

AUSTRALIAN COMPETITION AND CONSUMER COMMISSION
DOMESTIC MOBILE ROAMING DECLARATION INQUIRY
DRAFT DECISION MAY 2017

Submission lodged by B Bebbington June 16, 2017

The ACCC draft report is seriously and fundamentally flawed due to the inaccuracy of the information that it has used and quoted repeatedly in the report.

The information has been admitted as being inaccurate by one provider of the service and yet the ACCC continues to use that data and has based this draft report entirely on that data.

The ACCC has, in my opinion, failed in two areas, reflected in this draft decision

- A) It has relied entirely upon mobile phone population coverage claims that are falsely advertised by one or more of the providers, which it admits has an impact on the decision making of the Australian public, and
- B) The ACCC has failed to perform its own regulatory functions of preventing the continued advertising and making of false and misleading claims and statements by one or more of the mobile phone providers in Australia.

Below I will outline how I believe the ACCC has erred.

On page 7 of the draft report the ACCC states-

“However, each network is far more similar in terms of population coverage. Telstra’s 3G network covers around 99.3 per cent of the population, Optus’ 3G network covers around 98.5 per cent of the population and VHA’s is able to offer 3G network coverage to around 97 per cent of the population.”

On page 29 of the draft report the ACCC states-

“Geographic coverage

A key focus of this declaration inquiry is the degree to which MNOs also compete over the geographic coverage of their networks and the value consumers place on coverage. Population coverage is a point of differentiation, but as each of the operators have extended their population coverage to the majority of Australians, and reduced the geographic gap, coverage has remained a key differentiator between the three MNOs.”

On page 31 of the draft report the ACCC states-

“Advertising or marketing claims made by MNOs also emphasise coverage as a means of differentiating networks. For example, Telstra advertises that it has ‘Australia’s largest mobile network’.⁶² Optus advertises that its network reaches 98.5 per cent of the population; that its 4G network is available in more than 700 regional towns; and that it is working to improve services available to regional Australians by improving regional coverage.⁶³ VHA advertises that its 4G network covers 22 million Australians.”

On page 76 of the draft report the ACCC states-

“9. Issues for further consideration

The ACCC has found that the national mobile services market is currently exhibiting signs of reasonably effective competition. This has led to investment, innovation, and a wide variety of products and services being offered to meet consumer demands. For example, retail services appear to be of high quality, are reasonably priced and importantly, mobile services are available to 99.3 per cent of the Australian population.”

On page 76 of the draft report, the ACCC states-

“We are interested in exploring whether there is scope to improve the outcomes for regional Australians in relation to mobile services through policy and regulatory measures. We received a number of submissions which suggested measures that could deliver some improvements in the MNOs’ ability to expand their coverage and the services available to consumers in those areas.”

Those five sections, and other elements of the draft decision all refer to the advertised claims of Telstra, Optus and VHA in respect to their population coverage of their mobile networks, the significance of the coverage that allegedly exists and the fact that consumer decisions are being made on that basis.

The ACCC arrives at its decision on the likely impact of making a domestic mobile roaming declaration based significantly on the alleged 99.3% population coverage.

The fundamental flaw in the report and decision is the fact that it is known and has been announced by Telstra that it cannot provide coverage to 99.3% of the Australian population, despite what it falsely continued to make claims of and advertises.

In the Productivity Commission December 2016 draft report into the review of the Universal Service Obligation, the Productivity Commission also relied on this advertised claim of coverage of 99.3% of the Australian population. The Productivity Commission determined that with that extent of coverage, voice communication via mobile rather than landline for

the universal service obligation would be possible and voice over nbn skymuster for the remaining 0.7% or 90,000 premises.

In response, Telstra's "Response to the Productivity Commission's Draft Report on the Telecommunications Universal Service obligation", states

"2.1. In-building mobile coverage a key element of the USO is delivery of a STS to a customer's residence or place of business. Any USO solution based on mobile infrastructure must enable this outcome.

While mobile coverage has improved over the years and now reaches the vast majority of Australians, the fact a customer's residence falls within a mobile coverage map does not automatically translate into an ability to deliver STS to the residence.

Consumers may reside within areas of mobile coverage but not receive mobile signal within their premises due to a number of factors and obstructions. This can be contrasted with a fixed infrastructure connection where connection to the premises guarantees in premises access to the service.

For example, something as innocuous as the size and location of windows in a premises can impact on in-building coverage and signal strength. Generally, mobile coverage within a premises will improve with the more windows and the larger in size. Smaller windows, increased glass thickness and tints will reduce mobile coverage. The issue of limited in-building mobile coverage is well known within the industry and has been a matter addressed by the Mobile Carriers Forum, an industry group representing the three mobile phone carriers

2.1.1. Identifying whether a premises will have in-building mobile coverage The mobile coverage maps provided by mobile network owners is indicative, based on the coverage a mobile device should receive on the street. There is no desktop capability or service qualification check that can be conducted to determine whether the customer will get in-building mobile coverage. It is not possible to identify whether a particular premises will get in-building mobile coverage until a customer utilises a mobile service inside the premises.

Including the customer as a service qualification check, would assist in confirming availability while also adding additional administrative steps and source of potential uncertainty should the check be found at a later stage to be inaccurate. In circumstances where a confirming mobile signal availability and strength within a premises requires a technician at the site, this will introduce additional costs.

2.1.2. Improving in-building mobile coverage Where a signal strength is inadequate or non-existent within a premises, it may be addressed with the use of additional equipment that assists with the reception of a signal at the premises i.e. an antenna. It should be noted that this additional equipment will result in significant costs if provided to every customer ordering a service.

2.2. Implications on Telstra's use of mobile infrastructure to deliver USO STS While we are investigating the possibility of introducing a USO-compliant mobile solution to deliver the STS on a permanent basis, putting this into market will require consideration of the matters raised above, that is

1. identifying whether a premises will have in-building coverage; and 2. the additional upfront expenditure associated with installing the additional equipment enable a signal at a premises or improve in-building mobile coverage.

The challenges we are facing in the design of a USO compliant 4G FW service are not unique to Telstra and are shared by the NBN FW product. For example, with the NBN FW product:

1. serviceability can only be confirmed once the customer orders the service and the service provider attempts to offer the service - Telstra has offered services to customers who have sat within NBN FW footprint only to find that the premises is not serviceable by NBN FW;
2. all NBN FW services require that the NBN FW modem is connected to an external antenna fixed to the customer's roof; and
3. in some circumstances the external antenna fitted to the roof is insufficient and additional infrastructure is installed at the customer's expense to enable the service"

It is clear from Telstra's own submission that they admit they cannot provide coverage to 99.3% of the Australia population, only the "vast majority".

On day one of the Productivity Commission Sydney Hearing into the Telecommunications Universal Service Obligation on January 31, 2017, Telstra gave further evidence that the 99.3% that they advertise is not a true representation of the mobile coverage in Australia.

Therefore, what the Australian public have been saying for years, that there is not mobile coverage to the stated level of population, because they know they do not have coverage and the problems they have, is supported by Telstra's statements which appear to contradict their advertised claims.

As Telstra has made it clear that they only provide mobile coverage to "the vast majority of Australian's" it would be inappropriate for the ACCC to base any decision on the 99.3% figure or any other figure, until an accurate figure can be ascertained.

This information also has consequences for NBNco planning of the rollout and prioritising in accordance with the Statement of Expectations August 24, 2016, as the accuracy of the coverage will affect the accuracy of any future demand on the NBN fixed wireless and satellite service.

In my written submission to the Productivity Commission and at the Productivity Commission Perth Hearing on February 14, 2017, I gave evidence which also questioned the

claim of 99.3% population coverage by Telstra, and the admission by Telstra in their submission and evidence, that they could not provide such coverage and could not provide an accurate figure of the coverage.

Below is an excerpt from my submission to the Productivity Commission, which challenges the 99.3% coverage and the incorrect assumptions made by the Productivity Commission in using the alleged coverage. Reference to the “draft report” in that context refers to the Productivity Commission draft report not this report.

“MOBILE PHONE COVERAGE DOES NOT COVER THE POPULATION USED IN THE REPORT

As at January 20, 2017, the Australian Bureau of Statistics estimates the Australian Population to be 24,335,000.

On Page 3 of the draft report the statement is made that

“” With 99.3 per cent of the population covered by at least one mobile network, almost one third of Australian adults now rely solely on mobile phones for voice services.”

This would indicate 170,345 people without mobile coverage.

On page 12, of the draft report it states

“Of the 400 000 premises within the NBN satellite footprint, at least 310 000 premises are estimated to be able to use their mobile phones, thus providing a low-latency alternative to the NBN satellite service.

There are thus up to 90 000 premises in the NBN satellite footprint that do not have mobile phone coverage. “

On pages 175 and 176 of the draft report

“What are the alternatives to nbn’s Sky Muster satellites?

The majority of Sky Muster satellite users will be able to access an alternative voice service (table 6.3), with mobile services likely to be preferred where it is available (chapter 2). Based on Telstra’s stated mobile coverage and nbn forecasts, the Commission conservatively estimates that, at the completion of the NBN rollout, at least 320 000 premises in the satellite footprint will be able to receive a mobile service, leaving a maximum of around 90 000 premises reliant on satellite for the provision of voice services.”

The Australian Bureau of statistics estimates there are 9,268,700 households in Australia. Therefore 90,000 premises would equate to almost 1% (0.971) of households.

The average household has 2.6 residents which, based on the 90,000 households referred to, would 234,000 people without mobile coverage.

Whilst the NBN skymuster program of 412,000 installations covers Norfolk Island, Lord Howe Island, Cocos Keeling, Christmas Island plus other locations that may not be part of the Telstra copper network, Telstra Mobile network or covered by the USO, there is no distinction made in the draft report on this.”

The Productivity Commission has presented its final report to the Minister and the report is due to be released during August (based on parliamentary sitting day requirement for the release).

The ACCC has, in this draft decision, also relied on the false claims advertised despite it being known to be incorrect.

I only refer to the Telstra claims here, as I have not checked if Optus and VHA have made any statements as to the accuracy of their advertised population coverage figures, however the evidence of Telstra should be sufficient to constitute the basis of further investigation and action into the entire industry and their claimed coverage.

MOBILE BLACK SPOT PROGRAM

On page 78 of the draft report, the ACCC states, in discussing the mobile black spot programs-

“Similar outcomes have occurred in State-based funding programs to improve coverage, particularly in Western Australia, where subsidies and co-funding arrangements have assisted indelivered considerable network extensions to Telstra”.

The extent of mobile coverage is further questioned, as in our area there have been mobile phone towers installed on South Western Highway (Highway 1) which are purely orientated in the direction of the highway, rather than 360-degree coverage.

I raised this with Tim O’Leary Chief Sustainability Officer for Telstra, in September 2016. The response from Telstra stated-

“Yornup mobile tower was designed to provide mobile access along the South-Western Highway between Bridgetown and Manjimup. At this stage, there are no current plans to augment mobile coverage in the Yornup area...” Boyd Brown, Area General Manager WA 22 December 2016.

The CEO of the Shire of Bridgetown-Greenbushes has advised me that Mr Brown had previously gone to detail to show him maps of the 360-degree coverage from the Yornup tower, when the CEO had queried the coverage to the east and west of the tower.

However, in the same shire, within 3 kilometres of the same highway, 360 degree towers have just been approved under Round 2, primarily due to the fire prone nature of the area.

I am unsure whether the towers on the highway were approved under the National Black Spot program or under the program conducted by the Western Australian government, referred to her by the ACCC.

This may highlight further issues with gains that can be achieved through the black spot programme and the ACCC desire in this draft report where it refers to "... exploring whether there is scope to improve the outcomes for regional Australians in relation to mobile services through policy and regulatory measures..." on Page 76 of this draft report.

Inquiries should be made as to whether the program gives a preference for new installations at locations where there is a black spot rather than improving coverage where an existing tower and infrastructure already exists, by changing it from limited direction to omni directional, and where best use of resources can be achieved.

FAILURE OF THE ACCC TO ACT ON FALSE OR MISLEADING CLAIMS MADE BY THE MOBILE PHONE INDUSTRY

The ACCC may be familiar with the information below, as it is from their own website.

False or misleading claims

There are laws in place to protect you from being misled about the products and services you buy.

- [Creating a false or misleading impression](#)
- [Examples of false or misleading claims](#)
- [False or misleading advertising](#)
- [If you think you have been misled](#)
- [More information](#)

Creating a false or misleading impression

Businesses are not allowed to make statements that are incorrect or likely to create a false impression.

This rule applies to their advertising, their product packaging, and any information provided to you by their staff or online shopping services. It also applies to any statements made by businesses in the media or online, such as testimonials on their websites or social media pages.

For example, businesses cannot make false claims about:

- the quality, style, model or history of a product or service
- whether the goods are new
- the sponsorship, performance characteristics, accessories, benefits or use of products and services
- the availability of repair facilities or spare parts
- the need for the goods or services
- any exclusions on the goods and services.

It makes no difference whether the business intended to mislead you or not. If the overall impression left by a business's advertisement, promotion, quotation, statement or other representation creates a misleading impression in your mind—such as to the price, value or the quality of any goods and services—then the behaviour is likely to breach the law.

There is one exception to this rule. Sometimes businesses may use wildly exaggerated or vague claims about a product or service that no one could possibly treat seriously or find misleading. For example, a restaurant claims they have the 'best steaks on earth'. These types of claims are known as 'puffery' and are not considered misleading.

Examples of false or misleading claims

Some examples of business behaviour that might be misleading are:

- a mobile phone provider signs you up to a contract without telling you that there is no coverage in your region
- a real estate agent misinforms you about the characteristics of a property by advertising 'beachfront lots' that are not on the beach
- a jewellery store advertises that a watch 'was' \$200 and is 'now' \$100 when the store never sold the watch for \$200
- a business predicts the health benefits of a therapeutic device or health product but has no evidence that such benefits can be attained
- a transport company uses a picture of aeroplanes to give you the impression that it takes freight by air, when it actually sends it by road
- a company misrepresents the possible profits of a work-at-home scheme, or other business opportunity.

False or misleading advertising

These are some of the most common types of false or misleading advertising reported to the ACCC.

Fine print and qualifications

It is common practice for advertisements to include some information in fine print. This information must not contradict the overall message of the advertisement. For example, if an advertisement states that a product is 'free' but the fine print indicates some payment must be made, the advertisement is likely to be misleading.

Comparative advertising

Some advertisements or sales material may compare products or services to others on the market. These comparisons may relate to factors such as price, quality, range or volume.

Comparative advertising can be misleading if the comparison is inaccurate or does not appropriately compare products.

Bait advertising

Bait advertising takes place when an advertisement promotes certain (usually 'sale' prices) on products that are not available or available only in very limited quantities. It is not misleading if the business is upfront in a highly visible, clear and specific manner about the particular product 'on sale' being in short supply or on sale for a limited time.

Environmental ('green') claims

Environmental claims may appear on small household products such as nappies, toilet paper, cleaners and detergents through to major white goods and appliances. They may include statements about environmental sustainability, recycling, energy and water efficiency or impact on animals and the natural environment, for example 'green', 'environmentally safe' or 'fully recycled'.

Businesses making these claims must be able to substantiate them.

If you think you have been misled

[Make a consumer complaint](#)

More information

[Country of origin](#)

The ACCC understands consumers fall victim to businesses who make false or misleading claims in advertising.”

I would not expect the ACCC itself to fall victim to such conduct, which it has in the findings of this draft report.

False or misleading claims

There are laws in place to protect you from being misled about the products and services you buy.

- [Creating a false or misleading impression](#)
- [Examples of false or misleading claims](#)

False or misleading advertising

Telstra therefore would come under the above in that

- a) It is creating a false or misleading impression that it provides mobile coverage to 99.3% of the Australian population when it knows it does not and has given evidence that it cannot do this.
- b) Telstra have clearly created a “believable” false or misleading impression, as both the Productivity Commission and the ACCC have fallen victim to this false or misleading advertising, in the draft reports and decisions within those reports.

The ACCC website itself refers to what cannot be done

Creating a false or misleading impression

Businesses are not allowed to make statements that are incorrect or likely to create a false impression.

This rule applies to their advertising, their product packaging, and any information provided to you by their staff or online shopping services. It also applies to any statements made by businesses in the media or online, such as testimonials on their websites or social media pages.

It makes no difference whether the business intended to mislead you or not. If the overall impression left by a business’s advertisement, promotion, quotation, statement or other representation creates a misleading impression in your mind—such as to the price, value or the quality of any goods and services—then the behaviour is likely to breach the law.

It is unfortunately clear that both the Productivity Commission and the ACCC have, because of the advertising, promotion, quotation, statement or other representation, created a misleading impression” in their minds, as they have accepted the information contained in those advertisements and statements and used that information to make decisions about the product, in this case mobile phone coverage of that business, and of the other two businesses referred to in the draft reports.

It is also interesting that a specific example used by the ACCC of false or misleading claims is about a mobile phone provider signing customers up to a contract without telling you there is no mobile coverage in your region.

Telstra has specifically outlined in its evidence to the Productivity Commission that they know the 99.3% (which is portrayed on their own coverage maps) is not accurate.

Examples of false or misleading claims

Some examples of business behaviour that might be misleading are:

- a mobile phone provider signs you up to a contract without telling you that there is no coverage in your region

The comparative advertising issue also applies as this is used by the mobile phone providers, who are comparing the population coverage they claim against the population coverage of their competitors.

Further, as Telstra has admitted the 99.3% is incorrect, how can it advertise its service in comparison to the other providers.

Comparative advertising

Some advertisements or sales material may compare products or services to others on the market. These comparisons may relate to factors such as price, quality, range or volume.

Comparative advertising can be misleading if the comparison is inaccurate or does not appropriately compare products.

Conclusion

The failure to use accurate data, specifically the population coverage of mobile phones in Australia, when this is the key element of the benefits of roaming and access to improved mobile phone coverage, is why this report needs to be scrapped and the matter investigated properly.

The ACCC who has the responsibility to protect the Australian public from false and misleading claims, has failed to act and has fallen victim to its own failure, by presenting a report based on information that prior to the preparation of the report, was admitted and known to be incorrect.

The public who have for years tried to get a voice that mobile phone coverage claims are false, and who have been unable to get the matter investigated, should take heart from the fact that the ACCC has failed itself and the public, and that this should prompt the ACCC to act on this matter.

Submission lodged by

Bruce Bebbington

[REDACTED]

Mob-not available as we have no coverage.