

AUSTRALIAN
COMMUNICATIONS
INDUSTRY FORUM



CUSTOMER TRANSFER
INDUSTRY CODE
ACIF C546:2007

ACIF C546:2007 Customer Transfer Industry Code
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EXPLANATORY STATEMENT

This is the Explanatory Statement for the ACIF C546:2007 **Customer Transfer** Industry Code.

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

The Code replaces the ACIF C546:2006 **Customer Transfer** Industry Code published by ACIF in December 2006.

Background

Deregulation of the telecommunications industry introduced new industry participants and provided residential and small business consumers with greater choice about who provides their telecommunications services. Customers may choose to have different service providers for some or all of their telecommunications services. The ease with which a customer can transfer service(s) to another service provider has led to the use of sales practices which may result in a transfer occurring without the customer's full knowledge or informed consent.

Section 112 of the *Telecommunications Act 1997* (the Act) outlines the intention of Parliament that the telecommunications industry develop industry codes relating to telecommunications activities. Section 113 specifically lists 'churning' (customer transfer) as an example of the matters that may be dealt with by the development of an industry code.

Development of the Code in 2001

The Code was initially developed to minimise the likelihood of unauthorised transfers. This was achieved through collaboration between the telecommunications industry, consumer groups and regulatory agencies, including the Australian Competition and Consumer Commission (ACCC), the then Australian Communications Authority (ACA) and the Telecommunications Industry Ombudsman (TIO).

The key problems in industry sales practices include the following and are addressed by this code:

- intrusive sales practices;
- harassment and coercion;
- failure to accurately identify the supplier of service(s);
- failure to accurately identify the service(s) being sold;
- cooling off period (where applicable); and
- lack of informed consent.

The Code rules outline how a service provider can transfer a customer's service, including:

- the methods used to identify the customer as authorised to request the transfer;
- the transfer process itself, including the conduct of the sales representative and ensuring the customer is fully informed of and consents to the transfer;

- the methods used to verify the transfer;
- the methods used to confirm the transfer and notify the customer;
- the cooling off period (where applicable); and
- the access to and retention of documentation.

Code rules are divided into two sections: general Code rules that apply in all sales environments and cover all the relevant steps in transferring a customer's service(s), and specific Code rules that apply to the sales environment in which the transfer was initiated.

Code Revision in 2005

The Code was revised in 2005 to address additional issues identified by consumer representatives, the Australian Communications and Media Authority (ACMA), the ACCC, the TIO, and the Office of the Privacy Commissioner (OPC). Those issues included:

- providing additional guidance to ensure that the person who requests a transfer of service is authorised to do so;
- providing additional guidance for service providers in their verification of transfers;
- enhancing Code rules on the provision of information to ensure customers can make an informed choice;
- ensuring that any recording made of a customer's consent to transfer contains sufficient detail;
- dealing with repeated unwanted marketing contact by service provider sales representatives;
- updating the Code to reference the National Privacy Principles, inserted into the Privacy Act 1988 after the earlier version of the Code was developed; and
- moving some channel specific rules into the section on general rules to avoid duplication and potential conflict or confusion over service provider obligations.

Code Revision in 2006

The Code was revised in 2006 to address issues raised by the TIO and ACMA. Those issues include:

- clarifying that, when a gaining Supplier transfers a service, the service must remain in the name of the customer of the service; and
- clarifying that Suppliers must take all reasonable steps to both ascertain the name of the customer of the service, and ensure that the customer (or their representative) has authorised the transfer.

Code Revision in 2007

The Code was revised in 2007 to address inconsistencies with the *Telecommunications (Do Not Call Register) (Telemarketing and Research Calls) Industry Standard 2007*. Minor amendments were made to Section 4.1 Telemarketing.

Current Regulatory Arrangements

Sales practices are covered by both legislation and industry Codes. The main laws affecting sales practices in telecommunications are the Commonwealth Trade Practices Act 1974, particularly Part IVA on Unconscionable Conduct and Part V on Consumer Protection, State door-to-door and fair trading legislation.

The ACIF C531:2005 **Commercial Churn** Industry Code and the ACIF C521:2004 **Customer Information on Prices, Terms and Conditions** Industry Code cover aspects of sales practices by industry participants. Other relevant industry Codes are listed in References, Section 5. The Australian Direct Marketing Association's (ADMA) Code of Conduct is also relevant to its members when the customer transfer occurs as a result of direct marketing by the service provider.

Why Current Regulatory Arrangements are inadequate

The current regulatory arrangements are fragmented and inconsistent between States, especially in regard to the different requirements of door-to-door and fair trading legislation. This may result in confusion amongst service providers and consumers alike, and increase both the costs of compliance and the possibility of non-compliance by the industry.

The ACIF Commercial Churn Code covers the relationship between industry participants, but not the relationship between a service provider and customer. While the ACIF Customer Information on Prices, Terms and Conditions Code requires a customer to be informed of the service(s) being provided, it does not cover the issues of customer identification, service provider conduct, ensuring a customer's informed consent to a transfer, or the verification of the transfer. While the ADMA Code covers some of the issues highlighted in service provider sales practices, that Code applies only to ADMA members, which does not cover many service providers.

How the Code Builds on and Enhances the Current Regulatory arrangements

The Code rules rely, at times, on State fair trading and door-to-door legislation as it exists in different States. The Code does, however, build on existing regulatory arrangements by enhancing the minimum standard to ensure that all transfers of a customer from one service provider to another in the telecommunications industry occur after authorisation has been obtained by appropriate means, and with the customer's informed consent. Minimum standards also require service providers to put in place appropriate verification procedures and to take steps to confirm, document and notify the customer of the transfer.

What the Code will Accomplish

The Code establishes baseline rules for practical, fair trading practices to protect customers against the unauthorised transfer or attempted transfer of their telecommunications service(s) from one service provider to another.

This Code seeks to minimise the incidence of the improper transfer of a customer from one service provider to another without the customer's full knowledge and informed consent. This in turn will increase consumer confidence in the telecommunications industry and potentially result in greater fluidity in the market as customers have more faith in the transfer process.

The Code rules ensure that all industry participants will have clear standards to follow when transferring a customer's service(s) from one service provider to another. Customers will have a consistent set of minimum standards of behaviour from all industry participants when they transfer service(s).

Compliance with this Code will ensure that:

- sales representatives are appropriately trained prior to soliciting transfers;
- steps are followed to identify the authorised customer;
- an appropriate verification process is in place; and
- customers are duly notified of the transfer.

The Code applies in all sales environments but should have particular impact in those sales that have been identified as problem areas, such as community selling and telephone soliciting. Specific rules have been developed for selling channels to supplement the general rules that apply across all selling channels.

How the Objectives will be Achieved

The Code rules set out the minimum requirements that service providers must adopt when transferring the service(s) of a customer and include the following:

- Identification of the Authorised Customer. Code rules ensure that service providers take all reasonable steps to ensure that the customer with whom they are dealing has the authority to transfer the service(s);
- Customer Transfer Process. Code rules set out standards of conduct to ensure that customers are not harassed or coerced into agreeing to a transfer of service(s), that in all sales environments the sales approach is appropriate, and that the customer is informed of all relevant information on the transfer of the service(s) so as to have given informed consent to the transfer; and
- Verification. Code rules ensure that a sample of the transfer requests are verified by a process that is independent of the process undertaken by the original sales representative.

Although the Code places obligations on a service provider, it is recognised that agents of service providers carry out much of the sales activities. However, the general law of agency may make service providers responsible for the activities of dealers and agents. In addition, the Code places special obligations on service providers for the training and conduct of their agents.

The TIO handles complaints by residential and small business consumers in relation to the Code. In handling complaints under this Code, the TIO's investigative staff will consider whether a Code rule has been breached every time they address a complaint, irrespective of whether an industry participant is a signatory to the Code. The TIO records all possible and confirmed breaches, which are, in turn, reported to ACMA.

Upon registration of the Code by ACMA, it will become possible for ACMA to direct any member of the industry, whether a signatory or not, to comply with the Code. Communications Alliance will monitor Code signatories' performance against the Code in accordance with the ACIF Code Administration and Compliance Scheme. The Code will be reviewed within five years of its registration by ACMA, or earlier if circumstances require.

Anticipated Benefits to Consumers

By providing industry participants with a minimum set of standards for the protection of consumers against the unauthorised transfer or attempted transfer of their service(s) from one service provider to another, the Code will both encourage and enforce improved industry practices. Other anticipated benefits to consumers resulting from industry compliance with the Code include:

- customers will be better informed about the service(s) which they may transfer;
- customers can expect appropriate service provider behaviour in the conduct of the transfer; and
- customers will have access to a service provider's auditable records of the transfer.

The Code itself will also provide customers with information on the practices they should expect in the marketplace for the transfer of telecommunications services. This will provide customers with a higher level of confidence in the industry.

Anticipated Benefits to Industry

Improved performance in regard to customer transfer will have both market and operational benefits as a consequence of this Code, as follows:

- reduction of incidents of invalid customer transfers;
- higher levels of customer satisfaction, with implications for industry participants' market share;
- fewer customer complaints about customer transfer matters, resulting in lower costs; and
- greater certainty regarding the minimum level of standard expected in the customer transfer process.

From a regulatory standpoint, the Code will provide a basis for improved performance by service providers in relation to customer transfer such that there will be less cause for intervention by the TIO and the regulators.

Anticipated Cost to industry

It is expected that industry participants will incur initial and ongoing costs in relation to compliance with this Code.

Compliance with the Code in many cases will require existing service providers to modify their customer transfer policies and operating practices. The processes associated with customer transfer are highlighted, including staff education, training, and the need to build the necessary functionality into customer transfer processes and systems.

Myra Pincott/Margaret Fleming
Chairman
CIRP/WC17 : Customer Transfer Working Committee

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1 GENERAL

1.1 Introduction

- 1.1.1 Section 112 of the *Telecommunications Act 1997* 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 Communications Alliance 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 should be read in the context of other relevant Codes and Guidelines, including:
- (a) ACIF C515:2005 **Pre-selection – Single Basket/Multi Service Deliverer** Industry Code;
 - (b) ACIF C521:2004 **Customer Information on Prices, Terms and Conditions** Industry Code;
 - (c) ACIF C531:2005 **Commercial Churn** Industry Code;
 - (d) ACIF C540:2006 **Local Number Portability** Industry Code;
 - (e) ACIF C547:2004 **Complaint Handling** Industry Code;
 - (f) ACIF C620:2005 **Consumer Contracts** Industry Code; and
 - (g) ACIF G562:2000 **Electronic Customer Authorisation** Industry Guideline.
- 1.1.4 This Code should be read in conjunction with related legislation, including:
- (a) the *Telecommunications Act 1997*;
 - (b) the *Telecommunications (Consumer Protection and Service Standards) Act 1999*;
 - (c) the *Telecommunications (Do Not Call Register) (Telemarketing and Research Calls) Industry Standard 2007*;
 - (d) the *Privacy Act 1988*;

NOTE:

The collection, use, disclosure and retention of a Customer's personal information should be facilitated in accordance with the National Privacy Principles, contained in the Privacy Act.

- (e) the *Spam Act 2003*;
- (f) the *Disability Discrimination Act 1992*;
- (g) the *Racial Discrimination Act 1975*;
- (h) the *Trade Practices Act 1974*; and

- (i) State and Territory legislation on Fair Trading and Door to Door Selling.
- 1.1.5 The general rules in Section 3 apply in each of the selling channels covered by Clause 3.1.1 and must be read in conjunction with the rules in Section 4. The rules in Section 4 are in addition to the rules in Section 3. The rules in Section 4 apply only to the selling channel in which the Transfer of the Telecommunications Service was initiated.
- 1.1.6 If there is a conflict between the requirements of this Code and any requirements imposed on a Supplier by statute, the Supplier will not be in breach of this Code by complying with the requirements of the statute.
- 1.1.7 Statements in boxed text are a guide to interpretation only and are not binding as Code rules.

1.2 Registration with ACMA

This Code is to be submitted to the Australian Communications and Media Authority (ACMA) for registration pursuant to section 117 of the *Telecommunications Act 1997*.

1.3 Scope

- 1.3.1 This Code is applicable to the following sections of the telecommunications industry under section 110 of the *Telecommunications Act 1997*. They are collectively referred to as "Suppliers":
 - (a) Carriers; and
 - (b) Carriage Service Providers.

NOTE: *Carriage Service Providers include Internet Service Providers.*

- 1.3.2 This Code deals with the Transfer of Telecommunications Services in relation to telecommunications activities by Suppliers, as defined in Section 109 of the *Telecommunications Act 1997*, including the following:
 - (a) carrying on business as a Carrier; or
 - (b) carrying on business activities as a Carriage Service Provider; or
 - (c) supplying Goods or Service(s) for use in connection with the supply of a Listed Carriage Service.

1.4 Objectives

The objectives of this Code are to minimise the incidence of, and provide protection to, Customers against the unauthorised Transfer of their Telecommunications Service(s) from one Supplier to another by establishing procedures for Suppliers to:

- (a) identify the Authorised Customer;
- (b) inform Customers of all relevant terms and conditions of the Transfer and Supplier contact details;

- (c) ensure appropriate conduct of Suppliers' Sales Representatives;
- (d) confirm the components of the Transfer to the Customer;
- (e) verify the Transfer through independent means;
- (f) notify the Customer of the completion of the Transfer;
- (g) maintain records of the Transfer process; and
- (h) provide Customer access to Supplier's records of the Transfer.

1.5 Code review

Review of this Code will be conducted every five years subsequent to the Code being registered by ACMA or sooner if there are significant developments that impact on the Code.

2 ACRONYMS, DEFINITIONS AND INTERPRETATIONS

2.1 Acronyms

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

ACIF	Australian Communications Industry Forum
ACMA	Australian Communications and Media Authority

2.2 Definitions

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

Act

means the *Telecommunications Act 1997 (Cth)*.

Authorised Customer

means a Customer who:

- (a) has a contract with a Supplier for access to a Telecommunications Service(s); and
- (b) has the authority through that contract to authorise the Transfer of all or part of that Service(s) to another Supplier.

Authorised Representative

means the person who is legally authorised by the Authorised Customer to act on behalf of the Authorised Customer on a bona fide matter concerning the Transfer from one Supplier to another.

Business Day

means a day that is not a Saturday, Sunday or a public holiday in the place concerned.

Carriage Service Provider

has the meaning given by section 87 of the Act.

Carrier

has the meaning given by section 7 of the Act.

Customer

means any contactee including an actual or potential Customer, only in relation to a Telecommunications Service for a residential or small business purpose, and does not include another Supplier acquiring a Telecommunications Service(s) in its capacity as a Carriage Service Provider for the purpose of resale.

Door to Door Selling

means a mode of selling, offer or negotiation to Transfer a Telecommunications Service where conducted face to face at the place of residence or employment of a Customer, but excludes where there has been an unsolicited request by a Customer to a Supplier to enter into negotiations for supply of Telecommunications Service(s) at the place of residence, employment or business of the Customer.

Gaining Supplier

means the Supplier to which Telecommunications Service or Services are to be Transferred.

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; or
- (c) providing the information to the customer electronically.

Informed Consent

means as defined in Clause 3.4.

Listed Carriage Service

means as defined in section 16 of the Act.

Notification

means the process whereby the completion of the Transfer is advised to the Authorised Customer.

Point of Sale

means the point at which the Sales Representative obtains Informed Consent.

Retail Outlets

covers any outlets selling Telecommunications Goods and Services. Retail Outlets include:

- (a) branded and general shops;
- (b) booths in public places;
- (c) community centres;
- (d) exhibitions and shows; and
- (e) any other approaches to Customers in public places.

Sales Representative

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

Supplier

means a Carrier or Carriage Service Provider.

Telecommunications Good

means a good supplied for use in connection with a Listed Carriage Service.

Telecommunications Service

means:

- (a) a Listed Carriage Service; or
- (b) a service(s) supplied in connection with a Listed Carriage Service.

Telemarketing

means a mode of sale, offer or negotiation solicited via inbound or outbound voice telephone calls, whether or not the Authorised Customer and the Sales Representative have an existing relationship.

Transfer

means the transfer of all or part of a Customer's Telecommunications Service from one Supplier to the Gaining Supplier as specified by the Authorised Customer or their Authorised Representative.

NOTE:

This can include Local Number Portability, Inbound Number Portability, Pre-selection, internet services including broadband, Commercial Churn, Local Call Resale and Mobile Number Portability.

Verification

means the process whereby the Authorised Customer or their Authorised Representative's request to Transfer the Telecommunications Service to another Supplier is checked with the Customer by a person or procedure independent of the Sales Representative who obtained the Transfer, prior to the implementation of the Transfer.

2.3 Interpretations

In this Code, unless the contrary appears:

- (a) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (b) words in the singular include the plural and vice versa;
- (c) words importing persons include a body whether corporate, politic or otherwise; and
- (d) a reference to a person includes a reference to the person's executors, administrators, successors, officer, employee, volunteer, agent and/or subcontractor (including but not limited to, persons taking by novation) and assigns.

3 CUSTOMER TRANSFER – GENERAL RULES

3.1 Application of General Rules

- 3.1.1 The general rules apply in each of the selling channels including:
- (a) Door to Door Selling;
 - (b) Telemarketing;
 - (c) Retail Outlets;
 - (d) Electronic Data Communications; and
 - (e) direct mail.
- 3.1.2 For additional rules relating to specific selling channels, see Section 4 of this Code.

3.2 General Conduct

- 3.2.1 A Supplier must ensure that its Sales Representatives:
- (a) identify themselves and the Supplier they represent;
 - (b) identify the purpose for making the visit or call;
 - (c) present the Supplier's Telecommunications Service in a clear, truthful and honest manner without exaggeration;
 - (d) maintain strict confidentiality; and

EXAMPLE:

A Sales Representative should not tell a Customer that a specific person or persons have already decided to change their Supplier without that person's prior express consent.

- (e) do not mislead or misrepresent the Supplier's affiliation with any other Suppliers.

- 3.2.2 A Supplier must ensure that its Sales Representatives do not:
- (a) harass or coerce a Customer;
 - (b) engage in unconscionable conduct;

EXAMPLE:

Unconscionable conduct includes taking advantage of a person who does not appear to understand the information provided due to illness, disability, age, non - proficiency in the language used by the Sales Representative or because they are under the influence of intoxicants.

- (c) in the case of Door to Door Selling, fail to leave the premises upon request of the Customer; or
- (d) solicit orders in inappropriate places.

EXAMPLE:

- *On street corners, in public buildings, in or outside places of worship; or*

- *in nursing homes and residential care facilities, without gaining the express approval of the management of that facility.*

- 3.2.3 A Supplier must ensure its Sales Representatives receive induction and training prior to soliciting Transfers. This training must include relevant areas of Trade Practices and Fair Trading /door to door legislation and this Code.
- 3.2.4 A Supplier must ensure its training materials are current, complete, accurate and available to its Sales Representatives.
- 3.2.5 A Supplier must ensure that its Sales Representatives, if referring to another Supplier's Telecommunications Service:
- (a) do not mislead Customers in any form or manner;
 - (b) refer to a public document source and a valid date of such document;
 - (c) inform the Customer that although this is the reference made, this may vary, dependant on the contract or terms of the relationship between the Customer and Supplier; and
 - (d) refer only to comparisons that are relevant to the Transfer being made or attempted.

3.3 Authorised Customer Identification

- 3.3.1 A Gaining Supplier must take all reasonable steps to:
- (a) ascertain the name of the Authorised Customer; and

NOTE: In ascertaining the name of the Authorised Customer in Clause 3.3.1(a), the Supplier is predominantly reliant on the information provided by the person with whom they are dealing.

- (b) ensure that the person who authorises the Transfer is the Authorised Customer or their Authorised Representative.

NOTE:

For residential customers, the following or similar questions should be asked:

- *Are you the account holder?*
- *Are you the person who is authorised to Transfer the Service?*

If the answer to the questions is NO, either request to speak with the person who is authorised to make changes or cease the Transfer process.

If the answer to either question is YES, ask the following additional question:

- *Will you accept responsibility for transferring the service to us?*

In the case of small business, the following procedures are recommended to identify the Authorised Customer within that business:

Seek to identify the name and position of the person within the business who has the delegated authority to make decisions in

relation to telecommunications matters; then communicate with that person in order to authorise the transfer.

The following questions may be used:

- *Are you the person authorised by your company to make changes to your company's services?*

If the answer is NO, either request to speak with the person who is authorised to make changes or cease the Transfer process. If they answer YES, ask the following question

- *Will you accept responsibility for transferring your company's telephone service/s to us?*

- 3.3.2 A Gaining Supplier must ensure that when they are Transferring a Service it remains in the name of the Authorised Customer, as established in Clause 3.3.1 (a), even if the Gaining Supplier is dealing with the Authorised Representative.

3.4 Informed Consent

- 3.4.1 A Gaining Supplier must obtain consent to the Transfer from the Authorised Customer or their Authorised Representative. The Gaining Supplier must take all reasonable steps to ensure that consent obtained is Informed Consent.

- 3.4.2 Informed Consent occurs when:

- (a) before seeking agreement to the Transfer, a Gaining Supplier has Informed the Authorised Customer or their Authorised Representative:
- (i) that the Authorised Customer is entering into a new contract by agreeing to Transfer a Telecommunications Service from their existing Supplier to the Gaining Supplier;
 - (ii) which Telecommunications Service is being transferred;
 - (iii) the terms and conditions of the Transfer;

NOTE:

Terms and conditions may include time taken to effect the Transfer or expiry of the relevant cooling off period.

- (iv) the identity of the Gaining Supplier;
- (v) whether the Customer's existing equipment, necessary for the provision of the service to be Transferred, will be compatible with the supply of service by the Gaining Supplier;

EXAMPLES:

"You must have an ADSL2 modem in order to use this ADSL2 service."

"Our service requires that you use a <Brand X> Modem. If you do not currently own a <Brand X> modem you must seek further advice from us in order to find if your current equipment is compatible with our service."

- (vi) the relevant terms and conditions relating to any Telecommunications Good or Goods purchased for the express use in conjunction with the relevant Telecommunications Service being Transferred;
- (vii) that there may be consequences from the Transfer arising from their existing Telecommunications Service contract, and that it is the Customer's responsibility to check the terms and conditions of any existing contracts relevant to the Service(s) being Transferred; and

NOTE:

Customers may not be able to Transfer a part or parts of their Service to the proposed Gaining Supplier because of contractual arrangements with their current Supplier. The attempt to do so may result in their current Supplier imposing an exit fee (or other charge) under their existing contract, or the existing Supplier reversing the Transfer of the Customer's service.

- (b) the Authorised Customer or their Authorised Representative has clearly conveyed agreement to this Transfer.

EXAMPLE:

By signing this Transfer Authority, you agree that XXXX will Transfer your telecommunications service to it.

- 3.4.3 A Gaining Supplier must create and retain a record of the Authorised Customer or their Authorised Representative's consent to the Transfer.

3.5 Disclosure of Information

A Gaining Supplier must, at the Point of Sale, make available at least the following information to the Authorised Customer or their Authorised Representative:

- (a) the contact details of the Gaining Supplier;
- (b) the appropriate contact details for lodging an inquiry or a complaint about any aspects of the Transfer;
- (c) that they will be notified within ten Business Days of the Transfer taking place; and

- (d) the mechanism by which the Customer can ascertain that the Transfer has occurred.

NOTE:

*The ACIF C521:2004 **Customer Information on Prices, Terms and Conditions** Industry Code contains requirements on Suppliers on the provision of information that must be made to Customers at the point of sale.*

3.6 Cooling Off Periods

- 3.6.1 A Gaining Supplier must ensure that the Customer has been given all information regarding any cooling off period and rights of cancellation, if applicable, under any legislation relevant to the sales channel being utilised.
- 3.6.2 The Gaining Supplier must ensure that the notice of the right to rescind the contract supplied to the Customer is in the prescribed form as required by any applicable legislation.
- 3.6.3 The Gaining Supplier must not complete the Transfer prior to the expiration of the cooling-off period, except as may be allowed under applicable legislation.
- 3.6.4 Before the expiration of the cooling off period, the Authorised Customer may rescind the contract without having to give the Gaining Supplier reasons beyond any required by legislation.
- 3.6.5 If the contract is cancelled within the cooling off period, a Supplier must not seek or knowingly retain payment for Telecommunications Service(s) supplied under that contract except as may be allowed under legislation.
- 3.6.6 A Supplier must not accept a waiver of the cooling off period by the Authorised Customer or their Authorised Representative, except as may be allowed under relevant legislation.

3.7 Confirmation

- 3.7.1 A Gaining Supplier must, at the Point of Sale, check the accuracy of the details of the Transfer with the Customer. The details checked must include:
- (a) the name and address of the Authorised Customer;
 - (b) the Telecommunications Service and related number to be Transferred;
 - (c) the identity of the Gaining Supplier who will supply the Telecommunications Service; and
 - (d) the fact that the Telecommunications Service will be Transferred to a new Supplier.
- 3.7.2 In the case of Door to Door and Retail Outlet selling channels, a Supplier must ensure that its Sales Representatives provide to the Customer a summary record of the Transfer including the details in Clause 3.7.1.

3.8 Verification

- 3.8.1 Where a Supplier or the Sales Representative initiates contact with a Customer, the Supplier must ensure that it has appropriate procedures for the Verification of a Transfer, or a sample of Transfers in all selling channels.

NOTE:

Situations where contact will be considered to have been initiated by the Supplier or Sales Representative include Door to Door sales, cold canvassing and outbound calls.

Situations where contact will be considered to have been initiated by the Customer include when a customer requests a visit by the Supplier to their premises, where a Customer responds to direct mail or other marketing activity, makes an inbound call to the Supplier or contacts the supplier online, and when a Customer enters into a Supplier's shop, licensed shop or dealer.

- 3.8.2 The proportion of Transfers Verified must relate to the level of unauthorised Customer Transfer complaints in a statistically significant manner and relate to the number of internal complaints received by the Supplier.

NOTE:

Where Suppliers are experiencing apparently high levels of unauthorised Transfers, a greater number of Transfers should be Verified. Where a Supplier experiences high or increasing levels of unauthorised Transfers in a particular selling environment, a higher proportion of Transfers should be Verified in that selling environment.

- 3.8.3 A Supplier must ensure that its methods to check the person who authorises the Transfer are not in breach of any relevant legislation.

NOTE:

This includes ensuring that people with disabilities or people from non-English speaking backgrounds are not discriminated against when a Supplier seeks their authorisation.

- 3.8.4 A Gaining Supplier must not seek to use the means of Verification to preclude the application of the Code rules.

EXAMPLE:

A Supplier cannot assert that a Door to Door Selling cooling off period does not apply because the sale is Verified by telephone.

3.9 Notification

A Gaining Supplier must issue advice to the Authorised Customer of the completion of the Transfer within ten (10) Business Days of the Transfer. The advice will include the identity of the billing organisation, if different to the Gaining Supplier.

3.10 Retention of Records

- 3.10.1 A Gaining Supplier must create and retain records, which are auditable, for a minimum of two (2) years, or as required by legislation, in relation to:
- (a) establishing that the person who authorises the Transfer is the Authorised Customer or their Authorised Representative;
 - (b) establishing that the Transfer is authorised in accordance with the relevant Code rules; and
 - (c) establishing that Notification has occurred.
- 3.10.2 A Supplier must ensure that, if it seeks to rely upon an electronic authorisation, it is able to show that it has complied with any applicable legal requirements in relation to disclosure to the Customer of the terms and conditions of the relevant Transfer.
- 3.10.3 A Supplier must ensure that they have processes in place to identify individual Sales Representatives responsible for effecting the Transfer of a Customer's Service.

3.11 Customer Access to Information

- 3.11.1 A Gaining Supplier must make available, on request by the Authorised Customer or their Authorised Representative, any material relevant to the contract for the Telecommunications Service.
- 3.11.2 A Supplier must ensure that an Authorised Customer or their Authorised Representative has access to the record, either electronic or written, of the Authorised Customer or their Authorised Representative's request to Transfer their Telecommunications Service.
- 3.11.3 A Gaining Supplier must be able to, within a reasonable time, provide a copy of the actual voice recording, or play back the actual voice recording, to the requesting Customer or, with the Customer's consent, to a nominated party.

EXAMPLE:

The following will be taken into account in determining if the time taken is reasonable: how long ago the recording was made, the age and accessibility of the recording and whether there is a dispute regarding the Transfer.

- 3.11.4 When requested by the Authorised Customer or their Authorised Representative, a Supplier must provide its records relevant to the Transfer, either in electronic or written form, to the Authorised Customer or their Authorised Representative or with the Customer's consent, to a nominated party, in a format that is clear, unambiguous and easily understood.

3.12 Provision for Customer to Opt Out of Marketing Approaches

A Supplier must have effective procedures in place to ensure that:

- (a) the Customer is informed that they can request not to receive further marketing approaches in one or more sales channels; and

- (b) if the Customer has made a request to the Supplier to not receive direct marketing communications from the Supplier, they are not contacted.

NOTE:

Customers should be provided with information on how to opt out of marketing approaches generally via:

- details on an appropriate Supplier internet site;*
- Suppliers' privacy brochures - e.g, Privacy Collection Statements;*
- where customers specifically request information on opt out, in a telephone call, face to face, by direct mail, etc., where appropriate; and*
- by customer correspondence where appropriate.*

4 CUSTOMER TRANSFER – CHANNEL SPECIFIC RULES

4.1 Telemarketing

NOTE:

The Telecommunications (Do Not Call Register) (Telemarketing and Research Calls) Industry Standard 2007 specifies industry obligations for Telemarketing.

- 4.1.1 A Supplier must ensure that where the purpose of a call is to elicit a Transfer, its Sales Representative does not represent that they are undertaking market research or offering a product for free if it is not the case.
- 4.1.2 A Supplier must ensure that the Sales Representative receives the Customer's verbal consent to record the conversation or gives the Customer the opportunity to opt out of recording.
- 4.1.3 A Supplier must ensure that the scripting and recording provides a Customer with the opportunity to accept or decline the Sales Representative's offer.
- 4.1.4 If the authorisation for the Transfer is documented by the Supplier at the Point of Sale, a Supplier must collect the information in a form that is secure, relevant, comprehensible and accessible.
- 4.1.5 A Supplier must ensure that its Sales Representative records the Customer's voice authorisation to Transfer their Service(s). The recording must include:
 - (a) the Customer's name;
 - (b) the Customer's consent to Transfer;
 - (c) the Customer's acknowledgment that, by this recording, the Transfer is authorised;
 - (d) the Telecommunications Service being Transferred;
 - (e) the name of the Gaining Supplier; and
 - (f) a summary of the component of the service package and/or the name of the service package that the Customer has agreed to accept in transferring their service.

EXAMPLE: (to ensure all elements of the rule are complied with)

Please state your full name, including title – for example, Miss Martha Brown.

Welcome to the <Supplier Name> Voice Recording. Please respond to the following questions after the tone. <Supplier Name> Voice Recording will record your voice for the purpose of authorising <Supplier Name> to carry your International and National Long Distance calls, Calls to Mobiles and Operator Assisted Calls and bill your Local Call Service. This authorisation is not a trial. It is not a request for further information. By proceeding, you are agreeing to have <Supplier Name> carry your Long Distance service and bill your Local Call Service. Do you agree to proceed on this basis?

Do you certify that you are the account holder of the Local Call Services(s) and you are authorised to transfer the Long Distance and Local Call Service(s) to <Supplier Name>?

Please state which Long Distance offer you would like to select. Please state which Local Call Plan you would like to select.

4.2 Electronic Data Communications

NOTE:

This channel covers solicited and unsolicited offers to Transfer Telecommunications Service via electronic data communications methods which include but are not limited to electronic messaging services such as email and Short Message Services (SMS), multimedia message services (MMS), website offers and offers via facsimiles and online marketing.

- 4.2.1 A Supplier must ensure that the Customer can view all relevant terms and conditions of the Telecommunications Service on the website and that the website is accessible. The terms and conditions must be written in plain language.

NOTE:

Text on a Supplier's website should be accessible in accordance with the Web Content Accessibility Guidelines published by the World Wide Web Consortium (W3C), available at www.w3.org.

- 4.2.2 A Supplier must ensure that all relevant terms and conditions of the Telecommunications Service can be downloaded.

5 CODE ADMINISTRATION AND COMPLIANCE

5.1 Code Administration and Compliance Scheme

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

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

Under section 114 of the *Telecommunications Act 1997* 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.

5.3 Power to handle Industry Complaints under this Code

5.3.1 Complaints may be made under this Code to Communications Alliance 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.

5.3.2 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 ACMA under the power granted to ACMA in section 514 of the *Telecommunications Act 1997*, subject to the agreement of Communications Alliance to accept the referral. Without limiting the grounds on which Communications Alliance may withhold its agreement to accept a referral, Communications Alliance 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 Communications Alliance.

5.3.3 Communications Alliance must handle Industry Complaints under Clause 5.3.1 or 5.3.2 of this Code in accordance with the provisions of the ACIF G514:2003 **Code Administration and Compliance Scheme**.

6 REFERENCES

Publication	Title
Industry Codes	
ACIF C515:2005	Pre-selection – Single Basket/Multi Service Deliverer
ACIF C521:2004	Customer Information on Prices, Terms and Conditions
ACIF C531:2005	Commercial Churn
ACIF C540:2006	Local Number Portability
ACIF C547:2004	Complaint Handling
ACIF C620:2005	Consumer Contracts
Industry Guidelines	
ACIF G514:2003	Code Administration and Compliance Scheme
ACIF G562:2000	Electronic Customer Authorisation
Legislation	
<i>Disability Discrimination Act 1992</i>	
<i>Privacy Act 1988</i>	
<i>Racial Discrimination Act 1975</i>	
<i>Spam Act 2003</i>	
<i>Telecommunications Act 1997</i>	
<i>Telecommunications (Consumer Protection and Service Standards) Act 1999</i>	
<i>Telecommunications (Do Not Call Register) (Telemarketing and Research Calls) Industry Standard 2007</i>	
<i>Trade Practices Act 1974</i>	

PARTICIPANTS

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

Organisation	Membership	Representative
AAPT	Voting	Robyn Ziino
Australian Communications and Media Authority (ACMA)	Non-voting	Libby Howard
Australian Telecommunications Users Group (ATUG)	Voting	David Sokolovic
Consumers' Telecommunications Network (CTN)	Voting	Sarah Wilson
Country Women's Association of Australia	Non-voting	Myra Pincott
Optus	Voting	Paul Lica / Ana Tabacman
Small Enterprise Telecommunications Centre (SETEL)	Voting	Ewan Brown / Gordon Frend
Telstra	Voting	Jeff Pianko / Neil Mounsher
Telecommunications Industry Ombudsman (TIO)	Non-voting	Phil Waren

This Working Committee was chaired by Myra Pincott and Margaret Fleming. Margaret Fleming of Communications Alliance provided project management support.

Communications Alliance was formed in 2006 to provide a unified voice for the Australian communications industry and to lead it into the next generation of converging networks, technologies and services.

In pursuing its goals, Communications Alliance offers a forum for the industry to make coherent and constructive contributions to policy development and debate.

Communications Alliance seeks to facilitate open, effective and ethical competition between service providers while ensuring efficient, safe operation of networks, the provision of innovative services and the enhancement of consumer outcomes.

It is committed to the achievement of the policy objective of the Telecommunications Act 1997 - the greatest practicable use of industry self-regulation without imposing undue financial and administrative burdens on industry.



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Care should be taken to ensure the material used is from the current version of the Standard or Industry Code and that it is updated whenever the Standard or Code is amended or revised. The number and date of the Standard or Code should therefore be clearly identified. If in doubt please contact Communications Alliance.