and Service Standards) Act 1999* Act as market developments mean the provisions no longer serve any meaningful purpose as a protection against consumer detriment.

Description of relevant regulation	***Untimed Local Calls*** Providers of a fixed standard telephone service are also required to offer the pricing option of untimed local calls under Part 4 of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* (CPSS Act). ***Numbering Plan*** Part 22 of Division 13 of the *Telecommunications Act 1997* establishes a requirement for a numbering plan to be established by the ACMA as a regulatory instrument. The ACMA has made the *Telecommunications Numbering Plan 1997* (the Numbering Plan) which sets out the framework for the numbering of carriage services in Australia and the use of numbers in connection with the supply of services.
Policy underlying the regulation	***Untimed Local Calls*** The entitlement to an untimed local call option was a Government price intervention to ensure fixed line voice services were affordable in the then operating environment where no alternative communication options were available and pricing of services was heavily distance dependent and long distance charges were (relatively) very expensive. The concept of a local untimed call is bound by geographic charging zones established in Telecom's network in 1961 and is linked to legacy copper network local switching concepts. Neither of these has any direct relevance in modern telecommunications networks, where cost structures are far less dependent on distance (witness mobile pricing) and local switching (done in centralised switches or IP layers). ***Numbering Plan*** Historically, numbering plans provided addressing information for successful switching of calls in communications networks. An agreed convention or plan is required to ensure interoperability and

	consistency with international numbering arrangements. The objective of the Numbering Plan is to set out the rules for the allocation, transfer, surrender or withdrawal, portability and use of allocated numbers in connection with the supply of carriage services to the public in Australia.
Reasons the regulation is no longer needed	***Untimed Local Calls*** The dominance of Mobile, VOIP and the progression to the NBN has seen voice evolve as just another application over an IP network where cost isn't dependent on distance. These market developments also mean that fixed line services are not the primary means of communication and therefore there is no ongoing justification for special pricing treatment for this one call type on fixed line services. Also, these provisions no longer serve any meaningful purpose as a protection against consumer detriment. Current call plans typically see local calls charges significantly below 22c and in many cases local call charges are simply included within plan value at no additional cost to the consumer. ***Numbering Plan*** There is no intrinsic reason why a numbering plan has to be a legislative instrument. The fact it is a legislative instrument has led to it becoming inflexible and moribund. It also had the side-effect of being an instrument to which a number of ancillary obligations were added (e.g. number portability obligations and price charging rules). Maintaining the numbering plan as a regulatory instrument is not warranted as: • It can more cost effectively be managed via a self-regulatory process. It should be an industry numbering plan about how providers use number in their networks. • Other industry based self-regulated management schemes, for example, IP address and domain name administration, operate successfully without a regulator running them. The Numbering Plan should become a self-regulatory plan owned and operated by industry, not a legislative instrument. The overall objective should be to ensure

	that industry can manage numbering resources for the delivery of services to customers and that this is achieved in the most cost-effective and least disruptive way possible.
Proposal to remove the regulation	***Untimed Local Calls*** Repeal the untimed local call requirements under Part 4 of the CPSS Act. ***Numbering Plan*** Amend Part 22 of Division 13 of the *Telecommunications Act 1997* to allow the industry participants (e.g. via Communications Alliance) to manage and administer a self-regulated numbering plan. If ancillary obligations currently attached to the Numbering Plan are still warranted in their own right, (e.g. number portability) then these should be dealt with and justified on a stand-alone basis.
What impact removal/amendment will have on industry	***Untimed Local Calls*** Reduce complexity and cost of compliance with an out-dated regulatory requirement that does not improve customer detriment as the majority of fixed line plans have local calls included in total call value or are unlimited. The requirements to specify and implement switching and billing systems to collect and compute the information required to implement un-timed local calling obligations is significant and adds hundreds of millions of dollars to industry IT and switching costs. There is no intrinsic merit or relevance to the charging zones that hark back to the telecom network in the 1960s. Absent these obligations, fixed network call charging is more likely to have already gone down the path of pricing in the mobile sphere where pricing is essentially distance independent within Australia. ***Numbering Plan*** Remove complexity and cost of engagement in current processes and move towards a self-regulatory framework that develops a cost-effective and efficient management framework for number management.
What impact removal/amendment will have on consumers/individuals	***Untimed Local Calls*** There will be little impact on consumers as these provisions no longer serve any significant protection

	function against consumer detriment. The majority of plans for fixed link services have local calls included in total call value or are unlimited. Mobile services have overtaken fixed services as the predominant communications connection, and there are many close substitutes in the way of internet and messaging services that are available as alternative communication options. ***Numbering Plan*** A move to a self-regulatory management framework will ensure that numbering resources for the delivery of services to customers is achieved in a more cost-effective and the least disruptive way possible.

10. IIA SPAM CODE

Proposal
• Request the ACMA repeal the Spam Code

Description of relevant regulation	The *Internet Industry Association (IIA) Spam Code* was developed almost ten years ago, to deal with the more technical aspects of managing spam emails on ISP networks. It is a registered code under the *Telecommunications Act 1997*. The Act allows a code to be developed to deal with the matters in the Spam Code, but does not require it. A review of the Spam Code took place between 2007-2010, but the ACMA declined to register the new version of the code due to a procedural matter *(The changes that had occurred since public consultation were substantial and therefore the ACMA requested that the code be released for another round of public consultation)*. The second consultation period never occurred, and the revised version of the code was left in limbo. The result of this is that ISPs are still bound by the original version of the Spam Code, even though the review had identified substantial changes that were required. In the years since the unfinished review of the Spam Code, ACMA staff have presented differing views on whether the Spam Code is needed and whether it can be de-registered.
Policy underlying regulation	Following the introduction of the Spam Act (which governs how and when commercial electronic messages can be sent), and rising online activity (including increasing amounts of bulk spam email which are an inconvenience to ISPs and customers alike), the code sought to establish industry wide practices and procedures relating to spam emails specifically. The code includes requirements such as technical measures that network operators can take to minimise spam (referencing international best practice standards), advice to end users on spam filtering options, and managing spam reports and complaints from end users. Note that this focus specifically on spam email was

	relevant ten years ago, but spam email is now just one of the cybersecurity issues that ISPs and customers deal with. Cybersecurity matters more generally are now covered by the IIA iCode.
Reasons regulation is no longer needed/could be amended	• The Spam Code is redundant and has been maintained as a registered Code despite being out-of-date and its subject matter covered by subsequent instruments. • The Spam Code has a very narrow focus – spam email, and this has been superseded by the IIA's iCode, which has a broader cybersecurity focus and covers off spam email matters as well as other items. The iCode has been supported by the Department of Communications since its inception and several overseas jurisdictions have used the iCode as the basis for developing their own industry codes on cybersecurity matters. • In terms of technical standards to minimise spam emails – ISPs already implement these on their networks voluntarily. Spam emails are a huge impact on ISP networks, so a Code to suggest ISPs adopt practices to protect their networks is unnecessary and serves no useful purpose.
Proposal to remove or amend (if amend, please describe amendment)	The IIA Spam Code should be de-registered by the ACMA. Should there be any rules in the Spam Code that the ACMA believes must be retained, they can instead be added to the iCode. The iCode is not a registered code and therefore is very simple and quick to update.
What impact removal/amendment will have on industry	• Reduction in complexity and costs: removal of a registered code means less prescriptive obligations, less ongoing compliance checking activities and therefore reduced costs. • Increased innovation and responsiveness to changed cybersecurity threats: the ability to respond to new threats on our network will be enhanced if we have flexibility in the technical measures we can implement on our network and the information we provide to customers, rather than being stuck having to meet out-dated rules that have not been relevant for many years.

What impact removal/amendment will have on consumers/individuals	There will be no negative impacts on consumers from the removal and re-registration of this Code. The iCode deals with cybersecurity matters more broadly, and requires customer education and awareness on such matters already. The ability for providers to respond to threats without being bound by out-dated technical requirements and information provision obligations can only lead to better protected consumers.

ATTACHMENT TWO

TELECOMMUNICATIONS RED TAPE REFORM OPPORTUNITIES: LONGER TERM

Reducing regulation longer-term

Optus has identified a number of initial initiatives that are worthy of further consideration to reduce the burden of regulation on the sector. These include:

- **Consumer protection**, **customer information and marketing arrangements**: many layers of regulation have built up over time, or are included in legislation designed for the 'fixed line voice' paradigm. There is substantial opportunity for a re-design, removal or simplification of protections that are targeted at current supply and demand arrangements. This includes matters such as preselection, price caps and price controls and directory assistance obligations.
- **Regulation to protect the potential for competitive market outcomes**: there is substantial scope to refine, reduce and re-target pro-competition regulation.
- **Regulatory framework and institutional structures**: There is significant scope to clarify the lines of responsibility between the various regulatory agencies (e.g. ACCC, ACMA, Office of the Privacy Commissioner, TUSMA) and the legislation they administer, with a view to more effective administration with less overlap or duplication.
- **Spectrum**: the legislation and practical arrangements for the planning and allocation of spectrum are unnecessarily complex, costly for business to engage with and time consuming. Substantial efficiency gains should be achievable and there is scope for Government policy guidance to enhance administrative outcomes.
- **Charges, taxes, levies and licence fees**: The incidence, variety, scale and scope of the many Government imposts on the communications industry should be reviewed for efficiency and effectiveness. There will be opportunities to remedy distortionary impacts or reduce the aggregate burden.

Several of these opportunities are discussed in more detail below.

CUSTOMER INFORMATION

Telecommunications consumers are drowning under the sheer volume of information that industry is required to provide to them, referred to by many as 'information overload'. It could be almost guaranteed that not one provider in the industry is fully compliant with the more than 350 separate information obligations that apply across a vast range of laws, Standards, Determinations, Regulations, Codes and Guidelines.

This is a problem that has been discussed between regulators, industry and consumer stakeholders over time with no review process initiated or changes implemented. Even where a handful of obligations have been taken off the list, an equal number are added to the list as new issues arise. This is not sustainable.

Adding to the complexity is the fact that multiple regulators are involved, there is overlap and duplication between some of the requirements (leading to 'double jeopardy', where multiple regulators investigate the same issues).

In Optus' view, the only way to make a change is to reconsider the underlying framework.

Industry has a wealth of information gleaned from its customers about what is important to them, yet Government departments and regulators limit their views to protecting the vulnerable and stopping 'those dodgy providers'. The results is that a large number of obligations are imposed on providers who are doing the right thing, and means the entire population must put up with being harangued by providers telling them information that is not relevant to them 'just in case'.

There seems to be overwhelming agreement from all stakeholders that customers want information to be available when it's relevant to them.

Providing non-sales related information to customers who are in the midst of buying a shiny new phone, for example, is pointless. They are not interested in that information at that point in time. However, telling them the same information a couple of weeks after their purchase, for example, may be more useful when they've had a play with the phone, understand how it works and are more open to understanding such information. Also, making information available and easy to find online means that the customer can gain access it as and when they need it.

What is stopping providers from providing this information in a more customer-friendly manner as described above?

In short, all the regulations. Many of the 350+ obligations are overly prescriptive and dictate in which format the information must be provided, at what point in time and sometimes even what wording must be used. This is incredibly restrictive on providers and inhibits more innovative delivery of such information to consumers. It also fails the very premise it was intended to achieve, an informed consumer is a protected consumer.

In Optus' view, work needs to be done by all industry participants to determine the base level of information that customers need to be given throughout their relationship with their provider (e.g. when they're researching what to buy, at the purchasing stage, on their bills, as they use the product, and when they leave a provider). This baseline information should be proactively given to consumers (i.e. pushed out), with all remaining information requirements made available either online or upon request.

Flexibility will also need to be built into the mandatory information requirements so that each provider can determine how best to communicate with their customer base. For example, a small provider with only a few hundred customers may like a more personal approach and may call their customers, whereas a larger provider may choose to email their customer base. Alternatively a provider can offer its customers the ability to choose their contact methods.

The key principles for a new customer information framework should:

- be based on customer-centric design: simplicity, control, flexibility;
- support competition and innovation;
- be outcomes-based, not process-based;
- consider the context of all the existing obligations that apply; and
- be subject to continuous improvement and review.

In our view, such a framework would deliver:

- lower costs to industry;
- enhanced innovation and competition;

- increased compliance (due to less complexity for providers);
- a much better customer experience; and
- most importantly - better informed consumers.

There is also a need for regulators to take an outcomes-focussed approach to compliance and enforcement activities

MARKETING RULES

Whilst we understand how the current environment came about, in the spirit of regulatory reform it is worthwhile considering whether Australia really needs four different approaches to regulate different marketing channels: door-to-door sales are governed by the *Competition and Consumer Act 2010* and state and territory fair trading legislation, outbound telemarketing calls are regulated under the Do Not Call Register regime, the Spam Act applies to electronic marketing and the Privacy Act covers other types of marketing, such as mail-outs.

Adding to this complex marketing environment is the fact that multiple regulators cover these regimes: the ACCC, the ACMA and the Office of the Australian Information Commissioner.

The concepts in each of the current regimes is not dissimilar – only contacting the customer with either inferred or express consent, identifying the company undertaking the marketing activity, and allowing the customer to opt-out of future contact, creating an opportunity to streamline regulatory approaches.

Optus supports consideration of one regime that applied across the board, under one regulator, and this marketing regime treated all marketing channels in the same way.

From a customer standpoint, it should simply be about choice. Choice as to which companies you want to receive marketing from, and how you receive this, for example, you may not want to receive an SMS, but be happy with a phone call. Or you may not want a phone call, and prefer an email or something mailed out to you instead.

A suggested starting point is that given the Spam Act is the odd one out - due to taking an "opt-in" approach, rather than the "opt-out" approach of the other 3 regimes - some changes could be made to the Spam Act to bring it in line with the other regimes, before a longer-term review of each of these separate regimes and whether they can be consolidated.

ENSURING THAT REGULATION DOES NOT ACT AS A BARRIER TO COMPETITION AND NEW ENTRY

A further area for long term reform is the telecommunications competition regime under Part XIC. The current infrastructure access approach has resulted in the imposition of competition regulation on entities both with and without a dominant position in the market. For example, fixed-line network access regulation under Part XIC is imposed on both Telstra and Optus, even though Telstra has 95% market share of physical lines compared to Optus' 5%. This has the unintended consequence of imposing unnecessary regulatory costs on competitive entities, restricting their ability to compete against the monopoly infrastructure provider.

Optus sees substantial merit in adopting a regime of ex ante regulation on entities that have significant market power in an economic market. Optus notes this approach would make the Australian regime consistent with the European regime that is more generally applied across most OECD members. Furthermore, it would update the telecommunications competition

regime to make it more relevant for an NBN-focused market – where entities may have limited infrastructure ownership but retain significant market power.

CLARIFYING THE RESPONSIBILITIES OF THE REGULATORY AGENCIES

A number of agencies that regulate telecommunications. This includes bodies such as:

- The Department of Communications
- ACCC
- ACMA
- TUSMA
- TIO

The responsibilities and remit of these agencies have been modified over time. There are examples where the remit of the agency has been extended. Optus is not aware that Government has taken the opportunity to review the scope of the activities of each of these agencies. Optus considers such a review would be worthwhile. A key aim of such a review, consistent with the objectives of de-regulation, is to remove any overlap in scope between the relevant agencies that might have developed over time.

SPECTRUM

Spectrum provides a significant part of the underlying infrastructure for the digital economy, a key driver of economic productivity.

However, the complexity associated with spectrum allocation, pricing and licence reissue processes has resulted in inefficiencies, delay and contributed to an unnecessarily costly burden on industry.

Optus supports a review of the *Radiocommunications Act 1992* and the development and implementation of a Spectrum Policy Roadmap as detailed below.

The review of the *Radiocommunications Act 1992* should include:

Spectrum Allocation and Licence Re-issue

- Streamline and simplify decision-making processes for spectrum allocation (*S. 60 Radiocommunications Act 1992*) and licence re-issue (S. 82 *Radiocommunications Act 1992)* to provide certainty and reduce process engagement costs for industry.

Price Setting Mechanisms

- Review price-setting mechanisms for spectrum access charges - including how prices are set at auction, licence re-issue, administrative pricing principles and how spectrum is taxed.

Standardise planning, allocation and management of all spectrum

- Establish a common approach to the planning, allocation and management of broadcasting and non-broadcasting spectrum that provides for market-based allocation and the extension of secondary trading i.e. a platform-neutral approach.

Review approach to consultation and set timeframe for regulator response

- Establish flexible and streamlined consultation processes and standardised timeframes for Regulator responses. (For e.g. regional 1800 MHz and 900 MHz allocation processes have been open-ended and do not provide the requisite certainty for industry to make investment decisions)

Review lack of 'delegated' decision making and sets of decisions that require either the AMCA authority or the Minister to issue.

Spectrum Policy Roadmap'

- Develop a spectrum policy roadmap to outline a clear policy approach to making spectrum available for future mobile services in a timely manner, under a clear and simplified regulatory framework, at reasonable price that will not deter investment