AUSTRALIAN COMPETITION
& CONSUMER COMMISSION

Audit of Telecommunications Infrastructure Assets – Record Keeping Rules

Explanatory statement

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Australian Competition and Consumer Commission

23 Marcus Clarke Street, Canberra, Australian Capital Territory, 2601

www.accc.gov.au

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1. Introduction

1.1. Purpose

This explanatory statement accompanies the *Audit of Telecommunications Infrastructure Assets - Record Keeping Rules* (Infrastructure RKR).

2. The Infrastructure RKR

2.1. Regulatory framework

The Australian Competition and Consumer Commission (ACCC) has the power to collect information from industry to undertake its telecommunications regulatory functions under the *Competition and Consumer Act 2010* (CCA) and relevant telecommunications legislation.

Section 151BU of the CCA provides that the ACCC may make record-keeping rules which require carriers and carriage service providers to keep records and provide reports of information in those records to the ACCC. The ACCC cannot require records to be kept unless they contain information relevant to the operation of certain parts of the CCA or certain other legislation.

Sections 151BUA, 151BUB and 151BUC of the CCA give the ACCC the powers to disclose, or to require carriers or carriage service providers to disclose, reports prepared in accordance with an RKR.

The ACCC has amended the *Audit of Telecommunications Infrastructure Assets – Record Keeping Rules 2013*. The amendments take effect from 18 December 2017. The amendments have been made in accordance with section 151BU of the CCA and section 33(3) of the *Acts Interpretation Act 1901*.

The ACCC considers that the updates and variations that are given effect through these amendments will assist the ACCC in administering a range of its regulatory functions listed in section 151BU(4) of the CCA, including:

- monitoring the rollout of the NBN and other infrastructure
- declaration inquiries, and
- monitoring and assessing the level of infrastructure competition and network deployment in specific telecommunications markets to inform the exercise of the ACCC powers under Part XIB and Part XIC of the CCA.

2.2. Background

In March 2007, the ACCC issued a discussion paper proposing an audit of telecommunications infrastructure to be implemented through a new RKR which would further inform its analysis of competition in relevant telecommunications markets.

On 19 December 2007, the ACCC made the *Audit of Telecommunications Infrastructure Assets – Record Keeping Rules 2007* requiring specified carriers to report the locations of their core network and customer access network (CAN) infrastructure.

The ACCC released a consultation paper in November 2012 proposing amendments to the *Audit of Telecommunications Infrastructure Assets – Record Keeping Rules 2007*, including an update to the list of record-keepers, and in particular, the addition of NBN Co as a record-keeper. Following consultation with stakeholders, the ACCC made the *Audit of Telecommunications Infrastructure Assets – Record Keeping Rules 2013* in March 2013. The *Audit of Telecommunications Infrastructure Assets – Record Keeping Rules 2013* updated the list of record-keepers and also introduced an obligation for record-keepers to identify leased infrastructure or infrastructure operated on behalf of third parties.

The ACCC released a consultation paper in October 2017 proposing amendments to the *Audit of Telecommunications Infrastructure Assets – Record Keeping Rules 2013* which included:

- updating the list of record-keepers
- clarifying the scope of information required in relation to mobile networks
- clarifying the requirements for reporting fibre to the building (FTTB) equipment, and
- clarifying the manner in which the geographic extent of customer access networks are to be report.

The ACCC received submissions from Ausgrid Operator Partnership (Ausgrid), AusNet Services Ltd (AusNet Services), the Australian Communications Consumer Action Network (ACCAN), the National Farmers' Federation (NFF), NBN Co Limited (NBN Co), OPENetworks Pty Ltd (OPENetworks), SingTel Optus Pty Limited (Optus), the Regional, Rural and Remote Communications Coalition (RRRCC), Telstra Corporation Limited (Telstra) and Victorian Rail Track Corporation (VicTrack).

A summary of submissions and an explanation of the ACCC's decision is discussed in detail below.

3. Summary of submissions and the ACCC's decision

3.1. Updating the list of relevant record-keepers

To ensure the ongoing usefulness of the data collected and oversight of changes in infrastructure, the ACCC considers that it is appropriate to update the list of record-keepers that could provide relevant information about the extent of telecommunications infrastructure in the market. Changes include:

- a new structure for the list of record-keepers, and
- the addition of certain SBAS and LBAS providers.

Summary of submissions

ACCAN, NBN Co, OPENetworks and Optus all supported the proposed inclusion of the larger SBAS and LBAS providers. ACCAN and OPENetworks however also submitted that there could be merit in including providers that have fewer than 12,000 services in operation.

- ACCAN submitted that all networks that operate in fulfilment of the statutory infrastructure provider should be included. It also submitted that fixed wireless providers should be considered for inclusion.

- OPENetworks submitted that the list should include all telecommunications infrastructure owners that supply, install and operate superfast broadband networks in a range of premises and building developments. In its submission it specifically lists a number of infrastructure owners to be added that supply services to end users in new developments and a range of premises.

AusNet Services submitted that it should not be added as a record-keeper as it is exempt from the requirement to hold a carriers licence on the basis that it is an electricity body that principally uses its communications networks to manage electricity supply. AusNet Services argued that if it is not a carrier, it cannot be a carriage service provider.

Ausgrid submitted that it should not be added as a record-keeper as reporting to the ACCC may compromise Ausgrid's obligations under the Critical Infrastructure licence conditions. It also submitted that it only provides wholesale dark fibre, and that the amount of fibre sold is neither material nor growing.

VicTrack also submitted it should be exempt or removed from the list of record-keepers. VicTrack notes that under the *Transport Integration Act 2010* its function with respect to telecommunications is limited to developing its telecommunications network and services to support the Victorian transport system.

No submissions were received from OptiComm Co Pty Ltd, Queensland Electricity Transmission Corporation Limited (Powerlink) and Spirit Telecom Ltd.

ACCC decision

The ACCC has amended the list of record-keepers to show the parent company. The current rules specify that the consolidated information report includes records of all subsidiaries and/or related entities of the record keeper. The ACCC notes that it did not receive any submissions with respect to this amendment.

The ACCC has also amended the Infrastructure RKR list of record-keepers to include SBAS and LBAS providers with significant customer bases (OPENetworks, OptiComm and Spirit Telecom). Telstra, TPG and Vocus also supply SBAS/LBAS services but are already captured under the existing Infrastructure RKR.

The ACCC has decided not to add electricity transmission and distribution network operators Ausgrid, AusNet Services and Powerlink to the list of record-keepers for the reasons set out below.

SBAS and LBAS providers

The ACCC notes that it did not receive any submissions against the inclusion of the proposed SBAS and LBAS providers. The ACCC does not consider it appropriate at this stage to include smaller SBAS and LBAS providers on the list of record-keepers given the development of many SBAS and LBAS networks are in their early stages. The ACCC also notes that the threshold requirement for regulation under the SBAS and LBAS declaration and access determination are SBAS and LBAS providers with more than 12,000 services.

In response to ACCAN's submission that fixed wireless providers should be considered for inclusion, the ACCC notes that a number of larger fixed wireless providers are already required to report under the Infrastructure RKR. As such we do not propose to add any new fixed wireless providers at this stage but will monitor the

development of the fixed wireless sector and consider inclusion of any fixed wireless operators that become of significant size.

Electricity transmission and distribution network operators

Under section 151BU of the CCA only carriers and carriage service providers may be subject to record keeping rules. The *Telecommunications Act 1997* also provides that:

- an owner of a telecommunications network unit must not use the unit to supply a carriage service to the public, unless the owner holds a carrier licence (unless an exemption applies), or a nominated carrier declaration is in force in relation to the unit[1]
- a carrier is the holder of a carrier licence,[2] and
- a carriage service provider is a person that supplies a carriage service to the public using a telecommunications network unit. The telecommunications network unit must either be owned by one or more carriers or, be a network unit in relation to which a nominated carrier declaration is in force.[3]

The ACCC notes that while AusNet Services and/or its related entities and subsidiaries supply telecommunication services, the network unit that is used to supply these services does not appear to be owned by a carrier or be subject to a nominated carrier declaration that is in force.

AusNet Services submits that it is exempt from the requirement to hold a carrier's licence. AusNet Services and its related entities or subsidiaries are also not listed on the ACMA's register of licensed carriers and nominated carrier declarations.[4]

The ACCC considers that as AusNet Services is not supplying telecommunication services on a telecommunications network unit that is either owned by a carrier(s) or subject to a nominated carrier declaration in force, it is not a carriage service provider under the *Telecommunications Act 1997*. The ACCC has therefore decided not to add AusNet Services to the list of record-keepers on the basis that it is not a carrier or carriage service providers under the *Telecommunications Act 1997*.

The ACCC has also decided not to add Powerlink to the list of record-keepers on the same basis. The ACCC notes that Powerlink has an exemption under section 42 of the *Telecommunications Act 1997* and as such is not a carrier or carriage service provider.

In terms of Ausgrid, the ACCC notes that the Critical Infrastructure provider conditions do not preclude Ausgrid from being required to record and report its telecommunications infrastructure asset information under the Infrastructure RKR. The ACCC also notes that information received from record keepers is considered protected information and processes are in place to ensure its security and confidentiality. However, the ACCC considers that it is ultimately not appropriate to include Ausgrid in the list of record-keepers. This is because the ACCC does not consider that Ausgrid owns telecommunications infrastructure of a significant size that would warrant adding it to the list of record-keepers. The ACCC considers that

[1] Section 42 of the *Telecommunications Act 1997.*

[2] Section 7 of the *Telecommunications Act 1997.*

[3] Section 87 of the *Telecommunications Act 1997*.

[4] ACMA, https://www.acma.gov.au/Industry/Telco/Carriers-and-service-providers/Licensing/register-of-licensed-carriers-licensing-i-acma.

the regulatory burden on Ausgrid is likely to outweigh the benefit from receiving this information.

Other

The ACCC notes the submission put forward by VicTrack and does not consider it appropriate to remove it from the list of record-keepers. While it has statutory limitations that restrict its ability to develop its telecommunications network, the ACCC considers VicTrack still owns and operates infrastructure that is important in assessing the overall extent and location of telecommunications infrastructure in the market.

3.2. Clarification of the type of assets to be recorded and reported

The ACCC identified several areas where clarification and further information in relation to infrastructure assets, and in particular mobile network information would assist the ACCC in monitoring competitive developments in the industry. Clarification and changes have been made in relation to the reporting of:

- radio infrastructure (mobile and fixed)
- fibre to the building (FTTB), and
- geographic information identifying customer access network boundaries.

3.2.1. Radio infrastructure (mobile and fixed)

Summary of submissions

ACCAN, the NFF, Optus and RRRCC support the recording and reporting of additional information with regard to mobile networks. It is argued that clarity of information will ensure consistency, transparency and accountability over network investment commitments and coverage claims.

- ACCAN specifically notes that any benefits from this information far outweigh any impediments from recording and reporting the information. ACCAN also requests the ACCC to consider a capacity measure for mobile towers to be recorded. This is due to reports from mobile operators that have difficulty in co-location and sharing of mobile tower infrastructure in rural and remote areas.
- NFF notes that greater transparency and consistency in coverage mapping has the potential to assist in future investment decisions.

However Telstra submits that the information requested is already available from public information sources and that duplication of reporting will be an additional burden on industry. Telstra makes reference to the below sources:

- ACMA – Register of Radiocommunications Licences (RRL): contains information on mobile sites and frequency.
- Australian Mobile Telecommunications Association – Radio Frequency National Site Archive (RFNSA): contains details of what equipment is deployed at each mobile site.

Telstra also submits that the ACCC should consider whether the information requested is fit for purpose. It argues that mobile site information alone is not an

appropriate proxy for depth of coverage and could lead to incorrect conclusions being made. It submits that the RKR does not distinguish between different forms of site technology that may provide different levels of coverage. Telstra puts forward the example that an operator with five micro sites may not have greater depth of coverage compared to another operator with one macro site. Furthermore it states that coverage quality is also dependent on spectrum used and technology.

OPENetworks submits that the current 'mobile site' definition does not adequately capture and monitor all modes of delivery of superfast broadband carriage services. It proposes that the definition be amended to include in-building mobile coverage solutions that consist of distributed antenna systems and 4G/5G micro-cell systems that are deployed in high density residential buildings.

NBN Co submits that the rationale behind the proposal to require record-keepers to identify the frequency band of the radiofrequency spectrum used to deploy the radio access service has not been explained. NBN Co argues that while radiofrequency information on mobile services may be relevant to the ACCC's inquiries on domestic mobile roaming, it may not have the same utility with respect to fixed wireless services. It therefore submits that the additional information on radiofrequency be limited to mobile services and not apply to fixed wireless services.

ACCC decision

The ACCC has assessed submissions made on radio (mobile and fixed) information and has amended the Infrastructure RKR as originally proposed in the consultation paper.

The ACCC considers that this extra information required to be recorded and reported under the amended Infrastructure RKR will provide greater consistency of information, transparency and accountability over network investment commitments and coverage claims by mobile network operators. This would better inform the ACCC of the state of infrastructure competition, investment dynamics and network deployments in specific markets (such as the mobile services market) for the purpose of exercising its functions under Part XIB or Part XIC of the CCA.

The ACCC agrees that there are a number of factors to take into account when assessing depth of coverage which is why it proposed a reporting requirement for technology type and frequency band/s of the radiofrequency spectrum used at each mobile and fixed wireless site in the consultation paper. The ACCC considers that this additional information will allow it to properly assess the quality and depth of coverage.

We also consider the current definition of mobile sites is broad enough to capture the information that OPENetworks intends for the ACCC to capture in its proposed definition change. That is, in-building sites for mobile equipment are covered under the rules.

In terms of NBN's submission, the rationale behind the proposal to require record-keepers to identify the frequency band of the radiofrequency spectrum used to deploy radio access services is as discussed above – frequency band/s of the radiofrequency spectrum is one factor that contributes to breadth and depth of coverage. The ACCC considers that there is utility in requiring this information for both mobile and fixed wireless infrastructure as it is important to assess the geographic extent and quality of coverage of both.

In relation to submissions on alternative sources for the information sought in the new RKR, we note that while the RFSNA database contains details of equipment deployed at mobile sites, it only allows for limited examination of the information contained in the database. Furthermore, part of the information in the RFSNA database is not in the public domain and is only accessible by internal users.

The ACCC has assessed the feasibility of using the ACMA's RRL database as an alternative source for the additional information sought in the amended Infrastructure RKR. As a result of this assessment, the ACCC has concluded that while the RRL database represents a comprehensive register of radiofrequency spectrum licenses, it is not fit for the ACCC to carry out an accurate and exhaustive identification of the infrastructure owned or operated by the record-keeper entities.

Consequently, the ACCC does not consider it appropriate to rely on these data sources for the intended use of the additional Infrastructure RKR data.

3.2.2. Fibre to the building

Summary of submissions

Telstra submits that the definition of FTTB and FTTC appear to be broader than necessary to address the issues raised in the paper. Telstra argues that the current definition would capture narrowband small pair gain systems which appear to not be an aim of the proposed changes.

OPENetworks submits that the definition of 'FTTB equipment' is not suitable because the current drafting does not capture all the infrastructure of superfast broadband networks that are deployed by carriers and CSPs. It proposes the following definition changes:

- 'FTTB equipment' amended to read "FTTB equipment means the main telecommunications Network Equipment and Lines needed or used to provide, operate or deploy networks capable of delivering superfast broadband services and located on the carrier side of a Network Boundary for premises".
- 'Network boundary' to be added to give effect to the new FTTB equipment definition, and reading "Network boundary means the same as Section 22 of the *Telecommunications Act 1997*".
- 'Line' to be added to give effect to the new FTTB equipment definition, and reading "Line means the same as Section 7 of the *Telecommunications Act 1997*".

NBN Co submits that it is already providing information on the geographic location of FTTB equipment including FTTB equipment located inside multi-dwelling units or multi-premises sites. However it supports the amendments if other record-keepers are not yet reporting this information.

ACCC decision

The ACCC considers that the geographic location of FTTB equipment will assist it with its assessment of competition levels between broadband providers and should be reported. The ACCC also considers that the FTTB and FTTB equipment definitions originally proposed in the consultation are appropriate given the information intended to be captured.

The ACCC is of the view that reference to 'Network Boundary' in the FTTB equipment definition as proposed by OPENetworks could open up the possibility of a record-keeper arguing that it's equipment is not located on the carrier side of the boundary and therefore not required to be recorded and reported. The intention of the definition is to capture any equipment, located in or on a building, from which it is possible for a superfast broadband service to be delivered to the dwellings/premises in the building. This is not dependent on which side of the network boundary that equipment could be classified as being located.

Furthermore, the inclusion of 'Line' would capture in-building cabling and wiring to each premise in a multi dwelling unit or multi premise site. This level of granularity provided by including 'Line' into the definition is not required by the ACCC for the purpose of assessing competition in the provision of FTTB services over both NBN Co's network and competing networks.

The ACCC agrees with Telstra's concerns that the FTTB and FTTC definitions could potentially capture narrowband small pair gain systems. As it is not the ACCC's intention to capture this information, we consider that adding additional clarity in the definition will ensure that those legacy systems are not captured. As such, each access technology definition now has reference to a capability of delivering a superfast broadband service, i.e. 25 Mbps or more.

3.2.3. Geographic information identifying customer access network boundaries

Summary of submissions

ACCAN supports the inclusion of geographic boundary information.

Telstra notes that it already supplies information, which is commercially available, on ESAs and distribution area boundaries and that it can provide this to the ACCC if the proposed changes proceed. However, it submits that the definition of 'geographic extent' may not always be suitable as the boundaries associated with particular infrastructure are not always clearly defined.

NBN Co submits that it does not consider the proposed addition of geographic information of network boundaries to be sufficiently supported by a clear purpose and rationale. It argues that it currently reports boundary data for in-service serving area modules (SAMs) and that this is sufficient to meet the ACCC's stated purposes of 'identifying rollout regions' and 'monitoring of NBN Co's roll out'. It also submits that enough geographic information is provided to allow the ACCC to relate its rollout to Telstra's copper network and ESAs.

ACCC decision

The ACCC considers that the recording and reporting of geographic information identifying customer access network boundaries is appropriate and has amended the Infrastructure RKR as originally proposed in the consultation paper. The ACCC notes that this information will assist with ongoing analysis of the roll out of the NBN and decommissioning of existing copper services.

The ACCC notes Telstra's submission that ESA and distribution area boundaries are already provided commercially, and can be provided to the ACCC if required. Given this information is already recorded and reported commercially, the regulatory burden on Telstra of providing this information to the ACCC would be minimal.

The ACCC notes that whilst NBN Co provides information to the ACCC regarding its in-service infrastructure, some of the data in the current NBN Co reports does not have an associated SAM boundary. The ACCC notes that NBN Co only provides SAM boundary information for fully completed SAMs.

The ACCC understands the NBN Co supplies its customers with network planning information that includes SAM boundary data. The ACCC considers that NBN Co should also be able to supply this data to the ACCC for the purposes of the Infrastructure RKR.

The ACCC considers that in order to monitor the rollout of the NBN and inform and make regulatory decisions involving the use of geographic boundaries, it is necessary for NBN Co to provide the information that it holds relating to both completed SAM boundaries and proposed SAM boundaries (that are yet to be fully rolled out).

3.2.4. Miscellaneous

Summary of submissions

Submitters made the following suggested changes to definitions in the Interpretation section (section 3) of the amended Infrastructure RKR:

- ACCAN suggests that ESAs need to be defined
- NBN Co submits that the acronym SAM refers to 'Serving Area Modules' not 'Service Area Module'
- NBN Co also submits that FTTC should be amended in the following way to more accurately reflect elements of a FTTN network:

> Fibre to the curb (FTTC) means a combination of optical fibre and copper is used in the CAN to connect the end-user to the core network. Optical fibre is delivered ~~to a telecom pit outside a premise~~ *to an underground pit or pole location* where it then connects with a Distribution Point Unit (DPU). The existing copper is then used to deliver services from the DPU to the end-user.

ACCC decision

In response to ACCAN's submission, the ACCC has added 'ESA' to the Interpretation section of the Infrastructure RKR to give effect to the 'geographic extent' definition in the same section.

The ACCC has also amended the definitions of SAM and FTTC, taking into account the amended definitions proposed by NBN Co in its submission. The FTTC definition also has reference to a capability of delivering a superfast broadband service, i.e. 25 Mbps or more, as discussed earlier.

Additional amendments

The ACCC has added Rule 8(3) into the Infrastructure RKR in order to clarify that reports must be provided to the ACCC by email or by another mode of delivery approved in writing by the ACCC. Rule 8(3) also provides the email addresses that reports must be sent to.