



24 December 2015

To: Working Committee 53 NBN Fibre Access Transfer
Communications Alliance

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Introduction

Communications Alliance (CA) is seeking feedback on the draft Industry Code, DR C647:2015 NBN Access Transfer (the draft Code). The objectives of the draft Code (which reflect the Working Committee's terms of reference) are:

- (a) Specify operational principles which will enable the Transfer of an active NBN Service between RSPs;
- (b) Establish minimum operational requirements on RSPs, Access Seekers and Access providers, in the Transfer of an active NBN Service between RSPs; and
- (c) Minimise Customer impacts during the Transfer of an active NBN Service between RSPs. (Clause 1.5.1, the draft Code)

It is proposed that, once finalised, the Code will be registered with the ACMA under section 117 of the Telecommunications Act. It will confer on the Telecommunications Industry Ombudsman (TIO) the power to receive, investigate, resolve, determine and report on complaints made by end-users of listed carriage service in relation to matters arising under the Code.

Foxtel comments

Foxtel supports a Code covering industry operational processes specific to the transfer of NBN services. However, there are some improvements that could be made to the draft Code to better achieve the objectives above. These include:

- Requirements already contained in other Codes or legislation should be removed from this Code.

An operational Code such as this one should primarily focus on operational processes and not replicate existing consumer obligations found in other Consumer Codes (e.g. the Telecommunications Consumer Protection (TCP) Code). Duplication of requirements could lead to inconsistencies (if the requirements in a Code or legislative

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instrument change over time) and/or confusion, for example, the draft Code only references some of the information obligations found in the TCP Code. It is noted in the introduction to the Draft Code that it should be read in conjunction with other Codes/legislation and obligations from those other Codes/legislation should not be replicated in the draft Code. Consistent with the broader approach to deregulation and removing duplicated requirements in recent years, the draft Code should be streamlined and duplicated requirements should be removed.

If additional context or explanation is required for these operational processes or for applying existing obligations in the context of NBN transfers, this detail should be set out in an accompanying boxed note, explanatory note/statement or separate guidance material.

- The TIO's enforcement role should be removed from this draft Code. It is not usual practice for the TIO to have an enforcement role in industry Codes that deal with operational processes. If the duplicated consumer obligations are removed from the draft Code (as suggested above) the TIO's enforcement role should be removed.
- Amendments should be made to ensure that there are no gaps in processes where RSPs obtain NBN services from Access Seekers. That is, if the Code is to reflect minimum operational requirements it should consider the role/responsibilities of Access Seekers in supplying NBN services to downstream RSPs. This would also assist in minimising impacts on end-users consistent with objective (c).
- Minor editorial changes for clarification.

Further details are set out in the following table.

Clause	Comment and suggested change
1.4	<p>The clause lists out of scope services, including 'Over-the-top' services, but, the draft Code does not define 'Over-the-top' services.</p> <p>Given there can be occasional confusion over what is meant by an 'over-the-top' service (in some cases, there are more limited interpretations covering only fire/medical alarms, ATM/ payment systems or elevator phones, whereas in other instances it can more broadly refer to any over-the-top service, such as, a VoIP or content service).</p> <p>For clarity, it would be helpful if there was a general description of what is (or is not) covered by 'over-the-top' services in relation to this draft Code.</p>
1.7	This clause refers to the powers of the TIO to handle

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	<p>complaints under the Code.</p> <p>However, it is not the usual practice for the TIO to have enforcement powers in relation to operational Codes and processes. As the duplicated consumer obligations in the Code should be removed, so the enforcement role of the TIO should also be removed.</p>
5.1	<p>This clause replicates obligations that already exist in the TCP Code regarding Customer authorisations.</p> <p>This clause is redundant and should be deleted.</p>
5.4.1	<p>This clause requires an RSP to keep a copy of a customer authorisation.</p> <p>Service providers are already required to keep records of customer authorisations under the TCP Code.</p> <p>This clause should be deleted.</p>
5.5	<p>This clause lists some information to be provided to a Customer. Requirements regarding minimum information to be provided to a Customer already exist in the TCP Code. Guidelines outlining further information to be provided to customers before a transfer also already exist (Industry Guideline G651:2015 Customer Authorisation). If guidance on interpreting TCP Code information obligations in an NBN context is required, this guidance should be set out in separate guidance or explanatory material instead.</p> <p>This clause should be deleted.</p>
5.6	<p>This clause lists information to be captured from the Customer. This also duplicates requirements already contained in the TCP Code (or other instruments, such as, the Telecommunications (Backup Power and Informed Decisions) Service Provider Determination 2014).</p> <p>This clause should be deleted.</p>
5.7.1	<p>This clause contains a requirement to comply with existing privacy legislation.</p> <p>Service providers are required to comply with privacy requirements in the Telecommunications Act 1997 (Part 13) and the Privacy Act 1988. In addition, the TCP Code has been amended to ensure that service providers not otherwise subject to Part 13 of the Telecommunications Act or the Privacy Act 1988 are subject to codified privacy obligations.</p> <p>This clause is redundant and should be deleted.</p>
6.2	<p>The clause outlines Access Provider responsibilities in relation to Service Qualification.</p> <p>There are no responsibilities listed for Access Seekers, where Access Seekers may supply NBN services to downstream RSPs. A draft Code should include Access Seeker responsibilities in relation to downstream RSPs (for example,</p>

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	<p>to provide service levels), as this could impact on the end-user experience. Including Access Seeker responsibilities would assist in achieving objective (c) and minimise potential impacts on customers.</p>
6.6(b)	<p>This clause refers to service qualification being available between 06:00 EST and 22:00 EST. For clarity, times should be described consistent with timezones listed on the Australian Government website http://www.australia.gov.au/about-australia/facts-and-figures/time-zones-and-daylight-saving. That is, AEST (Australian Eastern Standard Time) or AEDT (Australian Eastern Daylight Time used for daylight savings time in NSW (except Broken Hill), Victoria, ACT and Tasmania). Foxtel notes that AEST only operates in Queensland during daylight savings months (October to April). As written, the clause suggests SQs would only be available between 07:00 - 23:00 during daylight savings months for NSW, Victoria, ACT and Tasmania. This clause should be reviewed and times/timezones clarified if necessary.</p>
7.3.2(c)(viii)	<p>This clause requires an Access Seeker to provide an Access Provider with an informed consent indicator for optional battery backup (applicable to FTTP only). Foxtel understands that aspects of this requirement are currently under review by nbn (that is, whether informed consent is required for broadband only services). This clause should be phrased more generally (for example, by referring to 'any informed consent indicator for optional battery backup (applicable to FTTP only) as may be required') so that any subsequent changes by nbn are covered.</p>
8	<p>Section 8 includes General Principles for disputed rejects, including that only an Access Seeker may dispute the reason for a rejection. Foxtel notes that either an RSP or Access Seeker can advise other parties of an invalid request (in section 9) and considers that the General Principles in section 8 should be amended to allow an RSP to raise a disputed reject. This would assist in minimising impacts on customers and assist in achieving objective (c) of the draft Code.</p>
12	<p>Section 12 contains general principles and considerations for LNP in relation to NBN transfers. Foxtel notes this draft Code does not contain any clear requirements for LNP processes for the transfer of NBN services. LNP requirements for NBN transfers need to be developed as a priority whether these be included in this NBN access transfer Code or the LNP Code.</p>

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12.2.1	<p>This clause contains a sentence beginning “Note: there is no reason why the requirements to authorise the LNP....” It is not clear if this sentence is intended to be a boxed note or not. This should be reviewed and included in a boxed note if that is the intention.</p>
12.2.4	<p>This clause refers to a ‘Losing Access Seeker’, however, this term does not seem to be defined in section 2 of the draft Code. A definition for this term should be included or the term should be rephrased.</p>