



22 March 2019

Communications Alliance

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Dear Mr Purdon,

ACCAN thanks the Communications Alliance for the opportunity to provide comment on the NBN Access Transfer Code (C647:2017). We believe that the code as currently drafted provides strong statements of principle concerning industry co-operation to ensure a smooth transfer of access for end-users, but may benefit through further definition of the substantive requirements of this process.

We accordingly support the reconfirmation of the code, with enhancements to ensure that the stated intention of the code is being met. These enhancements would entail a commitment to processes to mitigate disruption and loss of service by consumers that may arise during transfer.

The code as drafted currently commits industry to minimise customer inconvenience, disruption and delay when transferring services and represents a welcome and important development. However, this commitment is not fully articulated in the current drafting of the code and further definition is required.

ACCAN considers that further specification of the general principle set out at 4.1.6 would be conducive to the promotion of operational practices that achieve this objective. This should include the articulation of operational and technical procedures to support the achievement of the objectives of minimising customer inconvenience, and the cost to all parties (including consumers) at 4.1.7.

The code as drafted provides little technical or operational guidance concerning how the stated objectives are to be achieved beyond a high level commitment. The setting out of time-frames for the transfer of services and processes for rectification and dispute resolution where services cannot be transferred in a timely fashion would be appropriate.

ACCAN believes that there is scope to enhance the existing information obligations set out within the code at 5.5.1. The current obligations do not require service providers to inform consumers about a fault in the transfer process if such a fault arises. A requirement to advise consumers of a fault is appropriate as a failure to notify often leads consumers to wait considerable periods before contacting their gaining and losing service providers in order to organise remediation of any outstanding issues. This can result in an unnecessary disruption to consumer's services, and is highly inefficient for both consumers and industry as it delays the identification and rectification of transfer issues.

ACCAN supports the continued extension of privacy protections to consumers for smaller service providers as set out at 5.7.1. The protections set out within the code however, may be enhanced by incorporating reference to the Australian Privacy Principles for smaller providers, in order to facilitate a consistent industry wide approach to privacy.

ACCAN believes that substantive protections must be afforded to consumers in order to ensure that the intent of the code is achieved. In the absence of binding obligations being accepted on the part of industry there will be no incentives to comply, and no incentive to ensure minimum disruption and loss to consumers.

A ‘best-endeavours’ approach to customer service has historically been found lacking, with industry often facing direct regulatory intervention when co-regulatory mechanisms have failed to promote strong consumer outcomes. ACCAN believes that the adoption of binding co-regulatory mechanisms in the first instance may avoid the occurrence of consumer harms that may subsequently form the basis for reactive regulatory interventions.

Undertakings made by industry members with the ACCC and more recent regulatory interventions by the ACMA via the *Telecommunications (NBN Continuity of Service) Industry Standard 2018* and *Telecommunications Service Provider NBN Service Migration) Determination 2018* have provided consistent regulatory protections. ACCAN considers the use of the protections set out within these instruments, including rights to compensation, cancellation of non-performing services and to be provided an interim service in the event of delayed rectification are appropriate.

Many of these protections overlay the code, and although ACCAN does not support duplication of these protections, we do support their application where any gaps may exist. The regulatory instruments created by the ACMA provide strong incentives for industry co-operation and if more broadly adopted would promote measures being taken to minimise the inconvenience faced by consumers when transferring their services.

A binding framework for the management of transfers is of merit as it will engender effective industry co-operation and promote the smooth transfer of NBN services in a timely fashion. A pro-active approach to engaging with these issues via enhancements to the code would reflect a best practice approach to co-regulatory arrangements and facilitate better consumer outcomes at lower cost to industry.

The extension of these protections is appropriate as the fundamental process of transferring a service between providers raises issues that are analogous to those observed in the migration process. In the event that measures are not taken to address these issues, it is foreseeable that consumer loss will arise due to inadequate incentives to minimise disruption and service loss during the transfer process. Industry can however create stronger incentives for effective co-operation through a voluntary, but binding commitment to establishing clear and efficient transfer processes via the code.

In the absence of industry action on consumer outcomes, it is foreseeable that comprehensive consumer protections will be imposed via regulation at a greater cost to industry, and at the cost of better outcomes for consumers in the immediate future.

Should you wish to discuss this submission further please do not hesitate to get in contact.

Yours Sincerely,

Gareth Downing

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