

11 July 2007

Committee Secretary
Senate Legal and Constitutional Committee
Department of the Senate
PO Box 6100
Parliament House
CANBERRA ACT 2600



Dear Committee Secretary

RE: Senate Inquiry into the Telecommunications (Interception and Access) Amendment Bill 2007

Thank you for the invitation to Communications Alliance to make a submission to this Inquiry into the *Telecommunications (Interception and Access) Amendment Bill 1007* ('the Bill').

Communications Alliance and its members are committed to working collaboratively with the Government, law enforcement agencies and all stakeholders in the vital requirements for an effective and efficient framework for security and law enforcement.

Communications Alliance supports the approach of transferring provisions in the *Telecommunications Act 1997* relating to access to telecommunications data and telecommunications industry interception obligations to the *Telecommunications (Interception and Access) Act 1979*.

In particular (and subject to some comments set out below related to clarification of some of the provisions) Communications Alliance supports the retention of the provisions for the making of Ministerial determinations in relation to interception capabilities as currently set out in section 322 of the *Telecommunications Act* and as encapsulated in s 189 of the Bill.

Our comments on the Bill relate to provisions in the Bill which, in our submission, would benefit from clarification:

- (i) It was our submission in respect of the Exposure Draft that where there were references to taking into account 'the objects of the *Telecommunications Act 1997*', that those references be amended to refer to both 'the objects and regulatory policy' of the *Telecommunications Act*. This would ensure that the regulatory policy in section 4 was taken into account, that is:

'Parliament intends that telecommunications be regulated in a manner that:

- (a) *promotes the greatest practicable use of industry self-regulation; and*
(b) *does not impose undue financial and administrative burdens on participants in the Australian telecommunications industry...'*

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We make the same submission in respect of Bill. That is, that references to the 'objects of the *Telecommunications Act 1997*' – in particular in s 189(4)(b) and 192(7)(b) – be amended to refer to both 'the objects and regulatory policy' of the *Telecommunications Act*.

- (ii) It was our submission in respect of the Exposure Draft that the use of the term 'telecommunications service' in then-section 192 contrasts with the term 'carriage service' in the equivalent provision in section 322 of the *Telecommunications Act*.

Section 189 of the Bill retains the use of the word 'telecommunications service'. It therefore remains a concern that the term 'telecommunications service' may extend to applications carried by the service.

We submit that clarification would be assisted by specific reference to exclude:

- a. content services, as defined in section 15 of the *Telecommunications Act*; and
- b. any service, that in itself, would not result in the provider being classified as a carriage service provider under the *Telecommunications Act*.

Alternatively, clarification could be provided by reverting to the existing definition of 'carriage service' in s 322 of the *Telecommunications Act*.

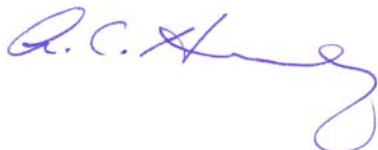
- (iii) It was our submission in respect of the Exposure Draft that an absolute obligation to comply with an interception capability plan, as required by s 203 of the Exposure Draft, would be an onerous requirement effectively requiring ongoing audits.

Section 200 of the Bill retains the same language as s 203 of the Exposure Draft. It therefore remains a concern that this absolute obligation will add considerable cost to compliance and we submit that the insertion of a 'reasonable steps' defence be considered.

- (iv) in respect of matters raised by AMTA in its submission to this Inquiry, Communications Alliance adds its support to both the matters identified and the recommendations.

Thank you again for the opportunity to make this Submission. We would be happy to discuss further if required.

Yours sincerely



Anne Hurley
Chief Executive Officer
Communications Alliance

About Communications Alliance

Communications Alliance Ltd represents over 100 members participating in the Australian telecommunications sector. Our membership includes telecommunications carriers, both large and small, ISPs and other carriage service providers, equipment manufacturers and organisations with close relationships to the sector, such as Standards Australia and the Department of Defence. Our mission is to promote the growth of the Australian communications sector and the protection of consumer interests by fostering the highest standards of business ethics and behaviour through industry self-governance.