



Australian  
Competition &  
Consumer  
Commission

**ACCC**  
**Infrastructure Record-Keeping Rule 2007**  
**Regulation Impact Statement**

December 2007



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# Contents

Introduction.....	4
Issues.....	6
Problem.....	6
Overview of telecommunications infrastructure.....	6
Relevant ACCC processes under Part XIC.....	6
ACCC Communications Infrastructure Audit.....	7
Minimising cross-agency regulatory burden.....	7
Options.....	9
Ad hoc data collection.....	9
Continue the Telstra CAN RKR, introduce the Infrastructure RKR and reintroduce the previous RKR.....	9
Continue the Telstra CAN RKR but not introduce the Infrastructure RKR.....	9
Options for the scope and detail of the Infrastructure RKR.....	10
Impact Analysis.....	12
Consultation.....	13
The proposed Infrastructure RKR.....	14
Conclusion.....	16

## Introduction

The Australian Competition and Consumer Commission (ACCC) must exercise its telecommunications regulatory functions (declaration, dispute settlement and assessment of access undertakings, as well as ancillary functions such as determining pricing principles to be applied in access disputes) in accordance with the *Trade Practices Act 1974* (the Act). A key component of this requirement is the promotion of the *long-term interests of end-users* (LTIE). This is achieved through:

- the objective of promoting competition
- the objective of achieving any-to-any connectivity in relation to carriage services that involve communication between end-users
- the objective of encouraging the economically efficient use of and investment in infrastructure supplying telecommunication services

When making and reviewing decisions, the ACCC carefully considers whether regulatory action is required or whether the objects of the Act could best be served by alternative measures which would involve lower costs for business and the community.

In order to continue to improve the quality of its regulation and to reduce the burden of regulation on the community, the ACCC requires industry data on telecommunications network infrastructure. This information is intended to assist the ACCC in administering its regulatory functions under Part XIC. Appropriately targeted access regulation promotes the LTIE. The purpose of this Record-Keeping and Reporting Rule, in a highly dynamic and evolving market, is to provide the ACCC with a consistent and coherent database to inform regulatory decisions.

The Act enables the ACCC to require telecommunications carriers to maintain certain records and provide them to the ACCC. These requirements, known as Record-Keeping and Reporting Rules (RKR), provide the ACCC with critical information required for the exercise of its statutory functions.

The ACCC issued a discussion paper in March 2007 proposing a Communications Infrastructure Audit which would utilise the RKR framework to collect (and regularly update) information regarding the nature and location (including take-up in certain circumstances) of competing infrastructure. After reviewing submissions, the ACCC proposed that the collection of infrastructure information be proceeded with in two stages:

- (1) the collection of data on the Telstra Customer Access Network (CAN) (Telstra CAN RKR)
- (2) the collection of information on alternative CANs as well as other infrastructure (the Infrastructure RKR)

A regulation impact statement (RIS) for stage (1) was approved by the Office of Best Practice Regulation (OPBR) on 28 August 2007 (ref # 9278).

This RIS relates to stage (2). It considers the case for the imposition of the Infrastructure RKR and the recent revocation of two existing RKRs as well as the coordination of data requests with other agencies to minimise regulatory burdens. Specifically, it considers the direct burden on industry of the Infrastructure RKR and also the indirect burden on industry should the ACCC not have access to this information and consequently be less able to consider, on an ongoing basis, the efficiency of other regulation.

## Issues

### Problem

The ACCC is continually seeking to improve the quality of its regulation and to ensure that where regulation is required to promote the LTIE it is imposed with minimal regulatory burdens. While the ACCC currently receives some data on an ad hoc basis, it considers that a new approach to data collection is required to better target the collection of data so that:

- decisions that rely on this information are as timely, efficient and effective as possible while
- the regulatory burden on industry of all RKR is minimised

### Overview of telecommunications infrastructure

The telecommunications network has two key components:

- the CAN which is defined as that part of the telecommunications network that allows end-users to connect to the local switch, base station, node or exchange
- the Core network which is defined as including all other parts of the network required to connect the CANs

From a telecommunications competition perspective, the CAN and elements of the Core networks are of considerable significance as they represent restraints on competition; it may be uneconomic to replicate a CAN and equally, it may be uneconomic to take-up a declared CAN service (discussed below) if Core network services are unavailable.

### Relevant ACCC processes under Part XIC

There are a range of regulatory functions which the ACCC is responsible for administering under Part XIC. This includes provisions to:

- declare certain services where this promotes the LTIE
- not declare certain services where this will not promote the LTIE and
- exempt previously declared services from declaration where this promotes the LTIE.

Administration of these provisions is an ongoing and recurring function of the ACCC. For example, the ACCC is currently:

- reviewing three service declarations (possible variation of the ULLS, and DDAS/ISDN)
- considering four exemption applications from Telstra in relation to the PSTN O/TA, DTCS, LCS and WLR declared services in discrete geographic regions
- preparing for a holistic review of existing declared services to be completed by 2009.

The ACCC has stated its intentions to focus future regulatory decisions on enduring bottlenecks. The identification of enduring bottlenecks is both carrier and technology neutral, and requires as an initial step an understanding of the geographic extent of the key technologies capable of supplying telecommunications services as deployed by all significant carriers.

The individual aspects of the RKR are therefore intended to capture information to inform subsequent analyses as to whether services provided over different platforms represent substitutes for other services such that they are not enduring bottlenecks, or indeed that those services are enduring bottlenecks in their own right. Indeed, the capacity for network configuration and/or ownership to change over time may provide indications on the extent to which services are or are not enduring bottlenecks.

### **ACCC Telecommunications Infrastructure Audit**

Given that competition is developing unevenly across different geographic regions, future regulatory decisions should be based on robust geographically delineated empirical data. Previously, the ACCC has received data on an ad hoc basis through various reviews and assessment processes, however this information is generally not provided by parties in a manner amenable to time series analyses. This is a significant impediment to the ACCC's capacity to make appropriately targeted and timely regulatory decisions.

In March 2007 the ACCC issued a discussion paper proposing a Telecommunications Infrastructure Audit which would utilise the RKR framework to collect (and regularly update) information regarding the nature and location (including take-up in certain circumstances) of competing infrastructure.<sup>1</sup> The discussion paper proposed issuing record keeping requirements covering a number of categories of information including Telstra's CAN, alternative CANs and Core networks. A clear majority of submissions supported these audits.

#### ***The audit process***

##### Stage 1 of the audit – Telstra CAN RKR – September 2007

The first stage of the audit was the issuing of the Telstra CAN RKR to Telstra. This RKR primarily requires the quarterly reporting of ULLS and LSS take-up. This audit is now underway.

A regulation impact statement (RIS) for stage (1) was approved by the Office of Best Practice Regulation (OPBR) on 28 August 2007 (ref # 9278).

##### Stage 2 of the audit – Infrastructure and Alternative CAN RKR – December 2007

The second stage of the audit is the issuing of the Infrastructure and Alternative CAN RKR to a number of other carriers. This is the proposed RKR which is the subject of this statement.

### **Minimising cross-agency regulatory burden**

The ACCC is conducting extensive consultations with other agencies with a view to sharing data, where appropriate, and coordinating data requests to industry.

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<sup>1</sup> ACCC, *Proposed audit of telecommunications infrastructure assets—discussion paper*, March 2007.

### Joint Project with ACMA on duplicative data collection

ACCC and ACMA have been working on a project to identify duplicative data requests imposed on reporting parties. The two agencies have agreed that there would be benefit in the two agencies communicating their data collection plans and coordinating with each other where possible. This is being achieved via regular meetings and a protocol whereby both agencies agree that data requests are aligned and minimise, to the extent possible, the extent of additional work required by reporting parties. This has the added benefit of ensuring that both agencies are reviewing their data collection needs and the consequent regulatory burden on an ongoing basis.

ACMA is currently waiting for advice from the Minister for Broadband, Communications and the Digital Economy (DBCDE) on whether the Government intends to repeal certain legislative reporting requirements including the Digital Data Service Obligation and industry reporting on overhead cabling by carriers. The previous Minister had announced on 27 June 2007 that as part of its proposals to reduce regulatory burden, the government would 'remove a range of regulations including the Digital Data Service Obligation and industry reporting on overhead cabling by carriers'<sup>2</sup>.

The ACCC is authorised under s.155AAA of the Act to share data with other agencies in certain circumstances. In 2007 the ACCC and ACMA released the Communications Infrastructure and Services Availability in Australia 2006-07 report (the Report). The joint drafting of the Report has helped to establish an effective and efficient working relationship between the agencies and negotiations have commenced for the development of the Report in 2008.

The Report fulfilled an information need for the Regional Telecommunications Independent Review Committee which is currently assessing the adequacy of telecommunications services in Australia. More generally the Report is being used by a range of organisations with an interest in telecommunications to independently evaluate the effectiveness and efficiency of regulations imposed by DBCDE, ACMA, the ACCC and other agencies.

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<sup>2</sup> Accessed at:

[www.minister.dcita.gov.au/media/media\\_releases/telco\\_red\\_tape\\_reduction?SQ\\_DESIGN\\_NAME=printer\\_friendly - 6k](http://www.minister.dcita.gov.au/media/media_releases/telco_red_tape_reduction?SQ_DESIGN_NAME=printer_friendly - 6k)

## Options

### Ad hoc data collection

Under this option, the Telstra CAN RKR would be revoked, the Infrastructure Audit would not proceed and the ACCC would revert to the collection of ad hoc information to support future regulatory decisions.

This approach is undesirable for the following reasons:

- It would not respond to the ACCC's publicly expressed requirement for a coherent and consistent time-series database with which to consider future adjustment to the scope of declarations
- It would not respond to the majority of submissions supporting the ACCC's Telecommunications Infrastructure Audit and
- Reporting burden may not be reduced, will be less predictable and may be increased in some circumstances.

### Continue the Telstra CAN RKR, introduce the Infrastructure RKR and reintroduce the previous RKR

Under this option, the ACCC would continue with the Telstra CAN RKR, and also reinstate the exchange access and service delivery RKR.

This approach would provide the ACCC with the data necessary to consider future adjustment to the scope of declarations.

However by retaining the existing RKR, it would ignore the introduction of Operational Separation which means that Telstra is reporting similar information under the two current RKR and the Operational Separation regime.

### Continue the Telstra CAN RKR but not introduce the Infrastructure RKR

Under this option, the ACCC would continue with the new Telstra CAN RKR, but not introduce the second stage Infrastructure RKR.

This approach would fail to provide the ACCC with the data necessary to consider future adjustments to the scope of declarations. Industry has supported the introduction of an Infrastructure RKR. In its submission to the *Taskforce on reducing the regulatory burden on business*, Telstra called for 'criterion or milestone indicators to measure when there is sufficient competition and compliance to scale back regulation'.<sup>3</sup>

In order to develop criterion or milestones the ACCC needs information on the state of competition and compliance. As was pointed out above, competition in the CAN is a

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<sup>3</sup> Telstra submission to the *Taskforce on reducing the regulatory burden on business* on 25 November 2005 at page 25.

function not only of infrastructure in the CAN but also infrastructure that enables the CAN to be connected to a network. The Infrastructure RKR provides a broader picture of the competing platforms and infrastructure than would be available were it not to be approved.

### **Options for the scope and detail of the Infrastructure RKR**

If it is accepted that there is a requirement for the ACCC to obtain data on telecommunications infrastructure, the ACCC is mindful that the scope and detail of data required must also be considered. A number of submissions have called for more detail to be provided than is proposed in the Infrastructure RKR and some have called for less. The balance between these two positions is discussed below.

#### ***Wireless infrastructure***

One consideration is the inclusion of wireless infrastructure in the RKR.

In public submissions received in a number of instances, the presence of wireless infrastructure has been suggested as indicating competitive pressure within a market. For example Telstra has made the following submission:

...Telstra notes that fixed line subscriptions have declined in recent years (having peaked at 10.4 million SIOs in 2002)<sup>57</sup> whereas mobile subscriptions have increased (to some 92% as at 30 September 2005)<sup>58</sup>. This is further evidence of the growing substitutability between fixed and mobile subscriptions.

Telstra expects that the substitutability of fixed and mobile telephony will continue to increase. Factors that are currently reinforcing the substitutability of fixed and mobile services include:

- (a) virtual saturation of mobile phone penetration suggesting that all residents in any particular household are likely to have access to a mobile phone; and
- (b) improvements in the quality of mobile service. That is, while early mobile telephony was not a particularly good substitute for fixed lines as transmission quality and geographic coverage were limited and early handsets were not particularly portable, factors such as the roll-out of digital technology in 2G and 3G networks, increased network coverage and higher quality transmission have improved the substitutability of mobiles. Moreover, with the advent of video calling, mobile telephony arguably provides superior call functionality to fixed lines. Importantly, mobile call prices have also substantially decreased.

<sup>57</sup> WIK Undertakings Report, p. 48.

<sup>58</sup> ACCC, Optus's undertaking with respect to the supply of its Domestic GSM Terminating Access Service (DGTAS) - Final Decision (Public version), (February 2006), ("Optus Undertaking Decision"), p 110.<sup>4</sup>

The ACCC is agnostic to conclusions about the nature and location of enduring bottlenecks, the substitutability between different platforms and how this may change over time. The information to be collected under the Infrastructure RKR is intended to improve the ability of the ACCC, and all parties, to conduct an informed debate on these matters in future regulatory processes, while ensuring to the greatest extent possible the minimisation of regulatory burdens associated with the collection of this information.

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<sup>4</sup> Telstra Corporation Limited, *Submission in response to the ACCC's discussion paper on the WIK Mobile Network and Cost Model to inform the MTAS Pricing Principles Determination 1 July 2007 to 30 June 2009*, March 2007 page 35

To address these and other similar submissions, the ACCC will require longitudinal data on coverage as the capabilities of wireless evolve over time. For this reason wireless coverage information will be crucial to the success of the Infrastructure RKR.

### ***Requiring more detail than the draft RKR***

A number of submissions to the draft RKR have expressed concern that the RKR will not receive the granularity of data required. In particular, it has been suggested that the ACCC should seek:

- The number of Digital Subscriber Line Access Multiplexers (DSLAMs) in each telephone exchange. This would provide more valuable information on the state of competition in each ESA but it would increase the reporting burden on industry. Also the ACCC receives information on ULLS and LSS take-up in each exchange and this can be analysed to provide similar information.
- The capacity of fibre in the Core network. This would provide the ACCC with information on the capacity of fibre links – not just their geographic extent. For example, the presence of technologies such as wave-division multiplexing can exponentially increase the capacity of an existing fibre link. This information would be very useful to the ACCC in obtaining deeper understanding of the capacity of fibre and so competition. However the ACCC believes that this would place extra burden on industry. The most important information required is the presence of fibre as this represents the majority of the cost of entry.
- Information on Indefeasible Rights of Use (IRUs). A number of submitters have posited that in order to receive a clear understanding of their networks the ACCC needs to obtain information on leasing, line sharing and IRUs that they may have with infrastructure owners. This information would enable the ACCC to develop a clearer picture of the individual carrier networks. However the ACCC also considers that this would add to the reporting burden and the ACCC expects to receive the location of the infrastructure under this RKR from infrastructure owners in the first instance. The ACCC has indicated that where the data is readily available, it would value the addition of this information on a voluntary basis. A number of submitters have indicated that they will be voluntarily providing this information.

## Impact Analysis

The following considerations are relevant:

- The RKR is being developed a part of the ongoing process of improving the efficiency of all regulation.
- The ACCC has pursued a careful and considered process of consultation on the RKR; discussed in more detail below:
  - Importantly, the majority of submissions to the ACCC's Telecommunications Infrastructure Audit discussion paper agreed with the proposal for the ACCC to obtain infrastructure data
  - The discussion paper sought an estimation of the costs of compliance. Most respondents have reported that costs will be minimal, or close to negligible. Some submitters have reported substantial costs if required to report under the ACCC's preferred format. The ACCC is working flexibly with those that have expressed concern to aid in reducing costs. The ACCC:
    - is seeking to align requirements with data produced by respondents for internal purposes
    - has built extensive internal databases including the purchase of the ExchangeInfo and other spatial information so that it can perform the transformation of data itself.
    - has offered to accept new reporting methods not contemplated at the time of the issuing of the draft RKR which are capable of meeting the ACCC's requirements while appropriately minimising any potential cost burdens.
- The ACCC is mindful that the frequency by which data under the RKR is required can affect regulatory burdens. Accordingly, the RKR requires the provision of data annually. This ensures that data is regularly updated and therefore subject to time series analyses, but avoids the more regular reporting which may have placed regulatory burden on industry.

## Consultation

The ACCC issued a discussion paper on the Telecommunications Infrastructure Audit in March 2007. The clear majority of submissions supported the audit.

Further, to assist industry in its internal planning for the new RKR, the ACCC provided a full copy of the draft RKR for the purposes of comment in November 2007.

Each subject of the draft RKR was emailed and posted a copy of the draft RKR. Phone conversations have also been held by the ACCC with each subject of the draft RKR. The ACCC has received written submissions, email submissions and also taken oral submissions to minimise the burden on industry. The ACCC has also conducted phone conferences and meetings to discuss the RKR. The ACCC received 13 responses to the draft RKR.

The key issue for respondents is the question of format for reporting. Where industry has made itself available to negotiate on formats the ACCC has been able to indicate to:

- eight respondents that their requests in relation to formats have been accepted
- four respondents that their suggestions for alternative formats can be tentatively accepted pending further discussions

One respondent has not provided any information on alternative reporting methods and so the ACCC is not at this stage able to suggest alternative formats.

One respondent queried the purpose of the RKR. The purpose of this RKR is addressed as part of this RIS.

There is flexibility to continue this cooperative approach into the future using Clause 7(b) of the Infrastructure RKR.

## The proposed Infrastructure RKR

The proposed infrastructure RKR would require 22 specified carriers to report on their core network and CAN infrastructure.

### Carriers to report under the RKR

The following carriers will be required to report under the RKR:

AAPT	AARNET
Agile Communications	Amcom
Austar	Ergon
Hutchison	Macquarie Telecom
Neighbourhood Cable	NextGen
OPEL	Optus
Personal Broadband Australia	PIPE Networks
Primus	Silk Telecom
Soul Communications	Telstra
Transact	Unwired
Verizon	Vodafone

### Infrastructure coverage

In the RKR, there are the following definitions:

‘**CAN**’ means the Customer Access Network and is that part of the telecommunications network that allows end-users to connect to the local switch, node, base station or exchange.

‘**Core network**’ means that part of the network that is not the CAN.

For any CAN or core infrastructure the carrier must report on the geographic extent of each of the sub-groups of infrastructure:

For CAN:

- Copper
- Fibre (point to multipoint)
- Fibre (point to point)
- Fibre to the Node (FTTN)
- HFC
- Radio (fixed)
- Radio (mobile)

- Other

For core networks:

- Optical fibre core network
- Microwave radio core network
- Any other core network

### **Format of data**

An important determinant of the success of the RKR is the ACCC's ability to manipulate and compare the data obtained. Because of this, the preferred data format is defined as MapInfo Tab vector format. Some submitters indicated that they will not have the capacity to respond in this format. So the ACCC has added clause 7(b) which allows the ACCC to negotiate with industry to receive data in formats in which they are already keeping their infrastructure information.

For example, where industry is producing data internally in very different formats and the costs of conversions would be significant, the ACCC has informed carriers that it will accept data in:

- Another GIS format called ESRI SHP
- Written form aligning to other information including:
  - a radio communication database produced by ACMA
  - a dataset purchased by the ACCC called ExchangeInfo

We seek information to be provided on an annual basis. We would aim for the information to be provided within 28 days of the reporting date, which we propose would be 31 January each year.

## **Conclusion**

This RIS has evaluated the regulatory burden of imposing the RKR. The ACCC has decided on the proposed RKR outlined above. The ACCC has taken a flexible and cooperative approach to the reporting requirements and while some trades-offs have been made to minimise the reporting burden there remains the capacity with this information to continue to improve the efficiency and effectiveness of many regulatory decisions taken by this and other agencies on an ongoing basis.