

12 December 2013

The Manager
NBN Implementation Section
Australian Communications and Media Authority



**Telecommunications
Industry
Ombudsman**

Simon Cohen
Ombudsman

Dear Sir or Madam

ACMA Consultation Paper – ‘Implementation of consumer safeguards for optional backup power supply arrangements’

Thank you for providing the Telecommunications Industry Ombudsman (TIO) with the opportunity to provide comments to the Consultation Paper by the Australian Communications and Media Authority (ACMA) on the ‘Implementation of consumer safeguards for optional backup power supply arrangements’.

Our submission is only a brief one, and deals primarily with the issue of informed consent.

Our complaints data

In 2012-13, the TIO registered 158,652 new complaints from consumers and small businesses. Contractual issues were associated with 22.4 percent of these, representing some 35,500 complaints. Of these new complaints with contractual issues, the highest represented issue related to the information provided to consumers at the point of sale. This formed 37.8 percent of all contract issues for new complaints, or some 15,000 matters. This issue relates more specifically to the adequacy, accuracy or accessibility of advice provided at the point of sale about a product or terms associated with a contract.

This statistic highlights the importance of providing sufficient and relevant information to consumers at the time they sign up for a new service. It is relevant in the context of the ACMA’s Consultation Paper in that it supports the importance of the policy objectives underlying an informed consent process.

Consumer safeguards for optional backup power supply arrangements

As the National Broadband Network (NBN) is rolled out throughout Australia, it becomes increasingly important for consumers to be made aware of some of the less obvious changes that come with the NBN. For example, it is not immediately apparent to consumers that a change in the underlying infrastructure may impact their ability to use their services during a power outage.

“... providing independent, just, informal and speedy resolution of complaints”

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*calls from mobile phones may incur charges

The TIO understands that the NBN Wholesale Broadband Agreement (WBA) commencing in December 2013 will enable Carriage Service Providers (CSPs) to confirm to NBN Co whether an informed consent transaction has been undertaken with the end user prior to service provision. This enables circumstances where an NBN service may be connected without a battery backup supply unit. However, as the ACMA's Consultation Paper highlights, the details of this consent or how it may be recorded remains unclear. While NBN Co has released a series of informed consent guidelines, they do not form part of the WBA and do not appear to be contractually binding.

The informed consent process must be effective and reliable, as well as consistent across the industry to prevent information asymmetry between service providers, particularly for vulnerable consumers who, in some respects, may be most impacted by the provision or otherwise of a battery back-up supply. A consistent approach across industry would also be effective in reducing the costs of remediating wrong decisions and reduce the potential for complaints about this issue. Furthermore, in light of the first NBN FSAM sites ready to be disconnected by May 2014, any initiative should be undertaken as soon as practicable.

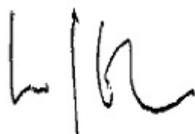
A viable option to address these issues would be for the ACMA to develop and implement a service provider determination. As the ACMA's Consultation Paper highlights, this option has some advantages over the mentioned alternatives, namely no regulatory action or industry developing a guideline or code, although the latter may also achieve similar objectives if implemented well. The advantages of a service provider determination include the following:

- ensuring end users are adequately and uniformly informed about the implications of accepting or declining a battery backup power supply unit under the NBN
- having a clear distinction of obligations for Priority Assistance customers and providing them with tailored information. Part 3 of the ACMA's draft determination is a good example of this, and
- ensuring that records of informed consent are appropriately made and retained to assist both consumers and providers with any uncertainty over the information that may have been provided. Part 4 of the ACMA's draft determination is a good example of this.

Conclusion

In summary, the TIO considers the ACMA's draft service provider determination may sufficiently cover the range of scenarios in which the informed consent process will be required and documented, both for regular and priority assistance customers. We note in this respect that a service provider determination may be an appropriate way to ensure consistency of information across the industry, although other mechanisms may also be effective.

Yours sincerely



Simon Cohen
Ombudsman