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House of Representatives Standing Committee
on Infrastructure and Communications
PO Box 6021
Parliament House
Canberra ACT 2600

11 November 2011

RE: Telecommunications Amendment (Enhancing Community Consultation) Bill 2011

Thank you for the opportunity to make a submission on this Bill. The Australian Communications Consumer Action Network (ACCAN) is the peak body that represents all consumers on communications issues including telecommunications, broadband and emerging new services. ACCAN provides a strong unified voice to industry and government as we work towards availability, accessibility and affordability of communications services for all Australians.

A principal theme of ACCAN's work since our establishment has been to highlight the failure of co-regulatory arrangements in telecommunications where voluntary industry codes are the tools used for consumer protection.

Unfortunately, representations made to us by several community groups would indicate that the Industry Code, ACIF C564:2004 *Deployment of Mobile Phone Network Infrastructure*, is another example of a Code which fails because there are no effective enforcement mechanisms and therefore no reason for industry to interpret the Code in any way other than for their own commercial convenience.

There are also weaknesses in the Code's content such as significant 'get-out' clauses. One example is in relation to the precautionary approach to infrastructure design, where a criteria is whether the cost of meeting the objective is "reasonable".¹ The wording of the Code is discretionary rather than mandatory in key areas.

While the proposed updated Code prepared by Communications Alliance earlier this year contains some improvements to community consultation provisions, the fundamental problem of absence of effective avenues of enforcement or appeal remains. This is particularly concerning as mobile towers may have health implications, and so in this respect the issue differs from many other issues dealt with by industry codes.

This Code, as with other Codes under the Telecommunications Act, requires the ACMA's "direction to comply" to bring breaches within the ambit of civil penalty provisions. The ACMA's practice however has been to rarely if ever use its enforcement powers.

¹ Eg. section 5.2.3 (f) in the C564:2004 Code

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In these circumstances, there is no real 'balancing' of community concerns against the cost and inconvenience to carriers. There is rather a significant in-built bias towards the needs of carriers, and communities appear to be facing a fundamental unfairness. A community's view that there are shortcomings in the consultation process or that a particular site is inappropriate because of proximity to schools and similar sensitive facilities can be ignored, and it appears often is.

Yours sincerely,

Elissa Freeman
ACCAN Director of Policy and Campaigns