



SUBMISSION

Inquiry into the Disability Discrimination Act

Version 1.0
April 2003

EXECUTIVE SUMMARY

Australian Communication Exchange (ACE) commends the Commonwealth Government for initiating this important inquiry and strongly urges that compliance mechanisms within the *Disability Discrimination Act 1992* (DDA) be reviewed.

This paper uses telecommunications access for people with a disability to exemplify the broader issues associated with the DDA.

In the late 1990's, telecommunications access for people with a disability made a tremendous leap forward and the future looked positive considering that there was a reference to the DDA in the *Telecommunications (Customer Protection and Service Standards) Act 1999* and previously in the *Telecommunications Act 1997*.

However, in three short years since 2000, more than half of the telecommunications network is now not accessible to people who are deaf or have a hearing or speech impairment despite the existence of the disability discrimination and telecommunications legislation.

It is suggested that the risk to consumers in making a complaint under the DDA is greater than the risk to business in defending the complaint.

It is daunting for people with a disability to make a complaint to the Human Rights and Equal Opportunity Commission (HREOC) especially if the complaint needs to proceed to a full hearing of the Federal Court.

Due to the costs (legal, financial, opportunity and emotional) involved in making a complaint, there is a reduced likelihood that a person with a disability or an organization advocating for the rights of people with a disability will make a complaint under the Disability Discrimination Act.

This situation needs to be redressed to achieve the necessary systemic changes within the telecommunications industry to meet the obligations of the disability discrimination legislation.

The *Americans with a Disability Act 1990* (ADA) provides for the specific requirement for rulings that are binding and mandate people's rights.

By clarifying the obligations of industry to consumers up-front, the risks to all parties are reduced, the risk of litigation is reduced and initial investment in design to include the needs of people with a disability will, in most cases, result in zero cost to industry.

1.0 LESSONS AUSTRALIA HAS LEARNT

In 1995, Australians who are Deaf or who have a speech or hearing impairment rejoiced with the introduction of the National Relay Service (NRS)¹. This service offered long-awaited access to the broad range of telecommunications services enjoyed by other Australians. In December 2000 this was further enhanced by the introduction of the world's first dedicated text emergency call service using the number 106².

Unfortunately these wins were short lived.

The closure of the analogue mobile network on 1st January 2000 deprived the following individuals of access to a mobile phone:

1.1 People who have a hearing impairment and wear a hearing aid

Prior to the closure of the analogue mobile network, people with a hearing aid were able to use a mobile phone. When GSM mobile networks were the only mobile networks in Australia, people with a hearing aid were unable to use a mobile phone. The introduction of CDMA networks has largely resolved this issue for most people who use a hearing aid. GSM mobile phones still cause significant interference with a hearing aid. A complaint made by hearing impaired consumers to HREOC resulted in the telecommunications carriers offering relief to hearing impaired individuals by allowing them on a case-by-case basis and within a defined timeframe to:

- transfer to a CDMA mobile phone contract without penalty or

¹ For more information about the National Relay Service, please see the Australian Communication Exchange website www.aceinfo.net.au

² For more information about the 106 Text Emergency Service, please see the Australian Communication Exchange website www.aceinfo.net.au

- by issuing individuals with a neckloop compatible with their hearing aid and a GSM mobile phone.

1.2 People who are Deaf or have a hearing or speech impairment and who use a Teletypewriter (TTY)

Prior to the closure of the analogue network, Deaf people and people with a hearing or speech impairment were able to use a mobile phone. The existing digital mobile networks do not currently support the textphones used by people with a disability. While these technologies may be used to transmit text in proprietary or other protocols, they are unable to communicate with the extensive installed-base of textphone technologies in common use.

Even though there are now more mobile phone services in Australia than fixed line services, this issue is still not resolved. There is currently no effective real-time mobile phone access (GSM or CDMA) offered as customer equipment under the current telecommunications disability equipment programs for Deaf people and people with a hearing or speech impairment and therefore no mobile access to emergency services.

Notwithstanding the outcome of the HREOC Scott v's Telstra case in 1995 that resulted in Telstra being required to provide TTYs to eligible deaf people and people with a hearing or speech impairment; and the introduction of the legislative changes to deregulate the telecommunications industry, people with a disability still have limited choice in terms of selecting a carriage service provider (CSP) who will provide them with telecommunications equipment. Telstra remains the only CSP with a disability equipment program that meets the needs of a broad range of people with a disability. Optus has trialled an equipment program to deliver TTYs to its directly-connected cable customers and is presently negotiating with Telstra to offer telecommunications equipment to people connected to its local services provided on Telstra's network.

In September 2001, HREOC, Australian Communications Authority (ACA) and Department of Communications Information Technology and the Arts (DCITA) jointly outlined the obligations (see Appendix A) on carriage service providers in relation to the access to the products and services provided by CSPs. This advice was sought by Australian Communications Industry Forum (ACIF) as an outcome of the telecommunications industry meetings on the provision of equipment to people with a disability. Very little progress has been made by the telecommunications industry in terms of compliance on this issue.

Under the existing telecommunications and competition legislation, the lack of choice that a person with a disability has in terms of selecting a carriage service provider who provides

telecommunications equipment for people with a disability has been defined as a compliance issue rather than a competition issue.

When the Productivity Commission examined the matter of provision of teletypewriters (TTYs) to people with a disability in its Telecommunications Competition Regulation Inquiry³, it concluded "...the discrimination arises from the apparent failure of other carriers to provide such equipment on a rental basis."

This leaves consumers with the option of making a complaint to HREOC under the DDA that access to products and services is denied. This approach is resource intensive and can result in industry-wide issues being addressed slowly on a case-by-case basis, without standardization of the relief offered to complainants across an industry that provides access to emergency services.

2.0 ARE WE SEEING ANOTHER HOLE APPEAR IN DISABILITY ACCESS?

ACE is aware that Telstra is considering deploying a wireless local loop in regional and remote areas in Australia in the near future. A TTY will not work with a wireless local loop so access to the standard telephone service for Deaf people and people with a hearing or speech impairment will currently not be possible in an area serviced by a wireless local loop.

It has been suggested to ACE that a carrier intending to deploy a wireless local loop in an area could meet its carrier license conditions by:

- interviewing local residents to determine if a family member is Deaf or has a hearing or speech impairment prior to the deployment of a wireless local loop in an area; and
- offering a plain old telephone service (POTS), as an alternative to a wireless local loop, to residences and places of work where there is a person living or working who is Deaf or has a hearing or speech impairment.

ACE considers that this is an extremely short-sighted strategy fraught with numerous "human" weaknesses as follows:

- an interview will reflect the current situation only and will not be "future-proof";
- the decision to install a wireless local loop will not take into account future household circumstances eg. the house is sold to someone else, a family member loses his/her hearing or speech by an accident, stroke, cancer, etc;

³ Productivity Commission, Report No. 16, 21st September 2001, Telecommunications Competition Regulation Inquiry Report, Section 18.5 TTYs, page 580-581.

- visitors or passing travelers who are Deaf or have a hearing or speech impairment to an area serviced by a wireless local loop will not be able to use the telephone eg. to ring fire, police or ambulance via 106 (the text emergency call service provided on 106 is the legislated equivalent of “000” for people who are Deaf or have a hearing or speech impairment);
- people who are Deaf or have a hearing or speech impairment will not be able to make any telephone calls outside their own home or work eg. they won’t be able to make a telephone call from the local hospital, shopping center, railway station, or if they are staying with a friend;
- the carrier will be required to install and maintain an expensive POTS infrastructure for individual homes or places of work in areas that may move exclusively towards wireless services in the future.

Any assumptions on this topic need to be carefully considered and questioned.

In a regional or remote area serviced by a wireless local loop, the majority of people who rely on their hearing to use the telephone would have a number of options available if they need to contact emergency services ie. home phone, mobile phone, telephone in a motel, public phone, a neighbour’s phone, etc. Comparatively, a person who is Deaf or has a hearing or speech impairment would currently have NO OPTIONS AVAILABLE to contact emergency services in a regional or remote area serviced by a wireless local loop.

The original intent behind the obligations placed on Carriers and Carriage Service Providers in the *Telecommunications (Consumer Protection and Service Standards) Act 1999* needs to be examined to determine whether or not it was the intention of the Act for some Australians to ONLY have telephone access at their place of residence and work, while other Australians could have telephone access at their place of residence and work as well as at school, hospital, a friend’s house, etc.

The Australian Communications Authority (ACA) has given ACE its view on the legislative obligations of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* and the *Telecommunications (Emergency Call Service) Determination 2002*, as administered by the ACA (see Appendix B). The interpretation provides for inconsistency in telecommunications access, including access to emergency services, available to Australians.

The requirements of the DDA go beyond the standard telephone service and standard emergency telephone service defined in the telecommunications legislation, to include access to mobile phones and telephone access at public venues such as hospitals, libraries, railway stations, etc. The letter in Appendix B is of concern as telecommunications companies appear to be relying on the

interpretation of the *Telecommunications (Consumer Protection and Service Standards) Act 1999*, in isolation of their obligations under the DDA.

There are two courses of action available to people with a disability:

- Lobbying the Federal Government to ensure that there is consistency in legislation; and/or
- Making a complaint under the DDA to level the playing field and ensure that the telecommunications standards that hearing people take for granted are equally available for people who rely on text and video for their primary telecommunications access.

Considering that the Deaf community had a significant win in the Scott v's Telstra complaint under the DDA in 1995, it is interesting to note that no complaints have been lodged by the Deaf community with HREOC against telephone companies in terms of equipment provision and telecommunications access to mobile networks.

The question needs to be asked why.

4.0 A WAY FORWARD

ACE suggests changing the complaints-based compliance mechanisms within the DDA to more positive compliance mechanisms that may prevent discrimination occurring in the first instance. For a complaint to occur the service or product needs to be inadequate (ie the system has already failed). It would be preferable for industry, consumers and HREOC to work co-operatively at the planning and design stages to prevent discrimination occurring.

The *Americans with a Disability Act 1990* (ADA) in the USA ensures access to employment, goods and services, including facilities, in the private and public sectors, public transportation and communications. The ADA gives the Access Board responsibility for the design requirements covering the private sector and state and local governments. The Access Board is structured to function as a co-ordinating body among Federal agencies and to directly represent the public. Half of its 25 members are representatives from most of the Federal departments. The other half is comprised of members of the public appointed for four-year terms, the majority of whom must have a disability. In 1996, the Access Board was given responsibility for writing accessibility guidelines for telecommunications products under the USA Telecommunications Act.

For example, under the powers of the ADA, it was mandated that all television sets must be manufactured with the facility to allow people who are Deaf or hearing impaired to read the captions on television programs broadcast with hidden subtitles. The result has been greatly improved access for people with a disability at basically zero cost to

industry, as the economies of scale of inserting the caption chip at the time of manufacture is negligible. The additional benefit of televisions with the facility to release the hidden captions on programs, is that the general community has also learnt to use and appreciate the same facility to read the words in a noisy bar, on an in-flight movie, etc. In a positive move, Qantas has recently started to caption its in-flight news broadcast and observation has revealed that many people now watch the in-flight news without headphones (ie. they read the captions!)

As emerging technologies (and the removal of existing technologies) in Australia have the potential to increase the recent erosion that we have seen in telecommunications access for people with a disability over a period of three short years, the telecommunications access needs of people with a disability need to be adequately defined and protected.

A strong compliance regime to support disability legislation would complement the compliance regime (ACA, ACIF, telecommunications industry ombudsman) supporting telecommunications legislation. There needs to be an opportunity for the “disability discrimination watchdog” to work with the “telecommunications watchdog” to initiate change, observe and influence industry trends and require industry participants to demonstrate that access is available before a network service is removed or introduced.

Positive outcomes of change to the compliance regime would be that disability access would receive a higher rating on the agenda of telecommunications industry participants, up-front expectations would be mandated, systemic issues would be considered and addressed on an industry-wide basis, and discrimination would be prevented.

5.0 CONCLUSION

The “equivalent access” telecommunications safety net has a significant hole in it even though protection is offered in legislation. Some of the significant weaknesses in the existing system are: lack of compliance, unwillingness for people with disabilities to take an adversarial position against large service providers, case-by-case treatment of complaints with limited systemic industry-wide influence and the absence of specific rulings that mandate people’s rights.

It would be preferable for all parties to have access to a regulator that could make pro-active decisions. Industry and consumers would obtain greater comfort if requirements were stated up-front thus offering certainty to all parties. The impacts of telecommunications changes could be researched, reported and solutions identified, if required, prior to the removal of an existing service or the introduction of a new service.

The greatest benefits for people with a disability will be if their needs are considered at the time technology is implemented – during the

planning and development stages and certainly before wide spread deployment. Retrofitting accessibility features after deployment is usually very difficult and almost certainly very expensive.

The National Relay Service and the 106 text emergency call service are part of the national telecommunications infrastructure provided to benefit the community. These services are provided by Australian Communication Exchange on behalf of the Commonwealth Government. As such, ACE is willing to work with consumers, industry and Government to offer expertise in identifying solutions to some of the telecommunications access issues raised in this submission.

For further information please contact:
Len Bytheway
Chief Executive Officer
Australian Communication Exchange Limited
PO Box 473
Stones Corner QLD 4120
Voice (07) 3815 7600, TTY (07) 3815 7602
Len.Bytheway@aceinfo.net.au

APPENDIX A

DISABILITY EQUIPMENT PROVISION

– RIGHTS AND RESPONSIBILITIES OF CARRIERS

Background

At an ACIF disability seminar on 1 August 2001 a number of issues were raised concerning carriers' obligations with respect to the provision of telecommunications equipment for use by people with a disability. The Department of Communications, Information Technology and the Arts, the Australian Communications Authority and the Human Rights and Equal Opportunity Commission offered to provide some material.

The following paper outlines the broad principles, and aims to help clarify, the general obligations and responsibilities on telecommunications carriage service providers (CSPs) regarding the provision of equipment that is accessible to, and useable by, people with disabilities under Telecommunications legislation and under the *Disability Discrimination Act 1992* (DDA).

It is important to note that the views represented in this paper are in no way intended to constitute legal advice, and carriers are encouraged to seek their own legal advice to ensure they are meeting their obligations.

Obligations under telecommunications legislation

Universal Service Provider

- The *Telecommunications (Consumer Protection and Service Standards) Act 1999* (TCPSS Act) places obligations on a universal service provider (USP) – currently Telstra – to provide, on request, disability equipment to a disabled person seeking supply of the standard telephone service, under circumstances described below.
 - S.9 of the TCPSS Act sets out the universal service obligation which includes the obligation to ensure that standard telephone services are reasonably accessible to all people in Australia on an equitable basis, wherever they reside or carry on business.
 - The standard telephone service is currently defined (s.6 TCPSS Act) as a carriage service for two purposes:
 - (1) voice telephony; or
 - (2) another form of communication that is equivalent to voice telephony (such as a TTY).The second purpose applies if voice telephony is not practical for a particular end-user with a disability, and another form of communication would be required to be supplied to the end-user in order to comply with the DDA.
 - Note that under this definition the USP is not required to do something over and above the requirements of the DDA.

- The term 'supply' in relation to a standard telephone service includes the supply of customer equipment specified in the *Telecommunications (Equipment for the Disabled) Regulations 1998*, eg TTY, modem, telebraille, Touchfone 400 volume control, voice aid, unless the supply would impose unjustifiable hardship on the supplier of the standard telephone service.
- A USP will comply with the TCPSS Act if it provides access to equipment that meets the objectives specified in the Regulations. That is, a USP is not under an obligation to consider the consumer's preference for a certain type of technology to enable equitable access to voice telephony or an equivalent carriage service.

Non-USPs

- The telecommunications legislation does not impose any obligations on non-USP service providers to provide disability equipment to customers who cannot access the standard telephone service using standard equipment.
 - Obligations, if any, that might exist in relation to non-USP CSPs are created by the DDA (principally sections 5, 6 & 24) with the Human Rights and Equal Opportunity Commission (HREOC) responsible for ensuring compliance with these obligations.

Obligations under the *Disability Discrimination Act 1992*

Telecommunications carriage service providers (CSPs)

- CSPs who supply customer equipment to the public as part of, or in association with their telephone service offering – i.e. where equipment is 'bundled' with the provision of a service - are obliged to provide equipment which enables equivalent access to people with disabilities, on the same terms and conditions (including price) as standard customer equipment.
 - This obligation applies to all CSPs who provide such a bundled service to the public, irrespective of whether they have wholesale arrangements with CSPs (or other parties) for supply of one or more components of the bundled service.
 - This obligation also stands regardless of the means by which the CSP provides customer access to equipment ie. whether the equipment is provided directly or leased through agents, partners or franchisees, etc.
 - A CSP's obligations under the DDA include the supply of equipment provided in conjunction with mobile services as well as fixed line services.
- A CSP that does not supply any customer equipment to the public as part of, or in conjunction with its service, would generally not have any obligation under the DDA to provide disability equipment. This is because there is no direct discrimination in the form of differential treatment between its disabled and non-disabled customers.

- In certain limited circumstances, however, there may be some potential for indirect discrimination if it can be demonstrated that there are unreasonable barriers to access for disabled people.
- CSPs are not obliged to provide services or goods in a non-discriminatory manner where it can be demonstrated that this would involve unjustifiable hardship for the service or goods provider.
- The availability of technical solutions at commercially competitive costs would be taken into consideration in assessing 'unjustifiable hardship' (refer Scott v Telstra).
- The DDA does not create an obligation to provide new, or different, services or goods than those a provider is in the business of supplying, simply because the services or goods currently provided are not useful to people with a particular disability, or might better suit the needs of a customer with a disability.

Retailers and manufacturers

- Retailers who sell telephones bundled as part of a contract providing access to services are obliged by the DDA to make available equipment that enables equivalent access for people with a disability.
- Retailers who sell equipment, but do not offer access to a service, are not obliged by the DDA to supply equipment that enables equivalent access to people with a disability.
- Retailers that are corporations are, however, obliged by the *Trade Practices Act 1974* (TPA) to properly describe what they sell and warrant that it is suitable for the customer's purpose – including the purposes of people with disabilities – provided the consumer makes the retailer aware of the needs of the consumer.
- Telecommunications equipment manufacturers are not required by the DDA to make phones that are universally accessible, but if they are corporations they are required by the TPA to properly describe the products that they do make.

September 2001

APPENDIX B – LETTER FROM THE AUSTRALIAN COMMUNICATIONS AUTHORITY

File Reference: ACA2001/62

Ms Tracey Annear
Executive Officer - Sydney
Australian Communications Exchange Limited

Locked Bag 5380
PARRAMATTA NSW 2124

Dear Ms Annear

**RE: ACCESS TO THE TEXT EMERGENCY CALL SERVICE VIA
WIRELESS LOCAL LOOPS**

The Australian Communications Authority (ACA) has considered ACE's concerns, as outlined in your letter of 3 April 2002, regarding the potential inability of the Deaf and hearing and speech impaired to gain access to digital wireless technologies, such as mobile and CDMA wireless local loop (WLL). This letter sets out the ACA's view on the issues raised in your letter in the context of the key legislative obligations relating to these issues, as administered by the ACA. These legislative obligations are the universal service obligation, as specified in the *Telecommunications (Consumer Protection and Service Standards) Act 1999* (TCPSS Act) and the obligations associated with the *Telecommunications (Emergency Call Service) Determination 1999* (the Determination).

Before discussing the issues raised in your letter, I consider it important to outline my understanding of Telstra's intended approach to rolling out its CDMA WLL technology. Telstra has advised the ACA that, when deciding whether to offer a CDMA WLL service to a customer, it will firstly establish that customer's need to utilise a teletypewriter (TTY). If that customer requires a TTY to access the public switched telephone network—or any other residents at the customer's location require such TTY access—then Telstra will offer that customer an alternative technology that does enable TTY access to this telephone network. The reason for Telstra's adoption of this approach is that CDMA WLL technology does not currently enable access by TTYs commonly used in Australia.

The ACA has considered the implications of Telstra's approach to rolling out CDMA WLL services and considers that this approach will fulfil Telstra's obligations under the USO and the Determination. The reasons for this position are discussed in Attachment A.

I should also note that Telstra has advised the ACA that it is investigating a long term solution to the problem of TTY access over CDMA WLL technology (and I do not mean to imply that Telstra is not working to resolve the concern you have flagged).

I understand that Telstra's approach will not remedy at this time the concerns raised in your letter, which are directed at ensuring TTY access to all technologies deployed on telecommunications networks used for voice communications, including mobile networks.

You will be aware that, the ACA's regulatory role is to ensure that legislated policy outcomes are implemented and monitored, (such as ensuring appropriate fulfilment of the universal service obligation and adherence with the requirements of the emergency call determinations). As the issues you raise are substantially of a policy nature, I have forwarded your correspondence to the Department of Communications,

Information Technology and the Arts, to be examined within the context of the Department's telecommunications policy development role.

You will recall from our discussion at the last ESAC meeting that the Department was agreeable to undertake this examination and ACE concurred with this course of action. In addition, I appreciate the offer from ACE to prepare a broader paper for discussion at the next ESAC meeting to outline your concerns that the accessibility of networks for people with communications impairments is being eroded.

Please contact me by phone on 03 9963 6866 or by email at paul.white@aca.gov.au if you require further information on any of these matters.

Yours sincerely

Paul White
Executive Manager
Telecommunications Licensing Group
18 July 2002

cc: Simon Bryant, Department of Communications, Information Technology and the Arts
Don Williams, Department of Communications, Information Technology and the Arts
Australian Communications Industry Forum
ESAC Members
Australian Association of the Deaf
Consumer Telecommunications Network
Communication Aid Users Society
TEDICORE
Better Hearing Australia

APPENDIX B - ATTACHMENT A

Telstra's proposed approach for providing equivalent access to the STS for CDMA WLL

Under the extended zones (EZ) contract, between the Commonwealth and Telstra, Telstra is required to upgrade services and infrastructure in the EZ of Australia by 31 December 2003. Telstra is also the declared primary universal service provider (PUSP) for the EZ. In order to fulfil its responsibilities under the EZ contract, Telstra intends to replace all digital radio concentrator systems (DRCS) with either a high capacity radio concentrator (HCRC) system or other technologies such as satellite, cable and CDMA WLL (subject to successful trials).

Where CDMA WLL technology is offered as a standard telephone service (STS) under the universal service obligation (USO), Telstra intends to offer an alternative access technology to customers in the EZ who require a teletypewriter (TTY) to access the STS. An example of an alternative access technology is HCRC technology. The ACA understands that Telstra also intends to adopt the same approach to offering CDMA WLL in areas outside the EZ, should it decide to install CDMA WLL services in these areas.

Telstra's obligation to provide equivalent access under the USO

Telstra, as the PUSP, is required under the USO to ensure that STSs, payphones and prescribed carriage services are reasonably accessible to all people in Australia on an equitable basis, wherever they reside or carry on business. (Refer to subsection 9(1) of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* (the TCPSS Act).) In supplying an STS, subparagraph 6(1)(b)(ii) of the TCPSS Act states that another form of communication, equivalent to voice telephony, is to be supplied to customers in order to comply with the *Disability Discrimination Act 1992* (the DDA), where voice telephony is not practical. An example of an equivalent form of communication for Deaf users is communication by means of a TTY.

The ACA has concluded that Telstra's proposed approach of supplying an access technology to customers requiring TTY access that is compatible with currently available TTYs, fulfils its obligations to supply an STS, or an equivalent form of the STS, under the USO.

In examining this issue, the ACA has also considered the scope of the requirement for a universal service provider to provide 'reasonable access' to the STS under the USO, as referenced in subsection 9(1) of the TCPSS Act. That is, whether the obligation to provide 'reasonable access' to the STS applies to:

- (a) the person who contracts with the service provider to supply the STS; or
- (b) other residents at that person's household; or
- (c) visitors to that person's household; or
- (d) visitors to that person's business.

The ACA considers that as long as the request for the STS is in itself reasonable—in that reasonable access under the USO is not already provided at a given location—that anyone residing or carrying on business at a particular location must be provided with

access, or equivalent access to the STS, even if that need is only occasional. Therefore, the requirement to supply a compatible access technology for TTY users would extend to any place the TTY user resides or works, even though the requirement may not previously have existed (for example, when a person requiring TTY access commences at a new place of employment or moves house). However, the ACA considers that in scenario (c) and (d) above, Telstra would not be obliged to supply an alternative access technology where the request for TTY access was for:

- (a) a possible need in the future;
- (b) an occasional visitor who did not reside or work at the location; or
- (c) a visitor or guest at an accommodation facility such as a hotel, unless that individual resides or works at the facility.

The rationale for the ACA's position on the scenarios identified is based on the requirement under the USO that STSs must be reasonably accessible to all people in Australia wherever they 'reside' or 'carry on business' and its interpretation of the definition of these words.

Telstra's obligations under the Telecommunications (Emergency Call Service) Determination 1999

The *Telecommunications (Emergency Call Service) Determination 1999* (the Determination) sets out the obligations on carriers, carriage service providers and emergency services in relation to the handling of emergency calls and access to emergency services numbers '000' and '106'.

Subsection 11(2) of the Determination provides that all 'end-users' must be given access to the emergency service number '000'. Subsection 11(5) extends this obligation to end-users who use an STS as described under subparagraph 6(1)(b)(ii) of the TCPSS Act, to access the emergency call service number '106'. An example includes emergency calls made using a TTY. The term 'end user' is not defined in the Determination or any other relevant legislation.

The ACA has considered whether, in order to provide access to emergency call services in accordance with the Determination, Telstra is obliged to go further than its responsibilities to supply an STS under the USO (ie. only to those residing or carrying on business at the location). If this were the case, the Determination would require Telstra to ensure that all persons can make emergency calls over its CDMA WLL service, thereby requiring its CDMA WLL service to support TTY access.

The ACA has concluded that although the term 'end-user' appears to have a broader scope than terminology used in the TCPSS Act to describe the USO, it is unlikely that it was intended for the subordinate instrument (the Determination) to impose a more onerous obligation than the USO itself, especially when the TCPSS Act deals with the needs of people with disabilities to a significant extent. Such an interpretation would have the effect of overriding the requirement to provide TTY access that is reasonable and equitable (following a request for such access), and instead require TTY access in all equipment regardless of the circumstances. Therefore the ACA's view is that even though they are separate and distinct obligations, the Determination should not be interpreted so as to impose a greater obligation than the USO itself.

Conclusion

Based on the above analysis, it is the ACA's view that Telstra's proposed arrangements for providing CDMA WLL technology will fulfil its legislative and regulatory obligations under both the USO and the Determination.