

ACMA submission to ACCC NBN wholesale service standards inquiry

Response to second discussion paper

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Introduction

The Australian Communications and Media Authority (ACMA) is Australia's regulator for telecommunications, radiocommunications, broadcasting and some online content. Our strategic purpose is to maximise the economic and social benefits of communications and media for Australia. The ACMA's priorities and strategies include:

- > public confidence in communications and media services through the provision of safeguards, information and advice
- > spectrum arrangements that benefit all Australians through efficient and effective management
- > a regulatory framework that anticipates change through monitoring our environment and influencing regulatory responses.¹

The ACMA is the primary sector-specific regulator for communications, with responsibility for industry codes and standards and oversight of several important retail consumer safeguards, as well as reporting requirements under the *Telecommunications Act 1997*.

The ACMA [made a submission](#) to the Australian Competition and Consumer Commission's (ACCC) first discussion paper for this inquiry into National Broadband Network (NBN) wholesale service standards and welcomes the opportunity to comment on the ACCC's second discussion paper.

In summary, our second submission observes that:

- > the retail safeguards contained in the ACMA's NBN rules may benefit from complementary wholesale requirements to ensure that NBN Co provides reasonable assistance to retail providers
- > wholesale and retail Priority Assistance (PA) obligations are not well aligned. We consider that close alignment of obligations is necessary to ensure that retail providers offering PA are capable of meeting their regulatory obligations
- > the delivery of retail services in accordance with the Customer Service Guarantee (CSG) is dependent on wholesale service standards being in place
- > rebates should provide a strong incentive for NBN Co to meet its contracted service levels
- > transparency of service speed and performance is an important part of the delivery of services over the NBN
- > accurate measurement of service levels is important for delivering improved outcomes for consumers.

¹ https://www.acma.gov.au/-/media/mediacomms/Information/pdf/Corporate-plan-on-a-page-2018_19-pdf.pdf?la=en

ACMA regulation

New NBN rules

In response to deficiencies in the way problems were being addressed by industry during the migration of consumers to the NBN, the ACMA made new rules to improve the consumer experience. These rules:

- > specify the minimum information that retail providers must provide to consumers about their services before they sign up for a service
- > specify minimum standards for retail providers' complaints-handling processes and a requirement for retail providers to report their complaint numbers to the ACMA so that trends can be monitored
- > require retail providers to 'line test' new services on the NBN to ensure lines are working and faults are identified early
- > enable consumers to be reconnected to legacy network services, or be provided with an interim service, if that fall back is needed.

The last of the new rules commenced in September 2018.²

We have been actively enforcing compliance with these rules since their introduction. Recent investigations by the ACMA found widespread industry non-compliance with the complaints-handling rules. Following the investigations:

- > 34 out of the 41 retail providers whose complaint-handling processes were examined were found in breach of the new rules
- > three retail providers undertook comprehensive remediation to move into full compliance during the investigation process
- > 27 retail providers took positive steps to remediate
- > four retail providers took inadequate steps to remediate.

As a result of our investigations, formal warnings were issued to 27 retail providers and remedial directions were issued to four.³

We will continue to closely monitor compliance with these new rules to ensure they have the desired effect of improving the overall consumer experience.

Reasonable assistance

The rules referred to above place obligations on upstream entities to provide reasonable assistance to carriage service providers (CSPs). These provisions were introduced, in part, to end 'buck-passing' and encourage service providers to work cooperatively to achieve favourable consumer outcomes.

² More information on our compliance approach with respect to the new NBN rules is available at <https://www.acma.gov.au/theACMA/nbn-rules-compliance-approach>

³ Further information about the outcomes of our compliance activities with respect to the new complaints-handling standard is available at <https://www.acma.gov.au/theACMA/telcos-directed-to-comply-with-complaints-handling-rules>

The reasonable assistance obligations apply to:

- > the supply of legacy services
- > upstream testing following service migration
- > the supply of an interim service
- > the line capability assessment
- > other requirements, when there is an unreasonable delay in the supply of an operational NBN service.

Additionally, the Telecommunications (NBN Continuity of Service) Industry Standard 2018 specifies that CSPs and NBN Co must take all reasonable steps to manage the migration at a consumer's premises in a way that minimises disruption to the continuous supply of carriage services to the relevant consumer.

Reasonable steps by NBN Co to manage migration include that it must:

- > not advise an NBN CSP, legacy CSP or legacy network carrier that the migration at the consumer's premises is complete until it has taken all reasonable steps to ensure that successful migration at the premises has occurred (paragraph 8(2)(a))
- > where the migration at the consumer's premises has been unsuccessful, take all reasonable steps to notify the consumer's NBN CSP that migration to the NBN service has not been successful, within one working day of becoming aware of that fact (paragraph 8(2)(b)).

We consider there would be merit in establishing wholesale service standards that incentivise wholesale providers (including NBN Co) to provide assistance of the kinds described above.

Retail consumer safeguards

We support the view that retail providers need to be supported by appropriate arrangements at the wholesale level in order for them to be able to meet their obligations. Accordingly, our comments below focus on service standards relevant to these obligations.

This section comments on the interaction between existing retail consumer safeguards and wholesale standards under the Wholesale Broadband Agreement (WBA). We note these issues are also currently being examined as part of the Department of Communications and the Arts' (Department) Consumer Safeguards Review.

Priority Assistance

PA is a special fixed voice service status available to customers with (or have a person living in their home with) a diagnosed life-threatening medical condition and whose life may be at risk if they do not have access to a working telephone service. PA covers one home phone line only and does not apply to internet or mobile phone services. Once approved, a customer is registered for PA for up to three years (depending on the circumstances⁴), after which the customer must re-register to be eligible for PA.

PA customers are entitled to priority connection and fault rectification. The maximum timeframes for connecting or repairing a fault⁵ are shorter than those required under the Telecommunications (Customer Service Guarantee) Standard 2011 (CSG Standard).

Regarding PA, the ACMA notes that:

- > Telstra is required to supply PA as a carrier licence condition
- > the shorter connection and fault rectification timeframes for PA were originally formulated with an expectation that network remediation was completely within Telstra's control, as a vertically integrated provider
- > when Telstra supplies services over a network it does not control (for example, the NBN), it may be dependent on network remediation being undertaken by the relevant infrastructure owner (for example, NBN Co)
- > in addition to Telstra, there are two other CSPs—iPrimus and Fuzenet—supplying PA in accordance with the Communications Alliance Code C609:2007 Priority Assistance for Life-Threatening Medical Conditions. Under the WBA³, iPrimus and Fuzenet would only be able to meet the code-specified PA connection service levels for certain NBN service classes (other service classes are subject to much longer connection and fault repair timeframes)

⁴ Customers will be registered for a maximum of three years, unless their life-threatening medical condition is of a short-term nature (e.g. a high-risk pregnancy) or until the PA customer advises Telstra that they no longer require PA.

⁵ Within 24 hours of receiving a request in urban and rural areas and within 48 hours of receiving a request in remote areas.

- > NBN Co's WBA3 specifies that PA service standards only apply to connections for certain fixed line NBN service class types—i.e. where infrastructure is in place and a service can be ordered.⁶ This means that if a PA customer does not have the necessary fixed line NBN infrastructure in place at their premises and/or an NBN service is unable to be ordered, wholesale PA service standards won't apply to them.

Given the vulnerability of PA customers, we consider that all PA customers would benefit from receiving prioritised connections/fault repairs irrespective of their fixed line service class type.

The ACMA recommends that the ACCC examine NBN Co's PA-related service level agreements, including its historical performance in meeting these and the currently excluded service class types. We consider this work would assist in evaluating the extent to which the current wholesale and retail PA obligations are aligned and identify potential opportunities to improve the NBN migration experience for PA customers.

Given a retail provider of PA is dependent on the provision of a wholesale PA service, there is also a case for a regulator to closely monitor the performance of both retail providers and NBN Co in meeting their PA obligations.

From a public interest perspective, we also consider there is merit in NBN Co publicly reporting on the extent to which it meets its PA service level commitments.

- > NBN Co's 11 September 2018 undertaking to the ACCC, for the purposes of section 87B of the *Competition and Consumer Act 2010*, provides for rebates being paid by NBN Co to retail providers for missed PA connection appointments and missed PA fault rectification appointments under specified circumstances.

Any delays associated with meeting PA-related appointments or connection/fault rectification timeframes may have serious consequences for PA customers. We therefore question whether the payment of a PA rebate is the most appropriate form of incentive given the critical nature of PA. Instead, the ACCC should consider what incentives (or penalties) are necessary to ensure that NBN Co always meets its PA obligations.

Customer Service Guarantee Standard

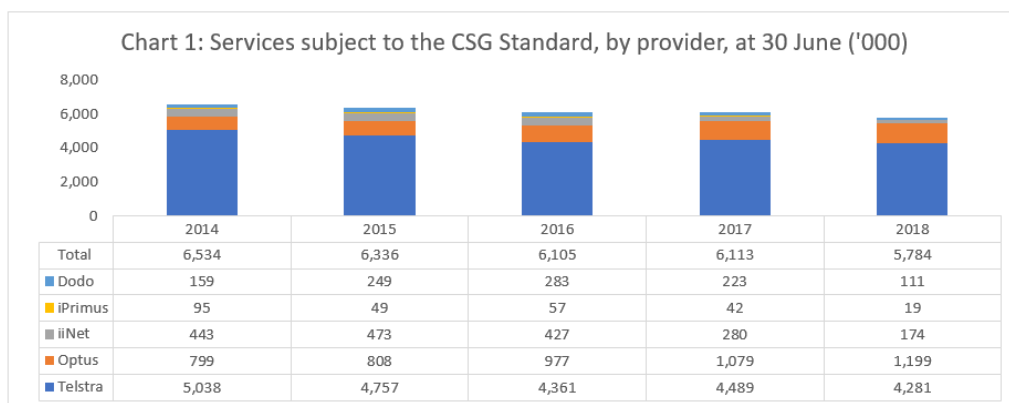
The CSG Standard sets minimum retail service standards for CSPs to install, repair and attend appointments for standard telephone services for residential and small business customers with five or less fixed-lines. However, the CSG does not apply to broadband internet services or to mobile phone services (given the focus of the CSG is on standard telephone services), which are the dominant types of services currently being adopted by consumers.⁷

⁶ PA connections only apply to service class 3, 13, 24 and 34 premises (where an FTTC-NCD shortfall does not apply). Put another way, these service classes describe premises where NBN infrastructure is in place and an NBN service can be ordered.

⁷ At 30 June 2018, the mobile phone was the most popular and most frequently used device to go online; 7.70 million Australian adults had a mobile phone and no fixed-line telephone at home. Further, at 30 June 2018, there were 8.16 million total fixed internet subscriber lines.

Number of CSG services

The total number of services covered by the CSG Standard has declined by 11.49 per cent from 6.53 million services at 30 June 2014 to 5.78 million services at 30 June 2018 (see Chart 1).



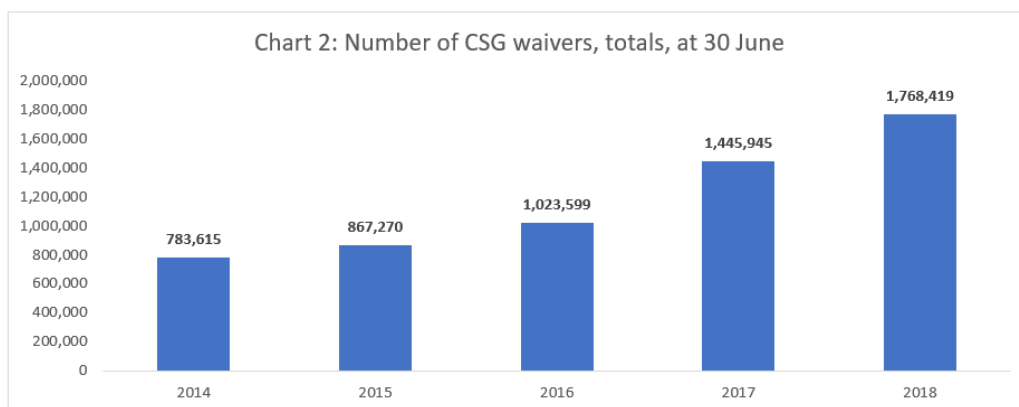
Note 1: In relation to iiNet's 2016 figure of 427, TPG acquired iiNet in September 2015.

Note 2: In relation to iiNet's 2017 figure of 280, this was revised due to iiNet submitting updated data. This followed the ACMA requiring iiNet to commission an independent audit of its 2016–17 compliance report under the Telecommunications (Customer Service Guarantee) Record-Keeping Rules 2011.

Source: ACMA Communications Report 2017–18

CSG waivers

Customers of service providers other than Telstra can waive their rights under the CSG Standard and many of these providers have encouraged their customers to do so. Between 2013–14 and 2017–18 there were 5.89 million CSG waivers, and the provision of waivers has increased over this time (see Chart 2). The ACMA understands that some providers only offer services to customers if they waive their CSG rights.



Source: ACMA Communications reports for the years 2013–14, 2014–15, 2015–16, 2016–17 and 2017–18

NBN Co requires its customers to take all 'reasonable actions' to avoid or mitigate their liability to pay primary damages under the CSG Standard where NBN Co may be liable to pay CSG compensation under the 'nbn Ethernet Service Levels Schedule' or secondary damages under section 118A of the *Telecommunications (Consumer Protection and Service Standards) Act 1999*. Reasonable actions may include the supply of an alternative or interim service to consumers, applying for a CSG exemption or requesting a consumer to waive their CSG rights.

We are concerned that an ever-increasing number of consumers are choosing to opt out of important consumer safeguards. While NBN Co's requirements are unlikely to be the sole driver of this outcome, it is likely that they are partly responsible. Consequently, it may be that NBN Co is creating perverse incentives for retail providers to avoid being subject to retail service standards.

Regarding the CSG, we consider that:

- > the effective delivery of retail CSG services is dependent on corresponding wholesale service standards being in place
- > currently, wholesale and retail service standards are not well aligned and there is merit in closer alignment of these. However, it is noted that the ACMA and the ACCC operate under different legislative remits and that the ACCC's ability to implement wholesale obligations which perfectly align with retail level obligations may be limited
- > where NBN Co fails to meet a service level which directly contributes to a retail provider being liable to pay CSG compensation to its customer (or a penalty, if applicable), then NBN Co should be required to pay the retail provider a rebate (see Scenario D in Table 1 below).

Rebates

We agree that rebates form a key part of NBN Co's service level framework.⁸ If set correctly, they should provide appropriate incentives for NBN Co to meet its service levels and provide redress or alternative solutions when NBN Co's service levels are not met.

We consider that rebates should:

- > be transparent and simple to understand
- > be automatically paid by the responsible entity to the affected entity. That is, there should not be a requirement for an affected entity to apply for a rebate. However, the ACCC may wish to consider how the payment of rebates would apply when NBN Co is only partially responsible for a service level not being met (such as where a third-party, other than NBN Co, was also responsible)
- > not be contingent on the retail provider seeking CSG waivers (or equivalent)
- > be of sufficient quantum to provide an effective incentive for NBN Co to meet its service levels
- > incentivise issues being addressed early to minimise the impact on affected entities (which may be either the retail provider or the retail provider's customer). Where rebates apply, this may suggest the amount is determined by reference to the length of time an issue remains unresolved
- > ensure that the retail provider is not significantly disadvantaged if they are not responsible for a fault. If retail providers are subject to penalty payments for not meeting retail level obligations as a consequence of an NBN Co service level not being met, then the retail provider should receive a rebate from NBN Co. For example, in the hypothetical case where a retail provider might be obligated to pay a \$100 penalty to a consumer for a missed appointment (such as proposed by the Department's Proposal 2 in its [Discussion paper – Part B – Reliability of services](#)) the \$25 rebate currently payable by NBN Co to its customers for missed appointments would be insufficient
- > only apply where they are considered sufficient to incentivise the desired outcomes. As stated previously, we question whether the payment of a PA-related rebate is the most appropriate form of incentive given the critical nature of PA
- > not be paid directly from NBN Co to the consumer, as no contractual relationship exists between those entities. Instead, rebates should be paid by NBN Co to its customer with it then being incumbent on NBN Co's customer to pass this compensation through the supply chain to the affected consumer (if the retail provider is liable to pay a retail penalty to the consumer) (See Table 1 below).

⁸ A rebate refers to compensation paid by NBN Co to its customers (i.e. retail or wholesale providers). A penalty refers to compensation paid by a retail provider to consumers.

Table 1: Potential scenarios for rebate and penalty payments

Scenario	Retail provider meets service level	Retail provider does not meet service level
NBN Co meets service level	A. No rebates or penalties (if applicable) payable by NBN Co or retail provider respectively	B. No rebate payable by NBN Co to its customer (retail provider). Retail provider pays penalty (if applicable) to affected consumers
NBN Co does not meet service level	C. NBN Co pays rebate to its customer. No penalty (if applicable) payable by retail provider to consumers	D. 'Passthrough': NBN Co pays rebate to its customer and retail provider pays penalty (if applicable) to affected consumers

The ACMA considers that certain service standards are of higher importance than others. We regard standards that underpin the delivery of PA as being of critical importance.

The ACCC may wish to consider if a higher rebate amount, or different levels of rebate, should apply where a missed NBN Co service level is associated with a higher level of potential consumer detriment.

In the current telecommunications environment, services provided to a consumer may be provided by several different entities across a supply chain. For an NBN service, a consumer engages directly with a retail provider, which sources its services either directly from NBN Co, or potentially through a different wholesale provider which then has a relationship with NBN Co.

We recommend that the ACCC consider the need for any passthrough mechanism to remain effective regardless of how many entities there are in the NBN supply chain.

Service speed and performance

We consider that transparency of service speed and performance is an important part of the delivery of services over the NBN.

In particular, we:

- > support Optus' contention that additional wholesale commitments are required to enable retail providers to better identify FTTN/B lines that are subject to co-existence, remediation or interference mitigation actions, and an estimate of the date by which the co-existence period is expected to end.⁹ This is important because it would enable a retail provider to better inform its customers when they are subject to co-existence limitations or other factors that may limit the performance of a line
- > consider it important that NBN Co provides retail providers with an estimate of the maximum attainable speed for fixed wireless connections before a consumer's order is placed. This will enable consumers to be better informed about the likely performance of fixed wireless services before making a purchase decision and enable comparison of service speed with other competing services available (for example, non-NBN fixed wireless services, or home wireless broadband, where available)
- > consider it important that NBN Co is subject to a wholesale service level standard which is specific to fixed wireless network congestion.¹⁰ The service level would act as a trigger threshold at which NBN Co would be required to promptly address (i.e. fix) the fixed wireless network congestion issues concerned. Further, if this type of service level standard were to be put in place, the payment of a fixed wireless rebate by NBN Co to retail providers may not be necessary.

⁹ Optus, [Submissions to ACCC in Response to Revised First Variation to NBN Co Special Access Undertaking](#), September 2017, p.14.

¹⁰ NBN Co's December 2018 monthly progress report states that 3.42 per cent of customers are receiving less than 6 Mbps in busy hours.

Measurement and reporting of operational outcomes

We consider that transparency of service delivery performance—both at the wholesale and retail levels—and accurate measurement of service levels are important for delivering improved outcomes for consumers.

New service never worked

Regarding NBN Co's categorisation of 'new service never worked' installations, we are concerned about the potential to distort the measurement of NBN Co's performance against its service levels, and where applicable, the potential payment of rebates from NBN Co to its affected customers.

We consider that a failed installation should not be defined by NBN Co as a 'new service never worked'. In the circumstance where NBN Co sends a completion advice to the retail provider that the consumer has been connected, but the connection is not operational, this should not be counted as a successful connection by NBN Co.

Start time for rectifying faults

We do not consider it appropriate that the timeframe for rectifying faults begins once NBN Co has evaluated and accepted a 'trouble ticket' lodged by a customer. This arguably delays the start of measuring performance against the fault rectification service level timeframe and is not an optimal outcome for consumers.

We consider that the timeframe for rectifying faults should commence from the time the trouble ticket is received in NBN Co's system. This is consistent with the operation of the CSG Standard where guaranteed maximum timeframes commence when the CSP receives the consumer's connection/fault repair request.

Reporting of wholesale service level performance

When there is an issue associated with a retail provider's performance, having the associated wholesale-equivalent reporting would enable us to identify and, if necessary, investigate any systemic issues and undertake appropriate action.

We consider there would be value in our receiving reporting on wholesale service level outcomes that directly relate to retail performance associated with connections, fault repairs and appointments (with a subset for PA).

Conclusion

We appreciate the opportunity to respond to the second discussion paper of the ACCC's wholesale service standards inquiry.

Two key themes run throughout our submission:

1. Wholesale and retail obligations must be aligned

Current regulatory arrangements assume a vertically integrated supply chain for fixed line services. It is important that NBN wholesale and retail consumer safeguards in today's more complex supply chains are aligned and work effectively together. This will provide clear lines of responsibility for industry, clarity of regulatory oversight, and support positive consumer outcomes.

2. Cooperation between wholesale and retail regulators

As the NBN supply chain is not an integrated one, as was sometimes the case for legacy voice and broadband services, close cooperation between the two regulators—the ACCC and the ACMA—responsible for wholesale and retail matters respectively, is important.

Given the implementation of any outcomes of the ACCC's wholesale service standards inquiry and the implementation of outcomes from the Department's Consumer Safeguards Review will occur in similar timeframes, the changes that arise from both processes should be coordinated so they are aligned to the maximum extent possible.

We look forward to continuing to work with the ACCC on the outcomes of this inquiry.