

**COMMUNICATIONS
ALLIANCE LTD**



ACMA Consultation Paper

*New rules to protect consumers migrating to the
National Broadband Network*

*Part 2: Improving consumer information and
ensuring service continuity and quality*

COMMUNICATIONS ALLIANCE SUBMISSION

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Executive Summary

The migration of all Australians from legacy networks to a new National Broadband Network is a complex undertaking that is unprecedented in Australian history. Industry is fully committed to facilitating this migration in an efficient way with as little disruption as possible and will boost its efforts to improve the migration experience for consumers through various measures.

Industry does not consider the three proposed instruments to be an appropriate means to achieve the desired objective of improving the consumer experience moving to the NBN.

The instruments are, to varying degrees, unlikely to achieve an improved migration experience and, worse, bear the real risk of being detrimental to it. They also entail the risk of creating a perception that the migration to the NBN can be delayed or is optional, and of creating unrealistic consumer expectations.

The instruments are also, again to varying degrees, very time consuming and costly to implement. The estimated costs of \$1.49M are completely unrealistic. The costs of implementation, in particular for the *Telecommunications Service Provider (NBN Line Testing) Determination 2018* (LT Determination) and the *Telecommunications (NBN Continuity of Service) Industry Standard 2018* (SC Standard), will be multiple times higher than the stated figure.

Implementation timeframes of only three months, as envisaged by the Ministerial Direction, are challenging for some aspects of the instruments and completely unrealistic in many other areas. This is especially the case with regards to the SC Standard.

It is important that the proposed instruments align with other instruments or guidance from other regulators to avoid the introduction of inefficiencies and confusing customer processes which overlap current regulatory requirements. This is, unfortunately, not the case as the instruments take an approach to speed measurements and advertising that deviates from formal guidance provided by the ACCC. The SC Standard also appears to insufficiently consider existing Industry Guidelines and regulation.

In light of the proposed instruments, Industry cannot overstate the importance of keeping firmly in sight the objective to migrate all consumers to the NBN as efficiently as possible. Any measures designed to mitigate temporary difficulties must be considered with caution and the potential distraction that they may introduce should be weighed against the benefits of focusing all available resources on the declared objective. It is key to not only consider technical feasibility but also the logistical and economic practicalities to ensure that any measures designed with the intention to improve the migration experience strike the right balance of actually enhancing the customer experience without introducing unnecessary complexities, costs – which are ultimately borne by consumers – or worse, migration delays.

In addition to the general concerns raised above, areas of particular concern in the three instruments under consideration include (but are not limited to):

Telecommunications (NBN Consumer Information) Industry Standard 2018:

- the level of unnecessary and unhelpful prescriptiveness of the CI Standard; and
- the misalignment of the CI Standard with the *ACCC Broadband Speed Claims Industry Guidance* (Guidance).

Telecommunications Service Provider (NBN Line Testing) Determination 2018:

- impracticalities resulting from the large volume of tests required;
- the misalignment of the LT Determination with the *ACCC Broadband Speed Claims Industry Guidance* (Guidance);
- the resultant misinterpretation that network/plan related speed measurements and advertising can be equated to a promise to an individual consumer;
- the methodology of the consumer-initiated layer 3 speed testing; and

- the timeframes stipulated within the LT Determination.

Telecommunications (NBN Continuity of Service) Industry Standard 2018:

- the undue focus onto reconnection to a legacy network instead of service continuity which can be achieved through various alternatives services, including a consumer's own mobile service where this service is not provided by the Carriage Service Provider (CSP) providing the NBN service;
- a significant lack of understanding of the workings of consumer migrations to the NBN, including the fact that a consumer's migration to the NBN cannot be progressed once a consumer has been reconnected to a copper-based legacy network, thereby leaving reconnected customers stranded or subjecting them to the risk of repeated reconnection-migration cycles;
- the large-scale diversion of resources away from the stated aim of migrating consumers to the NBN;
- the consumer detriment that is likely to result from consumers being reconnected to a legacy network (including where the access technology is not copper-based);
- the timeframes stipulated within the SC Standard.

The timeframes imposed by the Ministerial Direction are very tight. However, Industry highlights the need for a thorough discussion with all stakeholders to ensure that the new instruments are workable and, most of all, does not degrade the customer experience.

Introduction

Communications Alliance welcomes the opportunity to comment on the Australian Communications and Media Authority's (ACMA) Consultation Paper *New rules to protect consumers migrating to the NBN, Part 2: Improving consumer information and ensuring service continuity and quality* (Consultation Paper).

This submission provides feedback on the three draft instruments discussed in the Consultation Paper:

- *Telecommunications (NBN Consumer Information) Industry Standard 2018* (CI Standard)
- *Telecommunications Service Provider (NBN Line Testing) Determination 2018* (LT Determination)
- *Telecommunications (NBN Continuity of Service) Industry Standard 2018* (SC Standard)

For questions, please contact Director Program Management, Christiane Gillespie-Jones, at c.gillespiejones@commsalliance.com.au.

We agree to the publication of this submission.

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>.

1. Cost-benefit considerations

Industry appreciates that the migration of the nation to a National Broadband Network (NBN) has caused significant disruptions, and our Industry will boost its efforts to improving the migration experience for consumers through various measures. However, Communications Alliance raises strong concerns regarding the overall analysis and scrutiny that the proposed regulatory instruments have undergone with regards to their costs and benefits.

We note that the cost estimate of \$1.49M¹ for the implementation of the instruments contained in the Ministerial Direction, which was included in an (unpublished) Short-Form Regulatory Impact Statement, is completely unrealistic. The costs for implementation of the instruments, in particular the LT Determination and the SC Standard, will be multiple times higher than the stated figure.

Importantly, it is key to understand that the proposed CI Standard, LT Determination and SC Standard will take a significant amount of time and effort to implement (even if implementation begins immediately upon the instrument being made) and address issues that will naturally diminish or disappear within two to three years, i.e. upon completion of the rollout of the NBN.

With such extraordinarily high costs to be incurred for a very limited timeframe and phenomenon, one would expect significant consumer benefit to be likely to materialise to balance out those costs. However, as will be argued below, while some measures may improve the consumer experience, others, especially the proposed SC Standard, are more likely to be detrimental to the consumer migration experience.

Therefore, we contend that the benefits associated with the implementation of the proposed instruments do not outweigh their costs – which are largely borne by consumers. Consequently, all three instruments ought to be scrutinised and be reconsidered against this background.

2. Telecommunications (NBN Consumer Information) Industry Standard 2018

Industry appreciates the need for consumers to have access to relevant information about the telecommunications products and services that they are purchasing, including about products and services that relate to their migration to the National Broadband Network (NBN). Such information ought to be useful; clear and accurate; provided at the appropriate time; not confusing or contradictory to information that consumers may receive through the same or other channels; and be limited in volume, to avoid 'information overload'.

Any regulation for the provision and content of information that is being provided to consumers should be outcomes-focused and as non-prescriptive as possible, to allow Carriage Service Providers (CSPs) to flexibly engage with their customers in the most efficient and effective manner, while still achieving the desired result. It is also important to bear in mind that much of the costs for the implementation of any regulatory measures are ultimately borne by consumers, and that the benefits of the regulation must outweigh its costs.

Industry notes that the envisaged implementation time of three months for this Standard is difficult to achieve because of the significant system and process changes which will be required, and so should be targeted appropriately to allow industry to implement consumer solutions which meet the Minister's Direction to the ACMA.

This is particularly so in the current, unprecedented environment as Industry is facing a simultaneous compliance requirement against no fewer than five proposed ACMA Standards and Determinations, as well as an onerous proposed Record Keeping Rule (RKR).

¹ Government advised Communications Alliance of this figure.

We also highlight that the CI Standard (or any other regulatory instrument) must align with other instruments or guidance from other regulators to avoid the introduction of inefficiencies and confusing customer processes which overlap current regulatory requirements. For example, most of Industry has adopted the ACCC *Broadband Speed Claims Industry Guidance* (Guidance) recently published by the ACCC. CSPs must not be exposed to potential 'double jeopardy' situations when processes implemented to comply with one set of regulations fall foul of those introduced by another.

It is in this light that Communications Alliance offers the following comments on the proposed CI Standard.

Relationship of the CI Standard and the *Telecommunications Consumer Protections (TCP) Code*²:

1. It is our understanding from the Consultation Paper and conversations with the ACMA that the proposed CI Standard "builds on the foundation of existing consumer information requirements of the Telecommunications Consumer Protections (TCP) Code and current industry practice."³ Industry shares the view that, wherever possible, the proposed new CI Standard ought to align with similar provisions of the TCP Code, other regulatory instruments and industry practice. Consequently, we suggest the following amendments to the CI Standard which remove duplication and allow CSPs the flexibility to deliver the desired consumer outcomes:
2. Ensure that the requirements to make available the information contained in the key facts aligns with the implementation of the requirements of the TCP Code in that the key facts are not required to be made available as a separate document (i.e. neither as a physical document nor as separate digital file such as a PDF) but can be made available online. Also refer to our discussion in item 26 further below.
3. Amend paragraph 7(1)(d) to require making a copy of the facts sheets available free of charge at a CSP's store, i.e. remove the reference to a 'physical location'. The latter term would include pop-up stalls in malls etc. which typically fall under unsolicited sales provisions. The proposed drafting unnecessarily deviates from the clause 4.1.1 (d) (iii) of the TCP Code and complicates CSP processes, thereby adding to compliance costs.
4. Amend paragraph 7(3) to align with the requirements of clause 4.1.1 (e) (ii) of the TCP Code: The proposed CI Standard ought to allow customers to opt out of receiving all of the information contained in the key facts and, where the customer has done so, only require the CSP to provide a general overview of the key facts prior to or at the point of sale and the subsequent dispatching of the key facts within 5 working days. In their overview, CSPs ought to include the essence of the information required in paragraphs 9(a) and 10 of the CI Standard, noting our comments on removing the requirements of paragraphs 13(2) and (3) further below.
5. Note that paragraphs 7(3)(b) also ought to refer to the dispatching of the key facts rather than the provision of the document to avoid uncertainty around what constitutes provision in this context.
6. Amend paragraph 11(1)(a) to exclude small online advertising (defined as online strip, banner or tile advertising or the equivalent) from the requirement to include the information referred to in paragraph 8(b) and (c). Given the size of the advertising and the volume of information required to be provided, it is impractical to include this information in such

² Unless stated otherwise, references to specific clauses of the TCP Code refer to the TCP Code 2015 as registered with the ACMA.

³ p. 5, ACMA, *New rules to protect consumers migrating to the NBN, Part 2: Improving consumer information and ensuring service continuity and quality*, Consultation paper.

advertising. The suggested exclusion of small online advertising aligns with the requirements of clauses 4.1.1 (d) (ii) and 4.2.6 of the TCP Code.

7. It is Industry's view that CSPs should be allowed to provide the proposed key facts (also see item 26 below) either separate to the Critical Information Summary (TCP Code clause 4.1.1) or combined with the Critical Information Summary, and in the latter case the combined information, if contained in a document, ought to be no longer than three A4 pages. This means that the CI Standard ought not prescribe whether or not the key facts are separate from a Critical Information Summary. This approach is feasible if the CI Standards is amended to align with the provisions of the TCP Code as set out above.

Relationship of the CI Standard and the ACCC *Broadband Speed Claims Industry Guidance*:

8. In August 2017, the ACCC published its *Broadband Speed Claims Industry Guidance* and many CSPs have already altered their advertising accordingly to follow the ACCC Guidance, to reduce the risk of enforcement action on the basis that their advertising could be deemed misleading. Consequently, with respect to speed claims, it is important to ensure that the CI Standard does not introduce additional or, worse, contradictory or conflicting requirements. It is key that CSPs complying with the CI Standard are not adjudged to have fallen short of the Guidance, and vice-versa, where the requirements of the CI Standard and the Guidance relate to essentially the same matters e.g. regarding statements around speed tiers and typical busy hour speeds.
9. Against this background, we note that paragraph 8(a) of the CI Standard requires CSPs (if they are using speed tier information to describe NBN consumer plans in their advertising) to state that "actual speeds experienced are likely to be lower" (emphasis added). However, item 5.9 of the ACCC Guidance indicates that CSPs are acting in line with the principle of not misleading consumers where they include "a statement that this [the maximum attainable line speed of the underlying wholesale access network] is an 'off peak' measure only" (and a numerical representation of typical busy period speed). The two requirements are not the same as the ACCC Guidance is contingent on CSPs advertising speed tiers whereas paragraph 8(b) of the CI Standard is not. As many CSPs have implemented measures to comply with the ACCC Guidance in their advertising and to avoid confusing consumers by changing established advertising practices, we request that the CI Standard adopt the same language as the ACCC Guidance i.e. only where CSPs use speed tiers to describe the consumer plan in their advertising should they be required to indicate that this is an off-peak measure only and provide a typical busy period speed in accordance with the ACCC Guidance.
10. It should also be noted that paragraph 8(b) as currently drafted would require CSPs to state the typical busy period speed for fixed wireless and satellite services for which no speed testing is currently being performed.
11. The ACCC Guidance also stipulates in item 5.10 that access speed can be used "as a measure of the typical off-peak speed provided this is a reasonable approximation of the plan speed across the off-peak times." A blanket statement that actual speeds are likely to be lower, as required by the proposed CI Standard does not, therefore, reflect the ACCC Guidance and ought to be amended accordingly.
12. Similarly, it should be made clear that CSPs are allowed to use the numerical values that they have derived for the typical busy period for purposes of following the ACCC Guidance.
13. In this context it is important to highlight that the ACCC Guidance with regards to the typical busy period speeds (and other areas of guidance) was created with a view to allowing consumers to compare speeds at a network and plan level. Consequently, the

busy period speeds do not constitute a promise to individual consumers. (Also refer to our comments at item 17ff of our submission on the LT Determination.) Therefore, paragraph 8(b) ought to be amended to reflect this, i.e. the paragraph ought not refer to the “typical download speed that a consumer will experience” (emphasis added) but to the typical busy period speed which is the speed that underlies the consumer’s plan.

14. For ease of reference and comparison, we also recommend replacing the term ‘peak times’ with the term ‘busy period’ (as used in the ACCC Guidance) in the definitions and paragraph 8(b) of the CI Standard.
15. Please also refer to our comments on speed measurements in the section of this submission that relates to the *Telecommunications Service Provider (NBN Line Testing) Determination 2018*.

Explanations of data and speeds:

16. Industry agrees that speed tier information can be enhanced by including statements about minimum or typical busy period speeds and information about how the advertised speeds may facilitate certain usages. Conversely, where CSPs do not advertise their service using speed tiers, it would be unreasonable to mandate provision of such information, as no expectation regarding speeds and usage has been created and, therefore, no consumer detriment can be caused. Given the dynamics of the communications industry it is conceivable or already the case that CSPs may not advertise their services with an underlying speed claim, e.g. CSPs may opt to offer a broadband service that is speed and technology neutral.
17. Consequently, the entire paragraph 8 ought to only apply to cases where providers have used speed tiers in their advertising, i.e. the limitation “if speed tier information is used to describe an NBN consumer plan in its advertising material” contained in paragraph 8(a) ought to be moved up to the preceding sentence to then read “If speed tiers are used to describe an NBN consumer plan in a provider’s advertising material, the key facts referred to in section 7 must:...”.
18. Applying the same reasoning, paragraph 11 equally ought to only apply in cases where providers have used speed tiers in their advertising.
19. The draft CI Standard requires CSPs to provide a description of the number of connected devices and the kinds of online applications that can be used in a household at the same time. This is completely impractical and not useful for consumers. The number of devices that can be used depends on many factors, including the nature of each device and the use that it is put to. For example, a consumer may be able to use hundreds of smart IoT devices and sensors that use very little data at the same time but may only be able to use a single TV (to the exclusion of all other devices) to stream an UHD movie at a time. The vast number of different types of devices (phones, computers, tablets, TVs, sensors, etc.) combined with an equally large number of applications and usage profiles (web browsing, VoIP, video streaming, gaming, etc.) means that only a broad overview rather than a more definitive indication can be offered to consumers in the key facts or in advertising.
20. However, Industry appreciates that consumers may wish to consider the relationship of their plan and their intended usage of devices prior to purchase, along with other matters that ought to be considered, such as minimising interference and the location of a Wi-Fi modem in a home.
21. Consequently, Communications Alliance suggests replacing the current paragraph 8(b) with a general statement that the number of devices that can be used simultaneously will,

among other factors, depend on the online activities carried out over those devices along with a hyperlink to the Communications Alliance *Broadband Education Package*.⁴

22. It should be noted that clause 4.1.3 of the TCP Code already requires CSPs to “provide usage information that can help Consumers predict their average level of telecommunications usage and what Offers may be suitable for that level of usage” where consumers identify a need to the CSP. Industry considers the two requirements, i.e. the suggested amended version of paragraph 8(a), including the link to the *Broadband Education Package*, and the provisions of the TCP Code provide consumers with adequate information when purchasing an NBN service.

Advice about NBN services:

23. As highlighted above, consumer information ought to be provided at the appropriate time during the customer engagement process. However, paragraph 12(2)(a) requires CSPs to provide information around medical alarms to each consumer who is enquiring about acquiring an NBN service. This is not warranted or useful. Paragraph 10 already requires CSPs to provide such information in their key facts, which are available to consumers at any time on a CSP’s website and will be actively ‘pushed out’ to consumers as part of the sales process (but prior to sale). Therefore, we request the removal of paragraph 12(2)(a) and (b) and suggest the inclusion of a hyperlink to the medical alarm register in the key facts.
24. Following the same logic, we request removing paragraph 12(3) as this information is already being provided in the key facts.

Retaining a telephone number:

25. We note that, while consumers can, in most cases, retain their number when moving to the NBN, however, there may be limitations or variations to the use of that number, e.g. the service provided may have different service characteristics that may apply in transition to an NBN service such as the voice service being one-way only, or bi-directional. It is expected that CSPs will make this information available as part of their key facts and their Standard Form of Agreement.

Key Facts Sheet:

26. Paragraph 1(a) states that CSPs must prepare “a separate key facts sheet containing information about NBN services [...] for each NBN consumer plan offered” (emphasis added). Communications Alliance contends that this level of prescription is not justified and will increase compliance costs unnecessarily and substantially without attendant consumer benefit. Where CSPs are able to prepare key facts for groups of plans (or even all their NBN consumer plans) while still including all information as per the CI Standard, they should be allowed to do so. The CI Standard ought to clarify this.
27. We note that the name “Key Facts Sheet: NBN Services” appears to suggest that the information is contained in a document such as a physical document or a PDF. However, as also currently the case with Critical Information Summaries, CSPs more often display the required information online, i.e. without converting it into a PDF or similar. Accordingly, we suggest that the information in question must be labelled with “Key Facts: NBN Services” (i.e. omitting the word ‘sheet’) and to amend the CI Standard to indicate that the key facts are

⁴ The Communications Alliance *Broadband Education Package* can be found at <http://www.commsalliance.com.au/BEP>. However, it is not suggested that CSPs have to link to the Communications Alliance website itself.

not required to be contained in a single file or physical document but can also be displayed online on a website.

Record keeping:

28. Paragraph 13(a) requires CSPs to keep records that are “sufficient to demonstrate its compliance with the requirements of Parts 2 and 3”. It ought to be clear that the requirement to keep records to demonstrate compliance pertains to the processes that a CSP has put in place for the various scenarios in which key facts and other information is being provided, and that it does not require CSPs to keep records of every time the key facts have been made available to a consumer.

Other comments:

29. Industry does not believe that CSPs ought to be obliged to make additional information available, including upload speeds. While upload speeds may be of interest to some consumers, they are of lesser importance for a large majority of consumers and, consequently, ought not to be included into the key facts that is geared at conveying key information.
30. Communications Alliance notes that enforcement of the CI Standard lies with the ACMA. We recognise that the Telecommunications Industry Ombudsman (TIO) will be able to accept and investigate complaints in relation to the CI Standard. However, we note that the TIO ought not be given any additional powers beyond its existing role.

3. Telecommunications Service Provider (NBN Line Testing) Determination 2018

Communications Alliance appreciates that the migration of a nation to a new network is a once-in-a-generation effort that requires a vast amount of commitment and resources from all stakeholders to ensure that the transition to the new network creates as little disruption as possible. Industry agrees that consumers migrating to the NBN must have an effectively working new connection and ought to enjoy the internet speeds that they have contracted for.

However, it is important to bear in mind that any additional measures required from Industry, such as the testing proposed in the *Telecommunications Service Provider (NBN Line Testing) Determination 2018* (LT Determination) and the *Telecommunications (NBN Continuity of Service) Industry Standard 2018* (SC Standard), will put further strains on already stretched resources and that those measures, if not well targeted, risk causing distraction and diversion of resources from the actual task at hand, namely the most effective and efficient migration possible.

It is, therefore, key to not only consider technical feasibility but also the logistical and economic practicalities to ensure that any measures designed with the intention to improve the migration experience strike the right balance of actually enhancing the customer experience without introducing unnecessary complexities, costs – which are ultimately borne by consumers – or worse, migration delays. It is critical that any testing requirements are narrowly targeted and necessary to address any existing, documented issues with the migration to the NBN rather than being imposed on the basis that those measures may only be potentially useful or ‘nice to have’.

Volumes and timeframes:

1. The rollout of the NBN is progressing rapidly, with nbn currently activating between 25,000 and 40,000 premises per week. It is forecast that this number will be increasing once the HFC rollout resumes.
2. Apart from some significant technical difficulties that the LT Determination poses (discussed further below), Industry holds grave concerns with the proposed LT Determination on the basis of the sheer scale of the exercise. It is critical to understand that the proposed measures not only require the physical execution of several tests but also involve large scale additional engagement and communication with consumers who are, understandably, not necessarily leading their lives to fit in with migration processes and CSP testing procedures thereby compounding the problems of managing large scale testing within tight timeframes. Testing may require cooperation from consumers, which makes adherence to such a short timeframe impossible in such circumstances. The difficulties relating to scale and timeframes are even more pronounced in cases where the retail CSP requires assistance or any form of input from another CSP in the process.
3. For smaller CSPs, that may have to perform fewer tests, it is likely that the testing is not automated, thereby creating additional difficulties for meeting a one-day turn-around. Importantly, the additional costs involved with the measures proposed in the LT Determination (and the SC Standard) may negatively impact smaller CSPs' ability to compete and even force some of them out of the market.
4. Therefore, it appears impossible to comply with the timeframe of performing post-activation tests within one working day as required in paragraph 8.
5. For the same reasons, performing a layer 3 speed test within one day of receiving a request from a customer appears impossible in many circumstances.
6. It should be noted that not only are the timeframes for the various tests difficult or impossible to meet, but also the implementation period of three months would be almost impossible to

adhere to if the LT Determination remained as currently drafted. This is because of the combination of the large volumes of tests, the technical difficulties of performing some of the tests, the extraordinary departure from current billing practices and the additional processes around remediation that may arise as a result of the testing (and re-testing), especially with regards to the consumer-initiated layer 3 testing, just to mention a few.

Technical challenges:

7. Paragraphs 9 and 11 require CSPs to perform a layer 2 line speed test and a layer 3 speed test respectively, both of which involve a modem as an end-point. Industry highlights with great concern that such testing is not possible where the customer is using a modem that has not been supplied by the CSP as the modem may not be configured to support accurate testing. Speed tests performed by CSPs rely on a set of protocols (e.g. TR-069 and TR-143) that are integrated into modems. These protocols allow CSPs to communicate with the modem, performing tasks including running speed tests and to receive diagnostic information. Each CSP will load a predefined configuration onto modems that it provides to its customers, allowing the device to register and securely connect to the CSP's server via TR-069. This configuration is specific to the CSP and the device that they are using, as each modem model may have different capabilities and implementations of the protocols that need to be mapped back to the server. When a customer chooses to use a third-party modem, this modem will not be configured to communicate with their CSP, and it is unlikely to be able to be reconfigured due to the aforementioned different implementations of TR-069 on the modem. Consequently, in these circumstances (third-party modem) the required test is not feasible.
8. Therefore, the LT Determination must be amended to exclude circumstances in which consumers are using a modem which has not been provided by their CSP. CSPs can inform their customers that they will be unable to perform the proposed layer 2 line speed test and the layer 3 speed test if customers connect their own device.
9. Also refer to our comments on consumer-initiated tests for further technical issues that relate to layer 3 speed testing.

Charging:

10. Paragraph 10 of the LT Determination states that CSPs must not charge a consumer for their next-generation broadband NBN service, unless the service is operational and, roughly speaking, a positive line capability test has been obtained, or the CSP and customer have come to an agreement around a remedy where this is not the case.
11. Industry agrees that there ought to be principles that ensure that customers do not pay for non-operational services and ought not to pay the full amount when they are not receiving the speeds that they have purchased, where a CSP or nbn is at fault. (Also refer to our discussion on speed measurements.)
12. However, it must be absolutely clear that CSPs are allowed to charge and bill their customers in such circumstances and to subsequently refund/rebate any amounts or apply credits to future bills. Any requirement that implies that CSPs must not commence charging or discontinue charging in such circumstances is completely infeasible as – where possible at all – this would require large scale and extremely expensive adjustments to billing systems. It is important to understand that many providers charge their customers upfront and cannot accommodate a strict 'do-not-charge' requirement, and that where providers do not charge upfront, the billing systems in place are not designed to be 'switched on and off'.

13. Consequently, we request that paragraph 10 be amended to reflect the realities of complex billing systems and to allow for the common practice of refunds, rebates and credits.
14. Recognising that the majority of faults that result in low speeds on FttN/B/C connections are caused by incorrect or faulty customer cabling beyond the network boundary point and WiFi interference, the LT Determination must recognise that, where this is the case, it is the consumer's responsibility to rectify such faults and not the CSP's or nbn's responsibility. (The latter is responsible for access cable faults as far as the network boundary point.) If a consumer declines to accept a CSP's offer to investigate and, where possible, to rectify the fault for a fee, the requirements of paragraph 10 ought not apply at all.

Relationship of the LT Determination and the ACCC Broadband Speed Claims Industry Guidance (Guidance):

15. As with the CI Standard, it is imperative that the LT Determination and SC Standard align with the ACCC Guidance to ensure that CSPs are not being held to diverging standards of speed measurements and performance under the different regulatory instruments.
16. Paragraph 11(4) of the LT Determination requires CSPs to take certain action when "the layer 3 speed tests performed [...] indicate that the average download speed over the five layer 3 speed tests is below the typical download speed in peak times specified in the consumer's NBN consumer plan".
17. Noting that the 'typical download speed in peak times' is lacking a definition in the LT Determination, but assuming that this speed measure is supposed to be the same measure as the 'typical busy period speed' as described in Attachment A, items 6. to 11., of the ACCC Guidance, the requirement as stipulated in paragraph 11(4) of the LT Determination creates a higher standard than the ACCC Guidance. This is so as the typical busy period speed (as defined in the ACCC Guidance) is intended to represent the retail plan performance as a whole and is an average over a sample of peak hour speed measurements taken across at least 75 services and averaged for each busy period.
18. The LT Determination requirement inappropriately turns this measure, which was adopted by the ACCC to encourage greater comparability of plans across the market and to provide a general indication of what a consumer may receive, into an individual contractual promise (effectively a minimum speed guarantee) with attendant remedies that must be made available if this new individual speed measure lies below the typical busy hour speed.
19. In its discussion of the speed claim principles, the ACCC makes clear that "the 'typical busy period speed' is the speed that the retail plan as a whole typically delivers".⁵ The ACCC further notes: "As the performance of individual lines may differ for a variety of reasons, only the typical busy period speeds need to be included in advertising."⁶ This clearly suggests that the typical busy period speed is not intended to be a promise in relation to an individual line and the ACCC clearly acknowledges that individual lines may perform differently for a variety of reasons.
20. Importantly, the ACCC Guidance does contain a speed measure suitable for a benchmark of the consumer-initiated layer 3 speed testing of the LT Determination, i.e. the minimum typical busy period speed that provides the basis for speed tier labelling, namely 15Mbps for a 25/5 NBN Ethernet Bitstream Service (NEBS), 30 Mbps for a 50/20 NEBS and 60Mbps for a 100/40 NEBS.⁷

⁵ p.8 ACCC, item 5.3, *Broadband Speed Claims Industry Guidance*

⁶ p.8 ACCC, footnote 15, *Broadband Speed Claims Industry Guidance*

⁷ p.14 ACCC, item 5.34, *Broadband Speed Claims Industry Guidance*

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21. However, as explained above, it is critical to understand that the logic of awarding an individual consumer a right to a remedy on the basis that a layer 3 speed test may return a busy period speed that lies below an advertised network/plan average is incorrect and must not be pursued.
 22. If Consequently, paragraph 11(4) must be amended to reflect the intention and actual workings of the ACCC Guidance.

Consumer-initiated layer 3 speed tests / multiple tests:

23. Communications Alliance appreciates that consumers may wish to request a layer 3 speed test from their CSP and that such tests may be warranted in a limited set of circumstances. In those cases, it is important that tests are performed in a 'consumer-friendly' manner and do not degrade the customer experience. In order for CSPs to be able to perform such testing when reasonably necessary, it is important that the requirement to do so is not unnecessarily wide nor open-ended, and that the testing method does not unnecessarily inconvenience consumers.
24. The proposals for a layer 3 speed test fail to recognise that CSPs and nbn hold a large amount of historical data on the performance of an NBN service. That data can often be used to identify the cause of the customer's dissatisfaction or, as the case may be, to explain to the customer that the service was working well at the time of the perceived slowness, and to assist the customer in reviewing and rectifying customer premises cabling and home network issues. It is important that the available data and ongoing cooperative investigation of home issues be used to understand and resolve issues prior to any download speed testing.
25. It is critical that the proposed testing be integrated with standard diagnostic testing and assurance processes already used by CSPs to rectify service faults that reduce speed. As download speed tests are not diagnostic in nature, consumer-initiated tests as envisaged by the LT Determination cannot be used to direct those processes. Instead, diagnostic testing and assurance should take precedence over download speed testing. The latter may, in some cases, be useful as a check that the assurance process has corrected the speed deficiency. Diagnostic assurance processes address the causes of low speed, allowing CSPs and nbn to determine whether the low speed is caused by low access line speed (for FttN/B/C), congestion in the CSP network, nbn's network or the home network, or packet loss on the access line. Those processes then drive directed repairs which should be attempted prior to further action such as a reduction of a consumer's speed tier. Where a consumer-initiated layer 3 speed test is performed while diagnostic assurance is in progress, test results may not be valid.
26. It is in the interests of consumers to obtain the highest speeds from their services by completing the diagnostic assurance processes and optimising the speed of the line prior to a layer 3 speed test being performed if still required at all. In many cases – where an obvious fault has been rectified – nbn portal testing or CVC testing can show that the cause has been corrected and, consequently, a layer 3 speed test is no longer required.
27. Paragraph 11(3) requires CSPs to perform a layer 3 speed test at least five times on five different days within a certain window and timeframe. Industry contends that this approach will not improve the customer experience and may even be detrimental to it. If a consumer has a problem with the speeds that they are experiencing, then it is unlikely that they would want to wait a further five to seven days until all testing is completed and, where required, a remedy (which might also not be instantaneous) can be put in place.
28. It should also be noted that the test itself may influence the performance of the customer connection. The intent of a speed test is to push utilisation of a service to 100%. By doing so,

normal use of the service will be degraded for the duration of the test, including increased latency (ping) and lower throughput. This may cause consumer to notice buffering, a shift down in adaptive video quality and poorer performance for latency sensitive applications such as gaming and video conferencing. This issue is exacerbated on poorly performing services, as the total available throughput is already lower to begin with and the duration of the test will be extended as a result, i.e. the testing has a greater impact on performance and will last longer.

29. Layer 3 speed tests are also a major concern as they add to congestion and can further reduce the busy period speeds for all consumers on the same CVC. This is exacerbated by the likely overlap of speed tests on the same CVCs as FttN is rolled out to a suburb with most speed complaints arising in the first few weeks after service activation. In normal operation, a single CVC serving approximately 1000 customers has many users with lower speed demands and only a few users with high speed demands (i.e. seeking to use their full 100 Mbps speed). Download speed testing attempts to operate at the full speed tier of the service and hence increases the number of such high-speed users, with proportionate reduction of the rate available to all high-speed users. Even performing only one or two simultaneous download speed tests can significantly reduce the available speed to all users on the CVC for the duration of those download speed tests. As CVCs already have a moderate load of speed testing from consumers (e.g. through freely available testing tools), unnecessary speed testing can further reduce speed to all consumers on the CVC and should be avoided wherever possible.
30. We also highlight that the proposed sample size of the busy period speed measurements will not produce an accurate result, and there will always be considerable statistical uncertainty as to whether the performed tests can be deemed compliant. In the busiest hours, the speed samples from a probe on the same line vary widely with standard deviations in the order of 10% to 20% of the tier speed. This deviation stems from the highly variable demand from a changing number of high-speed users each of whom only downloads for a short time. Standard statistical confidence interval analysis results in the estimated average over n samples having error bars of $1.96 \times s/\sqrt{n}$ (s = standard deviation) either side of the measured estimated average, which for $n = 5$ remains at roughly 9% to 18% of the tier speed. This level of statistical significance is insufficient to direct a decision as to whether a specific speed level has been achieved. Unfortunately, increasing the number of tests to a reasonable sample size (e.g. 75 as per the ACCC Guidance which would reduce the error to 2% to 4%) would considerably exacerbate congestion and further slow performance for all consumers.
31. Instead, CSPs ought to be able to use speed probes as already established in accordance with the ACCC speed testing.
32. Alternatively, but noting our general concerns around suggesting that a typical busy period speed constitutes an individual promise (it does not!), statistically significant results and detrimental effects on the connection performance, Industry suggests that, where required in the circumstances (also refer to our comments further below), a layer 3 speed test with a representative sample of measurements be performed over a 24-hour period that does not include a Saturday, Sunday or public holiday, and that four of those measurements must be performed in the busy period.
33. Unfortunately, as currently drafted, paragraph 11 of the LT Determination is also open-ended, applies beyond the migration window and indeed beyond the migration to the NBN in general as it includes churn between CSPs. It also does not limit the circumstances for which consumers can request the test. As proposed, any consumer who is using an NBN broadband service can request a layer 3 speed test (with a one working day turn around!) at any time during the contract, including multiple times, for any reason (or no reason at all).

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34. While we appreciate the intention of the LT Determination to ensure that consumers migrating to the NBN are receiving the contracted speeds, it appears unnecessary to mandate (customer-initiated) speed tests on the basis of a blanket assumption that speeds may be insufficient or not as contracted. The requirement ought to be drafted to only apply to circumstances where a consumer indicates that they believe that the speeds they are experiencing are not as contracted and the customer is unhappy with that situation and it is reasonably clear that the reason for this does not lie with the consumer and that the lower than expected speeds are unlikely to be of a temporary nature.
 35. It is also not clear why consumers should have the right to request the layer 3 speed tests multiple times (with the same provider, receiving the same service) during a contract lifetime and well beyond any NBN migration activity. This is even more the case as consumers have access to a number of alternative tests that do not involve their CSP.
 36. Industry appreciates that paragraph 11(6) on frivolous and vexatious requests may be aimed at limiting the number of requests, but without further limitations around the circumstances when a test can be requested as discussed above, it is unlikely that paragraph 11(6) would be sufficient to adequately limit the number of requests.
 37. Given the above, Communications Alliance requests the amendment of paragraph 11 to ensure that the requirement to provide layer 3 speed tests upon a consumer's request is not unnecessarily onerous and costly and only targets consumers who are likely to actually experience difficulties with their contracted speed that are the responsibility of their CSP.

Lack of clarity around definitions:

A number of terms used, that are critical to operation of the LT Determination, lack clarity and/or require more technical detail.

38. In particular, we believe that the circumstances in which the SC Standard is triggered (refer to paragraphs 8(2)(a) and (b)) should be clarified, to ensure that it is abundantly clear to CSPs and consumers, when the requirement to supply a legacy or alternative service arises.

Amend the definition:

39. *NBN broadband service* means a broadband carriage service supplied using an NBN Ethernet product, but does not include an NBN voice service.

Add the following definition:

40. *NBN Ethernet* has the meaning given in the Wholesale Broadband Agreement between nbn and retail carriage service providers published on nbn's website at <https://www.nbnco.com.au/sell-nbn-services/supply-agreements/wba.html>, as amended from time to time."

Amend the following definition:

41. *NBN voice service*: means standard telephone service that may be supplied by a CSP over an NBN Ethernet product, and does not include a public mobile telecommunications service, an NBN broadband service, or any other over-the-top voice services.

Amend the definition:

42. *Active or activated* means the consumer's premises have been connected to the NBN such that there is no impediment to a CSP providing an NBN service to a consumer.

Amend the definition:

43. *Layer 2 line rate* means the reported layer 2 downstream synchronisation rate between a modem and a digital subscriber line access multiplexer, or a distribution point unit, where relevant.

The correct international standard term is 'rate' not 'speed'. The layer 2 line test is not a test but only a data lookup of the synchronisation rate of the FttN service in nbn's portal or via the CSP's modem management system.

Amend the definition:

44. *Speed tier range* means the speed or speed range as advertised by the CSP and sold to the consumer.

It is not appropriate to measure CSP consumer plans and the ability to meet speed conditions on the wholesale layer 2 speed tiers sold by nbn to an access seeker alone. The definition ought to reflect a CSP's offering.

Application of the LT Determination:

45. The LT Determination ought not apply to hybrid services. Those services are broadband service that can be delivered using a mix of technologies, including the NBN and one or more other network access technologies, and where the consumer has consented to the use of a mix of technologies in the consumer contract, including in a Standard Form of Agreement.

Record keeping

46. Paragraph 13(a) requires CSPs to keep records that are "sufficient to demonstrate its compliance with the requirements of Parts 2 and 3". It ought to be clear that the requirement to keep records to demonstrate compliance pertains to the processes that a CSP has put in place for the various scenarios in which a test is to be performed, and that it does not require CSPs to keep records of each test ever performed.

Other comments:

47. Some retail CSPs have commented that the rectification of any faults or low speed performance will require the involvement of upstream and wholesale CSPs and that, given the requirements of providing remedies to consumers, those CSPs ought to have an obligation to provide reasonable assistance with resolving any such issues. Such assistance might take the form similar to the requirements as currently drafted in the proposed *Telecommunications (Consumer Complaints Handling) Industry Standard 2018*.
48. Industry notes that it ought to be clarified that the proposed LT Determination only applies to consumers migrating to the NBN and not those consumers who have already migrated to the NBN and are seeking to churn to another CSP. Paragraph 8 appears to be drafted in this light but could be misinterpreted to mean that every time any NBN service has been activated the obligations of the LT Determinations apply. As discussed above, paragraph 11 is fraught with the same issues. Industry suggests clarification of this matter.
49. Communications Alliance notes that enforcement of the LT Determination lies with the ACMA. We recognise that the Telecommunications Industry Ombudsman (TIO) will be able to accept and investigate complaints in relation to the LT Determination. However, Industry is of the strong view that the TIO ought not be given any additional powers beyond its

existing role, i.e. the TIO ought not have powers to direct CSPs that specific tests be conducted or remedies be applied.

4. Telecommunications (NBN Continuity of Service) Industry Standard 2018

As previously noted, the migration of all Australians from legacy networks to a new National Broadband Network is an undertaking that is unprecedented in Australian history. Industry is fully committed to facilitating this migration in an efficient way with as little disruption as possible. This includes our efforts to ensure that consumers migrating onto the NBN are not, as result of the migration of their legacy voice or broadband service, left without access to a working voice or broadband service for an unreasonable period of time. Unfortunately, the complexities and interdependencies that are an inherent part of the migration have resulted in some consumers experiencing an unacceptable loss in service as a result of the migration of their legacy services to the NBN. We agree that there is still scope for Industry to improve the customer migration experience in this regard.

Nevertheless, Industry cannot overstate the importance of keeping firmly in sight the objective to migrate all consumers to the new network as efficiently as possible. Any measures designed to mitigate temporary difficulties must be considered with caution and the potential distraction that they may introduce should be weighed against the benefits of focusing all available resources on the declared objective.

We also highlight the potential for the SC Standard to inadvertently create the perception that consumers can remain on their respective legacy networks and are not required to migrate to the NBN or that the SC Standard could be used as a means to delay migration. All stakeholders, including Government, have worked over the past years towards a consistent message that the migration to the NBN is a desirable and necessary nation-wide project to ensure that the future communications needs of our society can be met. This work must not be jeopardised through the proposed instrument.

Industry appreciates that the timeframes imposed by the Ministerial Direction are very tight. However, we would like to highlight the need for a thorough discussion with all stakeholders to ensure that the new instrument is workable and, most of all, does not degrade the customer experience. To allow for this to happen, it may be necessary to seek an extension to the commencement and implementation timeframes. We note that the Ministerial Direction allows for the SC Standard “to commence in whole or in part no later than three months after the date it is made.”⁸

General premise of the *Telecommunications (NBN Continuity of Service) Industry Standard 2018*:

1. Considering the proposed *Telecommunications (NBN Continuity of Service) Industry Standard 2018* (SC Standard) against the above background, Industry contends that the general premise of the SC Standard is not helpful and, rather, is detrimental to the customer experience. The proposed rules – often technically either extremely difficult or even impossible to comply with – would require Industry to divert a very large amount of resources to the reconnection of consumers to legacy networks (or at best to providing alternative solutions) and away from the actual task at hand, i.e. providing a good customer experience by moving consumers onto the NBN and rectifying any issues that may occur during the migration. The SC Standard must be reconsidered in this light.
2. Communications Alliance appreciates that consumers ought not be left without a service for any longer period of time than necessary and that, where this occurs, a functioning service ought to be available. However, a default requirement to revert to a legacy service is likely to do more harm than good for consumers. Migrating consumers to the NBN is a complex undertaking and is facilitated by a large variety of established processes and

⁸ *Telecommunications (NBN Consumer Experience Industry Standard) Direction 2017*

procedures – many of which are embedded in registered Codes or Industry Guidelines – that have been refined over the past years. Migrating consumers back to a legacy network, where technically possible at all, will be an even more complex task given that there are no established processes and underpinning contractual frameworks. Even more, existing Codes and Guidelines and other regulatory instruments may prevent CSPs from establishing new processes or directly contradict those. This needs to be carefully examined.

3. The SC Standard also fails to consider the use of hybrid service that are designed to offer a broadband service through a mix of technologies, including in circumstances where the NBN service has a fault (e.g. a failure of or damage to NBN or CSP infrastructure) or the connection to the NBN is delayed for whatever reason. This means that such services may offer a fall-back or 'alternative service' that is a temporary replacement until a connection issue to an NBN service can be resolved, or they may offer a permanent solution that does not use the NBN. The current drafting makes use of such services problematic from a supply and contractual point of view. In summary, the notion that consumers are being left without any service in cases of NBN migration delays is overly simplistic and needs to be revisited in order to develop an instrument that aligns more with current and future market realities.
4. Therefore, in the event of a failed migration, access to a service, i.e. service continuity, ought to be the underlying principle of the SC Standard. Importantly, the type of alternative service offered should be at the discretion of the CSP in consultation with the consumer and should take account of the customer's needs e.g. whether the alternative service should be voice only, data only or a combination of a voice and data service. Alternatives might include, but are not limited to, providing a mobile service as a voice service replacement, additional data allowances on a consumer's own mobile service (with options for compensation of costs where appropriate), supplying a broadband dongle, a modem that uses mobile technology, a data SIM or any other type of alternative service facilitated by the CSP where CSPs are able to provide an alternative service. Only in cases where there is no other option that can deliver a service to the consumer and where a reconnection to a legacy network is technically feasible, should a reconnection to a legacy service be considered.
5. To be clear it is not the technical and process-related complexities and costs that are the key reason for our objection to the SC Standard as currently drafted, albeit that these are highly material. Our primary concern is rather the likely significant detrimental effects for consumers that would arise from the implementation of the proposed requirements.

Feasibility, timeframes and legal issues:

6. Given the difficulties or infeasibilities associated with the proposal to reconnect a service to a legacy network – on which we will elaborate below – it appears that a 'grace period' of only two working days during which to make a migration successful (paragraph 8(2)) is extremely short. This timeframe does not take into account the realities of the migration exercise, i.e. many migrations simply require a longer timeframe. Where a migration is not successful (noting that the very definition of success is presently insufficiently clear in the drafting) within that timeframe, diverting resources away from the task of completing the migration to reconnecting a legacy service will, at best, slow down the completion of the migration and, in a worst case, significantly increase the timeframe within which a consumer receives an operational NBN connection and further inconvenience the customer as their cooperation may be required in the reconnection to the legacy network.
7. In addition, the timeframes for reconnecting to a legacy network stipulated in paragraph 10 and for the supply of an alternative service as per paragraph 11 (where possible at all, please refer to our discussion further below) are significantly too short at best and completely unachievable in certain circumstances where physical infrastructure must be

moved or cabling reconnected. Accordingly, it is critical that it is either made clear in the Standard that it is not readily feasible to supply a legacy service in these circumstances, hence the reconnection obligation does not apply (our preference), or the timeframes for supply of the reconnected legacy service need to be significantly extended.

8. Importantly, given the complexities of reconnection, Industry cannot conceive of a scenario where it would be in the consumer's interest to reconnect to a legacy service when the migration to the NBN has already been successful, even if an NBN service has not been supplied or cannot be supplied within two working days (paragraph 8(2)(b)). Paragraph 8(2)(b) ought to be completely excluded from the scope of the SC Standard
9. It is key to understand that there is an inherent conflict between reconnecting a copper-based legacy service and progressing or 'fixing' (including diagnosing any faults) an NBN connection or fault where that NBN connection uses the same copper pair as the legacy service, i.e. for FttN/B/C services which make up more than half(!) of the NBN's fixed line footprint. Given that these services use the same infrastructure, FttN/B/C NBN services cannot operate concurrently with legacy copper services. In fact, disconnection of the copper-based legacy service is an unavoidable aspect of the NBN connection process as the copper pair must be cut-over to the NBN network at the node, basement or curb in order to supply these NBN services.
10. However, the Standard as currently drafted, roughly speaking, requires:
 - a CSP to reconnect a customer as per the obligations in paragraph 8(2);
 - that the legacy service continue in operation until an operational NBN service is supplied (paragraph 12(a)); and
 - that nbn take reasonable steps to expedite the supply of an operational NBN service to the customer (paragraph 15(2)).

These provisions conflict with one another where the same infrastructure is used to supply both the legacy service and the NBN service. It is impossible for a CSP to reconnect a customer and continue supply of this service until an NBN FttB/N/C service is operational as disconnection of the legacy service is an essential step of the cut-over process for an NBN connection. Therefore, the CSP would be in breach of the SC Standard (paragraph 8(2) and paragraph 12) for failing to continue to supply the legacy service. If the CSP does reconnect the legacy service, nbn would be unable to expedite the supply of the NBN service and would be in breach of paragraph 15(2). Either the CSP or nbn will be likely to be in breach of the Standard in these cases. Note that this still leaves the consumer with a non-operational service, i.e. the consumer experience has not been improved.

11. Independent of the drafting issues outlined above, we request that the reconnection obligations must not apply where the supply of the legacy service would disrupt the connection or fault resolution of an NBN service, i.e. they ought not apply to FttB/N/C services. This would allow CSPs to focus their efforts on resolving the underlying issue and to migrate the consumer to the NBN. It cannot be in the consumer's interest to be reconnected to the legacy network (which takes time) to subsequently be migrated back onto the NBN to potentially find that the issue has not been resolved (as it could not be investigated as discussed above) and to start the reconnection-migration cycle for a second time. Once the issue that is causing the connection not to operate successfully has been diagnosed, it is very likely that it can be addressed far more quickly than the time it would take to reconnect that customer to a legacy network.
12. As systems and processes are currently set up, including through Industry Codes, it is generally not possible to reconnect to a consumer grade legacy service once a location has been declared serviceable by nbn. The changes required to nbn's and Telstra's systems and potentially also to Telstra's regulatory obligations under the Migration Plan to allow reconnections at locations that have been declared serviceable by nbn and to enable CSPs to progress a legacy reconnection while simultaneously progressing the migration of a

consumer are substantial and would likely be very costly and time consuming to implement. This does not even take into account changes to systems of individual CSPs.

13. The SC Standard does not appear to have given adequate consideration to scenarios where the migration to the NBN also involves a change of CSP. In this scenario, the expectations as to who would be providing the legacy service and on what contractual basis are unclear. Is it envisaged that the gaining CSP enters into a fresh contract with the customer to supply a temporary interim or legacy service, or somehow 'takes over' the losing CSP's legacy contract? Note that not all gaining CSPs might be able to access or provide a legacy service. This is always the case once a cease sale is active and the migration window has lapsed. A CSP may also not be able to service an address, e.g. in remote areas, or CSPs may only provide NBN services and hence not be able to connect the legacy service.
14. Where a gaining CSP is technically able to reconnect the consumer to a legacy network, it may be required to mail new equipment to the consumer (e.g. a CSP modem which has the required configuration, also refer to item 7 of the submission on the LT Determination).
15. Were the losing CSP to provide the legacy service, what would be its incentive (and compensation) to provide such service given that this CSP will no longer hold any customer relationship once the migration is successful? Note that the losing CSP may not want to provide a legacy service, e.g. in cases where the customer is considered to be a bad-debt risk. It must also be considered that this option would run contrary to the customer's choice to move to a new NBN-based CSP.
16. Overall, it appears that insufficient consideration has been given to a variety of circumstances that would need to be taken into account when devising processes and systems to reconnect customers to a legacy service. CSPs need to take into account the type of legacy service that a customer was using, the access technology for the NBN that the customer will migrate to, the CSPs that are involved in the migration, including churn scenarios and wholesalers in cases where either the legacy CSP and/or the new CSP providing the NBN service do not own the underlying infrastructure, and the timing of migration, i.e. parallel or sequential migration. The complexities of communication between all involved parties are significant, e.g. the NBN CSP will have to confirm its ability to 'accept' the service reactivation (an issue that Communications Alliance Working Committee 68 has been grappling with, albeit in different circumstances) and nbn, the NBN CSP, the legacy network provider will all have to coordinate the reinstatement of the legacy service. The implied notion of 'just move the customer back to a legacy service' appears almost absurd in light of the number of variables involved.
17. As highlighted above, it is also not clear how the proposed SC Standard would interact with other regulatory processes or legal instruments, e.g. the *C659:2018 NBN FTTB/N, FTTC and Parallel Migration Processes Industry Guideline*, local number portability rules, and the *G652:2016 NBN Migration Management Industry Guideline*. For example, the migration reversal processes set out in these Guidelines relate primarily to disconnections in error and unauthorised disconnections. It is appropriate in these cases to seek to restore the customer's service with their legacy CSP. But quite different considerations apply under the SC Standard, where it is expected that the customer has authorised the termination of their legacy service contract and the disconnection of their legacy service. The Telstra Migration Plan may also require careful examination, particularly regarding the impact on Telstra's obligations to commence managed disconnection at the end of the migration window, and to effect structural separation on the Designated Day (which date is earlier than the proposed repeal date for the Standard).
18. Given the discussion above, it almost goes without saying that the envisaged implementation timeframe of three months is not achievable if the SC Standard is not altered substantially to create a more useful and workable regime. More than this, these

practical issues throw into genuine doubt the wisdom of the ACMA trying to make the Standard by the end of June 2018, before it has had a full opportunity to reflect on Industry feedback.

Alternative services:

19. The SC Standard appears to assume that all CSPs would be able to offer an alternative service. This is not the case, in particular smaller CSPs are often not in a position to offer a mobile or other alternative service. This places those CSPs at a distinct disadvantage and may even create uncompetitive effects. The problem is exacerbated in circumstances where a legacy service is not 'readily available' – how would a CSP that cannot provide an alternative service comply with the SC Standard in cases where a legacy service is not readily available?
20. Where those smaller (or larger) CSPs are able to provide a legacy service, doing so may imply that a broadband dongle or other hardware needs to be supplied to the consumer, thereby making it very difficult or impossible to comply with the three working day deadline prescribed in paragraph 11 of the SC Standard.
21. Importantly, it is likely that the "supply of an alternative service by the carriage service provider" (paragraph 8(3)(b), emphasis added) would not be necessary or desired in the customer's particular circumstances. Given the widespread use of mobile devices, customers may be agreeable to using their own existing device and contract (which may or may not be with the CSP under consideration). Where consumers seek compensation for doing so, credit or reimbursement arrangements could be considered.

Consent:

22. As indicated above, several CSPs offer products that include 'fall-back' options and/or are hybrids. It is not unlikely that CSPs may increasingly offer a certain customer experience without specifying an underlying technology that delivers this experience.
23. In these cases, CSPs legitimately seek consent through standard contractual processes, including Standard Forms of Agreement, as the consent simply applies to the procurement of a broadband service which includes the use of multiple technologies to deliver that service in cases where NBN technologies are not available for whatever reason, including connection delays. It is critical that in those cases the consent provisions of paragraph 8(5), or indeed the entire SC Standard, do not apply.
24. Given the potential consumer detriment and significant technical challenges associated with the reconnection to legacy networks – which may not be clear to consumers when contracting with a CSP – Industry suggests that CSPs be required to inform their customers prior to sale (e.g. in the Key Facts proposed in the CI Standard) of the arrangements (which may consist of more than one option) that they would put in place to facilitate an alternative service, rather than seeking express consent from consumers. We note that the unrealistically short timeframes proposed in the SC Standard make it 'attractive' for some consumers to seek a reconnection to the legacy network.

Charging:

25. Industry agrees that consumers ought not pay for services that they are not receiving, including in cases where they are not receiving an operational NBN service. However, reiterating our comments put forward in our submission on the LT Determination, it must be absolutely clear that CSPs are allowed to charge and bill their customers in circumstances

of a delayed or unsuccessful NBN migration, and to subsequently refund/rebate any amounts or apply credits to future bills. Any requirement that implies that CSPs must not commence charging or discontinue charging in such circumstances is completely infeasible as – where possible at all – this would require large scale and extremely costly adjustments to billing systems. It is important to understand that many providers charge their customers upfront and cannot accommodate a strict 'do-not-charge' requirement, and that where providers do not charge upfront, the billing systems in place are not designed to be 'switched on and off'. Similarly, it must be clear that CSP's are allowed to charge their customers where a connection is not operational, unsuccessful or active due to a customer's fault.

26. Consequently, we request that paragraph 13 be amended to reflect the realities of complex billing systems and to allow for the common practice of refunds, rebates and credits.
27. CSPs ought not be required to refrain from charging for or to advise their customers of any charging arrangements for using a legacy network or alternative service where the use of such networks and services is a product feature that the customer has consented to in their customer contracts. Therefore, the obligations of paragraph 13 ought not apply to hybrid services.

Advising consumers of the use of legacy networks or alternative services:

28. In the same vein, it is key to clarify that CSPs are allowed to provide their legacy or alternative service without being required to advise their customers of this fact or any surrounding timeframes where the use of such networks and services is a product feature that the customer has consented to in their customer contracts. Consequently, the requirements of paragraph 9(2) and 9(4) ought not to apply to hybrid services.

Application of the SC Standard:

29. Paragraph 5(a) of the SC Standard states that the Standard will be repealed on the day that the "national broadband network should be treated as built and fully operational" without further explanation of what 'built and operational' entails.
30. Importantly, it appears that the SC Standard would also apply to circumstances after the date on which Telstra is obliged to commence managed disconnection for a rollout region at the end of the migration window under the Migration Plan, and also after the Designated Day on which Telstra is required to effect structural separation. This would run counter the core premise of Government's policy for the NBN, contradict current relevant regulatory instruments and agreements and must be rectified.
31. It is not clear from the SC Standard whether CSPs continue to have an obligation to progress the (originally envisaged) migration of a consumer to the NBN network where the consumer has been provided with a legacy or alternative service. Consistent with the objective of achieving migrations to the NBN and the structural separation of Telstra, we consider that this must be made clear in the SC Standard.
32. It appears that the SC Standard as currently drafted applies to all NBN access technologies and would apply outside of the NBN fixed line footprint to rollout regions nbn proposes to serve with fixed wireless and satellite technologies. Given the inherently parallel way in which NBN services are able to be provided to consumers in these areas, we do not consider the SC Standard should apply in these areas.

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33. Industry would like to see a clear indication that the SC Standard does not apply in circumstances where the migration to the NBN was successful but, subsequently, a consumer experiences a fault or connection issue that is unrelated to the migration of their service. We equally seek clarification that the obligations do not apply in areas that are Ready For Service but where due to force majeure, natural disasters etc. migration has been delayed.

Record keeping:

50. Paragraph 9(4) requires CSPs to keep records that are "sufficient to demonstrate its compliance with the requirements of Parts 2 and 3". It ought to be clear that the requirement to keep records to demonstrate compliance pertains to the processes that a CSP has put in place to provide a legacy or alternative service and attendant notification and consent obligations, and that it does not require CSPs to keep records of each legacy or alternative service ever provided.
34. Following the same logic as for charging and notification requirements, CSPs ought not to be required to keep records of providing a legacy or alternative service where the provision of such services is part of the product feature that the customer has purchased.

Lack of clarity around definitions:

A number of terms used, that are critical to operation of the SC Standard, lack clarity, require more technical detail or otherwise require amendment:

35. As a general comment, Industry notes that the definitions used in the SC Standard ought to mirror the definitions in the LT Determination. Please refer to our comments further above.
36. Hybrid service: against the background of services that use a mix of technologies to deliver a broadband service and the resultant requested amendments to the SC Standard, we proposed to add the following definition:
- Hybrid service* means a broadband service that can be delivered using a mix of technologies, including the NBN and one or more other network access technologies, and where the consumer has consented to the use of a mix of technologies in the consumer contract, including in a Standard Form of Agreement.
37. Legacy service: the definition links back to Part 4 of the Telecommunications Regulation 2001 where the definition of legacy service includes ISDN and other services which would be considered 'special services' in an NBN context. The definition ought to be amended to exclude those services.
38. Working day: it appears unhelpful to tie any requirements to the location of the CSP's registered address. If anything, this ought to be tied to the customer's location.

Working day means a day that is not a Saturday, Sunday or gazetted public holiday.

Other comments:

39. Paragraph 8(6) exempts services that have been disconnected as a result of credit management action taken in accordance with a registered Code. This provision ought to be extended to also apply to other disconnection scenarios applied in accordance with registered Codes, e.g. disconnection of a consumer as a result of the application of the *C525:2018 Handling of Life Threatening and Unwelcome Communications Industry Code*.

40. Communications Alliance notes that enforcement of the SC Standard lies with the ACMA. We recognise that the Telecommunications Industry Ombudsman (TIO) will be able to accept and investigate complaints that in relation to the SC Standard. However, Industry is of the strong view that the TIO ought not be given any additional powers beyond its existing role, i.e. the TIO ought not have powers to direct CSPs that a consumer be connected to a legacy service or receive a specific alternative service.



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**COMMUNICATIONS
ALLIANCE LTD**

Level 12
75 Miller Street
North Sydney
NSW 2060 Australia

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