



Telecommunications
Industry
Ombudsman

Submission to the
ACMA's proposed
service standards for
superfast fixed
broadband services:
Consumer remedies
for missed service
levels

December 2020

Contents

Introduction.....	3
Summary of recommendations	4
1. The proposed rules should be technology neutral	5
2. Rebate pass-through and mitigation requirements should be clear	5
2.1. Appropriate mitigation timing.....	5
2.2. Addressing consumer circumstances.....	6
3. Retail service level commitments	7
3.1. Setting minimum timeframes to support service reliability and continuity for consumers	7
3.2. A permanent fix for intermittent faults and dropouts	8
3.3. Continuity of service for medically vulnerable consumers	9
3.4. Notifying consumers of options and changes to retail service level commitments.....	10
4. Record keeping.....	10

Introduction

Thank you for inviting the Telecommunications Industry Ombudsman (TIO) to comment on the ACMA's proposed service standards for superfast fixed broadband services. We welcome the opportunity to contribute to this consultation.

As reliance on telecommunications services becomes increasingly unavoidable, the provision of a working phone and internet connection must be viewed as essential to how we work, study and connect with loved ones. As outlined in our submission to Part B of the Safeguards review (**our Part B Submission**), we support the introduction of reliability rules that apply to all providers across all technology types in the continually evolving telecommunications market.

We support the introduction of measures to ensure rebates payable by wholesalers for service level failures are passed through to the affected consumer. We believe it is also important for providers to have the opportunity to mitigate consumer detriment arising from wholesale service level failures. We have seen providers successfully supply appropriate mitigation measures to keep consumers connected.

While we acknowledge competition is important, we continue to believe a minimum baseline standard of reliable service is needed for retail service provision, as outlined in our Part B Submission. This should not be left to industry to self-regulate.

In financial year 2020, we received 127,151 complaints. Of these complaints, 49.2 per cent were about fault and connection issues. We received 27,689 fault and connection complaints about internet services¹.

Complaints about faults and connections are some of the hardest complaints to resolve. Consumers can be left without a properly working connection for unacceptably long periods of time. Clarity in service standards for these areas would provide clear expectations for consumers and providers and facilitate the speedy resolution of disputes.

¹ This number excludes Multiple service type complaints which also include internet issues. [TIO Annual Report 2019-2020](#) page 45.

Summary of recommendations

Recommendation 1:

That the draft Determination provide greater certainty to consumers about when their provider can appropriately offer a mitigation measure as an alternative to a rebate, and in what circumstances.

Recommendation 2:

That the Department consider including minimum baseline standards to support the resolution of fault and connection complaints.

Recommendation 3:

That retail service level commitments require providers to find permanent solutions for intermittent faults and dropouts.

Recommendation 4:

That retail service level commitments make special provision for consumers who require a service with Priority Assistance or are medically vulnerable.

Recommendation 5:

That the Determination require providers to notify consumers if they change their service level commitments and allow consumers to exit their contract without penalty.

Recommendation 6:

That record keeping and reporting obligations be comparative to allow consumers to make informed choices.

1. The proposed rules should be technology neutral

We welcome the introduction of consumer rebates and retail service level rules beyond the current Customer Service Guarantee (CSG) rules applicable to traditional fixed line voice services. However, as outlined in our Part B Submission, we consider these rules would be more effective and have greater longevity if they were technology neutral.

Consumers want a reliable service that meets their needs. Our complaints show consumers generally do not understand or care what technology is used to enable them to access their home phone and internet service. Most consumers are not able to choose the technology they use to access these services. And from a provider perspective, providers are selling services on multiple technologies.

A single instrument for consumer rebates and retail service level rules would help consumers to understand what they can expect from their provider. The instrument should apply regardless of the technology used to supply the telecommunications service.

In addition, a technology neutral instrument would allow for flexibility in requiring pass-through for any rebates payable on future technologies.

2. Rebate pass-through and mitigation requirements should be clear

We are pleased to see the introduction of a pass-through requirement for wholesale rebates payable for service level failures. Because end-users experience the detriment from service failures, we think end-users should receive the benefit of the rebates.

We support the flexibility being offered to providers to have appropriate mitigation measures for a rebate pass-through. When we resolve disputes, consumers often tell us they prefer a working service rather than compensation, and we support incentivising providers to do this. However, we suggest the draft Determination could provide greater certainty to consumers about when their provider can appropriately offer a mitigation measure as an alternative to a rebate, and in what circumstances.

2.1. Appropriate mitigation timing

For a mitigation measure to adequately replace a rebate pass-through, we believe it must be put in place in a way that prevents the detriment from arising.

For detriment from service failure to be prevented, the mitigation measure needs to be in place from the start of a service failure. We have seen providers successfully provide appropriate measures to keep consumers connected and prevent the detriment. For example, a mitigation measure might be providing modems that can supply a connection using 4G data in the event of a service failure. Back-up options are particularly important for small business owners, and for consumers who require a service with priority assistance.

A provider should be obligated to pass through rebates for the periods of no service where the mitigation measure was applied after a consumer has been without a service for a period.

We also note that some providers who offer modems with a 4G backup have 'fair use' policies. These policies do not allow consumers who have prolonged service faults to use 4G data for an extended period. For example, providers may be unwilling to continue supplying this service or require consumers to pay for 4G data used.

2.2. Addressing consumer circumstances

Consumers' circumstances may mean mitigation measures cannot fully rectify the loss of their service. For example, providing a consumer with a 4G or 5G modem backup as a mitigation measure is meaningless if the consumer lives in an area with little or no mobile coverage. Some small business consumers may have complex connection needs, such as multiple phone lines for high volume calls, the loss of which an alternative service may not fully mitigate.

It is critical to ensure clarity about when mitigation measures can replace rebate pass-through obligations. Our experience in dealing with interim service requirements under the CSG rules shows that some consumers are not aware their provider is required to offer an interim service. Consumers have told us they do not fully understand the consequences of declining an offer of an interim service, and the impact on their ability to claim compensation.

Case study 1: Diverting four lines to Number Crunch* mobile as an interim solution

Number Crunch* is a small accounting business. Number Crunch applied for NBN phone and internet services with ScoopTel*. When Number Crunch applied, they made it clear it was critical to their business that their existing four lines be maintained on migration to the NBN. ScoopTel acknowledged this and set a connection date.

The agreed date arrived without a technician turning up. Over the next three months, ScoopTel arranged several other appointments, all of which were not attended. ScoopTel told Number Crunch it would take another three months before the NBN service could be connected, and in the meantime their existing services would stay active.

On the migration date, the existing phone services of Number Crunch were disconnected without a new NBN service connection in place. After two weeks of back and forth conversations, ScoopTel arranged for Number Crunch's four phone lines to be diverted to a mobile phone.

Number Crunch told ScoopTel this was not a suitable interim solution because the many calls were diverting to only one mobile service so the usual call volume could not be received. Even though this was causing Number Crunch business loss, ScoopTel would not offer any other interim solution.

Number Crunch continued to rely on the interim diversion to one mobile phone for a further month until the NBN service was connected, with compensation being an important part of the resolution.

** Names of all parties have been changed*

*** This case study first appeared in TIO submission to the Department's Consumer Safeguards Review Part B*

Recommendation 1:

That the draft Determination provide greater certainty to consumers about when their provider can appropriately offer a mitigation measure as an alternative to a rebate, and in what circumstances.

3. Retail service level commitments

We encourage the ACMA to consider setting minimum standards for connection and fault repair timeframes. Setting minimum standards can help consumers and providers quickly resolve matters and avoid disputes. These should be balanced against competition considerations.

It is important that service level commitments adequately address the resolution of intermittent faults and drop-outs and continuity of service for priority assistance customers.

3.1. Setting minimum timeframes to support service reliability and continuity for consumers

As outlined in our Part B Submission, we continue to advocate for a minimum baseline standard of reliable service for retail service provision, rather than leaving this to industry to self-regulate. Clear and reasonable minimum standards would support the resolution of fault and connection complaints.

It is not clear how competition would result in all providers introducing appropriate reliability standards. As outlined in our Part B Submission, one of the drawbacks of the CSG is the widespread contractual waiving of this obligation. We note that some consumers have no option but to contract out of consumer protections to obtain an affordable service. We are concerned that this would be particularly the case for consumers in financial hardship.

We receive complaints from consumers who do not understand the consequences of waiving rights and remedies under CSG when signing up for a new service. Others decline the offer of interim services without fully understanding the consequences. These consumers can be left without a working service or compensation.

In the absence of minimum statutory or contractual standards, we find consumers can be left without a properly working connection for unacceptably long periods of time. Case study 2 illustrates the challenges.

We note that Recommendation 8 of the Government's Final Report on Part B of the Consumer Safeguards Review provides support for ensuring that providers are required to commit to timeframes and remedies that are 'reasonable and proportionate'.

Case study 2: Unreasonable delay in establishing a connection

Carmen complained to us about a delay connecting her service. She had placed and paid for an order with MinkTel to connect her new house and seven weeks later received notification of a connection delay.

While we sought to resolve the complaint over the next six months, Carmen was given three planned remediation dates, and each time offered a different reason for the delay.

MinkTel was not required to provide an interim service during the almost eight-month connection delay, and Carmen was left having to buy additional data for her mobile phone while we sought to reach a resolution

** Names of all parties have been changed.*

Recommendation 2:

That the Department consider including minimum baseline standards to support the resolution of fault and connection complaints.

3.2. A permanent fix for intermittent faults and dropouts

When consumers complain to our office, they expect intermittent service, dropouts, and recurring faults to be permanently fixed the first time they report it to their provider. As illustrated in Case Study 3, intermittent faults can be a continued source of frustration for consumers and providers.

Disputes about whether a provider has fixed an ongoing fault are commonly received by our office. When our office considers these complaints, we consider several factors. These factors include the frequency and nature of the fault, the quality of service between faults, how the fault has impacted the consumer's ability to use the service, and what the provider has done to rectify the fault. We often find what consumers experience as intermittent faults are the same ongoing fault.

Service level commitments should encourage providers to find permanent solutions the first time a fault is reported. For example, service level commitments could make it clear that intermittent faults and dropouts are an ongoing service failure rather than a series of individual complaints that may each be resolved.

Case Study 3: Permanently fixing Shiny Locks'* intermittent faults

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, and a payment agreed that reflected the entire period of the disruption.

** Names of all parties have been changed*

*** This case study first appeared in TIO submission to the Department's Consumer Safeguards Review Part B*

Recommendation 3:

That retail service level commitments require providers to find permanent solutions for intermittent faults and dropouts.

3.3. Continuity of service for medically vulnerable consumers

Consumers eligible for Priority Assistance protections and those who are medically vulnerable are particularly reliant on continuity of service. Being connected is important to allow these consumers to access assistance, reach emergency services, and maintain lifesaving medical alarms.

While currently only Telstra is required to offer Priority Assistance, the Government's Final Report on Part B of the Consumer Safeguards Review noted the need for a model that allows shared responsibility across the industry. There is an opportunity for retail service level commitments to include specific provision for medically vulnerable consumers.

Providers who offer services for medically vulnerable consumers should offer shorter timeframes for the connection and repair of services and state this clearly in their retail service level commitments. There should also be a focus on offering interim services if service problems arise so that medically vulnerable consumers can remain connected to a working service. Providers should consider whether a different solution is required for consumers located in areas with poor or no mobile coverage.

Recommendation 4:

That retail service level commitments make special provision for consumers who require a service with Priority Assistance or are medically vulnerable.

3.4. Notifying consumers of options and changes to retail service level commitments

It is important to ensure consumers are made aware of any change to the retail service level commitments, as this could affect whether a consumer wishes to continue with the service. If the variation substantially alters the contracted service level commitment, consumers should be given the option to exit the contract without penalty.

Consumers are not always aware of their legal and contractual rights and obligations, particularly if they are long term customers. Although service level commitments form part of a consumer's contractual rights, providers may vary these during the life of a consumer's contract and after the initial contract expires.

The draft Determination should include notification requirements that require providers to disclose to affected consumers any changes to their retail service level commitments. The ACMA could also consider providing guidance to consumers on their rights if a provider changes their retail service level commitments.

Recommendation 5:

That the Determination require providers to notify consumers if they change their service level commitments and allow consumers to exit their contract without penalty.

4. Record keeping

We support record keeping and reporting obligations for providers. A reporting framework on the reliability of services can help consumers make informed choices about which provider offers the most reliable service. However, any reporting framework would need to consider the impact of natural disasters when making comparisons on reliability standards.

To enable consumers to compare across providers, it would be helpful for reporting obligations to be consistent across the industry. Transparency in performance and service delivery can become a competitive point of difference for providers. Information that is presented in a clear and easy to understand format could help consumers make meaningful comparisons and decisions.

Recommendation 6:

That record keeping and reporting obligations be comparative to allow consumers to make informed choices.