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11 March 2012

Committee Secretary  
Senate Standing Committees on Environment and Communications  
PO Box 6100  
Parliament House  
Canberra ACT 2600  
Australia

Dear Sirs

### **The Telecommunications Amendment (Mobile Phone Towers) Bill 2011 Submission**

Thank you for the opportunity to provide comment on the above Bill. I do so as a community representative on the *Industry Code (ACIF C564:2004) Deployment of Mobile Phone Network Infrastructure (ACIF code)* review committee responsible for updating the industry code for the placement of low impact facilities, and as a community representative ARPANSA's EMR Reference Group (EMERG).

The recent review of the ACIF code for low impact facilities provides increased opportunity for community consultation, but it is subject to industry self regulation, which has proved problematic in the past, in addition a number of suggestions were considered regulatory compliance issues, and out of scope of the code. I have listed these at the end of my submission and request the committee consider these issues as part of this legislative review

I am a resident of Bardon, Brisbane, where in 2009 Telstra commenced community consultation to place a mobile phone base station near my son's school. I became involved in the community group objecting to this facility, and ultimately resulting in a three tower solution with significantly lower EMR at the school. This process involved communicating with Telstra, the ACMA, DBCDE, local, state and federal politicians, the following submission is made in light of these experiences.

I support in principle the changes proposed in the proposed amendments, however I urge the committee to consider the following suggestions, in priority order:

1. **Power not distance:** Amendment item **17** (after subparagraph 27(1)(g)ii) of schedule 3 be changed to require cumulative EMR emission's from all facilities be less than 0.1  $\mu\text{W}/\text{cm}^2$ , instead of distance from community sensitive sites (200m).
2. **Complaints:** Amendment items **11** and **12** the complaints process in subclause 15(1) of schedule 3 (1A) (c) be expanded to include "those affected by the facility", in addition to owners and occupiers, this would then include school groups such as Parents and Citizens groups, who may reside outside the 500m limit. And documenting the penalties for breach of the legislation in the amendment
3. **Appeals Process:** Amendment items **20**. Appeals to the AAT be expanded to cover all facilities (not just FIP's); and appeals to the AAT under this legislation being exempt from The AAT's \$777 application fee.

Further details are provided below, however If you require further information in relation to the above, please do not hesitate to contact me.

Yours Sincerely

Ian Gray

1. I support the intent of amendment items **17**, In addition I request the committee consider
  - a. **Amendment item 17 (after subparagraph 27(1)(g)ii) of schedule 3 be changed to include EMR emission instead of distance from community sensitive sites. Specifically that the cumulative EMR at sensitive sites be less than 0.1  $\mu\text{W}/\text{cm}^2$**

Comment:

1. Carriers will advise that it is uneconomic to limit stations within a prescribed distance (200m) from sensitive sites, and address customer demands, alternatively base stations emissions may have to be increased to cover customers close to sensitive sites.
2. The issue is around EMR emissions close to sensitive sites, not location of towers.
3. The scientific community appears to be divided on the effect of EMR on people, especially the young, and elderly. Biological effects have been reported as low as 0.1  $\mu\text{W}/\text{cm}^2$ , therefore a precautionary approach is recommended until the effects of EMR can be confirmed. Current Australian standard is 450  $\mu\text{W}/\text{cm}^2$ . Interim results from European trials suggest telephone networks can operate at lower EMR levels than the current Australian standard
4. Post construction Independent measurements from Bardon (a geographically challenging site) where Telstra implemented a 3 tower solution also indicate telephone networks can operate at lower EMR levels (readings at the school were significantly below 0.1  $\mu\text{W}/\text{cm}^2$ ,
5. The existing Industry code for placing low impact facilities does not require carriers to consider existing or proposed facilities, when consulting with the community. By including a reference to cumulative EMR, Carriers will have to take into account existing infrastructure prior to installing new base stations

2. I strongly support amendment items **1 & 2** requiring a regular (5 yearly) review of Australian EMR exposure standards. There is increasing concern surrounding the potential health effects of EMR. EMR from mobile phone base stations appear to have potentially harmful, non-thermal, biological effects on plants, insects and animals, as well as the human body<sup>1</sup> when exposed to levels that are below the Australian standard. Recognising that EMR is harmful to humans, has resulted in many countries taking a precautionary approach in trialling or setting EMR levels from base stations significantly lower than Australia. Adopting a precautionary principle means shifting the burden of proof from the Community (prove it's dangerous) to the Industry (prove it's safe) Using the current threshold values; waiting for high levels of scientific and clinical proof can lead to very high health and economic costs, as was the case in the past with asbestos, leaded petrol and tobacco

3. I support amendment item **3** In addition I request the committee consider

- a. **Extending the legislation to include antennas used for smart water meters.**

Comment: The current legislation only applies to mobile phone network operators. Mobile phone base station providers (such as ) and water companies installing smart meters, which utilise technology similar to mobile phone base stations are not covered by the act, or proposed amendment

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<sup>1</sup> The Council of Europe 6 May 2011; **The potential dangers of electromagnetic fields and their effect on the environment**; Committee on the Environment, Agriculture and Local and Regional Affairs

4. I understand amendment items **7** and **21 to 25** imply a repeal of the low impact determination, and make all towers high impact. Repealing the low impact determination may result in unintended consequences, including inconsistent practices, reduce certainty for carriers, and adverse outcomes for communities (who could be faced by Councils with limited resources, or knowledge about EMR and Base stations, and their role in the development application process), some councils and State Governments may also encourage less regulation or control than federal legislation resulting in a poor outcome for communities. Complying with 8 different state regulations will make it harder for the ACMA to regulate, and industry to comply with a patchwork of regulation. Recent amendments to regulations (such as health and safety), has seen increased federal control, to reduce red tape. The current definition of low impact facilities only refers to visual impact (ie height). If the low impact determination remains, I request the committee consider:

- a. Expanding the definition of a low impact facility to refer to emissions of a base station as well as the visual aspects

5. I strongly support amendment item **8**, any modifications to existing mobile phone base stations (such as additional antennas, larger antennas or increased EMR emissions) should require the carrier to undertake the same community consultation requirements as for constructing new base stations.

Comment: At present carriers can increase the number of antennas on an existing facility from 1 to 1,000, or emissions from a facility without undertaking further consultation. In Bardon a base station erected close to Rainworth state school on Main Avenue had been upgraded following its initial construction, without any community consultation, In other Brisbane sites additional antennas have been placed on shop roofs, again without any consultation with the community as to health or visual concerns.

6. I strongly support amendment items **11** and **12** In addition I request the committee consider
- a. the complaints process in subclause 15(1) of schedule 3 (1A) (c) be expanded to include “those affected by the facility, in addition to owners and occupiers, this would then include school groups such as Parents and Citizens groups, who may reside outside the 500m limit. And
- b. Documenting the penalties for breach of the legislation in the amendment

Comment:

- In Bardon’s experience the complaints procedure under the existing ACIF code is cumbersome, with limited penalties, and failed to meet the community’s expectations. The ACMA was only permitted to investigate once a complaint had been processed by the carrier. In Bardon’s case the ACMA declined to investigate breaches of the ACIF code by the carrier following the carrier proposing an alternate solution. I have been advised (verbally) by an ACMA representative that the ACMA has never fined a carrier for breach of the ACIF code.
- The ACIF code review terms of reference excluded the ability to review the penalties for non compliance, as these were considered legislative issues.
- The ACMA currently has the ability to prosecute carriers for breaches of the ACIF code, and levy fines upto \$250,000. Verbal advice from the ACMA is that no prosecutions have been made since introduced in 2003. I understand this is due to the cost of taking carriers through the federal court system. This implies the existing penalties are ineffective, and alternative penalties which are easier to place and enforce such as warnings, infringement notices, the ability to engage independent expert advice and the like be made available to the ACMA.

7. Amendment items **15 to 19** In my role as a community representative n the ACIF code review, I was advised by the Carriers representatives that the Facilities Installation Permit (FIP) system was not used for low impact facilities, furthermore it was not used in general due to the cost and time and additional process required. I request the committee consider

- a. repealing FIP provision

8. I strongly support amendment items **20**. I request the committee consider
- a. Appeals to the AAT be expanded to cover all facilities (not just FIP's),
  - b. Appeals to the AAT under this legislation being exempt from The AAT's \$777 application fee<sup>2</sup>, which may be a prohibitive cost to some community groups.
  - c. The AAT's 28 day time limit for making an application against a decision to be reviewed appears to be appropriate,

Comment:

- In Bardon's experience the ACMA appear to be wholly unsuitable to adequately consider community complaints. The complaints procedure under the existing ACIF code is cumbersome, with limited penalties for breaches. The ACMA is only permitted to investigate once a complaint had been processed by the carrier. In Bardon's case following derogatory images used by the ACMA in an industry presentation, the ACMA was seen as biased. This was exacerbated following their decision not to investigate breaches of the ACIF code by the carrier following the carrier proposing an alternate solution.
- The current ACIF code relies on industry self regulation, this is failing the community. A legislative requirement for the following would provide enhanced community engagement. The recent ACIF code review deemed the following, recommendations out of scope, and were not considered in the review: (i) the provision for ministerial discretion/intervention to intervene in individual roll outs that is of concern to the community, such as those near environmentally sensitive locations, schools; (ii) An independent body such as ACCAN is given greater authority, and funding to audit and regulate the application of the code to ensure compliance; (iii) Establishment of an appeals body, or ombudsman such as AAT or comprising the ACMA, and representation from carriers and communities to consider complaints associated with the consultation process
- On 17 February 2012 The House of Representatives' standing committee on infrastructure and communications' public hearing into the "enhanced community consultation" Bill the Chair, Ms S Bird said, in relation to contentious sites "*where it becomes contentious may be where the system is not particularly effective in managing the situation*"<sup>3</sup>

9. The following Issues were raised at the ACIF code review for low impact facilities, but deemed regulatory issues, and out of scope. I request the committee consider these issues, and whether they have been adequately addressed under the proposed amendments:

**9.1 Ministerial Discretion:** Provision for Ministerial discretion to intervene in individual roll outs that are of concern to the community, such as those near environmentally sensitive locations, schools and the like

**9.2 ACIF Code Governance:** Auditing and regulating the application of the code by an independent body such as the ACMA. to ensure compliance

**9.3 Revised penalties for non-compliance with ACIF Code:** Additional powers to be granted to the ACMA, including the engagement of independent expert advice, fines and penalties, requirement to remove existing facilities etc (note the penalties for non-compliance with the current code are for ACMA to issue formal warnings, or instruction to comply with the code).

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<sup>2</sup> No fee is payable if the decision to be reviewed is listed in Schedule 3 to the *Administrative Appeals Tribunal Regulations 1976* This includes decisions about Commonwealth workers' compensation, family assistance and social security payments and veterans' entitlements

<sup>3</sup> Proof Committee Hansard – House of Representatives Standing Committee on Infrastructure and Communications – Friday 17 Feb 2012 - Page 4

**9.4 Lack of consumer representation** on the Communications alliance board, and limited government (ACMA) representation or power

**9.5 Sanctions** against carriers for not meeting obligations under the code & carriers accountability for information provided under the code

**9.6 Local Government Planning:** Greater power to local government in the planning process, for example all facilities (including low impact) require local govt planning permission

**9.7 Research:** more studies on health effects experienced by people living in close proximity to base stations

**9.8 "low impact"** should refer to emissions of a base station as well as the visual aspects

10. In my role as a community representative in the ACIF Code review. I approved the content of the revised code; however I remain concerned in the new code's implementation. The code relies on the phrase "**have regard to**" as a cornerstone of industry practice, and not the stronger "shall". It remains to be seen if the Carriers are able to convey this culture change to carrier's staff and contractors, and a new culture of community engagement commence. I request the committee consider

- a. **Legislative Strengthening the requirement of the ACIF code for low impact facilities from ".....have regard to....." to the more robust ".....shall....."**

Comment: The ACIF code, is an industry self regulation code. It requires carriers to "**...have regard to...**" In practice this phrase negates the carrier's requirement to action any community feedback received during community consultation. The ACIF code is currently under review. I am one of two community representatives on the review committee. The new code makes no changes to the phrase "**...have regard to...**" In Bardon there was significant community objection to the proposed base station. (2 x Federal MP's (Michael Johnson (His electorate included the school), Arch Bevis (His electorate included the proposed base station)), 1 x State member (Andrew Fraser), 1 x local councillor (Peter Matic), 400+ community members at a Telstra organised community event (Telstra only recorded 133 who were able to enter the venue), 800+ signature petition objecting to the base station, 200 written objections, 10-20 letters to Telstra CEO and Board, And Senator Conroy. Following the community consultation Telstra advised BCC they planned to proceed with the base station without any amendments. The ACMA's investigation found that Telstra had **not** breached the ACIF code, as it had "**...had regard to...**", despite the community's objection, and suitability of an alternative site(s) that has now been constructed