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To: The ACCC  
CommunicationsComplianceSection@acc.gov.au

Thank you for the opportunity to express the Internet Association of Australia (IAA) perspective on the proposed Non-Discrimination Guidelines, as per Part XIC of the *Competition and Consumer Act 2010* and Part 8 of the *Telecommunications Act 1997*.

Many of IAA's members are small to medium sized internet service providers (ISPs) who are also NBN retail service providers (RSPs). IAA supports the non-discrimination provisions, especially as it encourages and promotes fair competition within the telecommunications sector. We also appreciate the ACCC's efforts in communicating the Guidelines in a straightforward and accessible manner.

This submission will focus specifically on questions 1 and 2.

*Question 1: Do you agree with us adopting these changes in our approach to testing for discriminatory conduct? Are there any aspects of our proposed approach that you consider should be altered or further developed in these guidelines to better achieve the intended objective?*

IAA supports the two-step framework proposed by the ACCC, especially the step of assessing whether conduct "impede(s) access seekers' ability to compete in a relevant telecommunications market." We see this second test for inherent discrimination as important as it recognises that measures providing same access services can be discriminatory. For example, as noted in an example in the Explanatory Material, volume discounts are offered to everyone on the same basis and they can favour larger access seekers over smaller access providers or newer access providers.

We recognise that exemptions to the non-discrimination provisions should be permissible in specific situations. However, we are concerned that some exemptions, for example the creditworthiness test, could be used as a mechanism for unfairly discriminating against smaller access seekers. Whilst the intent may be to prevent those with a history of failure to pay or of serious financial issues, our members have expressed concern that the burden of proof of creditworthiness may be excessive and time consuming to demonstrate leading to a significant barrier to entry.

IAA asserts the non-discrimination provisions should also apply to credit policy. We are of the view that it should be up to access seekers to determine whether they can take on a level of debt required to sustain a business, instead of having that choice made for them by access providers. In the past, our members have reported difficulty in navigating the process to become access seekers as they have found the creditworthiness process arduous and arcane. We would encourage this conduct to be further explored in the guidelines, especially as it can act as a barrier to entry.

IAA also recognises the need to protect consumers from fly-by-night operators and those with systemic poor practices, however the standard industry practice is to impose pre-payment or payment plans for those in arrears, rather than refuse service altogether.

Question 2: What changes, if any, may need to be made to this information to improve accuracy or comprehension?

IAA appreciates the use of examples and recommends them as a means of illustrating appropriate and inappropriate behaviour, however the language in some parts is ambiguous and lacking in clarity. For example in Table 4, the meaning in the following sentence is not clear:

*The access provider imposes a fair use policy which limits access services that exceed a specified usage level where these are provided by some access seekers but not others.*

An alternative phrasing might be:

*The access provider imposes a fair use policy which limits access services that exceed a specified usage level but imposes it on some access seekers but not others.*

The ACCC has also selected an apparently legalistic approach to the document format, in that the document is text heavy and each paragraph is numbered. IAA would encourage a more reader centric approach with the use of diagrams, colour and call out boxes to highlight and structure information in a more attractive and readable format. Another alternative would be to use a 'Frequently Asked Questions' approach to illustrate the examples of discriminatory approaches.

IAA would encourage the ACCC to actively seek input from smaller access seekers as it finalises the *Non-Discrimination Guidelines*. We would be happy to further discuss our submission with the ACCC or host a roundtable with our members.

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Once again, I would like to thank you for providing us with the opportunity to contribute to the Non-Discrimination Guidelines.

### [About the Internet Association of Australia](#)

The Internet Association of Australia Inc (IAA) is a member-based association representing the Internet community. Founded in 1995, as the Western Australian Internet Association (WAIA), the Association changed its name in early 2016 to better reflect our national membership and growth.

Our members comprise industry professionals, corporations and affiliate organisations. IAA provides a range of services and resources for members and supports the development of the Internet industry both within Australia and internationally. Providing technical services as well as social and professional development events, IAA aims to provide services and resources that our members need.

IX-Australia is a service provided by the Internet Association of Australia to Corporate and Affiliate members. It is the longest running and lowest cost Internet Exchange in Australia. Spanning six states and territories, IAA operates over 30 points of presence and operates the New Zealand Internet Exchange on behalf of NZIX Inc in New Zealand.

IAA is also a licenced telecommunications carrier, and operates on a not-for-profit basis.

Yours faithfully,

Narelle Clark  
Chief Executive Officer  
Internet Association of Australia