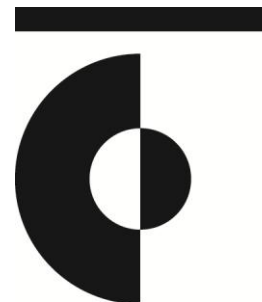


12 July 2013

Mr John Stanton
Chief Executive Officer
Communications Alliance Limited
PO Box 444
MILSONS POINT NSW 1565



**Telecommunications
Industry
Ombudsman**

Simon Cohen
Ombudsman

Dear Mr Stanton,

Public Comment Draft Local Number Portability Code (draft C540:2013)

Thank you for providing the Telecommunications Industry Ombudsman (TIO) with this opportunity to contribute to the review of the Local Number Portability (LNP) Code.

We enclose our submission on the LNP Code for consideration of the Working Committee tasked with drafting the new Code. We trust that our comments in the enclosed submission will assist in the development of the final LNP Code.

Yours sincerely

Simon Cohen
Ombudsman

"... providing independent, just, informal and speedy resolution of complaints"

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**Telecommunications Industry
Ombudsman – Submission on the draft
Local Number Portability Code**

July 2013



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About the TIO

The Telecommunications Industry Ombudsman (TIO) is authorised under Part 6 of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* to provide an independent alternative dispute resolution service for small business and residential consumers in Australia who have a complaint about their telecommunications services.

We aim to resolve these complaints quickly in a fair, independent and informal way, having regard not only to the law and to good industry practice, but also to what is fair and reasonable in all the circumstances. Before the TIO becomes involved in a complaint, the service provider is given an opportunity to resolve the complaint with its customer.

We are independent of telecommunications companies, consumer groups and government. For most complaints we receive, we establish the issues in dispute and the resolution sought, and then refer the consumer or small business to a designated point of contact at the relevant telephone or internet service provider. The provider is given a final opportunity to resolve the matter directly with the consumer, without the TIO's direct involvement. Around 90% of complaints we receive each year are resolved at this stage of the process.

Where the consumer and service provider do not reach an agreement at this early stage, the TIO becomes more directly involved by seeking to conciliate an agreed resolution between the parties. Around 7% of complaints are resolved using this conciliation process.

Complaints that cannot be resolved by conciliation are escalated for formal investigation by the TIO. If the complaint remains unresolved after formal investigation and the TIO is of the view that it would be fair and reasonable to do so, the TIO can make binding determinations up to a value of \$50,000 and non-binding recommendations up to a value of \$100,000 in respect of each complaint.

We record complaints according to service types – internet, mobile, landline and mobile premium services (MPS), and by the types of issues that these complaints present. These issues include connection delays, credit management disputes, contractual disputes, customer service/complaint handling and billing disputes. Every complaint involves at least one issue. Some complaints can involve multiple issues – for example, a complaint about a delay in rectifying a faulty landline service may also involve a claim that the consumer's complaint about this fault was not acknowledged or escalated (a complaint handling issue).

Further information about the TIO is available at www.tio.com.au.

TIO response to the draft Local Number Portability Code

The TIO welcomes the opportunity to comment on the draft Local Number Portability Code (the draft LNP Code).

Being in a position to choose the right provider or change providers is integral to an open and competitive marketplace. Freedom to choose a provider or change providers while retaining the same telephone number is highly valued by consumers. To this end, the LNP Code continues to play an important part of the telecommunications co-regulatory framework.

In our experience, complaints about porting or transfers can quickly turn systemic. Some providers do not appear to consider their obligations under the LNP Code or indeed, other industry codes. To ensure that the industry is positioned to seamlessly implement consumer choice, the draft LNP Code needs to contain rules that are relevant and effective.

In this submission, we have focused our comments on the following:

- (a) TIO complaints data and complaint issues that are relevant to local number portability
- (b) Specific issues that continue to generate new complaints to the TIO regarding transfers and the porting of landline numbers
- (c) Improvements in the draft LNP Code
- (d) Issues warranting further consideration in the draft LNP Code:
 - introduction and reference to the TCP Code 2012
 - the definition of 'disconnection'
 - requirements for consent and Customer Authorisation
 - validation of Customer Authorisation
 - recorded announcements on diversions and disconnections
 - referencing disputes and complaint management
 - accurate record keeping, and
 - transitioning to an NBN environment.

We trust that the information in this submission will assist in the finalisation of the draft LNP Code.

Complaints to the TIO

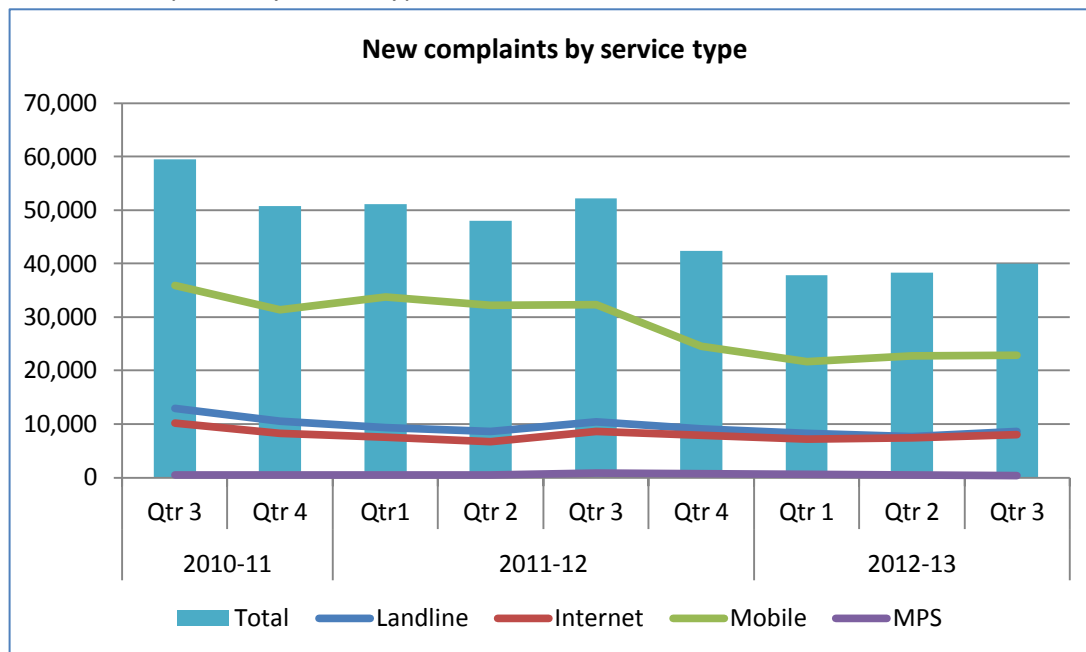
Overall trends for new complaints

When a consumer – residential or small business – contacts us about an expression of grievance or dissatisfaction about a matter within the TIO's jurisdiction that the service provider has had an opportunity to consider, we record this as a 'new complaint'.

The TIO recorded and handled around 193,702 new complaints from small business and residential consumers in 2011-12. This compares with 167,772 new complaints recorded during 2009-10 and 197,682 in 2010-11. Over the first three quarters of 2012-13, we have recorded around 116,000 new complaints.

The graph below shows the breakdown of new complaints recorded by the TIO by service type – internet, landline, mobile and mobile premium services (MPS) – over nine quarters up to March 2013.¹

Graph 1: New complaints by service type



New landline complaints and issues

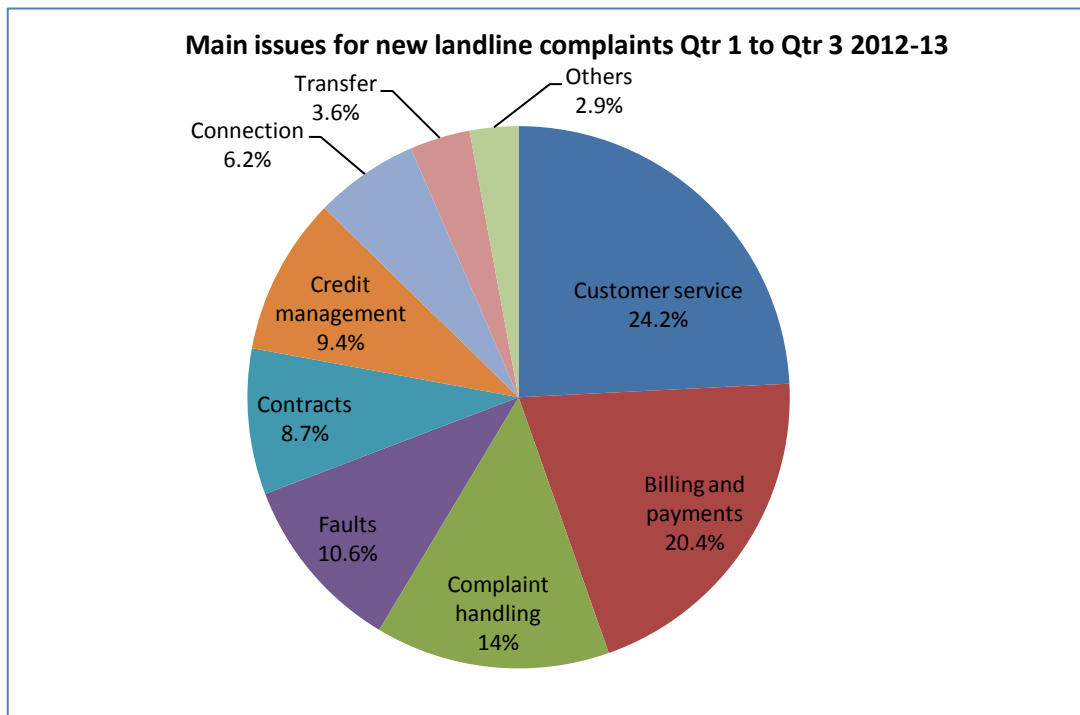
The TIO traditionally experiences an increase in new complaints regarding landline services during the third quarter in any given year. Quarter 3 of 2011-12 was no exception with an increase of 21% over the prior quarter. However, new complaints regarding landlines then declined over the following periods with decreases of 11.8%, 10% and 6.1% over quarter 4 of 2011-12 and quarters 1 and 2 of 2012-13. While quarter 3 of 2012-13 again saw a similar annual increase in new landline complaints, the 12.4% increase over the previous quarter was not as significant over the same period last year.

New complaints regarding landline services can present a variety of issues. Over three quarters from quarter 1 of 2012-13 to quarter 3 of 2012-13, issues regarding customer service and billing and payments made up 24.2% and 20.4% respectively of all issues we recorded for new landline complaints. Complaint handling issues (14%), credit management issues (9.4%), fault issues (10.6%) and contract issues (8.7%) also featured prominently throughout the same period. Issues about transferring and porting landline services made up 3.6% of all issues for new landline complaints.

Graph 2 below shows the main issues for new landline complaints from quarter 1 of 2012-13 to quarter 3 of 2012-13.

¹ Details of TIO complaints data for the full financial year 2011-12 is available in the TIO’s 2012 Annual Report at http://www.tio.com.au/_data/assets/pdf_file/0011/107975/TIO-2012-Annual-Report.pdf. Details of TIO complaints data for quarter 3 of 2012-13 was released in the June edition of TIO Talks at http://www.tio.com.au/_data/assets/pdf_file/0011/127865/TIO-Talks_No1_2013_FINAL.pdf.

Graph 2: Main issues for new landline complaints quarter 1 to quarter 3 of 2012-13



Local number portability issues

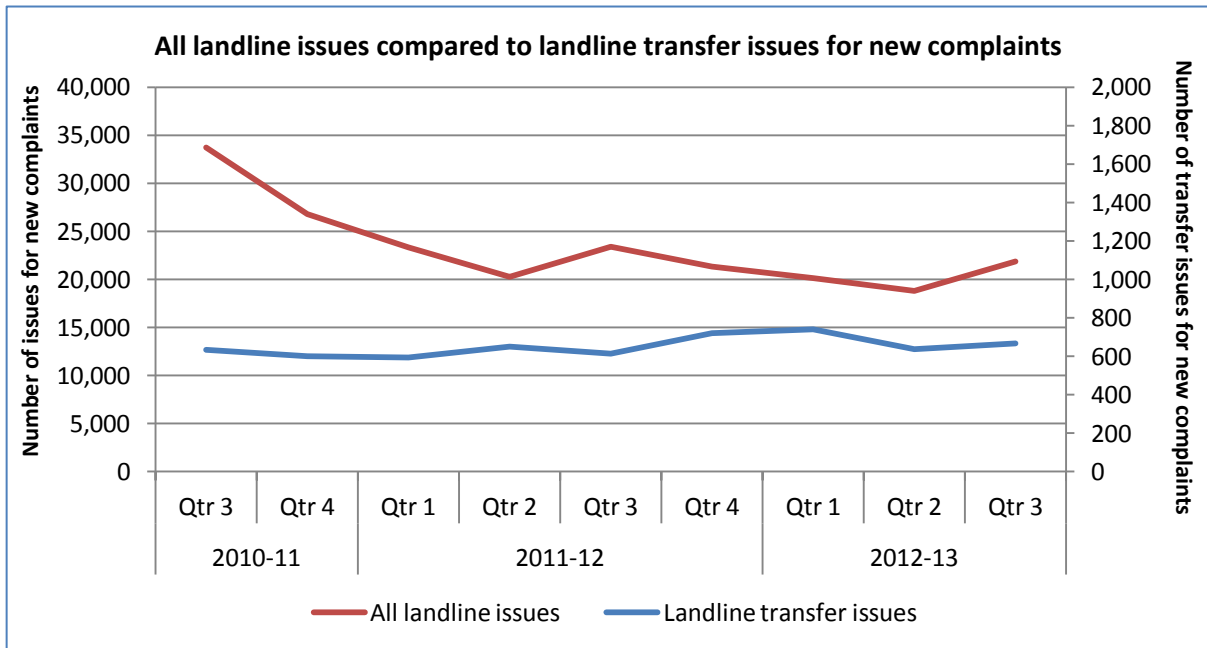
The TIO captures new complaint issues related to number portability with specific keywords. These broadly illustrate the types of problems consumers may commonly experience in moving their service from one provider to another. These keywords are:

- **Transfers – unauthorised:** for example, where a consumer finds their number/service has been transferred to another provider without their authority or informed consent
- **Transfers – reversal:** for example, where consumers are seeking to reverse a transfer back to their original provider, but experience difficulties or delays in doing so, and
- **Transfer – delay:** for example, where a consumer has sought to transfer a number/service between providers but experiences delays in doing so.

New complaints about the point of sale advice given to consumers and the sales tactics employed by providers and their agents are also recorded as transfer issues. In October 2012, we introduced a new keyword in line with the implementation of the TCP Code 2012 about the requirement of gaining service providers to notify consumers once a transfer has been completed.

Graph 3 illustrates the issues for landline new complaints and those relating specifically to landline transfers since quarter 3 of 2010-11 until quarter 3 of 2012-13.

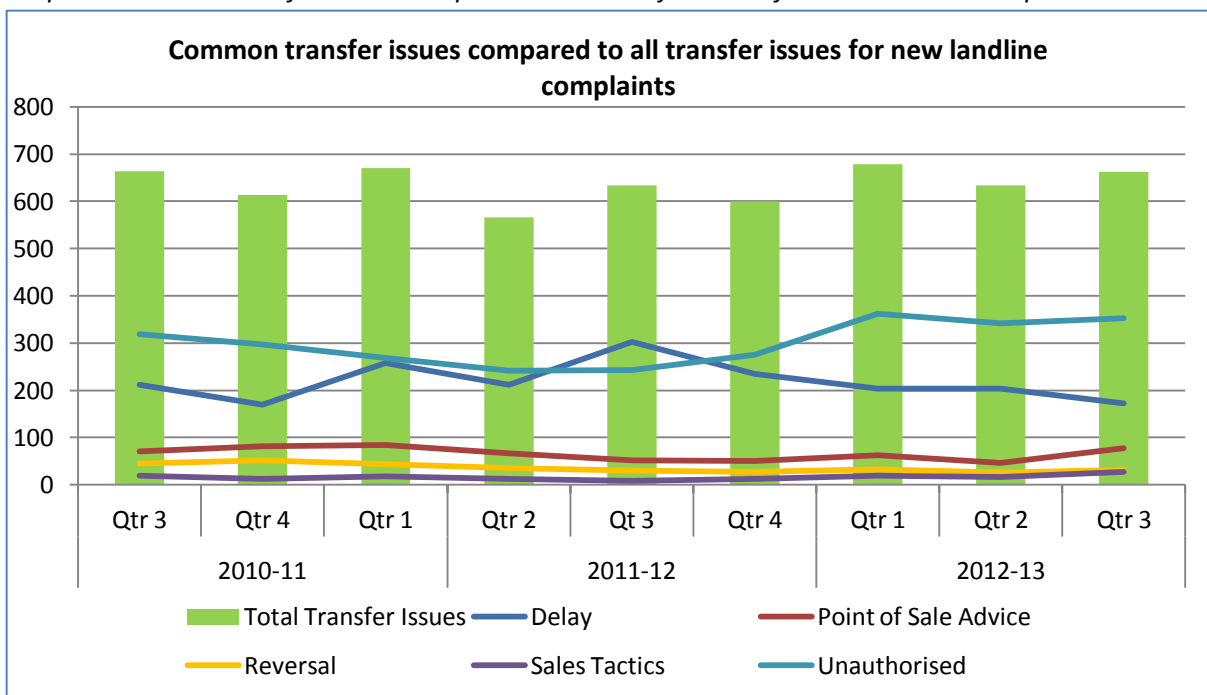
Graph 3: All landline issues and all landline transfer issues for new complaints



New complaints regarding transfers delays and unauthorised transfers are the most common transfer issues recorded by the TIO. While issues regarding delays in transferring a service have continued to decline since peaking in quarter 3 of 2011-12, issues regarding transfers that were unauthorised increased over the same period, peaking in quarter 1 of 2012-13.

Graph 4 illustrates the most common issues the TIO records regarding landline transfers over nine quarters up to March 2013.

Graph 4: Common transfer issues compared to all transfer issues for new landline complaints



Common themes in new complaints about delayed or unauthorised ports reported by consumers include:

- Sales agents misrepresenting which provider the service will port to
- Failure to obtain informed consent from the authorised consumer
- Delays after consumers have provided authorization, but the port does not take place and authorisations may have to be completed again, and
- Disputes between the gaining and losing service providers.

Improvements in the draft LNP Code

We note that the draft LNP Code has a number of improvements compared to the current LNP Code. We are pleased to note the following:

1. The removal of category B ports due to under utilisation within the industry. We consider it prudent to remove outdated or under utilised policies or procedures in order to streamline and create more efficient and effective mechanisms.
2. Introduction of the use of service account number to validate ports, rather than the wholesale account number. We believe that this is a logical step to ensure an easier process for both consumers and industry participants. It will also provide greater clarity in determining which service provider is responsible for the service number should disputes arise.
3. Introduction of the pre-port number validation process for Category C ports. The TIO receives complaints from consumers attempting to transfer a number of different services through the Category C process where some have ported successfully and others have not. As such, we consider the introduction of a pre-port validation process between the losing carrier and provider and the gaining carrier a valuable step in the process of enabling a smooth transition between providers and/or carriers.

We believe that the above improvements on the current LNP Code will deliver improved consumer outcomes if there is strong commitment and adherence to these requirements by service providers across the industry.

Draft LNP Code: Issues for consideration

In this section of the TIO's submission, we outline specific issues in the draft LNP Code which we believe warrant further consideration. We have also included where appropriate, references to the systemic investigations undertaken by the TIO in the past year to highlight our specific concerns relating to the impact poor industry practices can have on consumers.

Introduction and reference to the Telecommunications Consumer Protection Code 2012

The Introduction (clause 1.1) provides for the Code to be read in conjunction with other relevant Codes and Guidelines. The *Telecommunications Consumer Protections Code C628:2012* ("TCP Code") is not specifically referenced here. Given the relevance of Chapter 7 (Changing Suppliers) and Chapter 8 (Complaint Handling) to porting numbers, and the complementary nature of both Codes, we recommend that the TCP Code be specifically cross-referenced in the Introduction. This will further encourage both Codes being read together.

Definition of 'Disconnection'

We note that the definition of disconnection in the current and draft LNP Code differs from the definition in the Telecommunications Consumer Protections (TCP) Code and in the Mobile Number Portability (MNP) Code.

We note that in the TCP Code, disconnection is simply defined as:

"...the termination by a Supplier of a Customer Contract for a Telecommunications Service",

while in the MNP Code, a similar, simple definition is provided:

"...the service to which the MSN is associated has been cancelled."

In the current and draft LNP Code, the definition is altered and includes reference to the fact that the disconnection would be *"...in accordance with the terms of the relevant agreement between them."* We suggest that, unless there is a compelling reason, the definition of disconnection in the draft LNP Code should be similar to that in the TCP Code.

Requirements for consent and Customer Authorisation

We note that under clause 7.1.4 of the current LNP Code, there are eight mandatory requirements for a customer authority to be valid before a GSP or in the case of a clawback, the LSP, processes a port.

The draft LNP Code has replaced this clause with a "Guide to Requirements for Customer Authorisation" (the Guide) under clause 4.1: General Process Requirements. The Guide contains the eight requirements that were previously within clause 7.1.4 of the current LNP Code.

We are concerned that the use of the term *Guide* will be seen as weakening the obligations of GSPs and LSPs (for clawbacks) to ensure that a port is authorised before it takes place. This is especially the case as Clause 1.1.6 of the draft LNP Code provides that *'Statements in boxed texts are a guide to interpretation only and not binding as Code rules'*.

We recommend this be addressed, for example, by removing the words "Guide to" from the title of this part, so that it reads "Requirements for Customer Authorisation", and removing the box from this text. This will make clear the mandatory nature of these obligations.

In addition, we recommend that these requirements be specifically cross-referenced the requirements in the definition of "Customer Authority". In this respect, we note that the definition of "Customer Authority" refers to minimal requirements in clause 4.1.4. This appears to be an error in the draft, which should instead refer to the Requirements set out in the Guide, or to clause 4.1 more generally.

Validation of a Customer's Authorisation

We note that clause 7.1.10 in the current LNP Code outlines six sub-clauses which specifically set out the obligations of the GSP to validate the authorisation to port their service. The corresponding clause of the draft LNP Code (clause 4.1.5) only contains three sub-clauses and the following three sub-clauses have been removed:

- (a) the GSP confirming with the consumer the number(s) to be ported
- (b) the signatory on the CA was the consumer or a third party authorised to act on their behalf, and
- (c) confirming that the telephone number to be ported is connected to an exchange of the losing service provider that supports portability.

In our August 2012 submission to the review of the LNP Code, we called for stronger measures to prevent unauthorised ports. This included a requirement for the GSP to provide a valid customer authority to the LSP before a port takes place. A reason for this was the very substantial detriment caused to consumers (including small businesses, and elderly and vulnerable consumers) where numbers are ported without proper authority.

It is unclear why the sub-clauses in the existing LNP Code have been removed. We are not aware that the obligations are seen as onerous by GSPs.

As demonstrated in our complaints data, we continue to receive complaints regarding unauthorised transfers and inadequate consent. Some complaints of this nature have resulted in systemic investigations as providers have demonstrated a lack of compliance with the current LNP Code, as well as other relevant industry codes. This is illustrated in two examples outlined in **Attachment A**. These examples highlight the continued need for strong authorisation and validation processes in the draft LNP Code.

The GSP confirming each of the 3 matters can be an important part of the authorisation process and to prevent unauthorised ports taking place. Reasons for this view include that the TCP Code does not specifically cover the above issues in the validation of a customer's authorisation. Clause 7.5 of the TCP Code references that a GSP must "undertake activity to validate that the Telecommunications Service can be transferred" but does not outline these activities to the extent of sub-clauses (a), (b) and (d) of Clause 7.1.10 in the current LNP Code.

We therefore suggest that the current obligations of the GSP to validate the authorisation to port their service as set out in clause 7.1.10 should continue to be retained in the draft LNP Code. Alternatively, an obligation on the GSP to contact the consumer— either verbally or via text message or email – could be included in the draft LNP Code to confirm the port will take place. This would also bring the draft LNP Code in line with the obligation to keep consumers informed as set out in clause 7.6 of the TCP Code.

Recorded announcements on diversions and disconnections

We note that the current LNP Code contains obligations (clauses 9.1.14 – 9.1.16) around recorded voice announcements requested by consumers on call diversions and disconnections. The draft LNP Code no longer carries these obligations and it is unclear why these clauses have been removed. Recorded announcements on diverted or disconnected services are invaluable to residential consumers who may be temporarily without their preferred service numbers. These announcements can also assist in reducing loss for business consumers during the give back and quarantine process. We suggest that these obligations are retained in the draft LNP Code.

Disputes and complaint management

It is unclear why the draft LNP Code removes the specific and designated chapter on managing complaints regarding porting of landline services. While we appreciate that the relevant clauses have been incorporated into the body of the draft LNP Code itself (under Chapter 4: Standard Porting Process), we are concerned that the impact of the draft LNP Code will be weakened without a dedicated chapter which deals with disputes about ports.

We appreciate the view that the draft LNP Code should not duplicate other existing arrangements such as those set out in the TCP Code and the Numbering Plan. We also note the reference to the TIO's powers to handle complaints under the draft LNP Code (clause 1.5). However, the draft LNP Code lacks any reference to the management of complaints or any referral, if required, to external dispute resolution.

If removing a designated complaints management chapter streamlines the draft LNP Code and ensures that there is no repetition of the obligations in handling complaints or disputes set out in the TCP Code, we consider it important that the draft LNP Code cross references Chapter 8 of the TCP Code - Complaint Handling.

We also suggest that, if complaints handling is to be moved into Chapter 4 as proposed in the draft LNP Code, then the heading above clause 4.1.8 be re-titled "CA Enquiries, Disputes and Complaints" so that it is clear that the provisions moved from Chapter 11 of the current LNP Code are easily identifiable and accessible.

In our submission in August 2012 to the review of the LNP Code, we also suggested that the draft LNP Code should include:

- (a) timeframes for the GSP and the LSP to respond to issues and resolve disputes
- (b) safeguards to ensure that service numbers are not lost while a dispute is being resolved, and
- (c) where a consumer complains about a porting process, consistency with the complaint management provisions in chapter 8 of the TCP Code 2012, and
- (d) keeping a consumer informed of the progress of their port or, if there are delays or other issues, when these are likely to be rectified.

It is not clear what consideration of these matters has been undertaken, and why these recommendations are not included in the draft LNP Code.

Accurate record keeping

In the course of our systemic investigations into disputes over transfers, we have found that some providers do not keep or maintain consistent records of any agreements or consent with consumers to transfer the service. In Systemic Investigation 1 referenced in **Attachment A**, we found that the provider had not implemented appropriate procedures to solicit, complete and record transfers. This meant that their records were incomplete and therefore, the ability to verify consent was limited.

We understand that the requirement to retain such records is explicit under the TCP Code. However, we also consider that it would be worthwhile including in the draft LNP Code a reference to these

obligations under the TCP Code and an obligation to ensure that a provider's records – specifically in relation to customer authorisation – are complete, accurate and maintained.

Transitioning to an NBN environment and a further Code Review

In our August 2012 submission to the review of the LNP Code, we sought a revised LNP Code with a focus on the future telecommunications environment – a future enabling porting in an NBN environment.

We are aware of Communications Alliance's Working Committee 50 ("the Working Committee") – focussing on LNP Code NBN requirements and with the role of developing recommendations for an LNP Framework in a fully realised NBN environment.

Given this work, we are concerned that the Code Review period of 5 years set out in Clause 1.6 is too long a period. We recommend that consideration be given to the draft LNP Code specifically referencing the need to review the Code following receipt of the Working Committee's recommendations.

Code Training

We take this opportunity to propose that Communications Alliance rolls out training to its members when new or revised industry codes are introduced. The Case Studies outlined in **Attachment A** demonstrate the need for thorough training on LNP Code requirements and where there are similar or related obligations under the TCP Code. The TIO considers the training provided to industry on the new TCP Code in 2012 was beneficial to service providers and helped improve their awareness about their code obligations. We suggest that Communications Alliance consider introducing similar measures when the new LNP Code is released.

Attachment A

Systemic Investigation 1 – Unauthorised Transfers

In September 2012, the TIO wrote to the Australian Communications and Media Authority (ACMA) and the Australian Competition and Consumer Commission (ACCC) outlining our view about Provider X which, since joining the TIO the prior year, had recorded numerous complaints about the transfer of services.

The TIO's systemic investigation found that Provider X consistently failed to identify or obtain informed consent from the legitimate account holder of the service. In addition, when the consumer successfully transferred their service back to the original supplier, the Provider X would initiate another unauthorised transfer and 'clawback' the service.

Despite assurances from Provider X that it would comply with the TIO's suggested resolutions to finalise this systemic investigation, including ensuring that it had the informed consent of the account holder prior to transferring a service, the TIO continued to receive complaints of this nature.

As a consequence of the TIO's investigations and the subsequent referral to the ACCC, in June 2013 Provider X paid three infringement notices totalling almost \$20,000 and provided court enforceable undertakings in relation to its activities.

Systemic Investigation 2 – Inadequate Informed Consent and Sales Tactics

In February 2013 the TIO began a dialogue with a provider after receiving approximately 40 new complaints per month regarding inadequate consent when telemarketing consumers to transfer their services. This included telemarketing agents misrepresenting to consumers who the service would actually be transferring to or that the service would actually be transferred.

Typically, consumers complained that when they had been called by Provider A, the agent advised that they were calling from their current provider and that a better plan was being offered. Believing they were being offered a better deal by their existing provider, consumers would often agree to the offer made or, alternatively, request written information be issued, only to receive a welcome letter from Provider A which had already transferred the service. Once realising the service had been transferred without the appropriate consent, the consumers would be advised by Provider A that the service could be cancelled, but they would have to contact their preferred provider to initiate another transfer. In the meantime, consumers would be charged for calls that were made.

Given the number of complaints the TIO received regarding the practices of this provider, a systemic investigation was initiated. The TIO raised several possible breaches of Chapter 7 of the TCP Code, along with Clause 6.5.1 of the current LNP Code and sought a response to a number of questions about the provider's sales practices and customer authorisations.

As a result of this investigation, Provider A made substantial changes to its telemarketing and quality assurance procedures. The TIO monitored complaint numbers over the following month and found that these changes resulted in a significant drop in complaints, from around 40 per month to 5. The TIO subsequently closed the matter.

