

A guarantee for the future

ACCAN's policy position on a customer service and reliability standard

This policy position identifies key requirements needed to support the delivery of reliable voice and broadband services for the future. These requirements consist of:

- Wholesale service obligations setting timeframes for connections, fault repairs, and network reliability benchmarks,
- Arrangements to deal with the tension between wholesale and retail end user obligations,
- Incentives to comply in the form of end user compensation, penalties and wholesale pricing considerations,
- Independent and easy to understand comparative information about retail broadband performance to inform consumer choice in a competitive market.

Background

Access to reliable communication services is vital for Australian consumers and is essential for social and economic participation. The South Australian Council of Social Service (SACOSS) Cost of Living Report noted the essentiality of internet use for a range of activities including access to government services, paying bills, banking, employment and education.¹ Communications are also essential for a variety of social connections and participation, from keeping in touch with friends and family, to finding information on current affairs, as well as cultural and community events.² With Government and many businesses pursuing a 'digital first' agenda, reliable access to the internet becomes even more necessary.

The NBN means consumers, many for the first time, will have a choice in a retail service provider. This means consumer choices about important factors, like cost and customer service, will influence the market, and make it more responsive to consumer need. Future policies need to encourage the benefits of competition, and at the same time acknowledge that the underlying fixed wholesale communications service will generally be provided by one company, nbn. Without competition at the wholesale level, the NBN will not deliver in the interests of consumers, so a safety net is needed to ensure a reliable level of service.

Why we need measures to ensure a reliable quality of service

Generally competitive markets support the level of reliability and quality of service that consumers demand without the need for outside involvement.³ However, in some markets, particularly those where a monopoly exists, the market will not deliver these benefits. In these cases steps are required to ensure sufficient quality of service.

¹ SACOSS, 2015, 'Cost of Living Update', No. 22, March Qtr 2015, p.3

² SACOSS, 2015, 'Cost of Living Update', No. 22, March Qtr 2015, p.3

³ UKRN, 2015, 'Regulating for quality of service', p.3

The 2015 Regional Telecommunications Independent Review Committee (RTIRC) found that existing safeguards (e.g. Customer Service Guarantee (CSG)) focussed on delivery of the Standard Telephone Service (STS) were of “rapidly declining relevance”.⁴ This is due to the shifting consumer preference toward mobile and internet based communication. The Committee recommended the Australian Government, in consultation with industry and consumer groups, develop a new safeguard in the form of a Consumer Communications Standard.

This policy position addresses consumer concerns about existing customer service and reliability measures, and proposes a new model for the future. It is a step towards a new Consumer Communications Standard.

A new model for the future

Why a network level safety net is needed

Competitive services are increasingly provided ‘over the top’ (e.g. voice, messaging, and teleconferencing). This allows consumers to choose a service that meets their needs without having to change network provider.

While there are legal consumer guarantees over the provision of services, there is little case law on how these might work in practice in telecommunications.⁵ Without a clearly codified framework, it is difficult for consumers to enforce their rights over this complicated service delivery model. While consumers may have some success asserting their rights at the retail level under contract or the Australian Consumer Law, the wholesale level, where crucial services are delivered, remains largely unprotected. Adequately managing this tension between wholesale and retail performance is where improved consumer protections policy is required.⁶

The current CSG only protects the STS. This is out of step with changes in consumer usage patterns, which are now overwhelmingly towards mobile and broadband based communication. The lack of consumer protection is amplified in regional and remote areas, with Telecommunications Industry Ombudsman (TIO) data showing 40% of consumer enquiries raise issues with the unavailability or performance limitations of landline and internet services due to lack of infrastructure.⁷ The NBN will significantly address the lack of access to infrastructure, but guaranteed service connection, fault repair and reliability remains an issue.

⁴ RTIRC, 2015, ‘Regional Telecommunications Review 2015’, p.xiii

⁵ Services are to be provided with due care and skill, be fit for purpose, supplied within a reasonable time (ACL, s.60,61,62)

⁶ Section 65 of the ACL specifically carves out telecommunications and electricity networks from the consumer guarantee provisions if supply is covered by other regulations.

⁷ The TIO records contact from a consumer about a matter it cannot handle or help with as an ‘enquiry’; TIO, 2015, ‘Submission to the 2015 Regional Telecommunications Review’, p.5

The need for wholesale service obligations

Where relevant, obligations for fault rectification, connections and appointment keeping should be placed on the wholesale provider. These obligations should include whole of network performance obligations, as well as remedies for individual consumers.

The *Telecommunications (CPSS) Act* gives the Minister for Communications the power to create service obligations on both wholesale and retail telecommunications service suppliers.⁸ Currently the legislation is used to create obligations on retailers, in the form of the CSG. This is not suitable in a context where the wholesale NBN network will be largely responsible for ensuring network reliability.

As the NBN reaches scale, wholesale service standards will be more important as nbn is responsible for the performance of the underlying access network.

Existing wholesale obligations do not adequately protect consumers. The Wholesale Broadband Agreement (WBA) is an agreement between nbn and its retail customers (e.g. Telstra, Optus and TPG), and its focus is on network management rather than consumer demand.⁹ Creating lines of accountability between the wholesale provider and a consumer is more likely to create a network responsive to consumer needs.

In addition, the WBA does not create universal wholesale network obligations. There are a number of smaller competitor wholesale networks, such as TPG's 'fibre-to-the-basement' (FttB). In some instances these networks are operating in 'islands' of limited or no infrastructure competition and are exempt from some existing consumer protections. For example, there are currently 45 networks in residential estates with 'adequately serviced' status granted by the Minister. The practical impact is that the nbn is unlikely to overbuild in these areas. This means consumers are left with no protection under the WBA, and limited protection under existing legislation. Policy needs to address this gap preferably through a universal safety net on telecommunications networks.

Specific obligations

For an obligation to be sustainable, it should provide for a level of network service which realistically balances consumer need with the technical and resource limits of the network. This is consistent with the underlying considerations within the telecommunications legislation.¹⁰

The obligations should deliver a baseline level of adequate service to individual consumers. This should include:

a) Customer service standards setting timeframes for:

⁸ *Telecommunications (Consumer Protection and Service Standards) Act 1999*, Part 5 Division 3, sections 117D-117E

⁹ *Wholesale Broadband Agreement*, available at: <http://www.nbnco.com.au/sell-nbn-services/supply-agreements/wba2.html>

¹⁰ *Telecommunications Act 1997*, s3: objects such as:

- The long term interests of end users,
- The efficiency and international competitiveness of the Australian telecommunications industry, and
- The availability of accessible and affordable carriage services that enhance the welfare of Australians.

- Fault rectification,
- New connections,
- Existing connections (where infrastructure is in place), and
- Appointment keeping.

b) Reliability measures consisting of agreed independent performance benchmarks to encourage overall high performance across urban, regional and rural/remote geographies. These need to be targeted to address the severity of impact of unreliable services and include metrics such as:¹¹

- number of minutes that a customer is without services in a year,
- number of times a customer's supply is interrupted per year,
- duration of each interruption, and
- number of momentary interruptions per customer per year.

Using these measures, network reliability can be improved by identifying areas for remediation which are causing significant consumer detriment.

Remedies and incentives

Given the importance of a reliable communications network to a number of functions in a consumer's life, there needs to be a transparent streamlined mechanism that both encourages improved performance on the part of network operators and aims to compensate a consumer for loss suffered. A combination of negative and positive incentives is needed to achieve this outcome.

- **Customer compensation**

At the retail level the ordinary remedies under contract and consumer law should apply. These should be complemented by compensation paid by the retailer to the customer for extended outages and delays.

To ensure the wholesaler is accountable for outages and delays it has caused, a standard setting out a compensation formula would make it liable to reimburse the retailer for these payments.

To prevent overlap, a workable delineation between wholesale and retail obligations needs to be developed.¹²

Practical example: If a customer is experiencing a fault they should be entitled to a dollar amount (from the nbn or relevant wholesaler, delivered via the retail service provider (RSP) for each day the service does not work. Such measures should encourage timely repairs and the amount of compensation should increase the longer the customer is left without a service.

¹¹ These mirror the measures used to monitor network reliability in the energy sector. Further discussion in Houston Kemp, 2014, 'Electricity Network Service Standards: An Overview', p.2

¹² Broadly the separation would see retailers being responsible for contractual issues (e.g. selling practices, billing, contract cancellation) and wholesalers being responsible for supply issues (e.g. connection to the network, interruptions and quality of supply)

- **Wholesale price levels and adequate resourcing of network performance**

Customer service standards and published reliability measures need to be considered as part of future wholesale pricing decisions. Access pricing decisions should take into account wholesaler performance against customer service guarantee timeframes, and network reliability performance benchmarks as elements in the long term interests of end users. This approach would introduce a positive incentive for network providers to comply, and have the practical advantage of feeding into existing access pricing mechanisms. This approach also places performance in a market context. It can take into account factors such as the efficient operation and international competitiveness of the network as well as important social goals, such as availability and affordability of access.

This mirrors an approach that has been adopted locally in the energy sector, and internationally in telecommunications.¹³ The benefit of this approach is that it creates a positive dialogue between the regulator and the industry about performance standards.

- **Penalties for failing to meet set performance benchmarks**

As in the current system, it is expected that a wholesaler may face penalties for failing to meet set performance benchmarks. The inclusion of both incentives, in the form of pricing decisions, and disincentives, in the form of penalties, is deliberate in order to allow the regulator to tailor appropriate responses to encourage sound network performance. For example pricing decisions need to be set with a long view to encourage responsible investment practice, while penalties may be appropriate on a yearly basis if a wholesaler falls well below the expected standard.

- **Exemptions**

Providers should be able to apply for exemptions from penalties in situations such as an extreme weather event. As already outlined, independent oversight should be in place to ensure the network is adequately resourced. The aim of this oversight should be to limit the number and length of exemption claims to those needed to recover from the mass service disruption.

¹³ UKRN, 2015, 'Regulating for quality of service'; Houston Kemp, 2014, 'Electricity Network Service Standards: An Overview'

Case Study

In the energy sector, the National Electricity Rules (NER) require the regulator to assess proposed expenditure by the supplier to determine whether it reflects efficient expenditure required to meet the obligations of the reliability standard. Independently assessing expenditure against obligations provides greater certainty that exemptions from a service standard, say for a mass service disruption, are being claimed correctly and not because of a lack of resourcing. Telstra has in the past been criticised for a lack of transparency over its claimed exemptions, especially in a context of cuts to staff and network resourcing.¹⁴

Retail provider obligations

The policy as outlined in this document focusses primarily on the wholesale level. Most consumers will be separate from this layer and interact only with their retailer. The aim of the policy is not to disturb this arrangement, but to attempt to create a seamless experience where the wholesaler and retailer are responsible for the components of the network they each control, without the consumer needing to have knowledge of these relationships. As such, a consumer's interaction should be only with the retailer where there is a direct contractual relationship. This relationship extends to reporting faults and receiving prompt compensation for extended outages without having to make claims, while acknowledging that in many circumstances the wholesaler will be responsible for these elements.

Retail performance measures

Greater consumer choice under the NBN model, underpinned by uniform wholesale pricing, makes retail switching more possible and should facilitate a more competitive retail market.

However, consumers still need to be enabled to make good purchasing decisions. This is unlikely to occur if there is a lack of transparency over aspects of the network under a RSP's control, such as network contention ratios and backhaul capacity. Consumers are better placed to make informed purchases if they can easily compare performance between retail suppliers. This should include relevant, easily comparable independent performance measures, such as those developed by the ACCC in its broadband performance monitoring and reporting pilot program.

Another aspect that is not clear to consumers is a comparable measure of customer satisfaction across different providers. The TIO in collaboration with industry has developed 'Complaints in Context' data, which is one measure of customer satisfaction. This data currently compares a limited number of providers and could be improved by a fuller picture of the main market players.

Making public network performance and customer satisfaction measures should greatly enhance consumer decision making and help drive the market towards consumer friendly outcomes.

¹⁴ Telstra leaving clients on hold, SMH, 16/11/2013, available at: <http://www.smh.com.au/it-pro/business-it/telstra-leaving-clients-on-hold-20131115-hv3hw.html>