

AUSTRALIAN
COMMUNICATIONS
INDUSTRY FORUM



INDUSTRY CODE
ACIF C521:2004
CUSTOMER INFORMATION ON PRICES
TERMS AND CONDITIONS

ACIF C521:2004 *Customer Information on Prices, Terms and Conditions* Industry Code

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EXPLANATORY STATEMENT

This is the Explanatory Statement for the ACIF C521:2004 *Customer Information on Prices, Terms and Conditions* Industry Code.

This Explanatory Statement outlines the purpose of the Industry Code and the factors that have been taken into account in its development and revision.

Background

Since the introduction of competition into the telecommunications industry consumers have experienced a growing diversity of products and services – eg, SMS, high speed data services, video, games, as well as increasing use of bundling of services and many new providers of services. An early major issue was the introduction of new mobile players/services, so the initial version of the Code contained special provisions in relation to advertising mobile products.

It is important for the industry to develop and maintain minimum standards in relation to the provision of information to consumers. Minimum standards will facilitate the objective of informed purchasing decisions being made by consumers. This is especially important when prices, terms and conditions for a product can change during the term in which the customer uses the product

Also, in many instances, a customer's initial purchasing decision is followed by subsequent, related purchasing decisions with the potential for additional customer confusion. For these reasons it is important for consumers to have access to suitable information to be able to make informed purchasing decisions and be aware of the long term consequences of those decisions.

Part 6 of the *Telecommunications Act 1997* (Cth) (the Act) sets out the intention of the Commonwealth Parliament that the telecommunications industry develop codes of practice relating to telecommunications activities. The Act lists the provision of information to consumers about the goods and services on offer, including their prices, terms and conditions, as a prime example of an area where codes may be developed.

The development of an industry Code in this area was given a high priority by the telecommunications industry, Government, consumer groups and regulatory agencies, including the Australian Competition and Consumer Commission (ACCC), the Australian Communications Authority (ACA) and the Telecommunications Industry Ombudsman (TIO).

The Australian Communications Industry Forum (ACIF) published the first version of this Code in February 1999. The Code was divided into three main sections:

- information that must be provided to consumers (both pre and post contractually) in relation to the telecommunications goods and services offered;
- rules on the advertising of telecommunications goods and services; and
- a special section on advertising of mobile products, in light of the emerging and highly competitive market in mobile services.

The initial version of the Code was specifically drafted allowing service providers' dealers and agents to become signatories to the Code in their own right. This meant that, under the Code, service providers would not be held accountable for the behaviour of their dealers and agents.

Following a request from ACIF the ACA held an investigation and concluded it would not declare dealers and agents as a section of the industry. This resulted in the Working

Committee revising the Code to allow ACA registration. The revised version of the Code was published in August 2000, and registered by the ACA in October of that year.

In accordance with ACIF operations and procedures, the August 2000 version of the Code has been reviewed and substantially rewritten to address the following issues:

- simplification and restructure of the Code both to eliminate the complexities in the earlier versions of the Code, and to accommodate the ACA suggestion that Consumer Codes should focus on the higher level rules, while providing sufficient examples to guide compliance by the industry;
- the requirement of industry and regulators for greater clarity and enforceability of Code rules;
- inclusion of internet examples, reflecting the growing market for Internet services;
- use of more technology neutral terminology to recognise the current and potential changes in the market; and
- incorporation of specific provisions on mobile advertising into the more general rules, recognising the growing maturity of this market.

Current Regulatory Arrangements and why this Code is Needed

Currently, there are a number of State and Federal laws influencing and guiding various aspects of information provision to consumers. Current laws are covered in Part V of the *Trade Practices Act 1974* (Cth) and related state Fair Trading and Door to Door legislation. The important provisions are those covering misleading and deceptive conduct and unconscionable conduct. The legislation is general and does not always provide specific guidance for telecommunications service providers.

This Code develops a framework and set of obligations which have due regard to, and either encompass or are consistent with, the requirements of these laws. Further, this Code builds in requirements and examples based on practical experience which is specific to the telecommunications industry. Thus the Code provides some basic understanding to both service providers and consumers concerning the current legal and community requirements specific to the industry. Note that the Code does not supplant legislated obligations.

How this Code Builds on and Enhances the Current Regulatory Arrangements

This Code has been developed to provide a minimum set of standards for service providers to meet when providing information to consumers about the prices, terms and conditions of the products on offer. Industry compliance with the Code will:

- better inform consumers about the industry and the products on offer;
- improve the fairness and accuracy of information provided;
- allow consumers to make informed purchasing decisions; and
- enhance customer confidence in the industry.

The Code establishes rules, which must be heeded by, service providers as well as providing specific guidance and obligations regarding advertising, pre-sale and contractual information provided to consumers. The timing of the provision of information is also important if consumers are to make informed purchasing decisions. Information can be provided to consumers in advertising material, before the initial purchasing decision is made, in any contract the customer enters into and on an ongoing basis as the customer continues to use the products. This Code has been

written to address these timing issues as well as the style and scope of information provided and the manner in which it is provided.

The Code has been developed to provide rules regarding the information disseminated by carriers, carriage service providers, content service providers, and internet service providers. The Code applies to telecommunications services including fixed and mobile telephone calls, internet access, content services and specialised data services. It also covers telecommunications goods sold in conjunction with these services as well as bundled services.

What the Code will Accomplish

This Code seeks to ensure that consumers will be provided with clear, accurate and complete information on the products they are inquiring about, intending to purchase or are purchasing. The Code addresses the availability of information throughout the customer's continued use of the products, and that the information is provided in a manner that is not confusing, misleading or deceptive. The Code also requires that relevant information is provided to consumers in a form that is readily accessible, legible and capable of being readily understood by consumers.

Industry compliance with the Code will enhance customer confidence in the telecommunications industry as improved practices regarding the provision of information become the norm, enabling consumers to become more discerning.

How the Objectives will be Achieved

The Code establishes minimum standards for the provision of information to consumers about the prices, terms and conditions of the supply of telecommunications goods and services. The Code rules provide guidance on appropriate behaviour for service providers. Further, the Code contains examples specific to the industry which provide additional context and information about the practical effect of the Code rules.

The TIO's investigative staff consider whether a Code rule has been breached every time they address a complaint, irrespective of whether a service provider is a signatory to the Code. The TIO records all potential and confirmed breaches, which are, in turn, reported to the ACA. All providers of a standard telephone service, mobile services and internet access services must be members of the TIO scheme and are subject to the TIO's jurisdiction.

As a consequence of the ACA's decision not to declare dealers and agents as a section of the industry, dealers and agents cannot be directed by the ACA to comply with the Code. However, the ACA can examine any behaviour by a dealer or agent as behaviour by that dealer's or agent's service provider. So ultimately, a service provider may be responsible for the behaviour of its dealers and agents, subject to laws relating to dealers and agents and their principals (service providers).

Anticipated Benefits to Consumers

This Code is predominantly concerned with residential and small business consumers. By providing service providers with a minimum set of standards for the provision of information to consumers, this Code will both encourage and promote improved industry practices. It requires consumers to be provided with accurate and timely information concerning telecommunications products, contributing to informed purchasing decisions. The Code will also provide consumers with information on the practices they should expect in the marketplace.

This Code has been registered by the ACA, enabling the ACA to direct service providers to comply with Code rules regardless of whether they are a Code signatory. Code registration will benefit consumers who can be reasonably sure, when choosing a

telecommunications supplier, that the information provided will be in accordance with clear industry standards set by the Code.

Anticipated Benefits to Industry

The Code benefits industry by providing greater clarity about the information that service providers are required to provide to consumers, and also about the ways in which service providers can advertise their goods and services.

Registration of the Code ensures that all sections of the industry operate on an equal footing in relation to advertising and information provision standards. Compliance with the Code will also lead to a reduction in the volume of customer complaints and also contribute to customer confidence and build customer loyalty.

Anticipated Cost to industry

While it is difficult to quantify, compliance with the Code in relation to a service provider's own operations is not expected to result in a substantial cost impact. However, there will be implementation costs for industry, including the costs for retraining and education programs for in house staff and for dealers and agents. There will also be costs associated with immediate and ongoing compliance programs.

Ewan Brown
Chairman

CCRP/WC12 : Prices, Terms and Conditions Working Committee

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The Working Committee responsible for the revisions made to this Industry Code consisted of the following organisations and their representatives:

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1 INTRODUCTION AND REGISTRATION WITH ACA

1.1 Introduction

- 1.1.1 Section 112 of the *Telecommunications Act 1997* (Cth) sets out the intention of the Commonwealth Parliament that bodies and associations in the telecommunications industry develop industry codes relating to the telecommunications activities of those bodies.
- 1.1.2 The development of this Code has been facilitated by the Australian Communications Industry Forum (ACIF) through a Working Committee comprised of representatives from the telecommunications industry, Government regulatory agencies, the Telecommunications Industry Ombudsman and consumer groups.
- 1.1.3 This Code builds on obligations of Suppliers under:
- (a) the *Telecommunications Act*, in particular, Part 23;
 - (b) the *Trade Practices Act 1974*;
 - (c) the Fair Trading and Door-to-Door Sales legislation in each State and territory;
 - (d) the *Disability Discrimination Act 1992*; and
 - (e) other equal opportunity legislation.
- 1.1.4 The Code also builds on the ACCC guidelines, *The Fair Call Advertising Guide* for advertising in the telecommunications industry.
- 1.1.5 When complying with this Code, Suppliers may collect a Customer's personal information and may therefore be subject to the National Privacy Principles in the *Privacy Act 1988* (Cth).
- 1.1.6 Compliance with this Code does not guarantee compliance with any of the above legislation, and this Code is not a substitute for legal advice. Suppliers should obtain their own legal advice about how to inform their customers of the prices, terms and conditions relating to their products, including the matters covered by this Code.
- 1.1.7 If there is a conflict between the requirements of this Code and any requirements imposed on a Supplier by legislation, the Supplier will not be in breach of this Code by complying with the legislation.
- 1.1.8 Non-compliance by a Supplier with any requirement set out in this Code does not affect the validity of any contract entered into between the Supplier and the Customer, unless otherwise provided by law.

1.2 Registration with ACA

This Code is registered by the Australian Communications Authority pursuant to section 117 of the Telecommunications Act.

2 SCOPE AND OBJECTIVES

2.1 Scope

- 2.1.1 This Code is applicable to the following sections of the telecommunications industry referred to in section 110 of the Telecommunications Act.
- (a) Carriers;
 - (b) Carriage Service Providers including internet service providers; and
 - (c) Content Service Providers.
- 2.1.2 This Code applies to the following telecommunications activities referred to in section 109 of the Telecommunications Act:
- (a) carrying on business as a Carrier;
 - (b) carrying on business activities as a Carriage Service Provider;
 - (c) supplying Goods or Service(s) for use in connection with the supply of a Listed Carriage Service; or
 - (d) supplying a content service using a Listed Carriage Service.
- 2.1.3 The Code regulates the method by which Suppliers Inform Customers about the prices, terms and conditions of the telecommunications activities listed in Clause 2.1.2 above, including the following:
- (a) advertising in all media;
 - (b) promotional material such as brochures or letters;
 - (c) telemarketing;
 - (d) Door-to-Door sales;
 - (e) Community Selling;
 - (f) internet promotions;
 - (g) customer service representative contact;
 - (h) operator contact;
 - (i) point-of-sale, face-to-face contact; and
 - (j) contracts.

2.2 Objectives

The objectives of this Industry Code are:

- (a) to provide a concrete set of minimum standards for Suppliers to meet in telling Customers about the prices, terms and conditions of Telecommunications Products on offer;
- (b) to eliminate practices which deceive, mislead or confuse customers;

- (c) to provide sufficient, accurate, current and relevant information to enable Customers to make an informed purchasing decision;
- (d) to enhance Customer confidence and understanding of information by ensuring Suppliers avoid unnecessary complexity and use simple and straight forward language when providing information to customers, and
- (e) to recognise the legitimate business interests of Suppliers in a competitive environment.

3 CODE ADMINISTRATION AND COMPLIANCE

3.1 Code Administration and Compliance Scheme

Under ACIF Code signatory arrangements, signatories to this Code are subject to ACIF's Code Administration and Compliance Scheme (October 2003) (the Scheme). Accordingly, all signatories who are bound by this Code are also bound by the Scheme.

3.2 Powers of the Telecommunications Industry Ombudsman to handle complaints under this Code

Under section 114 of the Telecommunications Act and, subject to consent by the Telecommunications Industry Ombudsman, this Code confers on the Telecommunications Industry Ombudsman the functions and powers of:

- (a) receiving;
- (b) investigating;
- (c) facilitating the resolution of;
- (d) making determinations in relation to;
- (e) giving directions in relation to; and
- (f) reporting on

complaints made by the end users of carriage services about matters arising under or in relation to this Code, including compliance with the Code by those industry participants to whom this Code applies.

3.3 Power to handle Industry Complaints under this Code

- 3.3.1 Complaints may be made under this Code to ACIF by a member of the industry (or a voluntary or non-profit consumer organisation or similar body) (an "Industry Complaint") about a contravention of this Code by a signatory to this Code.
- 3.3.2 Complaints by a member of the industry (or a voluntary or non-profit consumer organisation or similar body) about a contravention of this Code by a signatory to this Code may be referred from the ACA under the power granted to the ACA in section 514 of the Telecommunications Act, subject to ACIF's agreement to accept the referral. Without limiting the grounds on which ACIF may withhold its agreement to accept a referral, ACIF may withhold its agreement where it considers that the complaint can be more conveniently dealt with in another forum or that handling the complaint may impose an unreasonable cost burden on ACIF.
- 3.3.3 ACIF must handle Industry Complaints under Clause 3.3.1 or 3.3.2 of this Code in accordance with the provisions of the ACIF G514:2003 Code Administration and Compliance Scheme.

3.4 Code review

Review of this Code will be conducted every five years or sooner if there are significant developments that impact on the Code.

4 ACRONYMS, DEFINITIONS AND INTERPRETATIONS

4.1 Definitions

For the purposes of this Industry Code, the following definitions apply:

ACA

means the Australian Communications Authority.

Advertising Material

means advertising and promotional material in relation to Telecommunications Products including, without limitation:

- (a) television;
- (b) radio;
- (c) press and magazine advertisements;
- (d) direct mail;
- (e) posters;
- (f) brochures;
- (g) packaging;
- (h) billboards;
- (i) cinema advertisements;
- (j) advertorials;
- (k) infomercials;
- (l) promotional videos;
- (m) website materials;
- (n) signage;
- (o) media releases;
- (p) electronic mail;
- (q) electronic news groups;
- (r) short messaging services (SMS) and multimedia messaging services (MMS)
- (s) bill messages and inserts; and
- (t) any point of sale material.

Asterisk

means any illustrative symbol which is used to refer the reader to other content in a document.

Basic Telephony Service

means

- (a) a fixed local call service; or
- (b) a fixed long distance call service which does not require use of an override code.

Bundled Telecommunications Product

means a Telecommunications Product supplied under a Bundled Contract.

Bundled Contract

means a Contract under which a Supplier offers a package of goods or services, at least one of which is a Telecommunications Product of the Supplier, to a Customer at one price applicable to the package, but only where it is technically feasible to separately supply the Telecommunications Products contained in the package.

Carriage Service Provider

has the meaning given by section 87 of the Telecommunications Act.

Carrier

has the meaning given by section 7 of the Telecommunications Act.

Community Selling

means a sale, offer or negotiation to sell a Telecommunications Product where conducted in a public place, other than the Supplier's place of business. Community Selling does not occur when there has been a request by a Customer to a Supplier to enter into negotiations for the supply of the Telecommunications Product.

Compared Product

has the meaning given to it in the definition of Comparative Advertisement.

Comparative Advertisement

means an advertisement which makes direct or implied comparisons between:

- (a) Suppliers; or
- (b) particular Telecommunications Products ("Preferred Products") and other Telecommunications Products ("Compared Products") and/or associated prices, terms and conditions;

for the purposes of encouraging the Customer to select a particular Supplier or the Preferred Products.

Contract

means a verbal or written contract, including a Standard Agreement or any other standard terms and conditions and/or relevant pricing information incorporated by reference, whereby a Supplier agrees to supply and a Customer agrees to acquire a Telecommunications Product.

Content Service Provider

has the meaning given by section 97 of the Telecommunications Act.

Customer

means a person who:

- (a) is party to a Contract;
- (b) is authorised by the Customer to act on the Customer's behalf; or

- (c) is eligible under the criteria set by a Supplier to enter into a Contract;

but does not include a Carriage Service Provider or Carrier acquiring a Telecommunications Product in its capacity as a Carriage Service Provider or Carrier for the purposes of resale.

Disclaimer

means words used in Advertising Material which qualify, disclaim or add to the principal message or to a specific offer in the Advertising Material.

Door-to-Door Sales

means any spoken communication by a Supplier to a Customer for the purpose of offering a Telecommunications Product at the Customer's place of:

- (a) residence; or
- (b) employment,

and includes a 'contact sales agreement', or 'door-to-door sale' or 'door-to-door trading' and equivalent terms in applicable state and territory legislation.

NOTE: Spoken communications includes equivalent communications, e.g., the use of Auslan.

Inform

means providing information to a Customer orally or in writing unless otherwise specified in the Code. Where a Supplier is required to Inform a Customer of matters under the Code, a Supplier can satisfy this obligation by providing that information in an appropriate format which may include the following:

- (a) providing the information to the Customer verbally;
- (b) providing the information to the Customer in writing;
- (c) prominently displaying the information at the premises at which the Customer enters into the Contract, and drawing the Customer's attention to it; or
- (d) providing the information to the customer electronically.

Minimum Total Charge

means

- (a) the total of:
 - (i) equipment price;
 - (ii) any connection fee;
 - (iii) any compulsory periodic charges;
 - (iv) any minimum usage charges;
 - (v) any other compulsory charges; or
- (b) a fixed contract price,

over the minimum or fixed period of the Contract if applicable.

Preferred Product

has the meaning given to it in the definition of Comparative Advertisement.

Reseller

means a Supplier that acquires Telecommunications Services from another Supplier for the purposes of on-selling those services.

Savings Claim

means a statement or representation made in Advertising Material that Customers may spend less money by using a particular Telecommunications Product or Supplier.

Sales Representative

means a person employed or contracted, directly or indirectly by a Supplier, for the purpose of selling or offering to sell Telecommunications Products.

Special Offer

means an offer contained in Advertising Material to give a discount or rebate in relation to any standard rates or charges for a limited period of time.

Standard Agreement

means a standard form of agreement formulated for the purposes of Part 23 of the Telecommunications Act as current from time to time.

Supplier

means a Carrier, Carriage Service Provider or Content Service Provider.

Telecommunications Act

means the Telecommunications Act 1997 (Cth).

Telecommunications Good

means any good supplied for use in connection with the supply of a Telecommunications Service whether or not the good is supplied separately from the Telecommunications Service.

Telecommunications Product

means a Telecommunications Good or a Telecommunications Service.

Telecommunications Service

means a listed carriage service as defined in section 16 of the Telecommunications Act, or any service supplied in connection with that service.

Trade Practices Act

means the *Trade Practices Act 1974* (Cth).

Unsolicited Offer

means any spoken communication by a Supplier to a Customer that is not initiated by the Customer for the purpose of offering a Telecommunications Product:

- (a) during telemarketing;

- (b) during Door-to-Door Sales; or
- (c) in a public place.

NOTE: Spoken communications includes equivalent communications, e.g., the use of Auslan.

4.2 Interpretations

In this Code, unless the contrary appears:

- 4.2.1 Headings are for convenience only and do not affect interpretation.
- 4.2.2 The following rules of interpretation apply unless the context requires otherwise:
 - (a) the singular includes the plural and conversely;
 - (b) where a word or phrase is defined, its other grammatical forms have a corresponding meaning; and
 - (c) mentioning anything after include, includes or including does not limit what else might be included.
- 4.2.3 Boxed text in this Code is not binding on Suppliers and is intended as an aid to the interpretation of Code rules.
- 4.2.4 Any obligation upon a Supplier under this Code to provide a Customer with a document or a copy of a document or any other information in writing shall be satisfied if the Supplier provides the document or information to the Customer:
 - (a) in hard copy format and delivered in person, by post or any other commonly used method of delivery;
 - (b) by facsimile; or
 - (c) by any other technology agreed by the Customer, provided the document or information is capable of being reproduced in written form.
- 4.2.5 Where a Supplier is dealing with a Customer through an agent or representative of the Customer, the Supplier fulfils its obligations to the Customer under this Code by providing information to the Customer's agent or representative.
- 4.2.6 In interpreting requirements on Suppliers under Section 6, Subsection 6.14 takes precedence over the requirements for information provision under Subsections 6.1 to 6.13.
- 4.2.7 Words and expressions which are not defined have the meanings given to them in the Telecommunications Act.

5 REFERENCES

The following publications are relevant to this Code. At the time of publication, the editions were valid.

Publication	Title
ACIF Documents	
ACIF C547:2003	Complaint Handling Industry Code
ACIF C541:2003	Credit Management Industry Code
ACIF G601:2003	Consumer Contracts Industry Guideline
ACIF G586:2001	Access to Telecommunications for People with Disabilities Industry Guideline
Other Publications	
ACCC, <i>The Fair Call Advertising Guide</i> March 2003	
ACA, <i>Telecommunications (Standard Form of Agreement Information) Determination 2003</i>	
Legislation	
<i>Disability Discrimination Act 1992 (Cth)</i>	
<i>Privacy Act 1988 (Cth), particularly the National Privacy Principles in Schedule 3</i>	
<i>Racial Discrimination Act 1975 (Cth)</i>	
<i>Telecommunications Act 1997 (Cth)</i>	
<i>Telecommunications (Consumer Protection and Service Standards) Act 1999 (Cth)</i>	
<i>Trade Practices Act 1974 (Cth)</i>	
State and Territory legislation regulating Door to Door selling including the following:	
<ul style="list-style-type: none">• <i>Fair Trading Act 1987 (NSW)</i>• <i>Door to Door Trading Act 1987 (WA)</i>• <i>Fair Trading Act 1999 (Vic)</i>• <i>Fair Trading Act 1999 (Qld)</i>• <i>Fair Trading Act 1987 (SA)</i>• <i>Door to Door Trading Act 1991 (ACT)</i>• <i>Consumer Affairs and Fair Trading Act 2002 (NT)</i>• <i>Door to Door Trading Act 1986 (Tas)</i>	

6 INFORMATION PROVISION

This Part concerns the provision of information by a Supplier to its Customers about the Supplier's Telecommunications Products.

6.1 General

- 6.1.1 When providing information on the prices, terms and conditions of Telecommunications Products to Customers, a Supplier must ensure that the information is:
- (a) accurate, current and relevant;
 - (b) provided in a timely manner; and
 - (c) provided in plain language that accurately explains the prices, terms and conditions associated with each Telecommunications Product.
- 6.1.2 Upon the request of a Customer, a Supplier must:
- (a) provide the Customer with information in relation to a Telecommunications Product offered by the Supplier; or
 - (b) if in the Supplier's reasonable view it is more appropriate for a third party to provide the information, refer the Customer to a third party whom the Supplier believes will be able to provide the information.

NOTE: A third party includes the manufacturer of a Telecommunications Good.

6.2 Contract Information

- 6.2.1 On request of a Customer, a Supplier must provide the Customer with the terms of the Customer's Contract in writing and, where available, a record or details of the Customer's consent to the Contract.

NOTE: The record can include a copy of the Customer's signature on an application form or a voice recording.

- 6.2.2 A Supplier must not charge a Customer for provision of the Customer's Contract.

6.3 Information Accessibility

- 6.3.1 A Supplier must use reasonable endeavours to respond to requests for information from Customers in a way that is appropriate to the Customer's communications needs.

NOTE: This includes Customers with disabilities and Customers from non-English speaking backgrounds.

EXAMPLE:

"Our TTY number is XXX."

"If you would like, we can provide you with a copy of the summary of the contract in Vietnamese."

"If you require an interpreter for this information, please contact the interpreter service on XXX."

- 6.3.2 If a Supplier charges a Customer for a copy of information covered by this Code, other than a Contract, the Supplier must ensure such charges are limited to the cost of providing that information.
- 6.3.3 A Supplier must have regard to ACIF G586:2001 *Access to Telecommunications for People with Disabilities* Industry Guideline when providing information to Customers with disabilities.

6.4 Details of Suppliers

- 6.4.1 Before entering into a Contract, a Supplier must inform the Customer of the parties to the Contract.
- 6.4.2 Where the Supplier is a Reseller, it must, on request of a Customer, provide the name of the principal Carrier whose network is being used to provide the Telecommunications Service, subject to any contractual obligations between the Reseller and Carrier concerned that prohibit the disclosure of such information.

EXAMPLES:

"Your contract is with Universal Carriers. As part of providing your service, we mainly use the network of Heavenly Carriers."

"We currently use the networks of a number of carriers, including Universal Carriers and Heavenly Carriers."

"We are a re-seller of Jupiter's ADSL network, who in turn use parts of Neptune's network."

- 6.4.3 On request of a Customer, a Supplier must provide the name of the manufacturer of any Telecommunications Goods supplied to the Customer by the Supplier.

6.5 Description of Telecommunications Products

- 6.5.1 Before entering into a Contract a Supplier must:
 - (a) give the Customer a sufficient description of the Telecommunications Product;

EXAMPLES:

"This is a long distance service where, once you subscribe, you can make national and international calls using an override code when you want to use us."

"This is a high-speed internet service so that you can have faster access to the internet. The service permits you to use your telephone at the same time as you are on the internet."

"This is a fixed telephone and cable internet service which offers local and long distance telephone calls and a high-speed connection to the internet."

- (b) if the Customer has stated the purpose for the use of the Telecommunications Product or that purpose has become apparent to the Supplier from interaction with the Customer, Inform the Customer of:
- (i) any limitations reasonably within the Supplier's knowledge or control that might affect the typical performance and/or availability of the Supplier's Telecommunications Products relevant to that Customer's stated or apparent purpose; and

EXAMPLES:

"The speed and capacity of data and internet services in your area may be affected by pair gain and RIM technologies and you may need to consider other products."

"If you have a radio concentrator service, you need to ensure that your fax modem is compatible with that service."

"This ADSL service may be incompatible with back to base security."

"There is no local Point of Presence (POP) in your area for our internet and other data services so you will need to make a long distance call to connect."

"If you are using a satellite access network, you may experience delay in transmissions for certain services."

"This handset may not be compatible with some hearing aids. You may need to seek special advice to ensure compatibility with your particular hearing aid."

"We use a wide range of third party suppliers for our content which may vary from time to time."

- (ii) any other Telecommunications Products that are required to operate or use the Telecommunications Product which the Customer intends to acquire from the Supplier.

EXAMPLE:

"You will need a computer with a XXX or higher operating system, dial-up modem and software for web-surfing and email in order to use this dial-up internet service."

- 6.5.2 Upon request, a Supplier must Inform a Customer with a disability of any Telecommunications Product available from the Supplier which addresses the Customer's particular requirements and how to effectively use the Telecommunications Product.

NOTE: For a person who is Deaf or with a hearing impairment, advice about an attachment that gives a noticeable visual indication that the telephone is ringing, or of customer equipment with volume control so the person can raise the volume; for a person with visual impairment, advice about customer equipment with large buttons.

- 6.5.3 In relation to a Contract for the supply of a public mobile telecommunications service a Supplier must:
- (a) before entering into a Contract in the presence of the Customer, offer to show the Customer a map or diagram indicating the coverage of the network for the mobile service in the area of Australia within which the Customer indicates the service is generally to be used; and
 - (b) at any other time provide:
 - (i) in writing, a map or diagram referred to in sub-section (a) or a map or diagram indicating coverage of the network for the mobile service in other areas of Australia if requested by the Customer; and
 - (ii) reasonable verbal information in relation to the coverage of the network for the mobile service in any area of Australia if requested by the Customer.

6.6 Pricing Information

- 6.6.1 On request of a Customer a Supplier must Inform the Customer of the charges to the Customer that may apply under a Contract including the amount or the method by which the Customer may calculate those charges.

NOTE: Under Clause 6.6.1 a Supplier is not required to provide Customers with wholesale costs, network costs or access charges payable by the Supplier.

EXAMPLE:

"You will be charged XX cents per message sent for SMS messaging and XX cents each time you access your Voice Mail."

- 6.6.2 Before entering into a Contract which is subject to a Minimum Total Charge over a fixed period, a Supplier must Inform the Customer:
- (a) of the Minimum Total Charge, or each component of the Minimum Total Charge, to enable a Customer to determine the Minimum Total Charge; and
 - (b) if the Minimum Total Charge or components of it may vary during the term of the Contract.
- 6.6.3 In any Contract, a Supplier must state:
- (a) what charges may apply;
 - (b) what the charges relate to;
 - (c) the amount of each type of charge or manner of calculation;
 - (d) the frequency of the charge or circumstance giving rise to the charge becoming payable; and
 - (e) if the charges stated may be varied or other charges introduced during the term of the Contract, any

information about the rights and obligations the Customer and Supplier may have in relation to the variation.

NOTE: Information about Standard Agreements, including their summaries, must comply with the Telecommunications (Standard Form of Agreement Information) Determination 2003 or subsequent determinations made by the ACA under section 480A of the Telecommunications Act.

6.7 Bundled Contract

- 6.7.1 Before entering into a Bundled Contract, a Supplier must:
- (a) give the Customer a sufficient description of each Telecommunications Product offered as part of the Bundled Contract; and
 - (b) Inform the Customer of:
 - (i) any goods or services which the Customer must purchase to be eligible for the discount applicable to the Bundled Contract; and
 - (ii) the basis for calculating any discount applicable to the Bundled Contract if a discount has been promoted to the Customer.

EXAMPLES:

"Your 15% discount applies to calls from your fixed line but not from your mobile."

"If you do not use your \$30 free calls in any month, the unused portion is rolled over to your next account."

"To be eligible for our Super Discount Plan you must be pre-selected to us for long distance services and be connected to our mobile service."

"To be eligible for a discount off your internet monthly access fees, you must also have your full telephone service with us."

- 6.7.2 If a Telecommunications Product forming part of a Bundled Contract is also sold separately by Supplier, that Supplier must provide the price for its separate purchase on request of a Customer.

6.8 Term and Termination

- 6.8.1 Before a Customer enters into a Contract, a Supplier must inform the Customer of:
- (a) the minimum term (duration) of the Contract;
 - (b) any requirement for the Customer to give notice to the Supplier if the Customer wishes to terminate the Contract before expiration of the minimum term; and
 - (c) any additional amount payable by the Customer arising from the Customer terminating the Contract before

expiration of the minimum term or the method of calculating that amount.

- 6.8.2 In a Contract, a Supplier must state:
- (a) the commencement date of the Contract (except if it is a Standard Agreement);
 - (b) the minimum term (duration) of the Contract;
 - (c) the conduct or events which give rise to a right to terminate the Contract before expiration of the minimum term and the party who may exercise that right;
 - (d) any requirement, including the form and timing, for the Customer to give notice to the Supplier if the Customer elects to terminate the Contract;
 - (e) any additional amount payable by the Customer if the Customer terminates the Contract before expiration of the minimum term or the method for calculating that amount; and
 - (f) the conditions and duration of any term of renewal of the Contract, if applicable.

NOTE: Information about Standard Agreements, including their summaries, must comply with the Telecommunications (Standard Form of Agreement Information) Determination 2003 or subsequent determinations made by the ACA under section 480A of the Telecommunications Act.

6.9 Warranty on Telecommunications Goods

On request of a Customer, a Supplier must Inform the Customer of the details of any warranty that applies to the Telecommunications Good.

6.10 Instructions for Use or Limitations on Use

- 6.10.1 Before, or at the time of entering into a Contract, a Supplier must offer to provide the Customer with general instructions on how to access or use the Telecommunications Product, except if the Telecommunications Product is a Basic Telephony Service, in which case instructions must be provided only upon request.
- 6.10.2 On request of a Customer, a Supplier must Inform the Customer how to operate a Telecommunications Product.

NOTE: If the relevant Telecommunications Products are Telecommunications Goods, the Supplier may comply with its obligations under this section by referring the Customer to the manufacturer for more detailed instructions.

- 6.10.3 At the time of application for a service, or otherwise as appropriate, a Supplier must Inform a Customer of their options (if any) in relation to limiting access to the services, including any charges the Customer may incur for limiting access.

NOTE: 'As otherwise appropriate' can mean providing the information in a welcome pack, on request of the Customer, or when relevant circumstances arise for that Customer.

EXAMPLE:

"If you wish to bar access to premium rate services from this service, please contact us on XXX."

6.11 Post Sales Support

- 6.11.1 If post sales support will not be available for a Telecommunications Product, the Supplier must Inform the Customer before entering into the Contract.
- 6.11.2 If post sales support is available for a Telecommunications Product, the Supplier must Inform a Customer if there are any material conditions or limitations upon the post sales support.
- 6.11.3 If post sales support is available for a Telecommunications Product, upon request, the Supplier must Inform the Customer of:
 - (a) the contact details for the post sales support; and
 - (b) any fees or charges payable for the post sales support, if known.

6.12 Changes to Terms and Conditions

- 6.12.1 In a Contract, a Supplier must state:
 - (a) how the terms and conditions of the Contract may be amended or varied;
 - (b) the minimum notice period for amending the Contract, if any;
 - (c) how a Customer shall be notified of amendments or variations to the Contract; and
 - (d) how the Customer may otherwise obtain or access a copy of the amended or varied terms and conditions.

EXAMPLE:

"A copy of amended terms and conditions are available at our offices and on our websites."

6.13 Unsolicited Offers

In making an Unsolicited Offer, a Supplier must ensure that its Sales Representative:

- (a) provides their name or other unique identifier and the identity of the Supplier;

EXAMPLE:

"Hello, I'm Gary representing Universal Carriers."

- (b) states up front the primary purpose of the Unsolicited Offer as soon as practicable;

EXAMPLES:

"I'd like to talk to you about switching to XXX."

"I am calling to see if you are interested in signing up to XXX."

- (c) gives a brief description of the Telecommunications Product that is being offered including any Minimum Total Charge; and
- (d) states any conditions or restrictions that qualify the Unsolicited Offer.

NOTE: A Supplier is required to ensure that the Customer has been given all information regarding any cooling off period and rights of cancellation required under legislation.

6.14 Exceptions to Code Obligations

- 6.14.1 If a Customer expressly informs the Supplier that the Customer does not wish to receive certain information that the Supplier would otherwise be required to provide to the Customer at the time of entering the contract or during the period of the Contract, in accordance with Section 6 of this Code, then the Supplier is not required to provide that information to the Customer.

EXAMPLES:

"I do not want to know anything further about international roaming."

"I have already had this product in the past so I don't want any further information about it. Just sign me up."

- 6.14.2 If it is reasonably impractical, in the circumstances, for the Supplier to provide information to the Customer about the prices, terms and conditions of Telecommunications Products, as outlined under section 6, before entering, or at the time of entering the Contract, then the Supplier is not required to provide that information to the Customer at that time, but subsequently must make that information readily available.

NOTE: Examples of where it may be 'reasonably impractical' include where a Customer:

- (a) purchases mobile prepaid products or services at a convenience store;*
- (b) initiates use of a service using an override code;*
- (c) purchases a prepaid phone card; or*
- (d) make reverse charge calls.*

EXAMPLE: (For a label on a starter pack, or information card)

"For information about all our terms and conditions for this product, please call us on 1800 YYYY or check our website on www.yyy.com.au."

- 6.14.3 A Supplier is not required to give a Customer information under this Code if:
- (a) the Customer is ineligible for the Telecommunications Product;
 - (b) the information is irrelevant to the Customer's use of the Telecommunications Product;
 - (c) it would breach obligations of confidentiality or privacy in contravention of any law;
 - (d) a Customer's request for information is frivolous or vexatious; or
 - (e) the Customer's request would be unduly onerous upon the Supplier, having regard to the nature of the request and the relevant obligation of the Supplier under the Code.
- 6.14.4 Where it is not reasonable for an agent or Sales Representative of a Supplier to hold information required to be provided under this Code, the Supplier is not in breach of this Section if the agent or Sales Representative refers a Customer to the Supplier for that information or knowledge.

NOTE: The circumstances in which information is requested determine the extent to which that information may be within the Supplier's knowledge, including the reasonable knowledge of its Sales Representative. This recognises that the level of knowledge of Sales Representatives in a branded Supplier outlet will be different to that of sales persons in a retailer that does not specialise in Telecommunications Products.

7 ADVERTISING MATERIAL

7.1 General

A Supplier must ensure that information about a Telecommunications Product contained in its Advertising Material is accurate and current.

7.2 Disclosure of Conditions and Qualifications

Any condition, limitation, qualification or restriction upon an offer made in Advertising Material must be clearly stated or communicated in a manner that is reasonable in the circumstances having regard to the medium used and the intended audience.

NOTE: A Supplier may use Disclaimers to comply with Section 7 of this Code.

7.3 Disclaimers

7.3.1 A Supplier must not use a Disclaimer to negate the principal messages of the Advertising Material.

7.3.2 A Supplier must ensure that Disclaimers are:

- (a) clearly indicated or stated; and
- (b) readily understandable

having regard to the type of Advertising Material, including the medium or format used and its intended audience.

NOTE:

(a) *For printed Advertising Material, a Supplier should ensure that the font size of a Disclaimer is at least:*

- (i) *10 point, where the Advertising Material is A4 size or greater; or*
- (ii) *8 point, where the Advertising Material is less than A4 size but larger than a 50 square cm advertisement; or*
- (iii) *6 point where the Advertising Material is of a size equal to 50 square cm or smaller,*

by reference to the font size of Times New Roman or equivalent size in any other font.

(b) *For billboards, a Supplier should ensure that any Disclaimer used is sufficiently clear and prominent to a person who is able to view the entire billboard.*

(c) *Where printed Advertising Material uses multiple Disclaimers, the Disclaimers should be clearly indicated and readily understandable, including by content and the order in which the Disclaimers are listed.*

(d) *For radio and television, a Supplier should ensure that any verbal Disclaimer used is stated at a speed and*

volume capable of being comprehended by the average listener.

- (e) In all television, promotional video and cinema advertising where a Supplier uses written Disclaimers, the Supplier should ensure that any written Disclaimer is of a size and duration capable of being read and comprehended by the average viewer.*
- (f) A supplier should ensure that a Disclaimer used in printed Advertising Material:*
 - (i) appears in text which contrasts sufficiently in colour with its background to be clearly read; and*
 - (ii) is horizontal or otherwise appropriate if the Advertising Material is in a language other than English.*

7.3.3 A Supplier must ensure that any Disclaimer:

- (a) is placed next to the offer;
- (b) is linked to the offer by an asterisked footnote or other symbol; or
- (c) for television and radio Advertising Material, forms part of the advertisement visually or aurally.

EXAMPLES:

"Up to \$25 free calls per month (excluding operator assisted calls)."

"84 cents a minute to the UK."*

** "Rates quoted exclude calls to and from mobiles and operator assisted calls."*

7.4 Technical and Geographic Availability

A Supplier must ensure that Advertising Material which makes specific claims about the geographic or technical availability of a Telecommunications Service clearly states or communicates any geographical or technical limitations which substantially affect the availability or performance of the Telecommunications Service.

EXAMPLES:

"This ADSL service is only available in Sydney, Melbourne, Perth, Adelaide and Brisbane metro areas."

"19XX services are not available from payphones."

7.5 Limits on Availability

A Supplier must ensure that Advertising Material offering a Telecommunications Product for a limited period or in a limited quantity states or communicates that limitation.

EXAMPLES:

"Available until 30 June or while stocks last."

"Offer limited to the first 500 customers."

NOTE: The Trade Practices Act prohibits advertising the supply of goods or services, at a specified price, when there are reasonable grounds, of which the Supplier is aware, for believing that they will not be able to supply the goods or services at that price for a reasonable period.

7.6 Eligible Customers

If a Telecommunications Product is available only to a limited class of Customers, the Supplier must ensure that its Advertising Material clearly states or communicates the eligibility requirement or restriction.

EXAMPLES:

"Available to approved customers only."

"For residential customers only."

"Only for customers with a total spend of over \$50 per month on long distance calls."

7.7 Special Offers

A Supplier must ensure that Advertising Material, in relation to a Special Offer, contains sufficient details of the Special Offer including:

- (a) the principal elements of the Special Offer;
- (b) any conditions or limitations such as the time of day, the day or call destinations for which the Special Offer is available; and
- (c) the start date (if the Special Offer has not already started) and the end date (if this has been determined by the Supplier).

7.8 Offers for Telecommunications Goods Conditional on Connection to a Telecommunications Service

7.8.1 A Supplier must clearly state in all Advertising Material offering Telecommunications Goods which are conditional on connection to a Telecommunications Service, that the offer of the Telecommunications Goods is conditional on the Customer connecting to the Telecommunications Service.

EXAMPLE:

"The \$5 Galaxy handset is only available when you connect to our \$XX plan for 24 months."

"Modem provided at no cost when you subscribe to our Heavenly internet service for 12 months."

7.8.2 A Supplier must state in all printed Advertising Material (except for billboards, posters or similar formats) offering Telecommunications Goods which are conditional on connection to a Telecommunications Service:

- (a) any minimum period applicable to the Telecommunications Service connection;
- (b) any applicable connection fees;

- (c) any applicable monthly access fee;
- (d) any minimum monthly call fees or other compulsory payments;
- (e) the minimum total cost applicable over the minimum term of the Contract, if the minimum total cost can be calculated; and
- (f) if any fee applies for termination of the Contract before expiration of the minimum term.

NOTE: The way in which the above information is stated may differ depending on the nature of the printed Advertising Material.

7.9 Call Connection Fees

Where Advertising Material:

- (a) includes or states a call rate in relation to which a call connection fee also applies; and
- (b) the call connection fee is not included in the stated call rate, the Supplier must ensure that the call connection fee is clearly stated or communicated in the Advertising Material in a manner that is reasonable in the circumstances having regard to the medium used and the intended audience.

EXAMPLE:

"Our rate is 20 cents per minute. A connection fee of 15 cents applies per call."

7.10 Savings Claims

A Savings Claim made by a Supplier in Advertising Material must specify the service, rate or other matter on which the Savings Claim is based.

EXAMPLES:

"Save between 10% to 50% off our normal rates."

"Save 50% off our previous rates."

"Save up to 50% this weekend on the cost of our long distance calls."

"Save 15% on your long distance calls by subscribing to our mobile and long distance services."

7.11 Use of "Free"

Where a Supplier uses the term "free" or equivalent (which also includes "no cost", "no fee", "no charge", or "\$0") in its Advertising Material, it must ensure that:

- (a) the "free" Telecommunications Product is not subject to any charge, fee or cost;

- (b) the Advertising Material identifies those elements of the offer that are "free";
- (c) any other conditions that qualify the offer are stated, including any other Telecommunications Product that must be purchased with the "free" Product; and
- (d) the prices of Telecommunications Products accompanying the offer are not inflated to cover some or all of the cost of the "free" offers.

EXAMPLES:

"Free monthly access to Voicemail (normal diversion and retrieval charges apply)."

"Free monthly access to call diversion for 6 months (normal charges apply for each diverted call)."

"Free installation of cable modem with our \$150 broadband plan."

7.12 Use of the term "Unlimited"

Where a Supplier uses the term "unlimited" or equivalent terms in its Advertising Material, it must ensure that:

- (a) the Advertising Material states the element or elements of the offer that is/are "unlimited" ; and
- (b) any other conditions that may qualify the offer are stated.

EXAMPLE:

"Unrestricted content download, subject to a 4 hour limitation on download time."

7.13 Credits/Free Call Offers

A Supplier must ensure that its Advertising Material which offers or promotes credits, free calls or other benefits clearly states or communicates any conditions, including time limits, caps or fair use policies, upon a Customer's ability to use the free calls, credits or other benefits.

EXAMPLES:

"Up to \$XXX credits/free calls per month if used within X days."

"Ten free calls per month, subject to our fair use policy."

7.14 Bundled Telecommunications Products

A Supplier must ensure its Advertising Material, which offers or promotes Bundled Telecommunications Products clearly states or communicates any conditions and costs which may apply to any Telecommunications Product which is a component of the Bundled Telecommunications Products.

EXAMPLES:

Internet access is advertised at \$10 per hour but this is subject to registration costs and a fixed term contract. A Supplier could state:

"Conditions apply including minimum purchase of 10 hours, registration fee of \$X and cancellation fee of \$X if connection is cancelled within 12 months. Total minimum cost for 12 months is \$X."

7.15 Comparative Advertisements

A Supplier must ensure that, in any Comparative Advertisement:

- (a) it is clear what the Preferred Products are being compared with;
- (b) sufficient information is provided so that the comparison is clear;
and
- (c) the information on which the comparison is based is accurate, current and relevant to the comparison.

NOTE: When considering whether the Comparative Advertisement is clear, a Supplier should have regard to any claims made in the Comparative Advertisement and to:

- (a) *the respective purpose or purposes for which the Preferred Products and the Compared Products are ordinarily to be used;*
- (b) *the respective pertinent features of the Preferred Products and the Compared Products; and*
- (c) *whether, in relation to the Compared Product, other goods or services offered by the Supplier of the Compared Product would afford a more appropriate comparison.*

The policy objective of the greatest practicable use of industry self-regulation without imposing undue financial and administrative burdens on industry is central to the regulatory scheme of the *Telecommunications Act 1997*.

ACIF was established to implement the policy of industry self-regulation. It is a company limited by guarantee and is a not-for-profit membership-based organisation. Its membership comprises carriers/carriage service providers, business and residential consumer groups, industry associations and individual companies.

ACIF's mission is to develop collaborative industry outcomes that foster the effective and safe operation of competitive networks, the provision of innovative services and the protection of consumer interests. In the development of Industry Codes and Technical Standards as part of its mission, ACIF's processes are based upon its principles of openness, transparency, consensus, representation and consultation. Procedures have been designed to ensure that all sectors of Australian society are reasonably able to influence the development of Standards and Codes. Representative participation in the work of developing a Code or Standard is encouraged from relevant and interested parties. All draft Codes and Standards are also released for public comment prior to publication to ensure outputs reflect the needs and concerns of all stakeholders.



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