

a similar action against Optus and Vodafone. All three carriers charge late payment fees when customers fail to pay their bills on time. ACA Lawyers cited the recent court decision in relation to credit card fees, which found that late payment fees charged by the banks were unlawful.

However, both Telstra and Optus told CommsDay they believed that their fees were reasonable.

“We will review the claim when we receive it. We believe our late payment fees are reasonable in light of the costs we incur and we will strongly defend any claim we receive,” a Telstra spokesperson said. Similarly, Optus noted that it had not received any legal claims from ACA Lawyers on late payment fees, but the carrier will assess any claims if and when they are made. “Optus believes that its late payment arrangements for customers are fair and well-based,” its spokesperson said.

ACA Lawyers is currently inviting customers of all three carriers who have been hit with late payment fees to register their details online. They will argue that the fee represents an unlawful penalty because it does not reflect the actual loss to the company caused by the late payment.

ACA Lawyers principal Steven Lewis claimed that since 2000, hundreds of thousands of Telstra customers had paid late fees in the mistaken belief Telstra was entitled to charge the fee.

“But a recent court decision in relation to credit card fees found that late payment fees charged by banks are unlawful and that clients are entitled to get most of their money back. We will argue this is the same for the late payment fees charged by Telstra, Optus and Vodafone,” he said.

Telstra currently charges \$15 if the outstanding amount is \$70 or more. Vodafone charges a late payment fee of \$10 per late payment, regardless of the amount of the payment, while Optus charges its mobile customers a flat late fee of \$15 per late payment if the outstanding amount is more than \$50, plus 2% interest above the prime lending rate charged by ANZ Bank if the unpaid amount exceeds \$100.

The legal firm said that Harbour Litigation Funding would cover the legal costs of the class action and, if the claim was successful, would be entitled to a percentage of the damages awarded.

ACA Lawyers said it was also proposing to commence a class action against Optus and Vodafone, but funding arrangements for these claims are yet to be announced.

The legal firm is a relative newcomer, having been setup in late 2013 as a low cost class action specialist backed by litigation funds. Other recent class actions have been against mining services firm WorleyParsons for withholding sensitive market information, while it has also recently commenced class actions against Iluka Resources and Oz Minerals.

Geoff Long

## Rod Tucker claims Scales ignored advice on ACCC role

A former member of the panel of experts that recommended a move to a fibre-to-the-premises model for the NBN has hit back at suggestions it was unduly influenced by the Australian Competition and Consumer Commission.

Rod Tucker, a laureate professor at the University of Melbourne, also claims that his views were ignored by former Telstra director Bill Scales, who completed an independent audit into the public policy process behind the NBN.

Writing on the university-funded Conversation web site, Tucker further disputed a number of other areas of the Scales audit – including that there had not been any debate among the expert panel



The image shows a screenshot of the ACA LAWYERS website. At the top, the header includes the ACA LAWYERS logo and navigation links: HOME, ABOUT, OUR LAWYERS, CLASS ACTIONS, NEWS, MEDIA, and CONTACT US. Below the header, there are two columns of 'Current Matters' and 'Latest News' with links to various legal actions. The main content area features a large image of a black telephone handset. Below the image, the text reads 'Telstra & Other Telco Class Actions' and 'Telecommunications Class Actions'. A 'Background' section provides details about the class actions, and a 'Register Now' button is visible on the right side.

regarding alternative technologies for the NBN.

“In reality, the panel spent many hours discussing and analysing the technology options and the upgrade paths, including those set out in the various proposals submitted by companies in response to the government’s Request for Proposals. The panel also independently evaluated other models for upgrades,” Tucker explained.

The expert panel had included telecommunications experts from both industry and academia. Other members included Patricia Scott, secretary of the Department of Broadband and Communications, John Wylie, CEO of Lazard, Tony Mitchell, chairman of Allphones, former ACMA board member Reg Coutts, Tony Shaw, a former chair of the Australian Communications Authority and former Treasury Secretary Ken Henry.

According to Tucker, the panel members were constrained by strict confidentiality rules from sharing details of panel discussions and deliberations. In his report Scales also noted that he did not have access to key information.

Tucker said that the panel had carefully scrutinised all advice it received, including that from the ACCC. However, in the case of the ACCC’s advice he said the panel had already arrived at the same result.

“When the ACCC tabled its advice regarding the costs of upgrading FTTN to FTTP, it came as no surprise to the expert panel that the ACCC had a view that was similar to what the panel had already concluded. Simply put the panel did not rely heavily on the ACCC advice,” Tucker said. “Without divulging any details, I was able to explain the situation regarding the ACCC to Bill Scales when he interviewed me for his report, but it seems he did not put much weight on my comments.”

In his report to the government, Scales had said that the ACCC’s advice had seemed to be “very influential in the thinking of some members of the Panel of Experts, some Ministers involved with the Strategic Priorities and Budget Committee of Cabinet (SPBC), subsequent discussions within government, and in shaping the direction of future NBN policy.”

He also suggested that the ACCC had overstepped its authority in providing this advice.

Geoff Long

## Researcher calls for more study of cellphone radiation

A scientist and academic researching the effects of cellphone radiation on human beings has called for more funding and investigation into the topic arguing that more safety validation is needed.

Adjunct professor at the University of Helsinki’s division of biochemistry and biotechnology Dr Dariusz Leszczynski has argued that, while historical research has proved inconclusive on the potential hazardous effects of radiation from mobile phones and cell towers on human health, more study is needed to validate the safety of mobile phone use.

“The International Agency for Research on Cancer-World Health Organisation classification of cell phone radiation is misrepresented by the industry. Classification of cell phone radiation as ‘a possible carcinogen to humans’ means that there are enough studies indicating that it might cause cancer and that we urgently need more research to clarify this issue,” Leszczynski told Indian news site DNA. According to Leszczynski, there are already studies that point to cellphone radiation as a probable carcinogen, which has led to its inclusion on the IARC’s scale of carcinogenicity. He also warned that existing definition of radiation safety levels by the industry were inadequate.

“International Commission on Non-Ionizing Radiation Protection safety standards for radiation

