



Telecommunications (NBN Continuity of Service) Industry Standard 2018

Submission by the Australian Communications Consumer Action Network to
the Australian Communications and Media Authority

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About ACCAN

The Australian Communications Consumer Action Network (ACCAN) is the peak body that represents all consumers on communications issues including telecommunications, broadband and emerging new services. ACCAN provides a strong unified voice to industry and government as consumers work towards availability, accessibility and affordability of communications services for all Australians.

Consumers need ACCAN to promote better consumer protection outcomes ensuring speedy responses to complaints and issues. ACCAN aims to empower consumers so that they are well informed and can make good choices about products and services. As a peak body, ACCAN will represent the views of its broad and diverse membership base to policy makers, government and industry to get better outcomes for all communications consumers.

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1. Introductory comments

ACCAN thanks the ACMA for the opportunity to comment on the Telecommunications (NBN Continuity of Service) Industry Standard 2018 (the Standard). ACCAN is pleased that the ACMA is taking positive steps to prevent consumers being without an internet and voice service for unreasonable periods of time during the migration to the NBN.

We would like to echo the ACMA's sentiment that telecommunications is an essential service, and that it is wholly unreasonable for consumers to be left without a service while migrating to the NBN. Access to a working service enables consumers to participate socially, economically, and in civil society. It can also be particularly important to vulnerable consumers, such as those who depend on equipment that requires a reliable connection, or those who need access to government services online. Being without a connection can also be particularly detrimental to small business owners, who face material economic loss well beyond that experienced by the average consumer, and in a shorter amount of time if they cannot conduct their business.

As shown by the ACMA's recent residential consumer experience research,¹ 34 per cent of households that connected to the NBN in the past 12 months reported being left without a phone and/or internet service during the connection process. 47 per cent of those left without an internet service, and 39 per cent of those left without a phone service, did not have those services for more than one week.

ACCAN believes that the Standard is a reasonable, necessary, and proportionate intervention that goes toward addressing a fundamental failure in service delivery and existing processes. In order for such a standard to work there will need to be clearly defined and improved processes that allow all parties in the service supply chain (CSPs, carriers, and the nbn co.) to work together to efficiently either reconnect a legacy service or provide an alternative service.

1.1. Purpose of the Standard

As noted in the consultation paper,² the ACMA is required to make an industry standard that deals with:

- Requirements for CSPs and carriers to reconnect customers to legacy networks when it is not possible to obtain a working service over the NBN but a legacy service is readily able to be supplied to the premises. The requirements will come into play when:
 - Migration has been unsuccessful; or
 - A connection to the NBN has been completed but the broadband or voice service still does not work for an unreasonable period of time.
- Processes for reconnection of legacy services including time frames.
- Requirements for CSPs and carriers to nominate contact points for coordinating a consumer's reconnection.

ACCAN receives repeated reports from consumers who are unable to rectify a fault with their connection as they are continuously passed between parties in the supply chain, with none taking

¹ ACMA, Improving consumer information and ensuring service continuity and quality: Consultation paper, April 2018, at 12.

² Ibid at 13.

responsibility for the issue. As such, ACCAN is glad that the Standard includes requirements for CSPs and carriers to nominate contact points for coordinating a consumer's reconnection.

1.2. ACCAN migration statement

As ACCAN has previously acknowledged,³ the rollout of the NBN is complex and requires the coordination of multiple parties (including Telstra, nbn, CSPs, and device providers). For a consumer, migrating services can be complicated and a loss of services can lead to increased costs, inconvenience, and even safety risks. ACCAN maintains that ensuring consumers have access to a working service is a key area for improvement.

It is important that services are confirmed to be working when they are switched. Given the number of parties involved in the switchover process, it can take some time to confirm whether or not a switch has been successful. Consumers often report to ACCAN that their services do not work after switching to nbn; either voice and internet services or applications and devices such as medical and security alarms.

The Joint Standing Committee on the NBN has recommended that nbn uses an 'active handover' model.⁴ ACCAN supports such a model where both the network (nbn) and service provider confirm that the service works at the time of switch over. Further, the RSP should confirm at this time that all applications, devices, and services are functional.

Case Study: Tracy, WA

When Tracy switched from ADSL to FTTN the service did not work at all. After Tracy complained to her provider and multiple technicians visited her premises, she was still left without a service for weeks and without a clear path to resolution.

³ ACCAN, ACCAN Migration Statement, November 2017, <http://accan.org.au/Migration%20Statement.pdf>, at 1.

⁴ Recommendation 5, Joint Standing Committee on the NBN First Report, September 2017.

2. Responses to consultation questions

2.1. Question 9

Are there any elements of the Standard that cannot be implemented or complied with for technical, operational, or other reasons? For example, are the time frames practicable for the Standard to take full effect?

As ACCAN is a consumer body we are not aware of any specific elements of the Standard that cannot be implemented or complied with for technical, operational, or other reasons. ACCAN's primary interest is in having measures such as those described in the Standard implemented as soon as possible, so as few consumers as possible are left without a service for an unreasonable amount of time.

A service provider that ACCAN consulted with about the Standard said that it could take 9-12 months to develop and implement the necessary IT processes. Equally, service providers are of the view that developing new inter-carrier processes and agreements will take longer than the three month time frame envisaged by the ACMA.

That said, ACCAN is of the view that in these circumstances, and given the stated purpose of the Standard, service providers should be held to tighter and shorter time frames than they previously have been. The Standard is addressing a major failure in service delivery, and the pace of the NBN rollout necessitates that all parties, including regulators, work efficiently and quickly to reduce consumer detriment to the maximum extent possible.

2.2. Question 10

Are there any complexities or circumstances which might lead to the time frames being jeopardised? Are there any circumstances in which a CSP would not be readily available to reconnect a consumer to their legacy service?

ACCAN has an appreciation of the technical complexities and constraints that industry faces in complying with the Standard as it is drafted, developed via consultation with service providers. The primary complexities identified by industry are that:

1. Migration from legacy networks (ADSL and ULL) to NBN technologies that use sections of the legacy network (FTTN/B, FTTC, Telstra HFC) requires completely disconnecting the legacy service to connect to the NBN. If the connection does not work, the Standard only allows two days to rectify the fault, after which the CSP will be required to completely disconnect the NBN connection to reconnect the legacy service (meaning that fault identification will no longer be possible). Therefore the two day time frame is not long enough.
2. Where a gaining CSP is not also the losing CSP and a service needs to be reconnected, issues arise as the losing CSP no longer has a relationship or agreement with the customer. This introduces complexities for billing amongst other things.
3. The appropriate inter-carrier processes do not exist and will take longer than three months to develop.

4. If an alternative service is to be provided, issues arise for CSPs who do not own a mobile network and who do not sell mobile products and services. There is unfairness as providers such as Telstra and Vodafone are already able to supply modems with backup SIMs, whereas other CSPs will need to rent these SIMs.

As ACCAN is a consumer representative body and not a service provider, we are not in a position to vouch for the legitimacy or otherwise of the above. However, following consultation with other stakeholders, ACCAN believes that the issues are to a large extent able to be overcome and the Standard complied with.

With regard to points 1 and 2: As noted previously, the Standard is a reaction to a demonstrated failing of service and intends to protect consumers from a material loss of service. There is a need for far better coordination between service providers. ACCAN believes that the issues identified by the service providers are able to be overcome by:

- Testing every service at point of activation
- Not cancelling any legacy service unless and until the NBN service is proven to be working
- Developing and implementing clear processes for cooperation between service providers, the NBN, and aggregators.

Indeed, requiring service testing in this way will reduce costs for CSPs and nbn in the long-run as addressing problems at the first instance will always lead to lower costs.

Issues may also be resolved by requiring nbn to allow testing *before* the activation of every new service. ACCAN believes that nbn should deliver a fully tested and operational service, and consequently take responsibility for any services that are not ready.

With regard to point 3: it is up to service providers to develop appropriate and efficient inter-carrier processes to address the fundamental failing in service delivery currently experienced by many consumers. Again, given the seriousness of the issue the Standard proposes to address, service providers should be held to a higher standard and tighter time frames.

With regard to point 4: ACCAN agrees that as the Standard is currently drafted it is not clear how the requirement to offer an alternative service will be complied with by CSPs who do not currently provide mobile services. There is also an issue as to how CSPs will recoup the costs of providing a mobile service from the NBN. ACCAN believes that the responsibility to provide and pay for the provision of an alternative mobile service should rest with nbn, who ACCAN understands have on occasion already provided consumers in new developments left without a service with a mobile interim service. An RSP neutral approach such as this does not create anti-competitive distortions in favour of providers such as Vodafone, Optus, and Telstra (and potentially TPG).

2.3. Question 11

What types of reasonable assistance would an NBN CSP likely need from a legacy CSP, legacy carrier, or NBN Co?

The extent to which ACCAN is able to respond to this question is limited, and we believe our comments under questions 10 and 12 apply here as well to the extent that:

- It is up to service providers to develop timely and effective inter-carrier processes so that fewer consumers are left without a service.
- NBN needs to test every service before activation.
- NBN should supply alternative mobile services to negate the potential negative impact on CSPs who do not already supply services or who rent other carriers' mobile networks.

2.4. Question 12

Is there a need for rules promoting the continuity of services – for example, through the provision of alternative services – in RFS areas where legacy services are not readily able to be supplied?

As stated in ACCAN's Migration Statement, a primary reason preventing consumers from accessing a working service is service availability,⁵ meaning that a consumer can only switch if the NBN is available for them to use. It is possible that a premises will be in an nbn area but 'not yet ready to connect' for many reasons, including that additional network work may be required.

Where a consumer can continue to use a legacy service, a period of waiting for nbn serviceability, while inconvenient, often only causes a delay in switching. The situation is different when there is no legacy service in place meaning the customer cannot connect to any service. Nbn has estimated that six per cent of premises require additional work to ensure serviceability, which takes on average six months to complete.⁶ Consumers who move into not yet ready to connect areas may face even longer periods without services, and the Australian Bureau of Statistics has estimated that 43% of people move every five years.⁷ This means it is likely that a number of consumers will move into areas that are ready for service and encounter serviceability issues.

When issues do arise ACCAN has found that it can take a long time to establish the serviceability status, leaving consumers without any connection. Options to ensure that all consumers can access a service need to be considered, including: expediting the serviceability of the NBN, establishing a connection to a legacy network, or providing an alternative service.

It should not be assumed that all consumers have access to legacy services. ACCAN recommends that in situations where a consumer's premises is in an area that is not yet ready to connect, and where there is no legacy service to connect to, the nbn should be required to offer and supply that consumer with an alternative service, such as mobile.

Case Study: Scott, VIC

Scott moved back into his house in March 2017 after a period of renovation. His area recently switched to nbn. Scott tried to order an nbn service only to find that his premises was unserviceable and required additional work by nbn. He was also unable to connect to the legacy network. For four months Scott was unable to get any broadband service. This impacted his children's education and his ability to work from home.

⁵ ACCAN, above n 3 at 2-3.

⁶ Bill Morrow, Senate Estimates, 25 May 2017.

⁷ ABS, Australian Social Trends, 2010.

Case Study: Alice, NSW

Alice's premises has no connection to the telecommunication network and she has been advised that it is not possible to provide one. NBN is expected to be available in her area in the coming months. However, due to a lack of infrastructure at Alice's premises she is likely to be classified as 'not yet ready to connect' for a number of months. Alice is likely to spend a year without any fixed internet connection.

2.5. Question 13

The Standard does not regulate price or non-price terms for offers of legacy or alternative services. Could the intent of the Standard be undermined if providers apply fees and charging arrangements to which few consumers are likely to agree?

Price terms

The intent of the Standard will certainly be undermined if arrangements are such that consumers will be unlikely to agree with them. Despite being without an NBN service, consumers should not be required to spend more on, or receive less of, a product or service through no fault of their own.

ACCAN submits that the Standard must contain a rule setting the maximum price at which legacy or alternative services can be offered. This price cannot exceed the price which the consumer has agreed to pay for their nbn service, or the price which they were paying for their legacy service, whichever is lower. Giving preference to the lower of the two prices will mean the consumer is less likely to end up paying an increased fee for an inferior service (for example if an alternative mobile service delivers a bad quality service). Equally, the Standard should ensure that no consumer is in a situation where they are paying for two services, i.e. the reconnected legacy service and the non-functioning NBN service.

In order to address the competition issue arising in the provision of an alternative mobile service, namely that CSPs (i.e. providers other than Vodafone, Optus, Telstra, or TPG) do not own mobile networks and potentially do not even sell mobile products and services, nbn should be responsible for delivering the alternative services. This will allow providers to recoup costs from nbn and will also incentivise nbn to resolve faults quicker and deliver reliable, tested service from the get-go.

Non-price terms

The Standard should also contain a rule for setting non-price terms. It is important that the interim service provided to the consumer is as close to the service they have contracted for as possible. This will include providing adequate data for a consumer's purposes, including whether that consumer is a small business that requires multiple connected devices and a higher data allowance. Equally, adequate data and speeds are important to family households, who require multiple devices to be connected concurrently.

The inclusion of a rule for setting non-price terms will eliminate the potential for perverse incentives to arise in situations where rectification of disconnection is less profitable for RSPs than providing low-quality mobile services at NBN prices.

2.6. Question 14

Are there any additional measures you consider should be included in the Standard?

2.6.1. Priority assistance for people with disability or life-threatening conditions, and small businesses

The time frames in the current Standard do not take into account that certain consumers may have a more urgent need for service continuity, or may not have their needs met through the provision of an 'alternative service' such as mobile.

ACCAN suggests that any service continuity standard should reflect existing Priority Assistance requirements set by the ACMA. Priority assistance is a customer status offered to people with life-threatening medical conditions who depend on a reliable fixed-line home telephone service, and entitles them to priority connection and fault repairs. The time frame for repairing a priority assistance customer's fault is 24 hours in urban and rural areas, and 48 hours in remote areas. Telstra is currently the only carrier required by its licence to provide priority assistance. However, if a priority assistance customer is left without a service during their migration to the NBN, ACCAN believes all providers should be required to meet the same rules.⁸

Equally, some consumers who use a TTY to communicate rely on having a fixed phone line. For these consumers, the provision of an alternative service such as mobile will not be adequate.

2.6.2. Recognition of risk to small business

Small businesses often stand to lose a lot more than individual consumers if they lose access to a reliable internet and voice service. The Standard should reflect this increased risk by including priority assistance rules and time frames for small businesses.

2.6.3. Standard should apply for longer than the 18 month migration window

The Standard should apply for a longer period than the 18 month migration window to take into account consumers who attempt to switch to an NBN service at the very end of the window and whose connection is unsuccessful. These consumers will need the protection of the Standard until their connection is secured despite the window having lapsed.

⁸ ACMA, Priority Assistance, <https://www.acma.gov.au/Industry/Telco/Carriers-and-service-providers/Universal-service-obligation/priority-assistance-carriers-service-providers-acma>.