



Telecommunications
Industry
Ombudsman

Submission to the
ACCC's NBN Wholesale Service
Standards Inquiry
November 2019

Table of Contents

Introduction from the Ombudsman, Judi Jones	3
1. Rebates should compensate consumers directly.....	4
Missed appointments.....	4
Delayed connections and fault repair	4
Recurring faults, intermittent service and drop outs.....	6
Priority assistance.....	7
2. The consumer experience of receiving a rebate should be seamless.....	9
3. The time is right for an integrated approach to consumer compensation.....	10
4. Public reporting obligations	12

Introduction from the Ombudsman, Judi Jones

I welcome the opportunity to contribute to the Australian Competition and Consumer Commission (ACCC)'s NBN Wholesale Service Standards Inquiry. The Draft Final Access Determination (NBN Service Standards) (NBN Determination) presents an opportunity to fill regulatory gaps and improve consumer-centred incentives for reliable NBN service delivery.

While recent regulatory developments led by the ACCC, Australian Communications and Media Authority (ACMA) and Department of Communication and the Arts have provided greater clarity for consumers and telecommunications providers, the evolution of the telecommunications landscape has outpaced the telecommunications consumer protection framework. Consumers regard both broadband and voice services as essential services and it is important that any new regulatory settings recognise this reality. Current service standards are limited as they only apply to voice services, not broadband services. Consumers who are protected by voice service standards are often unaware of how these protections apply, and some consumers may have waived even these protections. This has created gaps in the consumer protection framework, particularly with regard to broadband services.

Complaints received by my office illustrate significant consumer detriment associated with missed appointments, delayed repair of faults and delayed connections. These complaints can take significant time to resolve and impact on the consumer experience. This submission provides insights into the consumer experience and recommendations we hope will assist in strengthening the telecommunications consumer protection framework.

Recommendations

We recommend that the ACCC consider:

1. Introducing a pass-through requirement for connection and fault rectification rebates.
2. Developing requirements that address the impact on consumers who experience recurring faults, intermittent service and drop outs.
3. Mandating priority assistance timeframes across all service types to ensure all parties in the supply chain are accountable for meeting the needs of priority assistance customers.
4. Introducing a public reporting requirement to incentivise compliance with priority assistance obligations.
5. Requiring the rebate to be automatically passed through to the affected consumer, for example as a bill credit or a cash rebate.
6. Ensuring that providers are prohibited from requiring or requesting consumers to waive their entitlements to rebates.
7. Aligning the connection rebate cap with the timeframes outlined in the ACMA's NBN Service Migration Determination.
8. Introducing a public reporting requirement related to appointments, connections and fault repair across the supply chain.

1. Rebates should compensate consumers directly

We support the pass-through of rebates to end-users of telecommunications services. This ensures an end-to-end industry requirement to compensate consumers who experience delays in resolving issues with their NBN service.

We welcome the pass-through requirement for missed appointment rebates, and encourage the extension of a pass-through requirement for connection and fault rectification rebates.

Missed appointments

We support the pass-through requirement for missed appointment rebates. We agree with the ACCC that missed appointments primarily affect consumers and that consumers should be the ultimate recipients of the missed appointment rebate. Early indications for Financial Year 2020 place missed appointments in the top ten issues we see across all complaints we received for the July – September 2019 quarter.¹ We received 1,183 complaints that included missed appointments across all service types. Although this number may not seem large, missed appointments can lead to significant detriment as illustrated in Case Study A below.

Delayed connections and fault repair

Our complaints show that a significant number of consumers experience detriment from delayed connections and delayed repair of faults. Our Annual Report 2018-19 notes that 50.7% of complaints we handled in that year had a connection, changing provider or service quality issue.² Early indications for Financial Year 2020 suggest these complaints may remain at similar levels, as complaints we received about faults and connections made up 48.6% of all complaints received by us for the July – September 2019 quarter.³

When we handle complaints about delayed connections and fault repair, consumers tell us that they experience financial consequences, including:

- increased mobile data charges
- lost wages when a technician's appointment means the consumer has to stay home
- business loss where the connection or fault repair delay and an inadequate interim service impacts the business's ability to operate
- continued service charges while the consumer has no service or a faulty service
- paying a higher amount for an interim service than they would for a working NBN service.

Consumers experience significant and often prolonged detriment when they do not have a working broadband and voice connection. A clear and simple requirement to pass-through the rebate to

¹ TIO, *Quarterly Report – Quarter 1 Financial Year 2020* (29 October 2019), available at <https://www.tio.com.au/sites/default/files/2019-10/TIO%20Quarter%20One%202020%20Complaints%20report.pdf> (at page 3)

² TIO, *Annual Report 2018-19*, available at <https://www.tio.com.au/reports-updates/annual-report-2018-19> (at page 10)

³ TIO, *Quarterly Report – Quarter 1 Financial Year 2020* (29 October 2019), available at <https://www.tio.com.au/sites/default/files/2019-10/TIO%20Quarter%20One%202020%20Complaints%20report.pdf> (at page 1)

the consumer would go some way towards recognising and compensating consumers for the detriment suffered.

Consumers also express significant frustration where they make repeated attempts to resolve these issues or are subject to continued misdiagnosis of the issues causing delays. As shown in Case Study A, this frustration can compound an already negative experience.

Case Study A – So Yoon* eventually connected after many technicians attended⁴

So Yoon applied for NBN home phone and internet services with GoodTel*. GoodTel scheduled a connection appointment a few days later. The technician who attended the appointment told So Yoon they could not connect her because her internal wiring needed an upgrade. Based on this advice, So Yoon arranged for a private technician to upgrade her internal wiring that day, so GoodTel arranged for another technician to attend in two weeks.

The second technician who attended could not complete the connection because of problems with GoodTel's cabling. So Yoon reported this to GoodTel who organised for a more appropriately qualified technician to attend in another two weeks. This third technician said that they also could not fix the problem because a more specialised technician was required. So Yoon called GoodTel who apologised and scheduled a new appointment a week later.

In frustration, So Yoon contacted the Telecommunications Industry Ombudsman (TIO) for help. As GoodTel still had not connected So Yoon after referral of the complaint, the TIO began conciliation.

During conciliation, GoodTel arranged three additional technician appointments. Each time the technician kept the appointment, but gave different advice to So Yoon about why the connection could not be completed. Four months and many appointments later, the TIO was able to confirm So Yoon's services were properly connected and closed the complaint.

*Name of individuals, organisations and companies have been changed

We are concerned that without a pass-through requirement, rebates may benefit providers without compensating consumers. In instances where connecting a service or repairing a fault is difficult to achieve, a Retail Service Provider (RSP) may offer inadequate remedies that cost less than the value of the rebate the RSP receives. For example, where a delay persists and an RSP is entitled to receive the fault rectification rebate, the RSP could wait several days until the cap has been reached and then offer the consumer the option to exit the contract. In this instance the RSP receives the maximum rebate for fault rectification and the consumer does not have a working service.

Further, if the reason for the delay is outside the control of the RSP (for example, an infrastructure issue in the neighbourhood), the consumer may encounter the same situation when they sign up with a new RSP. Both RSPs could potentially receive the maximum rebate and the consumer would

⁴ Case Study originally appeared in the TIO's submission to Part B of the Consumer Safeguards Review

still not have a working service. Requiring RSPs to compensate consumers by passing through connection and fault rectification rebates may avoid the unintended consequence of some RSPs viewing the rebate as an opportunity to make a financial gain.

Recommendation 1

That the ACCC consider introducing a pass-through requirement for connection and fault rectification rebates.

Recurring faults, intermittent service and drop outs

When consumers complain to us about recurring faults, intermittent service and drop outs, they expect a permanent fix and expect to be compensated for the faulty service period. We encourage the ACCC to consider developing requirements for industry to address the impact recurring faults, intermittent service and drop outs has on consumers.

Consumers who experience recurring faults, intermittent service or drop outs may not receive compensation for the entire period they experienced the problem. Recurring faults, intermittent service and drop outs are particularly difficult for consumers to report and troubleshoot. This means that a traditional fault report process may not adequately capture the starting date. Where the consumer's recurring fault, intermittent service or drop out appears fixed, but a short time later resurfaces, it may be treated by the RSP as a new fault. When this happens, the consumer may need to go through the same troubleshooting process again, and it may be several days before the RSP resumes looking into the unresolved problem. These additional delays may not be considered when consumers are offered compensation, despite the consumer experiencing unreliable service for an extended period after a temporary fix.

The 2018 Regional Telecommunications Independent Review Committee also highlighted the issue of temporary repairs in its recent report.⁵ A common theme when telephone faults were not permanently repaired was consumers continuing to report the same problem for days or weeks.⁶

The theme of temporary repairs is also reflected in our complaints. For example, Case Study B illustrates how intermittent service and drop outs can be challenging for RSPs to resolve quickly and permanently, resulting in a poor consumer experience. The Customer Service Guarantee⁷ (CSG) formulas for calculating compensation are particularly challenging to apply to these types of complaints.

⁵ Regional Telecommunications Independent Review Committee, *2018 Regional Telecommunications Review – Getting it right out there* (30 September 2018), available at <https://www.communications.gov.au/publications/2018-regional-telecommunications-review-getting-it-right-out-there>

⁶ Regional Telecommunications Independent Review Committee, *2018 Regional Telecommunications Review – Getting it right out there* (30 September 2018), available at <https://www.communications.gov.au/publications/2018-regional-telecommunications-review-getting-it-right-out-there> (at page 40)

⁷ Telecommunications (Customer Service Guarantee) Standard 2011, available at <https://www.legislation.gov.au/Series/F2011L00413>

Case Study B – Permanently fixing Shiny Locks'* intermittent fault⁸

Shiny Locks is a small hairdressing business and has a landline connection with WowCall. Shiny Locks began receiving emails and social media messages saying customers could not call through. Shiny Locks was unable to receive calls for an entire day at a time and at other times only a few calls would come through for the day.

After Shiny Locks reported the intermittent drop out issue to WowCall, WowCall set up a diversion to a mobile phone. The diversion stopped working after one day. WowCall then provided Shiny Locks with a temporary phone. This also stopped working after a day. Shiny Locks had several conversations with WowCall to try to resolve the problem. Even after two technicians came to the salon, the problem continued for another six weeks.

Shiny Locks raised a complaint with the TIO. WowCall reinstated the diversion to the mobile phone but then, believing the problem was resolved, turned off the diversion without telling Shiny Locks. Shiny Locks experienced the intermittent drop out problem several times for a month, and became increasingly frustrated as the diversion service kept being turned off without a permanent solution.

After Shiny Locks escalated the complaint with the TIO, the intermittent drop out issue was permanently resolved. WowCall and Shiny Locks disagreed about how the CSG applied to the delayed fault repair, but a payment was agreed that reflected the entire period of the disruption.

*Name of individuals, organisations and companies have been changed

Recommendation 2

That the ACCC consider developing requirements that address the impact on consumers who experience recurring faults, intermittent service and drop outs

Priority assistance

It is important to ensure that regulatory settings support medically vulnerable consumers. Given the high safety risks and vulnerability of priority assistance customers, we encourage the ACCC to consider aligning wholesale and retail priority assistance obligations.

All parties in the supply chain should be accountable for prioritising connection and fault repair for priority assistance customers. To better protect consumers, prioritised fault and connection repair timeframes should apply across all service types.

⁸ Case Study originally appeared in the TIO's submission to Part B of the Consumer Safeguards Review

The current framework recognises that RSPs are not always able to control network performance:

- **Telstra's Carrier Licence Conditions:**⁹ Where Telstra is not able to control the network that the service is being supplied over, the obligation to meet priority assistance connect and repair timeframes does not apply, including where NBN Co controls the network.
- **Priority Assistance Industry Code:**¹⁰ Where RSPs voluntarily provide priority assistance status, they are not required to meet priority assistance connect and repair timeframes where delays flow from matters deemed within another supply chain party's control.
- **ACMA's Complaint Handling Rules:**¹¹ RSPs must implement resolutions for priority assistance complaints in two working days. However, where the RSP does not believe they can do this, they can inform the consumer why there is a delay, what the new timeframe is and the complaint escalation avenues that apply, including escalation to the TIO.

Requiring all parties in the supply chain to report publicly about compliance with priority assistance obligations would enhance transparency and accountability. Publication would also provide an objective way of monitoring industry's performance in delivering priority assistance services. Case Study C shows the high safety risks associated with priority assistance customers.

Case Study C – Priority assistance service disconnected by Brite Talk*¹²

Kylo applied to migrate his phone and internet services to the NBN with his existing provider, Brite Talk. Brite Talk scheduled an appointment for a technician to install the connection. When the agreed connection date arrived, Kylo's services were disconnected and no one showed up. Brite Talk made four different appointments after this, but each time the agreed date arrived, no one came. Kylo kept reminding Brite Talk that he was a priority assistance customer, but Kylo still had no services four weeks after his migration application.

Kylo became frustrated and called the TIO. Kylo explained that he has a life threatening medical condition and lives in a rural area with poor mobile coverage. The TIO referred Kylo's complaint to Brite Talk as urgent. A few days later, the TIO contacted Kylo to check he had received an interim service. Kylo said another technician had been scheduled, but they did not turn up and he had not been offered an interim service. The TIO began working with Brite Talk and Kylo to urgently conciliate the complaint.

During the conciliation, Brite Talk gave the consumer a mobile phone as Brite Talk disagreed there were mobile coverage issues. Kylo tried to use the mobile phone but it would not work in his area. When TIO requested that Brite Talk provide a suitable alternative interim service, Brite Talk agreed to send Kylo a satellite phone. When Kylo received the satellite phone, the TIO closed the urgent issue and continued to conciliate the issue of customer compensation.

*Name of individuals, organisations and companies have been changed

⁹ Telecommunications (Carrier Licence Conditions – Telstra Corporation Limited) Declaration 2019, available at <https://www.legislation.gov.au/Series/F2019L00443>

¹⁰ Priority Assistance for Life Threatening Medical Conditions Code (C609:2007), available at <https://www.commsalliance.com.au/Documents/all/codes/c609>

¹¹ Telecommunications (Consumer Complaints Handling) Industry Standard 2018, available at <https://www.legislation.gov.au/Series/F2018L00727>

¹² Case Study originally appeared in the TIO's submission to Part B of the Consumer Safeguards Review

Recommendation 3

That the ACCC consider mandating priority assistance timeframes across all service types to ensure all parties in the supply chain are accountable for meeting the needs of priority assistance customers.

Recommendation 4

That the ACCC consider introducing a public reporting requirement to incentivise compliance with priority assistance obligations.

2. The consumer experience of receiving a rebate should be seamless

We encourage the ACCC to take this opportunity to simplify consumer entitlements by ensuring the rebate pass-through is automatic for the consumer. To simplify the consumer experience of receiving rebates, the framework should clearly define when different parties in the supply chain are responsible. In our view, once the obligation is triggered, the consumer should not need to request the rebate, but should automatically receive it, for example as a bill credit or cash rebate.

We caution against introducing delays into the process. We are particularly mindful that the proposed rebate terms allow NBN Co to reduce rebates by any CSG related amount for which NBN Co is liable. In our experience, the CSG can be complex to apply. It is important that a consumer's entitlement to rebates is not hampered by challenges flowing from this complexity.

We observe a number of problems with the CSG when handling complaints:

- Formulas for calculating compensation are complex and are not applied consistently by RSPs.
- Consumers are often unaware that they have waived CSG protections or do not understand what protections they are waiving.
- The CSG's prescribed process for obtaining a valid waiver can lead to different views about whether the CSG applies.
- Consumers are often unaware how Mass Service Disruptions impact their service and CSG entitlement.
- Interim services offered in place of CSG compensation may not be appropriate for the consumer's circumstances.
- The fault repair provisions of the CSG do not adequately cater for intermittent faults.

Our submission to Part B of the Consumer Safeguards Review¹³ explores other challenges we encounter when applying the CSG.

The ACCC could consider lessons from the energy industry. Energy service standards clearly outline the service standards for which distributors are accountable, and the payments they must make to consumers where the service standards are not met.¹⁴

Recommendation 5

That the ACCC consider requiring the rebate to be automatically passed through to the affected consumer, for example as a bill credit or cash rebate.

We find that many consumers are not entitled to CSG protections because they have waived CSG entitlements as a condition of receiving the service. We encourage the ACCC to ensure that this problem is not replicated for consumer entitlements to missed appointment, connection and fault rectification rebates.

Recommendation 6

That the ACCC consider ensuring that providers are prohibited from requiring or requesting consumers to waive their entitlements to rebates.

3. The time is right for an integrated approach to consumer compensation

The NBN Determination will be most effective if it is part of an integrated approach to safeguarding telecommunications consumers.

We recommend an approach that aligns with the ACMA's NBN Rules which promote service continuity when consumers migrate to NBN services. The ACMA's NBN Migration Determination requires RSPs to make a plan and later complete an audit if the plan does not achieve an operational NBN connection.¹⁵ The connection rebate cap should be extended to ensure consumers are compensated when faults or connections take longer to fix.

¹³ TIO, *Submission to the Department's Consumer Safeguards Review (Part B – Reliability of Services)* (January 2019), available at <https://www.tio.com.au/sites/default/files/2019-05/Consumer-Safeguards-Review-TIO-submission.PDF>

¹⁴ For example, see Electricity Distribution Code 2018 (SA) (version published January 2018), available at <https://www.escosa.sa.gov.au/ArticleDocuments/1198/20180116-Electricity-DistributionCode-FDC-12.1.pdf.aspx?Embed=Y>; Electricity Distribution Code 2018 (Vic) (version published August 2018), available at https://www.esc.vic.gov.au/sites/default/files/documents/Electricity-Distribution-Code-version-9A-August-2018_0.pdf; Electricity Distribution Network Code 2018 (Qld), available at https://www.qca.org.au/wp-content/uploads/2019/06/33935_electricity-distribution-network-code-version-3.pdf

¹⁵ Telecommunications Service Provider (NBN Service Migration) Determination 2018, available at <https://www.legislation.gov.au/Series/F2018L01052> (at section 16)

The ACCC and ACMA could also develop an integrated framework that ensures consumers can access interim services in addition to receiving compensation. Other jurisdictions are looking at ways to ensure interim services are provided where consumers are experiencing delayed connections or fault repair. For example, the United Kingdom's compensation scheme requires RSPs to provide interim services after a connection or fault repair has been delayed for 60 days, otherwise compensation obligations continue to accrue daily.¹⁶

The NBN Determination presents an opportunity to provide a transparent incentive for all parties in the supply chain to deliver reliable NBN services and safeguard consumers while consumer protection measures are being reformed.

We note there are likely to be further measures introduced to safeguard voice and broadband consumers which include:

- **Part B of the Consumer Safeguards Review:**¹⁷ The Government is considering how to update or replace consumer protections, particularly the CSG, to cover both broadband and voice services.
- **Universal Service Guarantee (USG):**¹⁸ The Government plans to introduce the USG to guarantee access to voice and broadband services for all Australians, the USG will replace the Universal Service Obligation which only guarantees voice services.
- **Statutory Infrastructure Provider regime:**¹⁹ These measures were intended to obligate NBN Co and other carriers to connect infrastructure and supply wholesale services upon reasonable request from an RSP on behalf of a consumer, but these measures have since lapsed in Parliament.

Recommendation 7

That the ACCC consider aligning the connection rebate cap with the timeframes outlined in the ACMA's NBN Service Migration Determination.

¹⁶ OfCom, Communications Providers' Voluntary Code of Practice for an Automatic Compensation Scheme (version published 10 November 2017), available at https://www.ofcom.org.uk/_data/assets/pdf_file/0024/107691/Annex-1-industry-automatic-compensation-scheme.pdf

¹⁷ Department of Communication and the Arts, Consumer Safeguards Review Consultation – Part B: Reliability of Services, more information available at <https://www.communications.gov.au/have-your-say/consumer-safeguards-review-consultation-part-b-reliability-services>

¹⁸ Department of Communication and the Arts, Universal Service Guarantee for Telecommunications, more information available at <https://www.communications.gov.au/what-we-do/phone/phone-services/universal-service-guarantee-telecommunications>

¹⁹ Telecommunications Legislation Amendment (Competition and Consumer) Bill 2018, more information available at https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=r5923 (this bill lapsed in July 2019)

4. Public reporting obligations

We encourage the ACCC to include reporting obligations that enhance transparency and accountability across the supply chain. One of the benefits of the CSG is the requirement to report to the ACMA²⁰ on how many appointments are missed or kept and whether fault repair and connections comply with required timeframes.

Public reporting has been used in other industries to enhance transparency and accountability around the performance of energy distributors. For example, the Australian Energy Regulator reports on energy distributor performance against service levels, including:

- frequency and duration of energy supply interruptions
- instances of wrongful energy disconnection
- timeframes for energy reconnection
- appointments attended on time.²¹

Part 1 of this submission also encourages public reporting on the extent to which priority assistance obligations are being met by industry.

Recommendation 8

That the ACCC consider introducing a public reporting requirement related to appointments, connections and fault repair across the supply chain.

²⁰ Telecommunications (Customer Service Guarantee) Record-Keeping Rules 2011, available at <https://www.legislation.gov.au/Series/F2011L01997> (part 4, schedule 1 and schedule 2)

²¹ National Energy Retail Law (SA) Act 2011 (SA), available at [https://www.legislation.sa.gov.au/LZ/C/A/NATIONAL%20ENERGY%20RETAIL%20LAW%20\(SOUTH%20AUSTRALIA\)%20ACT%202011.aspx](https://www.legislation.sa.gov.au/LZ/C/A/NATIONAL%20ENERGY%20RETAIL%20LAW%20(SOUTH%20AUSTRALIA)%20ACT%202011.aspx) (section 285); Australian Energy Regulator, *2017-18 Annual Report*, available at <https://www.aer.gov.au/system/files/AER%20Retail%20Report%20Appendices%202017-18.pdf> (Appendix 6: Annual report on compliance and performance of the retail energy market)