30 March, 2016

The Manager
Consumer Interests Section
Communications Safeguards and Networks Branch
Australian Communications and Media Authority

Via email: consumerinterests@acma.gov.au

RE: Proposed amendments to the Telecommunications (International Mobile Roaming) Industry Standard 2013 Consultation

ACCAN would like to thank the Australian Communications and Media Authority (ACMA) for its consultation on changes to the International Mobile Roaming (IMR) Standard (‘the Standard’). As outlined in previous discussions with the Department of Communications and the Arts and industry we believe a balance can be struck between tailoring information to consumers without undermining existing consumer protections in the Standard. We also believe it is important to recognise that consumer protections play an important role in supporting a fair market that is sustainable in the long term.

Overall we believe the ACMA can take further steps to achieve a balanced approach and maintain an appropriate level of consumer protection. We will now turn to each of the proposed amendments and provide feedback.

Combining ‘on-arrival’ messages
Although ACCAN was not presented with any evidence of particular detriment that this amendment sought to remedy, we generally support the principle of simplifying consumer information. As such we are not concerned by the proposal to combine on arrival messages.

Other ways to decline roaming services
The ability to opt-out of roaming is important in providing consumers with capacity to self-manage their roaming. This principle of self-control is embodied in the industry’s own Framework for customer information provision.¹

ACCAN has no problem with expanding the number of avenues for declining IMR services, so long as this does not lead to options which are expensive, inaccessible or difficult to carry out in a timely manner. ACCAN believes the proposed amendments could do more to achieve these aims and we encourage the ACMA to monitor the impact of these changes.

We appreciate that the intention of subclauses 8(5) and (6) is to curb the charging of disproportionate fees and ensure that methods for declining services are accessible. However, there is a risk that without more prescriptive direction some service providers will seek to test the boundaries of terms such as ‘nominal fee’ or ‘reasonably accessible’. These terms need to be defined so that the ACMA is more easily enabled to take education, compliance and if necessary enforcement action to help industry understand its obligations.

Recommendation 1: Define the terms ‘nominal fee’ and ‘reasonably accessible’ in subclauses 8(5) and 8(6).

Delays obligations on MVNOs
ACCAN understands the Minister’s Direction was to delay the application of requirements on mobile virtual network operators (MVNOs) to provide charging and spend management information until 1 January 2019. As such there is no scope for the ACMA to implement an alternative policy.

For the record ACCAN has been informed by an MVNO and a Carrier that this capability has already been developed. As such we question purported cost savings to industry of further delaying a consumer’s ability to self-manage usage.

Opting out of usage alerts
ACCAN does not believe the ACMA has achieved an appropriate balance or adequate consumer protection in its creation of an opt-out method. The proposed amendment creates a loophole for service providers that seek to take advantage of limitations on consumer decision making. Using the wording ‘may’ rather than ‘must’ in subclause 9(3B) puts a decision in the service providers hands as to whether to gain proper informed consent from a consumer. This amendment has the potential to undermine the intent of the Standard, which was to allow consumers to self-manage their usage.

In the domestic context, ACMA research has found that 92 per cent of consumers found SMS usage notifications useful.\(^2\) We would expect consumer satisfaction to be even higher in the IMR market

Given the greater potential for bill shock due to higher costs of usage. Given the overwhelming support for usage notifications we think there is no consumer benefit in creating an opt-out option.

For component services, such as IMR, ACCAN believes it is inappropriate to gain consent at point of sale, as there is a significant chance consumers will not recall the choice to opt-out if they eventually use roaming months or even years later.

It would also be unacceptable if the ‘choice’ to opt out was a condition precedent of being sold a service. The practical effect will likely be many service providers only making offers available on the condition that consumers opt-out of usage notifications.

Behavioural economic research indicates consumers are poor judges of future needs and tend to be overly optimistic about future events. This kind of behavioural bias may lead to poor decision making about the future need for IMR usage notifications, especially if the choice is made significantly in advance of the need.

The ACMA can better achieve the Ministerial Direction and its intent by altering the language of subclause 9(3B) to ensure service providers gain informed consent in order to opt-out of usage notifications.

The Ministerial Direction simply required an amendment:

5(1)(d) to allow carriage service providers to make available methods for customers to opt out of the spend management tools required by subclause 9(3) of the Standard.

The accompanying press release by the Minister stated:

“The changes reflect the Government’s commitment to maintaining key consumer safeguards while giving consumers greater choice in the mobile roaming services they purchase.” As currently worded we do not believe the amendment adequately achieves the goal of providing choice and maintaining key consumer safeguards.

ACCAN proposes the Direction and its intent would be better met by allowing consumers a real choice over whether to opt-out of usage notifications.


Recommendation 2: Amend subclause 9(3B) to the following:

(3B) A CSP must not allow customers to elect to use a method referred to in subclause (3A) by way of accepting a term or condition of a standard form customer contract or the default terms and conditions associated with the purchase of an included value pack.

Conclusion
The ACMA through its Reconnecting the Customer Inquiry has played an important role in empowering consumers to self-manage usage. As recent ACMA research indicates, one of the key consumer protections in achieving this has been the introduction of usage notifications. ACCAN is concerned that the amendment to the IMR Standard as currently worded will reduce the availability of offers that make usage notifications available. As such we encourage the ACMA to consider the amendment proposed in the recommendation.

Sincerely,

Xavier O’Halloran
ACCAN Policy Officer