

**COMMUNICATIONS
ALLIANCE LTD**



**Service standards for superfast fixed broadband
services**

COMMUNICATIONS ALLIANCE SUBMISSION
DECEMBER 2020

CONTENTS

INTRODUCTION	2
An outcomes-based approach	2
REBATE PASS-THROUGH	3
Operational problems	3
Alternative Service and Appropriate Mitigation Measure	3
100% pass-through	4
Timing of rebates	4
non-NBN carriage services	4
RETAIL SERVICE LEVEL COMMITMENTS	5
Proposed topics for commitments	5
Consumer outcomes	5
RECORD-KEEPING, PUBLICATION AND IMPLEMENTATION	6
CONCLUSION	7

About Communications Alliance

Communications Alliance is the primary telecommunications industry body in Australia. Its membership is drawn from a wide cross-section of the communications industry, including carriers, carriage and internet service providers, content providers, equipment vendors, IT companies, consultants and business groups.

Its vision is to provide a unified voice for the telecommunications industry and to lead it into the next generation of converging networks, technologies and services. The prime mission of Communications Alliance is to promote the growth of the Australian communications industry and the protection of consumer interests by fostering the highest standards of business ethics and behaviour through industry self-governance. For more details about Communications Alliance, see <http://www.commsalliance.com.au>.

INTRODUCTION

Communications Alliance and its members agrees with the goal of appropriately compensating consumers when there are issues with their service, and ensuring they are fully informed when choosing a service through transparent communication of what service levels they can expect.

However, the draft instrument does not achieve these goals. In principle, it is in opposition to the policy position laid out in the Final report of Part B of the Consumer Safeguards Review, and the goal of Government to “overhaul[] consumer protections to better reflect the way that modern telecommunication services are delivered in Australia” and to move away from the historical safeguards that “have been in place for more than 20 years and are highly prescriptive.”¹ The rules proposed instead take the historical prescriptive approach to telecommunications regulation, being network-specific and at a level of detail that would prevent numerous paths towards innovation and service improvement for the period the Determination would remain in effect.

CA members are not convinced that the case has been made to introduce direct retail regulation for rebate pass-through and service level commitments.

We consider an outcomes-based approach would deliver the same results for consumers while supporting competition and innovation. With superfast broadband services in Australia almost entirely provided by one underlying network – with its own established service levels – Retail Service Providers (RSPs) must be able to differentiate themselves via innovation in service to create a competitive market.

We consider it would be open to the ACMA to set expectations for industry regarding transparency around rebate pass-through, mitigation measures and any service level commitments. An outcomes-based approach, focussing on competition within the framework of the Australian Consumer Law, can support positive results for consumers.

Notwithstanding the view that direct retail regulation is not warranted at this stage, this submission addresses the specific challenges with how the ACMA has proposed to approach each of those topics separately.

Industry sees value in the intention of the Draft Determination, and Communications Alliance and its members are eager and willing to engage in further discussions with the ACMA on clarifying the intended outcomes and then developing the appropriate approach by which to achieve those outcomes.

An outcomes-based approach

An outcomes-based approach should allow consumers to be able to make an informed choice of RSP based on what, if any, rebates, mitigation measures or service levels an RSP offers, while giving RSPs flexibility in how they service consumers.

Flexibility in the approach to this issue gives RSPs an opportunity to compete in different ways. For example, one possible approach is to combine rebate pass-throughs and Retail Service Level Commitments into one.

As the pass-through of the relevant rebates to ensure fair value benefit is available to consumers is already included in the terms of WBA4, how an RSP chooses to implement that could form part of the value proposition that they put forward, as this is an activity over which RSPs have control. This allows customers to decide what solution they prefer.

¹ [Media Release: Modernising safeguards for Australian telco customers | Paul Fletcher MP, Member for Bradfield](#). 17 Dec 2019

Public commitments are subject to the Australian Consumer Law – like existing commitments about speed. However, RSPs should be able to decide the extent of any rebate or service commitments they may be willing to make in line with their obligations under WBA4, or how they feel they can best compete for customers or how they want to position themselves in the market. This could be done with a simple, non-prescriptive, outcomes-based approach.

REBATE PASS-THROUGH

WBA4 stipulates that RSPs must take reasonable steps to ensure that for the rebates for missed appointments, an equal amount is paid or credited to customers. Rebates for late connections, late fault rectifications, PIR speed objectives and fixed wireless congested cells can be passed through in a form that provides a fair value benefit, providing appropriate protections and service levels for consumers.

Considering that this draft determination was developed and published prior even to the publication of WBA4, it is attempting to solve a problem that is not in evidence – namely, it has been developed based on the assumption that these commercial provisions in WBA4 will not be successful. We disagree strongly with the ACMA's assertion that these arrangements do not provide sufficient confidence that rebates and benefits will flow directly to customers. This is in direct contradiction to good public policy practice, as the first question in the Regulation Impact Statement process is "What is the policy problem you are trying to solve?"² – and in this case, the full suite of rebates offered to RSPs do not even come into effect until March 2021, and thus there is no possible way for there to be evidence that the WBA terms are not working or are ineffective.

While the Determination does not address an existing problem, it does create a significant one. Introducing these rules would undermine RSPs' ability to develop other, broader based measures to improve customer service (even more broadly than direct rebates to specific customers) that then allow them to differentiate in a competitive market. It also imposes unnecessary costs on already tight RSP margins through system changes and reporting and compliance obligations.

Additionally, the prescriptiveness of the draft Determination, considered in conjunction with the complexity of the rebate structure in WBA4, means that putting such an instrument in place would almost certainly result in the Determination coming into conflict with the WBA as it evolves in the future. This is another reason why layering a complex Determination upon existing contractual arrangements is not an efficient or effective regulatory solution.

Operational problems

Alternative Service and Appropriate Mitigation Measure

Question 2: Other than the missed appointment rebate, is it appropriate that rebates be passed through to affected consumers either in a monetary form or as an appropriate mitigation measure?

Question 3: Is the definition of 'appropriate mitigation measure' suitable?

As noted previously in this submission, we agree that rebates or other arrangements should be provided to consumers when appropriate – in accordance with WBA4 and RSPs' strategies. It is appropriate that the rebate could take a range of forms (excluding for missed appointments and for the FTTN/B/C Connection Performance Rebate), as this encourages innovation from RSPs, ultimately benefiting consumers – and also allows RSPs to align these actions with those required under the *Telecommunications (NBN Continuity of Service) Industry Standard*.

² [Australian Government Guide To Regulatory Impact Analysis, Department of the Prime Minister and Cabinet](#), 30 March 2020.

The specific definition of 'appropriate mitigation measure' in the proposed rules is different than the requirements in WBA4 – this creates unnecessary complexity if there are differences or even inconsistencies as the WBA will continue to change over time. It also does not align with the intention of the rebates – the dollar value of rebates RSPs can pass through to customers is not set based on each customer's individual experience, and thus setting a requirement that an alternative measure must be calculated in that way creates a substantially different obligation.

Finally, the loss or detriment suffered by a consumer will be an extremely subjective measure. Asking RSPs to determine this for each circumstance will create significant implementation complexity and cost.

100% pass-through

Question 4: Is it reasonable to require the full amount of a rebate (or appropriate mitigation measure) to be passed along the supply chain to the end user? If not, what alternative can be suggested? Please provide details.

These rebates serve multiple purposes – to incentivise the network operator and to compensate both the consumer and the RSP for time, effort and costs incurred. This shouldn't be about a specific percentage being passed on or not.

Costs are incurred when specific service levels have not been met – communication, scheduling, staff time, costs of providing an alternative service – but also are an underlying requirement of this commercial framework, in that RSPs must have structures in place to pass through complaints, manage faults, and pass-through rebates.

The rules should acknowledge this and appropriately allow RSPs to recover some costs associated with managing a missed service level. To contemplate implementing a specific percentage of rebates for pass-through is not consistent with an outcomes-based approach.

Timing of rebates

The Determination's specific requirements also create cash-flow issues for RSPs. A customer's billing cycle may not align with what steps nbn is required to take per the WBA4 – thus forcing an RSP to pay a customer a rebate before they have received confirmation about what the rebate from nbn will be. Furthermore, other activities may need to be resolved between the network operator and RSPs, for example billing disputes, before a rebate is able to be provided to the consumer, and these are not considered in the draft Determination.

non-NBN carriage services

Question 1: Should the rebate pass-through obligations for unmet connection, fault, appointment-keeping and speed service standards apply to providers of all superfast carriage services as stipulated in the draft Determination? If not, what obligations should providers of non-NBN carriage services have? What would be the ramifications for consumers on non-NBN services if no obligations were required?

We consider that this is a question that needs to be considered in a first stage outcomes/policy level discussion, before reaching the point of developing a detailed draft Determination.

The question of technology- or network-neutral consumer protections has been a key issue canvassed in the Consumer Safeguards Review, and it would be appropriate for the Government, Department and ACMA to coordinate on an approach to this question – in consultation with industry (including specific consultations with non-NBN network operators) and consumers, before moving ahead with a new instrument that creates significant rule differences between network types.

RETAIL SERVICE LEVEL COMMITMENTS

Question 5: Should it be a requirement for retail CSPs to make retail service level commitments as stipulated in the draft Determination (noting that the requirement to pass through rebates would still apply)? If not, what level of commitments should retail CSPs be required to make and how should this be communicated to their customers?

Question 6: Does the draft Determination specify the provision of all the information consumers should have access to about service levels for connections and faults?

Question 7: Does the draft Determination specify an effective way of allowing consumers to be aware of retail service level commitments (and remedies) to enable them to make an informed choice before choosing a telco provider? Are there more effective ways of promoting consumer awareness?

Industry agrees that consumers should be informed of their options, and that RSPs should be held to account for representations made, as is already required in the Australian Consumer Law (ACL).

However, the specific topics proposed in the draft Determination are not ones that RSPs have control over, creating a number of problems while not providing useful information to consumers or allowing RSPs to differentiate themselves in a competitive market. This also means that the commitments are questionable under the Australian Consumer Law (ACL) if RSPs do not have a reasonable basis for making claims.

Proposed topics for commitments

Quite simply, timeframes for connection and fault rectification are not completely within the control of the RSP where an activity involves multiple levels of the supply chain, as RSPs can be reliant on the network provider or other intermediaries to take a number of actions.

Thus, this proposal would require RSPs to make commitments about issues over which they do not have control – potentially raising questions of compliance with the Australian Consumer Law (ACL), if RSPs do not have a reasonable basis for making commitments.

The fact that these timeframes are usually reliant on the network provider also means that this is not a useful piece of information for consumers to make value proposition decisions when choosing a provider, as RSPs will not be able to differentiate themselves.

Additionally, requiring RSPs to make commitments about matters that may be under control of the network operator could create significant consumer confusion, as a consumer would then accord any challenges to the RSP and assume that transferring RSPs would resolve a problem that may not be within control of the RSP.

Finally, the level of detail in WBA4 on these topics is extensive – including exceptions to service levels, and there is no practical or reasonable way to accurately simplify this information in order to be able to communicate it to consumers.

Consumer outcomes

As noted, we do support ensuring consumers have access to transparent and appropriate information about the service levels they can expect from their RSPs, and have considered that issue closely during this consultation period.

If an RSP is not acting sufficiently quickly or appropriately communicating with a consumer about a fault or other problem with their service, there are extensive complaint handling rules and protections in place, and more importantly – as intended by Government in rolling out the NBN, there are numerous RSPs offering these services in a competitive market, and customers can easily transfer their services. In fact, with the structure of the network being provided by one company, customer service is one of the only ways in which RSPs can

distinguish themselves, and thus it is vital for continuing competition that they are able to do so.

We understand that the Part B Final Report did include recommendations around retail service commitments, but it also noted that "implementation will need to consider existing information provision requirements in the sector, such as critical information summaries, requirements to publish complaints handling policies and to provide key NBN fact sheets."³

Industry supports customers having information on RSP performance, thus our recommendation of the expansion of the Complaints in Context report and subsequent implementation.⁴ There are also reports from the TIO and the ACCC's Measuring Broadband Australia report that provide information on RSP performance.

These are on top of the extensive information available to consumers via rating websites, reviews, and word of mouth – all of which empower consumers to make decisions based on actual customer experiences. This information is also accessible and easily understandable for consumers – whereas the types of information proposed by the ACMA in the draft Determination would, by necessity of the supply arrangement, be exceedingly complex and only relevant to consumers in extremely specific circumstances.

Considering the above, during this consultation period Communications Alliance was not able to identify any service aspects (that are both solely within an RSPs control and could be reasonably publicly referred to considering ACL requirements regarding commitments) that consumers do not have ready access to information on. We would be open to further discussions with the ACMA on this matter, and once again would recommend discussions on goals and outcomes prior to the development of a revised draft instrument.

RECORD-KEEPING, PUBLICATION AND IMPLEMENTATION

Question 8: In what ways could the record-keeping and reporting obligations be streamlined to keep costs to a minimum?

Question 9: When should obligations in the ACMA's draft Determination for rebate pass-through and retail service level commitments commence? What factors should be considered in setting the commencement date?

We note that the proposal of monthly reporting would be extremely onerous, creating significant costs and impacting internal resources with questionable benefit to consumers.

Regarding implementation, if the current proposals in the draft Determination were introduced, it would likely require significant resources and time to build and implement the various operational and technical processes and make system changes. Additionally, RSPs who do not have a direct relationship with nbn may be required to re-negotiate contractual clauses with their upstream providers.

We look forward to further engaging with the ACMA on these issues following its consideration of submissions.

³ [Part B: reliability of services—Consumer Safeguards Review—Final report | Department of Infrastructure, Transport, Regional Development and Communications](#), p 14.

⁴ [Communications Alliance - Complaints in Context Reports](#)

CONCLUSION

Australians have consistently benefited from a competitive telecommunications market, driving service and technology innovation - including the increasingly flexible contracts on offer and consistently decreasing real costs.⁵

Retail competition, in balance with the extensive consumer protections already in place through legislation, standards and codes – both telecommunications specific and economy-wide – is the best way to maximise consumer benefits.

Industry agrees that consumers should be well-informed about the retail service commitments and remedies offered by RSPs. However, the draft Determination would severely restrict competition while not actually improving consumer experience in service connections or fault rectification. We are interested in working further with the ACMA to develop solutions to any identified problems that remain following the implementation of the significant improvements contained in WBA4.

⁵ [ACCC Communications Market Report 2019-20 December 2020](#), p 1.



Published by:
**COMMUNICATIONS
ALLIANCE LTD**

Level 12
75 Miller Street
North Sydney
NSW 2060 Australia

Correspondence
PO Box 444
Milsons Point
NSW 1565

T 61 2 9959 9111
F 61 2 9954 6136
E info@commsalliance.com.au
www.commsalliance.com.au
ABN 56 078 026 507