



14/09/09

Telecommunications Carriers' Forum,
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Submission on Code for the Transfer of Telecommunications Services

Background

The New Zealand Association of Citizens Advice Bureaux (the Association) – Ngā Pokapū Whakahoki Pātai mai i te Iwi Whānui welcomes the opportunity to comment on the Code for the Transfer of Telecommunications Services.

We work to empower individuals to resolve their problems and to strengthen communities by identifying and raising local and national issues. The person to person service provided by over 2,700 Citizens Advice Bureau (CAB) volunteers is unique in New Zealand.

From our 91 locations around New Zealand the CAB provides a free, impartial and confidential service of information, advice, advocacy and referral to individuals, and we use our experience with clients to seek socially just policies and services in Aotearoa New Zealand. In the 2008/09 financial year, the CAB assisted with 676,164 client enquiries across the gamut of issues that affect people in their daily lives. This included enquiries about telecommunications, including the transfer of customers.

Introduction

Over the last year the Association has become increasingly concerned about the number of enquiries it has received relating to unauthorised transfers, whereby a customer is transferred from one telecommunications company to another without their express knowledge and consent. The Association is concerned that some telecommunications companies are taking advantage of confused or vulnerable consumers to switch them without proper informed consent. Anecdotally it appears that many of the enquiries received

by the CAB have involved elderly consumers, who may be particularly vulnerable because of hearing problems, or lack of confidence.

We strongly urge the Telecommunications Carriers' Forum to take advantage of the opportunity presented by the updating of this code to ensure that there are adequate protections in the code to help protect against such unauthorised transfers.

The proposed code is significantly lacking in guidelines and safeguards against unauthorised transfers. The code is far too strongly focused on streamlining processes for Retail Service Providers and not enough on safeguarding the rights of End Customers, which we hold is contrary to section 18 of the Telecommunications Act. For this reason we are setting out a series of recommendations which would create much more robust safeguards against unauthorised transfers.

Recommendations:

Section C 4 (Objective):

We support the inclusion of clear objectives within the code, but we recommend that the high-level objective needs to be amended to specifically include the requirement for informed consent to be a central aspect of the transfer of End Customers.

We therefore recommend that the high-level objective is amended to read:

“The Code’s high-level objective is to provide a seamless transition of an End Customer’s Telecommunications Services between Retail Service Providers, *where proper informed consent has been granted by the End Customer*, so that the End Customer continues to receive high quality, uninterrupted service.”

We support the inclusion of sub-objectives within the code, and in particular we support the inclusion of objectives 4.1 and 4.4 as important statements emphasising the importance of Customer consent for, and control over, transfer of services. Unfortunately these objectives are not carried through to the rest of the code, nor are the objectives given sufficient weight in the code as a whole.

We recommend that a new clause is added to the effect that the remainder of the code needs to be interpreted in accordance with the objectives outlined in section C.

Section F (Customer Authorisation):

The objective of this section should be framed in much stronger terms.

We recommend that the objective of section F is amended to read: ‘That the objective of this section is to prevent the unauthorised Transfer of Services of End Customers.’

We recommend that the objective of this section should be followed by a series of principles which will serve as the basis for ensuring the objective is met. At a minimum the following principles should be added:

- RSPs (and their representatives) must communicate with End Customers in Plain English.
- RSPs (and their representatives) must ensure the appropriate conduct of Sales Representatives and that Sales Representatives understand this code and comply with it.
- RSPs (and their representatives) should not engage in conduct that misleads or deceives or is likely to mislead or deceive End Customers.
- RSPs (and their representatives) must present their Service in a clear, truthful and honest manner without exaggeration.
- RSPs (and their representatives) must ensure that End Customers entering into contracts understand, and intend to enter into them.
- RSPs (and their representatives) must not abuse the trust of vulnerable End Customers e.g. those who have hearing problems or whose first language is not English, or who have special needs. Providers should have a policy regarding such End Customers, including that their representatives do not pursue sales presentations to End Customers who it is reasonable to believe may be vulnerable.
- RSPs (and their representatives) must carry out regular audits of systems, procedures and documentation to ensure that they are acting compliantly with all aspects of the Code.
- RSPs (and their representatives) must ensure that true informed consent (as outlined in section 22) is obtained for a service transfer.

We recommend that section 21 **Obtaining Customer Authorisation** is amended to include a section that states:

“that in the process of obtaining the Customer Authorisation, a Gaining RSP (and their representatives) must set out in a clear, comprehensible, prominent and accurate manner:

- essential information including the identity of the company, its address, telephone, fax and e-mail contact details, as appropriate;
- a description of the telephone service sufficient to enable the End Customer to understand the option that the End Customer has chosen, and how it works;
- information about the major elements of the service, including the payment terms;

- any minimum period of contract, minimum contract charges, and any early termination charges, if applicable”

We recommend that the code should provide for a 7 day cooling off period to apply to transfers resulting from telemarketing calls in accordance the Telemarketing Code of the New Zealand Marketing Association. This cooling off period should begin once a written confirmation of a transfer has been sent. The End Customer should be contacted in writing within 5 working days of the transfer being agreed to. If it is found that the contract was not understood or intended and the End Customer wishes to cancel either the gaining or losing RSP must terminate the contract. This must be done without charge or other penalty to the End Customer.

We recommend that section 22 **Informed Customer Authorisation** is amended to include the following:

- That informed consent will only be considered to have occurred when, before seeking agreement to the Transfer, the Gaining RSP informs the End Customer of the following and the End Customer clearly conveys agreement to the Transfer:
 - That the End Customer is entering into a new contract by agreeing to the Transfer.
 - Which services are being transferred.
 - The terms and conditions of the transfer.
 - The identity of the gaining service provider.
 - That there may be consequences arising from their existing Telecommunications Services contract, which the End Customer must check.
- That an RSP must ensure that Telemarketing calls provide an End Customer with the clear opportunity to accept or decline the Sales Representative's offer.
- That any sales call resulting in a transfer must include a closing confirmation statement, which clearly states that the End Customer is choosing to transfer their service to a new service provider.
- A Supplier must ensure that its Sales Representative records the End Customer's voice authorisation to Transfer during a sales call, including at least:
 - the Customer's:
 - name;
 - consent to Transfer;
 - acknowledgement that the Transfer is authorised;
 - the Telecommunications Service being Transferred;
 - the name of the Gaining Service provider; and
 - a summary or the name of the service package that the End Customer has agreed to accept.

We recommend that clause 23.2 should be amended so that it is clear that an End Customer can request a copy of the Customer Authorisation.

Conclusion

The proposed code does not provide sufficient protection against unauthorised customer transfers. The code needs to be significantly strengthened in this regard through the addition of much more specific requirements to ensure that proper informed consent is obtained for any transfers.

The Association hopes that the Telecommunication Carriers' Forum takes the opportunity to address this serious issue and send a clear message to all telecommunication companies that customer transfers must always be done with informed consent. The Association is hopeful that amending this code will be a positive way to address the problems that CABx around the country have been seeing with illegitimate customer transfers.

Please contact Andrew Hubbard, the National Research and Policy Advisor, if you have any questions or want any clarification of our submission.

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