
Explanatory Statement

Under the *Telecommunications Act 1997*, the Commission has statutory powers to direct the Australian Communications Authority (ACA) in regard to portability of allocated numbers. The ACA cannot include rules about the portability of allocated numbers ('number portability') in the numbering plan it makes under s.455 of the *Telecommunications Act 1997* (the 'Plan') unless directed to do so by the Commission, and any rules regarding number portability the ACA includes in the Plan must be consistent with any directions by the Commission. The Plan is the principal instrument governing the numbering of carriage services in Australia and the allocation and use of numbers in connection with the supply of such services.

In fulfilling its responsibilities under the *Telecommunications Act 1997*, the Commission released draft directions on 30 May 1997. In response to the Commission's invitation for comments on the draft directions, a total of eight submissions were received. Following consideration of the submissions the Commission revised the draft directions and released them on 9 September 1997 inviting further comment. In making the Directions, the Commission considered relevant information available to it, including the submissions received. The Commission notes that it can make further directions if it considers it necessary or appropriate.

This statement details the relevant legislative provisions and explains the Directions.

Legislative Provisions

Sections 455 and 458 of the *Telecommunications Act 1997* set out the main responsibilities of the ACA and the Commission in relation to the portability of allocated numbers. [Allocated numbers are those allocated to carriers or carriage service providers for use under the Plan.]

Section 455(1) states

"The ACA must, by written instrument, make a plan for :

- (a) the numbering of carriage services in Australia; and
- (b) the use of numbers in connection with the supply of such services."

Section 455(5)(d) states

"The numbering plan may set out rules about:

- (d) the portability of allocated numbers (including rules about the maintenance of, and access to, databases that facilitate portability)."

Section 458 states:

1. The ACA must not make a numbering plan that sets out rules about the matter mentioned in paragraph 455(5)(d) (portability of allocated numbers) unless the ACA is directed to do so by the ACCC under subsection (2).
2. The ACCC may give written directions to the ACA in relation to the exercise of the power to determine a numbering plan setting out rules as mentioned in subsection (1).
3. In exercising the power conferred by subsection (1), the ACCC must ensure that, at all times when the numbering plan is in force, the plan sets out rules about the matter mentioned in paragraph 455(5)(d).
4. The ACA must exercise its powers under section 455 in a manner consistent with any directions given by the ACCC under subsection (2).
5. In exercising the power conferred by subsection (2), the ACCC must have regard to whether portability of particular allocated numbers is required in order to promote the long-term interests of end-users of carriage services or of services supplied by means of carriage services.
6. For the purposes of this section, the question whether a particular thing promotes the long-term interests of end-users of carriage services or of services supplied by means of carriage services is to be determined in the same manner as that question is determined for the purposes of Part XIC of the *Trade Practices Act 1974*."

Section 152AB(2) of the *Trade Practices Act 1974* states that

"For the purposes of this Part, in determining whether a particular thing promotes the long-term interests of end-users of either of the following services (listed services):

- a. carriage services;
- b. services supplied by means of carriage services;
- c. regard must be had to the extent to which the thing is likely to result in the achievement of the following objectives:
- d. the objective of promoting competition in markets for listed services;
- e. the objective of achieving any-to-any connectivity in relation to carriage services that involve communication between end-users;
- f. the objective of encouraging the economically efficient use of, and the economically efficient investment in, the infrastructure by which listed services are supplied."

Explanation of the Directions to the ACA

The directions to the ACA are separated into three parts.

Direction 1 contains a direction to the ACA for the purposes of section 458(1), that is, permitting the ACA to make a numbering plan that sets out

rules about the portability of allocated numbers (including rules about the maintenance of, and access to, databases that facilitate portability); and

Direction 2 sets out written directions to the ACA in relation to the exercise of the power to determine a numbering plan containing rules about the portability of allocated numbers.

Those written directions are as follows:

Direction 2(a) requires that the ACA must make a numbering plan which obliges carriage service providers to provide number portability with respect to each relevant portable number that the carriage service provider holds under the numbering plan. This obligation extends to the customers of each other carriage service provider.

Direction 2(b) defines certain services to be Declared Portable Services. Under Direction 2(b), the ACA must ensure that in the numbering plan, the ACA specifies local services, freephone services and local rate services as Declared Portable Services.

Directing that local services be Declared Portable Services requires that carriage service providers provide local number portability for the services of the type predominantly supplied using numbers in the (02), (03), (07) and (08) number ranges under the National Numbering Plan as at 22 September 1997 (excluding paging services). Directing that freephone and local rate services be Declared Portable Services requires that carriage service providers provide global inbound number portability for services of the type supplied using numbers in the 1800 and 13 number ranges under the National Numbering Plan as at 22 September 1997.

Direction 2(c) prohibits the ACA from specifying any other services as Declared Portable Services.

The Commission may issue further directions adding to the list of Declared Portable Services.

At this time, the Commission has not directed that mobile phone and Universal Personal Telephone (UPT) services be Declared Portable Services. However, the Commission makes the following comments.

The Commission is of the preliminary view that, in the near future, mobile number portability will likely be required in order to promote the long-term interests of end-users. The Commission currently plans to re-visit mobile number portability in the near future when more information is available. The Commission will write to the ACA asking the ACA to provide the Commission with a report on the technical options for mobile number portability, including the options that will support number portability within and across digital mobile networks.

The Commission is of the view that portability of UPT numbers is not required in order to promote the long-term interests of end-users at this time. However, the Commission will write to the ACA, asking the ACA to regularly update the Commission on solutions that can provide the portability of UPT numbers.

Direction 2(d) directs the ACA to include in the numbering plan an obligation to specify, in relation to each Declared Portable Service, a date (known as the 'Implementation Date') by which time each carriage service provider must provide number portability with respect to that service (ie. portability of numbers allocated to that service under the numbering plan) in relation to the customers of each other carriage service provider. The ACA must consult with the ACCC in setting Implementation Dates, and those dates must be specified by the ACA to ensure the provision of portability at the earliest practicable date, having regard to technical feasibility and any other relevant matters. It is possible that the ACA may set different dates for different Declared Portable Services.

Direction 2(e) directs the ACA to specify a form of limited number portability and an Interim Date from which carriage service providers are required to provide that form of limited number portability for local services. If the Implementation Date for number portability for local services is after 1 July 1998, the ACA is required to specify a form of limited number portability and an Interim Date. The purpose of this provision is to require the temporary provision of limited number portability for local services until the Implementation Date.

Limited number portability provides the capability for customers to change their carriage service provider and retain their telephone number, but may not fully meet one or more of the requirements of number portability. In particular limited number portability may not necessarily allow carriage service providers to provide to end-users services of equivalent quality and reliability and/or necessarily allow carriage service providers to provide equivalent services and features independent of whether the end-user is using or calling a number that has been ported from another carriage service provider. However, any lowering of these thresholds should not be substantial. The ACA must specify a form of limited number portability consistent with this definition. The solution for local number portability known as 'facility re-direct' will likely meet the requirements of limited number portability for local services.

This direction envisages that it may be technically feasible to provide limited number portability for local services before it is technically feasible to provide (full) number portability for local services.

The definition of limited local number portability is not designed to preclude carriage service providers from implementing a solution that fully meets the requirements of number portability. In other words a carriage service provider can meet its obligations to provide limited number portability by the Interim Date by providing number portability by that date.

Direction 2(f) directs that the ACA be required under the numbering plan to report to the ACCC on specified Implementation Dates and any Interim Date, and the progress achieved towards number portability or limited number portability in respect of each Declared Portable Service by the relevant Implementation Date or Interim Date (including reporting to the ACCC concerning any failure by carriage service providers to meet their obligations with respect to number portability or limited number portability). This requirement reflects the importance the legislation attaches to number portability as a competition issue, as well as providing a mechanism for establishing information flows and regulatory harmony between the ACA and the ACCC.

Direction 2(g) provides that the ACA must empower itself to grant written orders exempting certain carriage service providers from some or all of their obligations in relation to number portability or limited number portability.

In granting an exemption order the ACA may use any one or more of the categories set out in Direction 2(g)(i) to (v), such as particular services, carriage service providers or classes of providers, numbers (which could include, for example, geographic area codes) or timing factors (for example, granting relief - in the form of an extension of time - to a particular carriage service provider from an Implementation Date for a limited time).

Exemptions can also be granted to a carriage service provider or class of carriage service providers to provide number portability by an Implementation Date that does not allow each other carriage service provider to provide to end-users equivalent services and features independent of whether the end-user is using or calling a number that has been ported, where such differences are not detrimental to competition.

Exemptions can be granted for both the obligation to provide number portability and to provide limited number portability.

Direction 2(h) sets out the grounds the ACA must set out in the numbering plan for the granting of exemption orders. In so doing, the ACA must, in consultation with the ACCC, take into account whether the ACCC considers that granting the exemption order is required in order to promote the long-term interests of end-users, technical feasibility, and any other relevant matters.

In relation to an exemption order pertaining to non-equivalent quality and reliability of services and the services and features that can be provided to end-users by each other carriage service provider using ported and non-ported numbers, the ACCC will consider, in forming a view on whether granting an exemption order is required to promote the long-term interests of end-users, whether any differences are, or are likely to be, detrimental to competition.

Examples of the reasons for an exemption order might include the lack of competition or likely competition in an area or whether the provision of number portability would constitute a barrier to entry to a telecommunications market by a new carriage service provider.

Direction 3 provides a guide to interpreting the terms used in the Directions.

For the purposes of the Directions, ‘Portability of allocated numbers’ (also known as ‘number portability’) means the ability of customers to change their carriage service provider within specified number ranges and retain the same telephone number while allowing carriage service providers to provide services to end-users of equivalent quality and reliability and allow carriage service providers to provide a equivalent services and features independent of whether the end-user is using or calling a number that has been ported from another carriage service provider. Any differences in the quality and reliability of services and the services and features that can be provided to end-users must not be apparent to end-users in a way that may affect the choice of carriage service provider by customers. For example, a greater post-dialling delay for calls to ported and non-porting numbers that is perceptible to end-users may not provide for equivalent quality. ‘Intelligent network’ based solutions may meet the requirements of number portability.

‘Ported numbers’ and ‘non-porting numbers’ have corresponding meanings.

The technology used to provide number portability must allow each other carriage service provider to provide equivalent services and features to end-users independent of whether the number has been ported. This is not to imply that all carriage service providers must provide the same services and features. Rather the technology used to provide number portability must not prevent carriage service providers from offering equivalent services and features independent of whether the end-user is using or calling a number ported from another carriage service provider.

The Directions are not intended to prevent the ACA from including rules in the Plan about portability where a customer changes location or service portability (where an end-user changes services (eg. fixed phone to mobile) and retains the same telephone number).