



Telecommunications
Industry
Ombudsman

Submission to the
ACMA's post-implementation
review of the NBN consumer
experience rules
September 2019

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Acronyms and abbreviations

ACCC	Australian Competition and Consumer Commission
ACMA	Australian Communications and Media Authority
NBN	National Broadband Network
Service Continuity Rules	Both the Telecommunications (NBN Continuity of Service) Industry Standard 2018 and the Telecommunications Service Provider (NBN Service Migration) Determination 2018
TIO	Telecommunications Industry Ombudsman

Introduction from the Ombudsman, Judi Jones

I welcome the Australian Communications and Media Authority (ACMA)'s post-implementation review of the National Broadband Network (NBN) consumer experience rules.

It is pleasing to see the ACMA is reviewing whether the rules are working as intended, despite only being in place for a relatively short time, with:

- the rules to encourage early resolution of consumer complaints being in place since 1 July 2018;¹ and
- the rules to improve the quality of information about NBN offers² and the rules to promote service continuity (the **Service Continuity Rules**) being in place since 21 September 2018.³

The roll-out of the NBN continues to be a major transformative event in the telecommunications service landscape, with the pace of the rollout accelerating further in 2019.⁴ In this context, it is not surprising there continues to be residential, small business and Not For Profit consumers who approach my office for help with their complaint when their NBN migration experience does not go smoothly.

This submission covers the three key themes we continue to see in NBN migration complaints. We highlight these themes because they provide an insight into the consumer experience and present opportunities for improvement. The key themes we see involve technicians, provider practices to resolve troublesome connections, and customer sales and communication practices.

Even with the new rules, we receive complaints from consumers after their legacy service has been disconnected following an unsuccessful attempt to migrate to the NBN. This can have a significant detrimental effect on vulnerable consumers.

In other cases, we continue to receive complaints after consumers have successfully migrated to the NBN, because the quality of their NBN service becomes an issue. While the ACMA's Service Continuity Rules focus on addressing quality of service issues that arise when, or shortly after, migrating to the NBN, this submission mentions these other cases because they illustrate the full consumer experience.

When we assist consumers with their complaint about no or poor-quality connection, we may also deal with associated problems such as the provision of an interim service, fault diagnosis, billing, and compensation for small business loss.

We have provided insights into the consumer experience so industry, regulators and consumer representatives can better understand the issues for consumers after the introduction of the ACMA rules.

¹ *Telecommunications (Consumer Complaints Handling) Industry Standard 2018*

² *Telecommunications (NBN Consumer Information) Industry Standard 2018*

³ *Telecommunications (NBN Continuity of Service) Industry Standard 2018; Telecommunications Service Provider (NBN Service Migration) Determination 2018*

⁴ In FY2019, NBN Co reports 5.53 million residential and business premises activated on the network (an increase of 37 per cent on the previous financial year). See: [NBN Co delivers strong FY19 financial results \(15 August 2019\)](#)

I look forward to the outcome of the ACMA's post-implementation review. The ACMA's NBN consumer experience rules will continue to be one of the factors we take into account when handling complaints.

As the roll-out of the NBN reaches completion, it will be crucial for providers to embed the ACMA's rules across their practices. Providers could be assisted by the ACMA undertaking a provider awareness and education program and other actions to promote the rules.

1. Key themes in complaints about NBN migration

We continue to see key themes in NBN migration complaints to the Telecommunications Industry Ombudsman (TIO). These themes provide insights which may assist regulators, industry and consumer representatives to better understand the experience of consumers when migrating to the NBN. They also present opportunities for provider improvement.

The key themes the TIO continues to see involve:

- technicians;
- diagnosis and rectification of troublesome connections; and
- customer sales and communication practices.

1.1 Technicians

The availability of technicians and a technician with the right expertise turning up to a premise continue to be relevant to the experience of consumers who migrate to the NBN.

If this key theme was addressed, providers could improve the customer experience for migrating customers under the ACMA's NBN consumer experience rules.

We continue to see a combination of:

- a) missed technician appointments;
- b) the wrong technician sent to a premise;
- c) doubling up of technicians;
- d) technician reports lost or not actioned.

In March 2019, our submission⁵ to the second phase of the ACCC's Inquiry into NBN wholesale service standards called for a uniform approach to industry passing on the rebate to impacted customers the rebate (or its fair value). As part of its second phase of Inquiry, the ACCC sought feedback on the measures providers have in place to pass on the \$25 NBN Co rebate (or its fair value) for each missed technician appointment, and whether supporting rules at the wholesale level are needed.

Our submission also sought clarification about the interplay between the \$25 NBN Co rebate (or its fair value) and the Customer Service Guarantee. For example, is the \$25 rebate intended to be a customer entitlement separate to the Customer Service Guarantee payments of:

- \$14.52 per missed appointment for residential or Not For Profit customers; or
- \$24.20 per missed appointment for business customers?

⁵ A copy of our submission to the second phase of the ACCC Inquiry into NBN wholesale service standards is provided at **Appendix A**.

An industry-wide approach being confirmed by the relevant regulator would assist complaints handling, in both the internal complaint handling by providers, and external complaint handling processes we provide.

Recommendation: That the relevant regulator confirm the uniform approach for how the monetary incentives for technicians to keep appointments are passed on to impacted consumers. This could contribute to an improved consumer migration experience.

1.2 Diagnosis and rectification of troublesome connections

We see opportunities for improvement in the work of providers in diagnosing and rectifying troublesome connections.

We continue to see provider practices aimed at resolving troublesome connections that involve:

- a) inaccurate or inconsistent fault diagnosis;
- b) closing a fault ticket when the fault remains unresolved, the fault returns or there are intermittent dropouts not monitored by the provider;
- c) interactions with the consumer not being recorded or located;
- d) multiple modems being issued to the consumer, but do not fix the fault; and
- e) fault escalation processes that are unclear.

We also continue to see providers offering to release consumers early from their customer contract without penalty instead of trying to fix the troublesome connection.

These issues persist even after the introduction of the NBN consumer experience rules.

1.3 Customer sales and communication practices

There could be improved communication and active steps taken by providers to help consumers migrate to the NBN.

We continue to see instances of provider sales and communications practices where:

- a) the consumer is not told about the difference between professional install or self-install;
- b) the consumer is told their address is NBN ready when it is not;
- c) the consumer is not told they have a complex port that will take longer to migrate;
- d) the consumer is not told their service is affected by co-existence;

- e) promised call backs are not made; and
- f) higher level tech support calls are not made.

These practices are in addition to the sales practices we highlighted in our Systemic Spotlight: *Misleading telemarketing of NBN Services*.⁶ The spotlight also includes tips for consumers on how they can manage unsolicited telemarketing calls about NBN services.

The quality of a consumer's NBN service can be impacted by co-existence during the 18-month migration window. During this window, consumers who have already migrated may not experience the full potential of NBN speeds until all consumers in their area have moved off their legacy lines.

In other cases, the quality of the consumer's NBN broadband service may be impacted by the way they have been connected to the underlying network infrastructure on migration.

Consumers tell us they are experiencing slow broadband speeds even towards the end of their two year contract, and their provider is not offering a suitable remedy or alternative plan that meets their data needs. In these cases, the consumer may not want to switch to another provider because they know the underlying network infrastructure means they will have the same problem, no matter who their provider is. Consumers tell us they will have to wait at least two years until the roll-out is complete for an upgrade to the underlying network infrastructure. Meanwhile, the consumer reports their provider is charging them for speeds that can never be achieved.

We acknowledge the availability of other protections in the Australian Consumer Law and the ACCC's Broadband Speed Claims Guidance.⁷ However, as these protections focus on consumer remedies instead of remediating the underlying network infrastructure, the offer of a refund, exiting the contract without penalty or a move to a lower speed plan may not be an acceptable outcome for the consumer.

Case study A illustrates how some providers may offer the consumer a financial outcome to resolve their complaint when the quality of their NBN service is impacted by co-existence some time after migration.

⁶ TIO, *Systemic Spotlight: Misleading telemarketing of NBN Services (July 2019)*

⁷ ACCC, *Broadband speed claims Industry Guidance (May 2019)*

Case study A: AceTel* refunded Jamie* for co-existence impacting the quality of his NBN broadband service

In early 2019, Jamie escalated his complaint to the TIO about slow speeds on his bundled voice and data NBN plan.

Jamie told us the NBN plan he is on with AceTel is for 50 Mbps, but recently his speeds have dropped from 30 to 18 Mbps. Jamie also told us his NBN voice and broadband service can drop out, often for several minutes. The problems with his service continued even though Jamie had complained to AceTel and several AceTel and NBN technicians had visited to investigate the problem. Jamie told us NBN Co had also remotely tested his service, but as they found no problem no more technicians were being sent.

With the assistance of TIO's conciliation service, Jamie agreed to a refund of \$300 in recognition that his area was impacted by co-existence and AceTel could not require NBN Co to upgrade its network configuration to improve his service quality. While AceTel offered Jamie a cheaper plan that was on a slower speed tier, it was not accepted by Jamie because slower speeds and less data did not meet his household's needs.

*Name of individuals, organisations and companies have been changed

2. Vulnerable consumers feel unsafe and isolated when they are disconnected

We continue to see cases where vulnerable residential consumers feel unsafe or isolated when they lose their legacy fixed line voice service on attempted migration.

These complaints involve elderly consumers in their 80s or 90s who are living alone, who may be in poor health and not technologically savvy. A younger relative or friend will represent the elderly consumer's complaint to the provider and the TIO.

These cases reach the TIO after the elderly consumer loses their legacy service and it becomes apparent the attempted migration to the NBN was unsuccessful. This may be because their address requires sequential migration and their legacy copper service is not reconnected, or because it later becomes apparent the assumed existing infrastructure to convert the premise is not there.

In the process, the elderly consumer may also complain about losing the telephone number they've had for many years. In May 2019, the TIO published a Systemic Insight Report: *Loss of telephone numbers during migration to the NBN*.⁸ The Report makes findings and recommends the practical steps providers can take to reduce the incidence of consumers losing their telephone number on migration. In response, several (but not all) providers worked with our systemic team to improve their online customer order processes by adopting the recommendations in our Report.⁹

While these consumers are offered interim service solutions such as a mobile phone handset or calls transferred to their existing mobile service, a mobile service may not suit their specific needs. This may be because they are not confident using a mobile phone or they have poor or no mobile network coverage.

"My aunt is nearly 90 years of age and living alone... I am very concerned for her welfare. It is a very hard thing for someone of that age to be isolated with no phone. She is not confident using her mobile constantly while her phone gets fixed. She only uses her mobile to call a cab when she is at an appointment. She will hang up on anyone who calls her mobile. The costs for her mobile are also hindering her use. There is no respect for her age and that she is not technologically savvy to be able to fix issues by herself while being talked through it over the phone. This has caused her extreme stress. She is so stressed by this issue she no longer wants to talk to anyone about it."

Annabelle*, representing her aunt's complaint to the TIO

*Name of individuals, organisations and companies have been changed

⁸ TIO, *Systemic Insight Report: Loss of telephone numbers during migration to the NBN* (May 2019).

⁹ The TIO notified the ACMA of our follow up work to our Systemic Insight Report, including those providers who had not improved their customer processes.

When these complaints reach the TIO, we focus on getting the customer reconnected and resolving associated billing or other issues.

Case study B illustrates how migration can lead to disconnection which may cause distress and concern for impacted elderly consumers.

Case study B: *Mary* was disconnected from her service when attempting to migrate to the NBN with IncaTel**

Mary lives by herself and is in her late 80s. Mary has had the same phone number for years. In early 2019, Mary decided to switch from her current provider BlackPhone, to a new provider IncaTel, when signing up for a new NBN fixed line voice service.

Mary's son David escalated his mum's complaint to the TIO when porting of his mum's number was unsuccessful and Mary's voice service was disconnected. Even though a technician had visited to check the cabling, the port to the NBN did not work. David told us his family had to call the police to check in on their mum because no one could get in touch with her for several days and they were worried for her safety.

While IncaTel provided Mary with a temporary mobile phone as an interim solution, the phone did not work and kept cutting out. Mary told David she could not hear anything when she tried to use the mobile. David handled dealings with Mary's provider while they worked to find a solution.

When Mary eventually got her phone number back after the TIO commenced conciliation, David told us there was a fault with the connection. Anyone calling his mum using a provider other than IncaTel would get a busy tone or a message the number was not connected. To try to troubleshoot the problem, IncaTel made an appointment for a technician to visit, but three appointments later, a technician still hadn't attended.

The fault was eventually resolved when David attended Mary's home during a technician visit and the technician found there were issues with the initial installation. As part of resolving the complaint, IncaTel agreed to waive the monthly charges when Mary had no NBN connection.

*Name of individuals, organisations and companies have been changed

3. Small businesses experience business loss or have to update their advertising materials

We receive complaints from small business consumers about losing their fixed line number during the NBN migration process and the costs of having to update all their advertising materials with a new phone number.

"I cannot lose my business landline number. All my business cards, printed brochures, advertising on social media and booking services are linked to my business number of 15 years. Having all my business calls diverted to my personal mobile for \$30 a month is not an acceptable interim solution."

Foodilicious & Co*, a small business offering gourmet cooking classes, and overseas foodie tours.

With these types of complaints, the TIO assists the small business consumer to either recover their phone number or receive compensation from their provider to reimburse them for the costs of having to update all their advertising materials. In other situations, we may also assist the small business to recover their losses, where they are able to demonstrate the amount they have lost.

*Name of individuals, organisations and companies have been changed

Appendix A: TIO submission to phase 2 of the ACCC NBN wholesale service inquiry



1 March 2019

Scott Harding
Director
NBN & Pricing Coordination
ACCC

and

Nathan Sargent
Assistant Director
NBN & Pricing Coordination
ACCC

Sent by email to: nbn@accc.gov.au
cc: Scott.Harding@accc.gov.au and Nathan.Sargent@accc.gov.au

Dear Scott and Nathan,

ACCC inquiry into NBN wholesale service standards: second discussion paper

I have been following with interest, the progress of the ACCC's NBN wholesale service standards inquiry.

Following the first phase of the inquiry, I have been considering the potential impact of nbn co's recent ACCC undertaking on retail end users. I note nbn co undertakes to pay new rebates to those it directly contracts with (whether a wholesaler, aggregator, or retail service provider), including the new \$25 rebate for a missed technician appointment.

The undertaking includes an expectation that participants in the supply chain will pass on the new \$25 rebate or 'its fair value' to affected retail customers. The ACCC's second discussion paper seeks comment from retail service providers about how they might practically achieve this, and whether supporting rules at the wholesale level are needed. I would like to be kept updated of developments in this area, especially if they might involve a change in my office's approach to complaints handling.

This letter sets out two matters for consideration:

- My office could ask whether the retailer will pass on the \$25 rebate as part of the resolution outcome
- The interplay between the CSG and passing on the \$25 rebate (or its fair value)

1. The TIO could ask whether the retailer will pass on the \$25 rebate as part of the resolution outcome

The TIO currently considers complaints made by residential, small business and Not For Profit customers. These customers may tell us about a missed technician appointment when complaining about not having a connection to an NBN service or not having a quality connection.

In these cases, neither we nor the customer may know whether a missed appointment involves a technician sent by nbn co or the retail service provider. We could ask whether the retailer will pass on the \$25 rebate or 'its fair value' and take the retailer's response into account when proposing a fair and reasonable resolution of the complaint.

If my office were to do this, we anticipate providers might adopt different practices and approaches depending on how they interpret the interplay between the \$25 pass on requirement and the customer payments required by the Customer Service Guarantee (CSG)ⁱ. If a uniform interpretation is not shared by the sector, this could create complexity for TIO complaints handling and longer timeframes to reach a resolution.

2. The interplay between the CSG and passing on the \$25 rebate (or its fair value)

The TIO currently considers whether the CSG applies to complaints.

For example, if a customer has not waived their entitlement to CSG protections, they may be eligible for a CSG payment of:

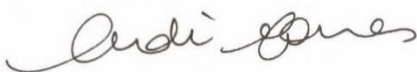
- \$14.52 per missed appointment if they are a residential or Not For Profit customer; or
- \$24.20 per missed appointment if they are a business customer.

The CSG missed appointment payments may be in addition to other CSG payments such as for delayed service connections and delayed fault repairs.

We seek clarification of whether the \$25 pass on is intended to be a customer entitlement, separate to a CSG payment. How would eligibility for both payments be balanced?

If you have any questions regarding this letter, please feel free to contact me, or my Senior Policy Advisor, Ai-Lin Lee on (03) 8680 8403 or Ai-Lin.Lee@tio.com.au.

Yours sincerely,



Judi Jones
Telecommunications Industry Ombudsman

ⁱ *Telecommunications (Consumer Protection and Service Standards Act) 1999, Part 5; Telecommunications (Customer Service Guarantee) Standard 2011*