



**Submission by CHOICE
to the Review of the Mobile Premium
Services Industry Code**

December 2008

CHOICE is a not-for-profit, non-government, non-party-political organisation established in 1959. CHOICE works to improve the lives of consumers by taking on the issues that matter to them. We arm consumers with the information to make confident choices and campaign for change when markets or regulation fails consumers.



INTRODUCTION

CHOICE appreciates the opportunity to make this submission to Communications Alliances on the draft Mobile Premium Services Industry Code (the draft Code).

CHOICE believes that improvements to the regulation of Mobile Premium Services (MPS) are essential to protecting consumers' interests. We provide the following comments to outline areas which we believe require particular attention. The comments have been divided first into broad issues in the draft Code, and followed by more specific comments relating to certain Code provisions.

BROAD ISSUES IN DRAFT CODE

1. The Code will not be effective without a monitoring mechanism

Effective consumer protection in any industry requires an independent body that monitors compliance. Good complaints handling processes are important but sole reliance on consumer complaints will not deliver adequate levels of compliance in all areas.

The Telecommunications Act 1997 does not provide any guidance on code compliance monitoring. In the report CHOICE commissioned in October 2008, entitled "Consumer Protection in the Communications Industry: Moving to best practice", one recommendation focussed on the need for ongoing monitoring, including external independent monitoring.

The draft Code fails to provide for compliance monitoring. CHOICE believes that the Code should provide for systematic monitoring of compliance by Carriage Service Providers (CSPs) and Content Providers (CPs). Potential monitoring techniques include mystery shopping, surveys and compliance visits, as used in other industries. This monitoring is necessary for all codes regulating the Telecommunications industry, including for this Code.

Whilst Communications Alliance has a *Code Administration and Compliance Scheme*, which produces regular compliance reports, these are only available to members of Communications Alliance. Monitoring reports should be publicly available.

2. Effective double opt-in to services will help reduce subscription abuses

CHOICE supports the proposal to require consumers to provide positive confirmation of a request to receive a MPS, by opting in twice. We believe that this will eliminate situations where vulnerable consumers might sign up without understanding the nature of the service.

We support the view that double opt-ins should be required for all MPS, and not just limited to internet sign-up.



3. Children should be protected from inappropriate advertising

CHOICE believes that young people are more vulnerable to marketing messages and should not generally be subject to advertising for high cost or high risk services (including subscription services). We propose a ban on television advertising of subscription MPS services between 6am and 9pm.

We believe that subscription services have affected young people particularly and caused financial hardship, sometimes leading to debt problems and listings with credit reporting agencies.

4. Up-to-date information is required for '19 Service Finder'

CHOICE welcomes the new '19 Service Finder'. However, our tests have found that with some 19 numbers, the service has not been able to identify the content provider as the list does not seem to be up to date.

To remedy the lack of currency of this list, CHOICE believes that content providers should be obligated to regularly update the '19 Service finder' with relevant details, with this occurring no later than 14 days after a service becomes operational.

To ensure adherence to this, we believe that:

- 1) A penalty should be applied to content providers who do not do so; and that
- 2) For any time, after the initial 14 days, for which the content provider has not provided the '19 Service Finder' with the relevant information, consumers should be refunded the cost of any MPS for which they have been charged.

5. Publicity about the '19 Service Finder'

In order for the '19 Service Finder' to be of most of use to consumers, its existence must be well publicised. We believe that the best way to achieve this would be to include the details of the '19 Service Finder' on all bills that include a 19 number.

CHOICE believes this to be the most effective publicity, as it is useful to have information available at times when consumers are paying their bills and are therefore most likely to want to check the details of some of their more expensive calls.

We understand that such a provision may require further IT development by CSPs. We suggest that a phase in period of perhaps one year be permitted.



6. Hard cap on expenditure limit needed

Total MPS costs per mobile phone number should be capped at a fixed figure per month, as Telstra presently provides. We believe that the cap should be \$50 per month, beyond which amount consumers would have to explicitly request an increase.

7. Default barring of MPS needed.

The Code should require a default barring by mobile phone providers of MPS, unless consumers explicitly request its activation. This would ensure that only those consumers who understand what the services are, and the costs and other associated conditions, access them and so may avoid many of the reported problems associated with MPS.

It should be both possible and easy to add an MPS bar to your account, without it being part of package of other provisions. The availability of MPS barring should be promoted adequately.

If default barring is not available in certain circumstances, the availability of barring in response to consumer action should be adequately promoted, in particular at the point of sale of prepay services and consumers who hold an account on behalf of a minor.

8. MPS Services should not be advertised as 'free'

CHOICE does not believe that term 'free' should be used in advertisements for MPS services, as it is not consistent with the common use of the term.

The draft Code currently provides as follows:

3.1.10 **Use of the term "free"**: Where a Content Supplier uses the term "free" or an equivalent in an advertisement for Mobile Premium Services, the Content Supplier must ensure that:

(a) where the "free" period is greater than 6 days, a message is sent to the Customer's nominated mobile phone without charge, when the "free" period is over including details of:

- (i) the impending charges for the Mobile Premium Service;
- (ii) the Helpline; and
- (iii) the "STOP" Message;

(b) If, however, the term 'free' is permitted in advertising we believe that Content Suppliers should provide complete and accurate disclosure of all subsequent costs for that product.

Further, where 'free' is used in marketing CPs should be required to provide all this information without distinction as to whether the free period is for greater than an arbitrary 6 days (as in 3.1.10.), or not.



SPECIFIC COMMENTS ON DRAFT CODE

1. 1.4 Objectives

1.4.1 The objectives of each chapter are detailed in that chapter

An overall objective should be articulated at the outset of the Code. Such an objective should include providing minimum consumer protections when using Mobile Premium Services.

2. 1.5 Code review

1.5.1 The Code will be reviewed after 2 years of the Code being registered by ACMA and every 5 years subsequently, or earlier in the event of significant developments that impact on the Code, or as otherwise determined by Communications Alliance.

The Code should be reviewed every 3 years, subsequent to the initial review after 2 years, due to the fast-paced evolution of Mobile Premium Services, and the inadequacy till now of Mobile Phone Providers to deal adequately with consumer concerns, as evidenced in recent TIO statistics.

3. 2.2 Definitions

Complaint means an expression of dissatisfaction made to a Supplier in relation to a Mobile Premium Service.

Content Service Provider has the meaning given by section 97 of the Act.

CHOICE believes that terminology, where possible, should be as clear to the reader as possible, and without need to refer to other documents such as legislation.

4. 3.1.2 Advertising display requirements: In advertisements for Mobile Premium Services, a Content Supplier must:

(a) include clear, prominent and legible information on price and material terms:

...

(iv) for long enough to allow it to be read or heard by an average person;

CHOICE believes that in advertising all information about price and materials terms should be presented equally to other parts of advertising the product.

When advertising is in print/in writing, the information on price and material terms should not only be 'clear, prominent and legible', but also of equal font as the rest of the advertising.

When advertising is in audio-form, the speed of speech about price and material terms should be no faster than the rest of the advertisement. Further, that it should be slow enough for not only for 'an average person', but for a vulnerable and disadvantaged listener. Such listeners may include young people, who already are overrepresented in their use of MPS.



5. **3.1.3 Pricing information:** A Content Supplier must ensure that a Customer can access pricing information about Mobile Premium Services, including:...

To aid understanding, the Code should clarify whether the relationship between the information that must be included in 3.1.3, and the reference in 3.1.2 to pricing.

6. **3.1.5 Prohibitions on disclaimers:** A Content Supplier must ensure that any disclaimer included in an advertisement for a Mobile Premium Service is not:
 - (a) inconsistent with anything in the principal message of the advertisement;
 - (b) negating the principal message of the advertising; or
 - (c) introducing a new or additional offer.

An additional subclause, '(d)', should be added, which reads: "introducing a new limitation, cost or condition".

7. **3.1.15 Limited number of marketing messages:** A Content Supplier must not send more than one Mobile Premium Service marketing message to a Customer's mobile phone per week, unless the Customer consents to receive more.

The last clause, qualifying the provisions where "Customer consents to receive more" is unnecessary and is open to abuse, as providers may infer consent in tenuous circumstances.

8. **3.1.16 Scams:** A Content Supplier must not use a Mobile Premium Service for conducting or participating in the promotion of a scam.

Scams should be considered a serious offence and lead to sanctions. Consideration should be given to requiring CSPs to terminate their relationship with a content provider, with or without a prior warning, according to the seriousness of the breach.

9. **3.1.17 Advertising to children:** If the placement, context and content of a Mobile Premium Services advertisement is reasonably likely to attract or encourage a significant number of persons under 15 years of age to use that Mobile Premium Service, the Content Supplier must include a warning to the effect "If you are under 15 you must ask the account holder before using this service" in the advertisement.

We believe that to enhance the understanding of this document to non-experts, it should use the term 'phone owner', instead of 'account holder'.

In addition, see our general comments on 'free' and 'advertising to children', set out in broad issues above.



10. **3.2.3 Pricing information:** A Content Supplier must ensure that advertisements for Premium SMS or MMS Services include pricing information:
- (a) in the case of television advertisements:
 - (i) in a prominent and highly visible manner in the visual elements of the advertisement; and
 - (ii) in font at least 50% of the size of the Short Code;
 - (b) in the case of print advertisements:
 - (i) in a prominent and highly visible manner in the main body of the advertisement;
 - (ii) if the Short Code is displayed in 24 to 48 point font size, in font at least 25% of the size of that Short Code; and
 - (iii) if the Short Code is displayed in larger than 48 point font size, in at least 12 point font size;
 - (c) in the case of online advertisements:
 - (i) in a prominent and highly visible manner in the main body of the advertisement; and
 - (ii) on the same page as the Short Code and in font at least 50% of the size of the Short Code or, if the Short Code is not displayed, on the first page of the advertisement so that it is obvious to Customers; and
 - (d) in radio and IVR advertisements.

CHOICE believes, as stated in our comments at 3.12,. that in advertising, all information about price and materials terms should be presented equally to other parts of advertising the product.

When advertising is in print/in writing, the information on price and material terms should not only be ‘clear, prominent and legible’, but also of equal font as the rest of the advertising.

In particular with online advertising, CHOICE believes that information on pricing and conditions should be required to be above the fold, so that viewers do not have to inconveniently scroll down to reach the relevant information.

CHOICE believes basic measures to ensure intelligibility must be provided when providing pricing information in audio form. Such basic measures, as mentioned earlier, should include that the speed of speech about price and material terms should be as clear as and no faster than the rest of the advertisement.

11. **3.2.4 Terms and conditions:...**

in the case of television advertisements, easily comprehensible and on screen long enough for an average viewer to read all text.

CHOICE believes, as stated in 3.1.2, that when advertising is audial, the pace of reading should be no faster than the rest of the advertisement. Further, we believe that it should be slow enough to be comprehended not only by ‘an average person’, but also by a vulnerable and disadvantaged listener. Such listeners may include young people, who already are overrepresented in their use of MPS.



12. **3.2.7 Call logs:** A Content Supplier must:

- (a) ensure that the call log described in clause 3.2.6(a) enables the reader of the log to easily read the content of each recorded WAP Push Message; and
- (b) make records from that call log available to the relevant End Carriage Supplier or Aggregator on request.

CHOICE believes that the Content Supplier should make relevant part of the call log available to the consumer on request, as well as to ACMA. This transparency would empower consumers and ACMA in the event of any disputes that arise with Content Suppliers.

13. **3.3.2 Charges for replying to marketing messages:** If a Customer would incur Mobile Content Fees for replying to a marketing, prompt or inducement message sent as part of a Premium Messaging Subscription Service, the Content Supplier must identify those Mobile Content Fees in the marketing, prompt or inducement message.

CHOICE does not believe that a consumer should incur any charges for responding to a marketing message. We are concerned if this provision means that if consumer sends 'stop' messages, they will be charged. CHOICE believes that there should never be any cost for sending of stop messages.

Beyond this, given consumer confusion about the status of incoming messages (SPAM, commercial, non-commercial) charges in responding to marketing are not appropriate.

14. **3.3.4 Subscription advertisements: ...**

- (d) how to opt-out of receiving marketing; and
- (e) the word "subscription" or "subscribe" to convey the activation method:
 - (i) in the case of television advertisements:
 - (A) in a prominent and highly visible manner in the visual elements of the advertisement;
 - (aa) for as long as the Short Code is displayed; and
 - (bb) in font at least 50% of the size of the Short Code; and
 - (ii) in the case of print advertisements:
 - (A) in a prominent and highly visible manner in the main body of the advertisement;
 - (B) if the Short Code is displayed in 24 to 48 point font size, in font at least 25% of the size of that Short Code; and
 - (C) if the Short Code is displayed in larger than 48 point font size, in at least 12 point font size;
 - (iii) in the case of online advertisements:
 - (A) in a prominent and highly visible manner in the main body of the advertisement; and
 - (B) on the same page as the Short Code and in font at least 50% of the size of the Short Code or, if the Short Code is not displayed, on the first page of the advertisement so that it is obvious to Customers; and



(iv) in voiceovers for radio and IVR advertisements.

We believe that the wording of subsections 3.3.4 (d) is confusing. We believe that it should use the following clearer language, “how to subscribe without receiving marketing”.

In relation to subsection 3.3.4(e), as stated earlier, in advertising all information about price and material terms should be presented equally to other elements of advertising.

When advertising is in print/in writing, the information on price and material terms should not only be ‘clear, prominent and legible’, but also of equal font as the rest of the advertising.

In particular with online advertising, information on pricing and conditions should be above the fold, so that viewers do not have to inconveniently scroll down to reach the relevant information.

Basic measures to ensure intelligibility should be provided when providing pricing information for radio. Such basic measures, as mentioned earlier, should include that the speed of speech about price and material terms should be no faster than the rest of the advertisement.

15. **4.1.5 Unsubscribe information:** A Content Supplier must provide information to Customers, at no charge, about how to unsubscribe from a Subscription Service: (a) in a clear manner prior to supply of the Subscription Service; and (b) on an ongoing basis by:

CHOICE does not believe that the use of the term ‘ongoing basis’ is adequately clear. It is not explained how frequently information should be provided for it to be considered ‘on-going’.

We believe that a Content Supplier should provide information about how to unsubscribe 30 days after initial sign-up, and then every 3 months following.

16. **4.1.7 Video calling:** If a Mobile Premium Service involves video calling, the Content Supplier must notify a Customer for the Mobile Premium Service, prior to, or on commencing supply of the Mobile Premium Service: (a) of whether the Content Supplier will be able to see the Customer during the video calling; and (b) if the Mobile Premium Service is recorded.

CHOICE believes that due to privacy issues involved in potentially viewing or recording a consumer’s video calling, consumers should be advised per 4.1.7 every time they elect to use the service.

17. **4.3.2 Content of purchase confirmation message:** The purchase confirmation message referred to in clause 4.3.1 must: (a) commence with the phrase "FreeMsg";



- (b) include the name of the Premium SMS or MMS Service;
- (c) state the cost per purchase;

We believe that 4.3.2 (c) 'cost per purchase' should be explicit about requiring cost per time period for SMS or MMS service, if it is costed per time period, and should also state the maximum cost per 28 days or month.

18. **4.4.2 Content of subscription request message:** The subscription request message referred to in clause 4.4.1 (e) must:...
- (d) include frequency of charging information, including any:...

CHOICE believes, as stated above, that consumers should be informed of the maximum costs per 28 days or month, when they are informed of frequency of charging.

19. **4.4.4 Exceptions to expenditure updates:** A Content Supplier is not required to provide expenditure updates to a Customer pursuant to clauses 4.4.5 or 4.4.7 if:
- (a) the Content Supplier has obtained the prior written permission of the End Carriage Supplier; and
 - (b) the Customer has opted-out of receiving such expenditure updates.

CHOICE does not believe that Content Suppliers should be relieved of the responsibility of sending expenditure updates in any circumstances.

20. **5.1.5 Refunds:** Unless a Customer agrees to another form of payment, a Supplier must pay any refund to a Customer by either:..

CHOICE believes that this should be worded that "Unless a Customer requests...", to avoid customers being pressured in to agreeing to a form of payment being pushed by a Supplier.

21. **5.2.4 Paid message indicator:** If the Mobile Content Fee for an MT Message is higher than the standard charge for receiving an SMS

or MMS message (as applicable) the Content Supplier must include the term "\$Msg" in the MT Message.

CHOICE cautiously supports the use of the term "\$Msg", however we believe this should be placed at the beginning of the message, as "FreeMsg" is.

22. **6.1.1 Complaint handling and inquiry procedures:...**

- (h) have a publicly available Complaints handling policy (including information about the Customer's right to complain);

Content Suppliers should communicate prominently to Consumers the availability of complaints' processes. We believe that this should be included in the Content Suppliers on-going communications with Consumers, including messages.



23. **6.1.10 Resolving Complaints:** A Supplier must use genuine efforts to resolve all Complaints made by Customers to it prior to referring them to the TIO.

Whilst CHOICE supports attempts to resolve Complaints in a timely manner, if the Complaints remain unresolved beyond 1 month, we believe the Complaint should then be referred to the TIO.

24. **6.1.12 Advice on outcomes:** A Content Supplier must advise each Customer complainant of the outcome of their Complaint. Such advice must be in writing if requested by the complainant.

Content Suppliers should advise consumers of the outcome of their complaints as a default in writing, unless the consumer requests otherwise.

25. **6.1.13 Disputed amounts:** A Content Supplier must not demand payment of genuinely disputed amounts whilst the dispute is being investigated.

CHOICE is concerned with the term ‘genuinely’ qualifying ‘disputed amount’. To avoid semantic disagreements between Content Suppliers and Consumers, we believe that ‘genuinely’ should be removed so that Content Supplier must not demand payment for disputed amounts.

26. **6.1.15 TIO:** A Content Supplier must advise Customers of their external avenue of recourse to the TIO if the Customer:
(a) expresses dissatisfaction with the resolution of their Complaint; or
(b) requests this information.

Content Suppliers should advise Consumers of the availability of recourse to the TIO automatically and this should not be subject to the circumstances laid out in (a) and (b).

27. **7.1.1 Unsubscribing from Subscription Services:** If a Customer requests to unsubscribe from a Subscription Service, at any time, a Content Supplier must:

(a) stop supplying the Subscription Service (other than supplying messages or providing access that the Customer has already paid for):
(i) as quickly as possible following receipt of the request by the Content Supplier;

(ii) and in any event within 1 Business Day of receipt of the request by the Content Supplier, unless the Content Supplier is unable to stop supply within that time due to matters beyond its control;

7.1.1 (ii) provides too much latitude for Content Suppliers to avoid their responsibility to terminate a subscription service due to “matters beyond its control”. CHOICE believes that with the amending of this clause to “matters *reasonably* beyond its control”, there will be less grounds for Content Suppliers to avoid their responsibilities. Some guidance should also be provided, as what type of scenario constitutes where matters are reasonably beyond a Content Suppliers control.



Should you wish to seek further information on CHOICE's position please do not hesitate to contact Mr Michael Frommer, Policy Officer on (02) 9577 3290 or at mfrommer@choice.com.au.