Telecommunications Service Provider (Premium Services) Determination 2004 (No. 2)

The AUSTRALIAN COMMUNICATIONS AUTHORITY makes this Determination under subsection 99 (1) of the Telecommunications Act 1997.

Dated 8 September 2004

R HORTON
Chair

A HORSLEY
Deputy Chair

Australian Communications Authority

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Federal Register of Legislative Instruments F2005B00102
Part 1 Preliminary

1.1 Name of Determination
This Determination is the *Telecommunications Service Provider (Premium Services) Determination 2004 (No. 2)*.

1.2 Commencement
This Determination commences on 15 December 2004.

1.3 Definitions
In this Determination:

*Act* means the *Telecommunications Act 1997*.

*eligible prefix* means a prefix of 191, 193, 194, 195, 196, 197 or 199.

*mobile carriage service provider* means:

(a) a carriage service provider that supplies a customer with a public mobile telecommunications service; or

(b) a carriage service intermediary that arranges for the supply by a carriage service provider to a customer of a public mobile telecommunications service.

*premium content service* means a content service for which a charge for the supply of the service:

(a) is expected to be included in a bill sent to a relevant customer of a mobile carriage service provider by or on behalf of that provider; or

(b) is payable by a relevant customer to a mobile carriage service provider or any person acting on behalf of that provider:

(i) in advance; or

(ii) in any other manner.

*premium service* means:

(a) a carriage service supplied by way of a call to a number with an eligible prefix; or

(b) a content service supplied by way of a call to a number with an eligible prefix; or

(c) a public mobile telecommunications service that enables an end-user to access a proprietary network.

*pre-paid customer* means a customer of a pre-paid public mobile telecommunications service, within the meaning given by section 1.5 of the *Telecommunications (Service Provider — Identity Checks for Pre-paid Public Mobile Telecommunications Services) Determination 2000*.
**proprietary network** means a telecommunications network used by a mobile carriage service provider that enables customers of that provider to access a premium content service by way of a mobile device if that service is not otherwise generally available.

**relevant carriage service provider** means:
(a) a carriage service provider that provides access to premium services; or
(b) a carriage service intermediary that:
   (i) arrangements for the supply of premium services by a carriage service provider to a customer of a public mobile telecommunications service; and
   (ii) bills the customer for that public mobile telecommunications service.

**relevant customer** means a person who has entered into an agreement with a relevant carriage service provider for:
(a) the supply of a carriage service using a line connected to the person’s customer equipment; or
(b) the supply of a public mobile telecommunications service to the person’s mobile equipment (within the meaning of subsection 33 (1) of the Act);

if the nature of the carriage service supplied by the relevant carriage service provider allows access to premium services.

*Note* The following terms are defined in the *Telecommunications Act 1997*:
- carriage service
- carriage service intermediary
- carriage service provider
- public mobile telecommunications service.
Part 2 Purpose and application of Determination

2.1 Purpose

(1) Subsection 99 (1) of the Act provides that the ACA may make a written determination setting out rules that apply to service providers in relation to the supply of either or both of the following:

(a) specified carriage services;
(b) specified content services.

Note 1 A determination must relate to a matter specified in the *Telecommunications Regulations 2001* or in section 346 of the Act (which relates to designated disaster plans) — see subsection 99 (3) of the Act.

Note 2 The ACA must consult with the Australian Competition and Consumer Commission before making a determination — see subsection 99 (4) of the Act.

(2) This Determination sets out rules that apply to carriage service providers in relation to the supply of premium services.
Part 3 Information about premium services

3.1 Information

(1) A relevant carriage service provider must prepare the following information relating to premium services:

(a) the definition of premium service;
(b) an overview of kinds of premium services that may be supplied to a relevant customer;
(c) information about the financial risks associated with premium services;
(d) information about the action that a relevant customer may take to lessen the risk of unexpected high bills for premium services;
(e) an explanation of the charges associated with premium services;
(f) an explanation of how liability for the cost of premium services arises, including an explanation of how to determine who is to pay for the supply of a premium service;
(g) an explanation of actions that a relevant customer may take to restrict the services supplied using the customer’s account;
(h) a description of the role, and contact details, of complaint handling organisations, including:
   (i) the relevant carriage service provider; and
   (ii) the Telecommunications Industry Ombudsman (TIO); and
   (iii) if the Telephone Information Services Standards Council (TISSC) is handling complaints in relation to premium services — the TISSC; and
   (iv) the ACA.

(2) The relevant carriage service provider must keep the information up to date.

(3) Subject to subsection (5), the relevant carriage service provider must give the information, in writing, to each of its relevant customers:

(a) as soon as practicable after this Determination commences; and
(b) at least once in each period of 2 years after the provider first gives the information to the customer.

(4) Subject to subsection (5), if a person becomes a relevant customer after this Determination commences, the relevant carriage service provider must give the information, in writing, to the customer:

(a) as soon as practicable after the person becomes a relevant customer; and
(b) at least once in each period of 2 years after the provider first gives the information to the customer.
Section 3.1

(5) For subsection (3) and paragraph (4) (b), in the case of a pre-paid customer, the carriage service provider is taken to have given the information, in writing, to the customer if the carriage service provider:

(a) delivers the information to the customer in person; or
(b) sends the information by pre-paid post to the address listed in the provider’s records for the customer; or
(c) transmits the information to the customer’s electronic mail address if the customer:
   (i) has an electronic mail address; and
   (ii) gives his or her consent to the sending of information by the provider to the customer at that address; or
(d) makes the information available to the customer by means such as through a website, or at a retail outlet of the provider, and advises the customer (by means of a recorded message or text message, or in writing), when the customer adds additional credit to his or her pre-paid account, how the customer can obtain the information.

(6) For paragraph (5) (d), the information must be available in accordance with the advice when the advice is provided.

(7) In addition to subsections (3) and (4), the carriage service provider must give the information in writing, to a person on request.

(8) The relevant carriage service provider must give to the ACA the information at each of the following times:

(a) as soon as practicable after this Determination commences;
(b) if the information is changed — as soon as practicable after the information has been changed;
(c) on request by the ACA.

(9) The relevant carriage service provider must give to the ACA details of the method or methods by which the information is given to customers at each of the following times:

(a) as soon as practicable after a method has first been used;
(b) on request by the ACA.

(10) If the ACA:

(a) considers that the information is not adequate for the purposes of this Determination; and
(b) gives the relevant carriage service provider a notice setting out the information that must be provided to a customer;

the relevant carriage service provider must provide information to the customer in accordance with the notice.

Note Under Part 29 of the Act, decisions of an administrative character under this Determination are subject to reconsideration by the ACA. Application may be made to the Administrative Appeals Tribunal for review of the decision if the decision is affirmed or varied on reconsideration.
Section 3.1

(11) A relevant carriage service provider is not required to comply with a provision of this section in relation to a relevant customer if another carriage service provider:

(a) is a relevant carriage service provider in relation to the customer; and

(b) has complied with the provision in relation to the customer.