

**COMMUNICATIONS
ALLIANCE LTD**



BACKUP POWER SUPPLY FOR NBN SERVICES
COMMUNICATIONS ALLIANCE SUBMISSION
DECEMBER 2013

TABLE OF CONTENTS

INTRODUCTION	2
SUMMARY	2
BACKGROUND	3
SECTION 4.1 – PROPOSED OPTIONS AND COST BENEFIT IMPACT ANALYSIS	4
SECTION 4.1.2 – TIME FRAME FOR INDUSTRY IMPLEMENTATION TO COMPLY WITH ACMA REGULATION	11
SECTION 4.1.3 – DATA ON PERCENTAGE OF END USERS WITH ANALOG OR CORDLESS PHONES IN THE HOME	12
SECTION 5.1 – DRAFT SERVICE PROVIDER DETERMINATION	13

INTRODUCTION

Communications Alliance welcomes the opportunity to provide this submission in response to the ACMA consultation paper *Backup power supply for NBN services*.

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>.

SUMMARY

Communications Alliance believes the preferred option from those presented in the ACMA consultation paper is option 1: 'the ACMA takes no regulatory action'. In adopting this position, Communications Alliance recognises that taking no regulatory action at this time does not preclude the ACMA from doing so in the future. In this respect, option 1 can also be considered a 'watch and wait' approach.

A 'watch and wait' approach offers the opportunity to learn from actual experience in deploying under the 'must opt battery backup' model which has not had large scale deployment yet. This approach also recognises that a number of variables are uncertain, as mentioned in the consultation paper e.g. details of battery backup requirements under the government policy of deploying fibre to the node. This approach could be applied to all three options in the consultation paper.

Notwithstanding the views outlined in this submission, Communications Alliance notes that NBN Co has a different view as to the most effective regulatory implementation of battery backup policy, given the objectives of that policy and NBN Co's role in the provision of battery backup. NBN Co has conveyed its view in a separate submission to ACMA. NBN Co has been involved in the discussions among Communications Alliance members regarding this consultation, and is aware of the position taken in this submission.

BACKGROUND

Communications Alliance understands that the consultation paper has been prepared and released in response to:

- (i) a request from former Communications Minister Conroy to the ACMA to put in place conditions to ensure that informed consent by end users under a 'must opt battery backup' model in the NBN is acquired and retained in a consistent manner; and
- (ii) a subsequent request by Minister Turnbull that the ACMA consult on its recommendation to make a service provider determination.

The original request from Minister Conroy requested the ACMA to examine potential regulatory mechanisms to resolve the inability of NBN Co and RSPs to reach commercial agreement on ways to ensure the incorporation of informed consent processes and related record keeping into the RSP installation and connection processes.

The options presented in the ACMA consultation paper do not appear to consider the option to use existing regulatory arrangements or a variation of them. Instead it appears to have an implicit assumption that there is an absence of regulatory arrangements to address the concern by Minister Conroy that there is "*a potential risk that informed consent will not be properly administered in some cases*".

A question that should be answered is how the current consultation process, initiated by the previous government, fits with the current government policy position is that "*The Coalition considers that regulation should only be imposed where absolutely necessary and should not be the default position in dealing with public policy issues.*"¹

Communications Alliance suggests that a viable option that complies with the government's regulatory policy is to adopt a 'watch and wait' approach and respond if an actual demonstrable problem requiring any level of regulatory intervention eventuates.

¹ <http://www.liberal.org.au/boosting-productivity-and-reducing-regulation>

SECTION 4.1 – PROPOSED OPTIONS AND COST BENEFIT IMPACT ANALYSIS

a. Feedback on the ACMA's characterisation of the problem, its scale and scope, including any information to assist in better understanding the 'uncertainties' listed at the end of this section (Attachment A pp. 9–12).

The ACMA's characterisation of the problem appears to be based on an assumption in the original request from Minister Conroy that new regulatory arrangements in the form of a service provider determination are the solution and with it an implicit assumption that existing arrangements are inadequate. As a result, the questions being asked in this consultation could lead a reader to infer the ACMA has a bias in favour of creating additional regulation.

Industry contends that the Consultation Paper does not address the scale and scope of the problem. Prior to a decision being made to introduce regulation, there is first a need to identify the size of the problem and for this to be used in the assessment of the options. Section 2.3 of the Consultation Paper states:

For FTTP planning purposes, NBN Co had assumed that 50 per cent of fibre end users with new installations would elect not to have a backup power supply unit installed when able to nominate whether or not they wanted NBN Co to provide a backup power supply.² However, feedback from industry meetings suggested that, given the choice, end user take-up of backup power supply in a FTTP deployment may in fact be even lower.³

Noting industry feedback that end user take-up of backup power supply in a FTTP deployment may in fact be even lower than 50 per cent, the scale of the issue to be addressed is unknown.

And further:

The first 15 rollout areas to receive NBN FTTP are scheduled to be disconnected from the copper network in May 2014. This may affect up to 48,000 end users, depending on how many still have access to the copper network. It is expected that end users, who have not voluntarily migrated to the NBN at an earlier opportunity, might include a disproportionate share of the more vulnerable end users, such as older people and those with limited English. Given the migration arrangements, it is anticipated that the rate of migration of end users (especially among such vulnerable groups) to the fibre network in these 15 rollout areas will accelerate in the six months prior to the disconnection date. This will also occur in other rollout areas progressively, as the copper decommissioning approaches. Consequently, there is a demonstrable urgency to provide appropriate safeguards for optional backup power supply.

Industry does not agree that a case of "demonstrable urgency" has been made. Further there is no evidence provided that there is a disproportionate share of the more vulnerable end users are yet to be migrated. Nor is it clear given the proposal for a shift to NBN FTTN services how many customers in addition to the 48,000 customers may be impacted as the NBN rollout progresses.

² NBN Co, *Corporate Plan 2012–15*, 6 August 2012, p. 12.

³ ACMA and Communications Alliance industry workshop held on 9 August 2012.

The Australian Mobile Telecommunications Association (AMTA) reports⁴ “There are now more than 22 million mobile phone services in Australia.”

In addition to the less than 50% of end customers who want battery backup there is also the datum that 80% of end users would use a mobile phone for an emergency call in the event of a general power blackout. So in determining the scale of the issue, it is unclear what proportion of the total number of customers would be ‘*the more vulnerable end users*’.

Industry has noted that the topic of informed consent about a NBN battery backup service is only one of many that need to be provided in conversation by RSP with a customer. The focus on regulating the supply of information about a NBN battery backup service appears to be out of proportion with a larger, important question of how to supply information at the point of sale that does not confuse customers.

As mentioned in the Background section, Communications Alliance understands the problem to be solved is how to ensure there is informed consent by end users under a ‘must opt battery backup’ model in the NBN, which is yet to be implemented.

The drafting of the *Telecommunications (Backup Power Supply Service) Service Provider Determination 2013* (the Determination) prior to the release of an Options-stage regulation impact statement (RIS) is highly unusual in that a new regulatory requirement could appear to be a foregone conclusion.

Communications Alliance recognises that the ACMA is trying simultaneously to follow due process in its consultation and address the ministerial suggestion that ‘*ideally the final implementation date will run concurrently with the NBN Co launch date of the must opt battery backup delivery model*’. It also recognises that the consultation process has been affected by:

- (i) the timing of the federal election;
- (ii) the policy of the new government to include Fibre To The Node as a delivery option for NBN services; and
- (iii) adjustments to reflect required changes to the Regulatory Impact Statement (RIS) by the Office of Best Practice Regulation (OBPR).

However there is a procedural question that remains – why is there an apparent rush to create new regulatory requirements for a problem that cannot be demonstrated to exist (since the new model has not been introduced) when existing regulatory arrangements might be adequate?

Some service providers already supply telephone services where powered equipment is located in the customer premises. Such supply arrangements have been operating for several years. The ACMA does not appear to have raised concern about these existing practices and procedures, or to have demonstrated there is an issue with the information provided to customers with these existing practices.

As Chris Chapman, Chairman of the Australian Communications and Media Authority, stated at the Communications Essential Seminar on Regulatory Reform on 25 July 2013:

“Our view is that fragmented and piecemeal institutional responses to the contemporary pressures of convergence and network effects – which is essentially what is happening at the moment - are essentially misguided. From our perspective, the evolution of the networked society is driving a need to empower the regulator to be flexible and rapidly adaptive to changing industry circumstances. My overriding proposition: what is, and will be needed, is regulation that is ‘fit for purpose’,

⁴ <http://www.amta.org.au/pages/Industry.statistics>

intervention that is enough to do the job in a specific circumstance, and no more, invoking from time to time regulatory discretion and the exercise of forbearance. This means regulation that is evidence-informed and that engages all stakeholders; industry, consumers, citizens, policy – developers, legislators, and ourselves as regulators.”

It appears an implicit assumption in Option 1 of “the ACMA takes no regulatory action” is that the ACMA never takes regulatory action on this topic. This option actually has two possible sub-options - “the ACMA takes no regulatory action” (i) forever or (ii) for a period of time (i.e. a ‘watch and wait’ approach). The first is unlikely since the ACMA always has the ability to revisit a topic where appropriate. The second will allow actual rollout experience to be incorporated into any regulatory decision instead of a presumptive decision to regulate.

By definition, to suggest a regulatory arrangement before the ‘must opt’ arrangements are in place appears to be inconsistent with the ACMA’s stated aim of evidence based regulation. A ‘watch and wait’ approach would allow the ACMA the opportunity to gather evidence.

Option 2 appears to assume the development of a new Industry Guideline or Industry Code. Another possibility under option 2 might be an amendment of an existing Industry Code or Industry Guideline. With the *Telecommunications Legislation Amendment (Consumer Protection) Bill 2013* currently before Parliament and a reasonable assumption of bipartisan support, it could be possible to amend existing industry code(s) that already contain provisions for informed consent and record keeping without creating new obligations.

Another approach is a combination of Options 1 and 2, that is watch and wait, gather evidence and proceed with the development of a code or guideline if the evidence demonstrates the need for such.

b. Information or data on the risks and costs associated with Option 1—the ACMA takes no regulatory action.
--

Costs for compliance with regulatory arrangements under any of the options include IT systems development, IT systems maintenance and ‘front of house’ training.

Feedback from industry is that the costs associated with option 1 (i.e. complying with the obligations in the WBA) is a fraction of cost of option 3 (i.e. complying with the obligations in both the WBA and the proposed service provider determination).

The cost of complying with option 1 relative to option 2 would depend on the level of prescription in an industry code or guideline. If there is reliance on existing codes and guidelines then the cost of option 2 might be similar to that for option 1. If a new industry code was created specifically around informed consent for battery backup, with a similar level of prescription to the proposed service provider determination, then the cost for compliance with the new industry code would be similar to that for option 3.

Option 1 (and also option 2) would carry reduced risk compared with option 3 in terms of flexibility to adapt requirements to incorporate industry learnings from the informed consent processes associated with NBN battery backup services.

Under option 1 there is minimal (perhaps negligible) risk of not obtaining informed consent about a battery backup service because the WBA contains a contracted obligation to gather informed consent. There is a potential risk of inconsistency in the quality of informed consent.

The request asks for information about the risks and costs associated with Option 1. Although there is no explicit request for information on the benefits of no regulatory action, section 4.1 is about a cost benefit analysis.

Therefore the ACMA should consider the potential benefits of option 1. These include:

- (i) there is no additional regulatory cost to industry which would avoid higher costs for end users; and
- (ii) there will be greater choice of retail providers for those end users who want battery backup – at least one supplier of wholesale services via the NBN has reported a number of its service provider customers will not offer a choice for battery backup (i.e. under a determination they would inform customers that they do not offer battery backup).

c. Views on whether a sufficient level of information would be provided in the informed consent process in the absence of regulation.

Communications Alliance believes a sufficient level of information would be provided in the informed consent process in the absence of additional regulation.

There are existing obligations to ensure a sufficient level of information would be provided in the informed consent process in both:

- (i) legislation;
- (ii) the NBN Co WBA; and
- (iii) at least one industry code on the register maintained by the ACMA under s136 of the *Telecommunications Act*.

Existing legislation includes the prohibition against misleading or deceptive conduct in the *Competition and Consumer Act 2010*.

The ACMA has existing regulatory power over the offering of Telecommunications Products to Consumers for both the informed consent process and the related record keeping. For example obligations in the **Telecommunications Consumer Protections (TCP)** Industry Code (C629:2012) include:

- (i) Clause 4.1.1 already obliges a service provider to support informed consent. It commences with "A Supplier must communicate its Offers in a way which is clear, accurate and not misleading, to allow Consumers to make informed choices."
- (ii) Clause 4.3.4 already obliges a service provider to obtain consent. It commences with "A Supplier must obtain the Consumer's consent in a fair and accurate manner before the Consumer enters a Customer Contract with the Supplier."
- (iii) Clause 4.3.4 (c) obliges a service provider to "keep records of basic details regarding the Consumer's consent to the sale of the Supplier's Telecommunications Products".

Another example is the **Priority Assistance** Industry Code (C609:2007), which includes:

- (i) Section 4.10 (Information to Customers), which describes information that must be provided to customers on whether or not a Priority Assistance service is available.
- (ii) Clause 5.11.1 already addresses record keeping for Priority Assistance customers. It states "Suppliers must retain a copy of any of the relevant Priority Assistance forms and relevant supporting documentation received from Priority Customers for a minimum of three calendar years from receipt of the relevant documentation."

Communications Alliance notes that if amending the Priority Assistance Industry Code is part of a solution for battery backup arrangements then one would also need to amend in a similar manner the licence condition on Telstra for Priority Assistance.

There are other education programs in the marketplace at the same time that give confidence there will be “a sufficient level of information would be provided in the informed consent process in the absence of regulation”. For example, there is:

- (i) An expectation that NBN Co will include information on battery backup in its contact with end customers (e.g. under the NBN Co PIM);
- (ii) Potential activity by TUSMA; and
- (iii) Information being circulated by the Department of Veteran Affairs to its stakeholders on (medical) alarms on the NBN.

d. Details of the cost that CSPs might expect to incur—in addition to the costs that would be incurred for system changes to meet the requirements of the WBA—in developing systems and processes to meet the additional requirements of an industry code (see discussion at pp. 20–23 of Attachment A).

The “cost that CSPs might expect to incur ... in developing systems and processes to meet the additional requirements of an industry code” will depend on the industry code rules.

This is because the level of prescription in regulatory obligations drives the cost incurred by the industry. Industry would expect a level of flexibility in rules in an industry code to allow RSPs to match their processes and systems to the obligations.

An industry code could allow the desired flexibility for RSPs and is likely to lead to lower costs for RSPs to implement in IT systems than would occur under a more prescriptive service provider determination.

Therefore a higher/lower level of prescription directly leads to higher/lower costs for industry, which results in higher/lower prices for end users.

e. Details of costs CSPs might be expect to incur in the event the ACMA investigated compliance with an industry code.

Similar to the response to 4.1.1 (d), the “cost CSPs might expect to incur in the event the ACMA investigated compliance with an industry code” will depend on the industry code rules.

As above, a higher/lower level of prescription directly leads to higher/lower costs for industry, which results in higher/lower costs for end users.

f. Data relating to the compliance costs associated with the implementation of an industry code (see discussion at pp 21–23 of Attachment A).

Feedback from members of Communications Alliance is that the costs associated with the implementation of an industry code or guideline (i.e. under option 2) would be less than the costs associated with the implementation of a service provider determination (i.e. under option 3).

Members have not been able to assess costs in detail within the consultation timeframe but they would need to reflect changes to IT systems. Specific changes to IT systems and processes would ultimately be driven by the terms included into the Code.

It might be instructive for the ACMA to collect two sets of data here - the compliance costs for a new industry code and the compliance costs for a variation to an existing industry code.

g. Feedback on whether delay costs (discussed at p. 22 of Attachment A) would be material should the ACMA seek the development of an industry code and whether such costs would be greater than in the absence of a code.

It appears three questions are being asked here:

- (i) What are the delay costs?
- (ii) Would delay costs be material?
- (iii) Would delay costs be greater than in the absence of a code?

Communications Alliance members report it is difficult to give detailed cost information without additional details on the three options. It is reasonable to assume that option 3 (a service provider Determination) would be the most costly, option 2 (an industry code/guideline) less costly than option 3 and option 1 (relying on the WBA) would be the least costly.

As above, the level of prescription in an industry code would drive the costs.

h. Feedback and data on the how an industry code might result in the reduction in remediation of wrong decisions (Attachment A pp. 23–25).

It is difficult to generate data on "how an industry code might result in the reduction in remediation of wrong decisions" because it depends on what is required in an informed consent decision (e.g. the level of prescription in an industry code).

Communications Alliance recommends the ACMA adopt a 'watch and wait' approach because RSPs do not have sufficient information to make a detailed recommendation on this topic.

i. Data on the extent to which code-based regulation would result in a reduction in the economic costs associated with the risk to personal and property safety (Attachment A p. 24).

Communications Alliance does not have data to answer this question.

j. Data relating to the administrative costs to CSPs that might result from the imposition of a service provider determination (Attachment A p. 25).

Communications Alliance does not have data to answer this question.

k. Data relating to the compliance cost that might be imposed on CSPs due to the implementation of a service provider determination (Attachment A p. 25).

Communications Alliance does not have data to answer this question.

l. Data relating to delay costs (if material) associated with the implementation of a service provider determination.

Communications Alliance does not have data to answer this question.

m. Feedback and data on how a service provider determination might result in the reduction in remediation of wrong decisions (Attachment A p. 27).

Communications Alliance does not have data to answer this question.

However Communications Alliance notes it is unclear what evidence the ACMA is using for the assumption at Attachment A, page 27 that:

"Given that there is likely to be reduced number of wrong decisions under a service provider determination than under a registered code, it is likely that the costs of remediating wrong decisions would also be lower."

Communications Alliance suggests the question here has two parts:

- (i) What is the likely reduction in remediation under an industry code vs. a service provider determination? and
- (ii) What is the likely reduction in wrong decisions under an industry code vs. a service provider determination?

n. Feedback on how a service provider determination might result in a reduction in the economic costs associated with risks to end users' personal and property safety (Attachment A p. 27).

Communications Alliance does not have data to answer this question.

o. Data on the likely reduction in the number of end users that would seek to remediate wrong decisions in the event the ACMA implements a service provider determination (Attachment A p. 27).

Communications Alliance does not have data to answer this question.

SECTION 4.1.2 – TIME FRAME FOR INDUSTRY IMPLEMENTATION TO COMPLY WITH ACMA REGULATION

a. *Is the proposed implementation time frame of four months feasible—with mandatory compliance commencing on 20 June 2014?*

Communications Alliance believes the proposed implementation time frame of four months for option 3 is infeasible. The Determination is overly prescriptive in its approach compared to the requirements for the supply of a battery backup service in the WBA. As a final decision from the ACMA on the preferred option will not be known until March 2014 or later, industry will not be in a position to implement changes to processes and systems until the final form of the Determination is available. In addition, the flow on effect to wholesale customers will result in additional problems. Hence the 2 to 3 month period between the making of the Determination and the commencement date of 20 June 2014 is insufficient to put in place necessary arrangements.

Communications Alliance members have reported there is a large quantity of work that occurs in the industry around the end of the financial year e.g. for connection management. This involves larger IT system development than usual at other times in the year. In addition there are other matters in the industry that compete for IT development resource, including NBN related regulatory arrangements. Therefore if there is additional regulation industry would support moving out the implementation date.

b. *Would an alternative implementation time frame cause industry confusion and lead to unwanted industry and end-user outcomes?*

NBN Co is making the battery backup functionality available to RSPs from 19 December 2013. Therefore there will be no additional regulatory arrangements in place for several months while the ACMA makes its decision, and at least until 20 June 2014.

This means "*an alternative implementation time frame*" would reflect the existing situation, and so extending an implementation timeline would not '*cause industry confusion and lead to unwanted industry and end-user outcomes*'.

SECTION 4.1.3 – DATA ON PERCENTAGE OF END USERS WITH ANALOG OR CORDLESS PHONES IN THE HOME

Communications Alliance members have noted that to have an obligation to record informed consent about a battery backup power service is of limited utility when a power outage at a residence would mean a gateway device for telephony (e.g. cordless telephone, router for VoIP service) would not work.

While the ACMA could undertake some research to have an evidence based decision on the questions under 4.1.3, while noting that the consultation paper identifies that 80% of users would use a mobile phone in a blackout.

a. How many end users are using only a corded telephone in the home?

Communications Alliance does not have data on the number or proportion of end users using only a corded telephone in their residence.

b. How many end users are using a home cordless telephone that depends wholly on mains power to function?

Communications Alliance does not have data on the number or proportion of end users using a cordless telephone in their residence that depends wholly on mains power to function.

c. How many end users are using a home cordless telephone that has its own built-in power capacity?

Communications Alliance does not have data on the number or proportion of end users using a cordless telephone in their residence that that has its own built-in power capacity.

d. Please provide any other additional information that will assist the ACMA to understand the scope of this issue.

Another relevant area where data may inform the decision making process might be the number or proportion of end users who have:

- (a) a service to assist in life threatening situations (e.g. a personal medical alarm); and
- (b) have / do not have a backup power supply service.

Communications Alliance does not have data on this.

The ACMA's consideration should not be limited to fixed line services but should include details of mobile service services in operation (SIOs) to give a better understanding of the actual need of consumers to be able to rely on battery back-up for fixed line services during power outages.

Communications Alliance suggests that this issue could be a topic for ACMA research under their research snapshot series, noting that each snapshot covers a single issue and allows the ACMA to focus on convergence and digital economy topics of interest to stakeholders.

SECTION 5.1 – DRAFT SERVICE PROVIDER DETERMINATION

While Communications Alliance does not believe a service provider determination is the best outcome from this consultation process, the following comments and suggestions are offered in response to questions in the ACMA consultation paper.

a. Is mandatory compliance with the service provider determination feasible by 20 June 2014, in order to coincide with mandatory compliance with NBN Co's wholesale broadband agreement?

Refer to the response to question 4.1.2a in this paper.

b. Are the definitions in Part 1 adequate?

Section 4 of the Determination omits the following definitions which might be helpful in a final version, should a service provider determination be made:

- (i) **Supply** – this term is undefined but it is a crucial part of section 3 **Objects** in the Determination. Communications Alliance has identified a number of possible scenarios for supply of a battery backup service but is uncertain which one(s) are relevant e.g. posting the battery (for self-installation, or installation by a third party), delivery and installation of the battery. Does the term 'supply' cover battery maintenance? Does it cover warranty for the backup function? A definition should address the question of whether or not battery backup occurs at the end customer premises – see comments below about FTTN.
- (ii) **Carriage service provider** – this might be defined as "has the meaning given in section 87 of the *Telecommunications Act 1997*".
- (iii) **Optical fibre connected NBN service** – Both the consultation paper and the options RIS state that "*New arrangements for backup power will not therefore be required in wireless and satellite coverage areas, unless changes are made as a consequence of future policy directions.*". The Determination is silent on access technology so it is possible that a wireless or satellite NBN connection could be covered by the Determination, which was not the intent of the consultation paper or the Options RIS. This apparent conflict could be addressed by adding a new definition for an 'optical fibre connected NBN service' or some similar service, or to exclude wireless and satellite NBN services. While this would move be undesirable because it moves away from a technology neutral approach it appears to be necessary based on the above information.
- (iv) **Node connected NBN service** – The consultation paper is less clear about possible arrangements under a Fibre To The Node (FTTN) architecture, stating "*Under the fibre-to-the-node (FTTN) model now to be deployed under the government's policy to the majority of end users, it is understood to be technically viable for a backup power supply to be provided either at the node or alternatively in the end-user's premises—or possibly at both locations. At this point, it remains unclear which design option will be implemented under the FTTN model.*". It is unclear whether or not there is a need for a separate definition for FTTN connected services.

The following definitions may need to be amended or removed:

- (v) **NBN equivalent network** - We question whether this is scope creep, as capturing networks owned by other carriers under the proposed regulation was not contemplated in the former Minister's letter.
- (i) **backup power supply service** – The reference to 'mains power' uses a popular term for the supply of electrical power by an electrical authority. A small number of cases might arise where a residence connected to NBN fibre might not have mains power e.g. off grid power such as generators or renewable energy. Perhaps the definition should replace "mains power" with something similar to "primary source of power".
- To clarify the scope of services in question, the definition of a backup power supply service should clarify that the "network termination device" is a "network termination device for the NBN" (i.e. not just a NTD). The current wording might capture other backup services used by end customers (e.g. for a RSP's gateway device with mains power), where there is no need for regulatory intervention.
- (ii) **Network Termination Device** – The Determination references the **Installation requirements for customer cabling (Wiring rules)** Australian Standard (AS/CA S009:2013) in its definition of a network termination device (NTD). Industry has noted that a NTD under AS/CA S009:2013 may be a passive device i.e. it has no need for electrical power and therefore no need for a backup power supply. The referencing of AS/CA S009:2013 in the definition for NTD is not appropriate and should be changed.
- (iii) **Customer** - In section 6 the definition of customer is very broad. It is unclear if the scope of the Determination is limited to consumers, in line with the title of the ACMA consultation paper, or if it includes business customers. Communications Alliance recommends that the Determination should clarify that the Determination applies to residential consumers only.

The definition of customer should only include residential customers, not businesses or any person that resells the service such as hotels. Given that the policy behind battery back-up and informed consent obligations is to provide a level of security and ongoing communications to vulnerable persons affected by power outages, it is also questionable if the policy should cover any business customers at all, but rather should be limited to residential consumers.

- (iv) **Specified carriage service** – the definition includes the ability "to access a standard telephone service or the internet or both". Communications Alliance appreciates this wording might be intended to cover some VoIP services and personal medical or security alarms in order to address points raised by former Minister Conroy. However the current definition should be limited only to a standard telephony service for voice. It is worth noting that the STS is broadly defined in the TCPSS Act and would encompass most VoIP services.

While concern about a range of services (e.g. security and medical alarms as well as voice telephony) might have led to the drafting of the Determination to include 'the internet', this expands the scope of the Determination considerably from the original offering under mandatory battery backup, which was only for voice telephony delivered via the UNI-V port i.e. access to 'the internet' was excluded by definition.

An RSP supplying a voice telephony service and a broadband data service cannot have visibility of, and so should have no responsibility for, other 'over the top' services that a consumer chooses to operate independently of a broadband service.

In a greenfield estate the person requesting installation of the NBN connection may be the owner or may be the builder, without knowing what service(s) the resident will order. Note that a resident is unlikely to be the builder, and may not be the owner (e.g. a tenant). In some greenfield estates it is possible for an end user to order RF TV only, relying on a mobile phone for voice telephony. In this case a conversation about battery backup (i.e. for TV) is nonsensical.

The ACMA's paper has only identified concerns about services that may be supplied over the NBN's FTTP access network. However the determination doesn't limit the scope of specified services to those over FTTP. This also raises concerns about the undisclosed impact of the Determination to CSP's processes in relation to services connected over the NBN's satellite services or NWS.

There is no distinction in the Determination between the types of technology that could be used to provide the service. As a result any service provided over a fixed line network built, altered or upgraded after 1 January 2011 is captured, including FTN services that are expected to have battery back-up at the node and will not require battery back-up at the end-user premises.

wholesale network provider - it is not clear if the WNP is NBN Co or an aggregator. This creates confusion as to where the obligation to install the BPSU rests.

Section 7 **Acknowledgement or decision by customer** is overly prescriptive and should be amended or deleted. The Determination does not need to spell out methods for acknowledgement because industry experience is that these methods will change over time. If the section is retained then the Determination should not include detail on the types of acknowledgement.

Communications Alliance notes this topic of recording acknowledgement has come up in discussion with the Telecommunications Industry Ombudsman (TIO) about how Customer Service Guarantee waivers are recorded by service providers e.g. online recording, frequently posing questions.

The expectation is that where consumers will sign up for the NBN online, being presented with an online page about the pros and cons of battery backup, and at the end requested to click on a button or checkbox or similar method to confirm acceptance.

Based on experience with the CSG waiver the TIO is likely to say it is not confident that the consumer actually agreed. The industry assumes the TIO would be collecting breach information on acknowledgement for the ACMA.

Another question raised by industry about section 7 of the Determination is whether or not a 'click wrap' agreement would be covered by section 7a or 7b.

c. Do the provisions in Part 2 cover the range of scenarios where the informed-consent process will be required?

Section 10 **Obligation to inform and obtain decision before commencing to supply a specified carriage service** is overly prescriptive and should be amended. The Determination does not need to spell out methods for how a RSP gives information because industry experience is that these methods will change over time. If the section is retained then the Determination should not include detail on the method(s) of information delivery.

It is unclear if s10(1) is consistent with the message that a retail service provider (RSP) will receive from its sales process, noting there is both presale and a post-sale points where

information is provided to a customer. Activities described in 10(1)(d) and (e) are likely to occur after the conversation with the customer has concluded.

For a RSP that does not offer Battery Backup there will be a point in the sale process where they will cease contact with the prospective customer. So in a similar way to earlier comments, s10(1) is unclear about the use of the terms 'supply' and 'commence to supply'.

Section 10(2) (about commencement) – if a customer has a service prior to the commencement of the determination then section 10 does not apply to the customer, however it is unclear whether this section will ever apply to the customer, for instance when that customer subsequently churns providers. This is because s.10(a) states 'this section does not apply if a carriage service provider first supplies a specified carriage service to a customer before commencement of this Determination', rather than 'the carriage service provider'.

Broadband only or broadband through a different provider - What happens in terms of transfer of responsibility e.g. transfer from a RSP of a standard telephony service with battery backup that was supplied before the Determination came into effect (so the Determination does not apply) to a RSP that does not support BBU.

The Determination needs to make clear that when customer says 'no I don't want a battery' it is a battery supplied by a RSP for the purposes of 'supplying' the NBN FTTP service although backup by building UPS might provide the required support.

The WBA obliges RSP to capture a customer's change in service, so a Determination is a duplication of an existing requirement.

Section 11 **Obligation to inform and obtain decision if a customer subsequently requests supply or discontinuation of a backup power supply service** is overly prescriptive and should be amended. The Determination does not need to spell out methods for how a RSP gives information because industry experience is that these methods will change over time. If the section is retained then the Determination should not include detail on the method(s) of information delivery.

Section 11 places obligations on the provider to inform the WNP of the customer's request for supply or disconnection of a battery, however, there is no corresponding obligation on the WNP to carry out the request. Similarly, there is no obligation on NBN Co or the WNP to undertake required maintenance/replacement of the BPSU, e.g. when it fails

One feasible scenario that illustrates the potential for confusion around obligations under section 11 is where the first RSP does not supply a battery backup service. The end customer then requests a second service with a different RSP and requests a battery backup service. Under this scenario section 10 applies. For the second RSP, it will need to know via NBN Co if the BBU functionality is installed or not.

Section 11(4) (on informing the wholesale network provider) – it is unclear if it may be broad enough for NBN Co as a network provider, and for aggregators like Optus and Telstra, or other network providers who also offer wholesale services (e.g. Opticomm).

In both section 10 and section 11(1) there is uncertainty around who has responsibility for the removal of a battery if an end customer is changing service provider. S11 is about change with an existing service. It is unclear what happens if the end customer is changing service and want an existing battery removed?

Section 12 **Obligation to inform where supply of a backup power supply service is not offered** – Communications Alliance notes the section is not prescriptive about acknowledgement

from the customer and is arguably a better model than the level of prescription in sections 10 and 11. Section 12 should not be expanded to increase the level of prescription to match other sections.

It is unclear whether or not sections 10 and 11 should be subject to section 12 e.g. if a RSP has decided not to supply a battery backup service.

Communications Alliance recommends changing the wording in section 12(1) from “unable to offer” to “does not offer” to reflect that an RSP might be able but chooses not to offer battery backup. This also occurs in 12(2)(a), 18(1), 18(2)(b).

d. Does the process set out in Part 3 adequately deal with the process that will be undertaken for priority assistance customers?

As with Section 10, Section 15 **Obligation to inform priority assistance customers** is overly prescriptive and should be amended. The Determination does not need to spell out methods for how a RSP gives information because industry experience is that these methods will change over time. If the section is retained then the Determination should not include detail on the method(s) of information delivery.

S16(d) Does the customer's acknowledgement need to be a positive action or can it be silence? E.g. if the Schedule 2 information is provided in an email or letter sent to the customer by the provider, does the customer have to write back? This could lead to delay and have service provisioning and CSG impacts. [see also 17(3)(a)]

Section 16 **Obligation to inform if a customer becomes a priority assistance customer** does not have the equivalent of section 15(1)(b) regarding acknowledgement. This is assumed to be an oversight and Communications Alliance suggests section 16 should include an obligation for acknowledgement similar to section 15(b).

As with Sections 10 and 15, Section 17 **Obligation to inform and obtain decision if a customer ceases to be a priority assistance customer** is overly prescriptive and should be amended. The Determination does not need to spell out methods for how a RSP gives information because industry experience is that these methods will change over time. If the section is retained then the Determination should not include detail on the method(s) of information delivery.

Section 18 **Obligation to inform where supply of a backup power supply service is not offered** should be reworded to reflect the heading of the section i.e. a RSP may be able to offer but chooses not to offer a backup power supply service. Communications Alliance suggests in Section 18(1) the ACMA replace “unable to offer” with “does not offer”.

Section 19 **Provision of Schedule 2 information** – Communications Alliance recognises section 19 mirrors the obligation in section 13 however it could be deleted. Section 19 appears to duplicate existing obligations in Telstra Carrier Licence conditions for Priority Assistance and in the Priority Assistance Industry Code.

e. Does the proposed scope of the information to be included in Schedules 1, 2 and 3 adequately capture the informed consent and record-keeping processes? If not, what information should the schedules require?

In Schedule 1 **Information to be given to customers other than priority assistance customers**, similar to the comments above regarding the definition of a *Specified carriage service*, the wording “or to access the internet” appears to be a significant expansion in scope.

Communications Alliance appreciates that the wording "or to access the internet" may be to assist with a standard telephony services delivered via a broadband data service and for OTT personal medical or security alarms. However the definition of standard telephone service should suffice for the scope identified in the ACMA's Consultation Paper.

When making reference in the Determination to making a call during a mains power outage Communications Alliance suggests adding the words "*for a limited time*" i.e. to clarify there is not an indefinite ability to make calls during a power outage.

In Schedule 1 section 3 addresses the use of an existing telephone. Then if one wants to keep using the phone one needs backup power. Section 3 does not acknowledge "*another means by which the customer can make emergency telephone calls during a mains power failure (such as a mobile telephone)*", as stated in section 8..

It is unclear if Schedule 1 section 5 places an obligation on a provider that chooses not to supply BBU. For example, a service provider that chooses not to offer battery backup cannot give a definitive timeframe as it may not have NBN Co specifications about how long battery backup functionality may last.

In section 5(c) the requirement to estimate for each customer how long a battery backup function is not workable because it is affected by a number of factors including the age of the battery, the number of recharge cycles it has been through. The standard backup time for medical alarms (e.g. stated by some sources as 36 hours) significantly exceeds the normal backup time in the current uninterruptible power supply for an optical network termination device (i.e. a few hours).

In Schedule 1 sections 5, 6, 7 and 9, it is recommended the clauses be clarified by starting with "If the CSP offers BPSU..." Those CSPs not offering a BPSU should not be required to provide this information.

In Schedule 3, there are a number of record requirements that are outlined that may not be known during the course of a sales conversation with the customer where a decision may be made. For example, section 12 states CSPs must record the date on which the backup power supply commences. However section 13 which requires the date on which the BPSU is installed at the customer's premises, and sections 14 and 15 would occur after initial informed consent is provided and the service is commenced. Yet in Part 2, Section 10(1)(e) and Part 3, Section 15(1)(d), CSPs are unable to commence supply of a service unless the information under Schedule 3 is recorded.

Section 3 should only be recorded if relevant. It is redundant to require CSPs not offering priority assistance to have to make a record that their customers are not priority assistance customers.

Schedule 3 asks CSPs to record 8 different dates from an individual customer's record, some of which may be the same date, some may not be able to be visible to the CSP (e.g. date of decision). Many of these will be captured across different systems, including sales systems, systems interconnected with the NBN and internal ordering and provisioning systems. Yet it is unclear if the ACMA's requirement under Section 20, i.e. to make a record that will enable the ACMA to verify the provider's compliance with that provision, should be interpreted in combination with the requirements under Schedule 3 which requires a record for each individual customer. The manner in which this current draft is written is likely to create the need for a separate reporting system just to house reporting requirements for the ACMA thereby creating huge imposts to individual CSP's IT development costs. Communications Alliance suggests this imposition far outweighs the policy objective the draft Determination is trying to address.

f. Any other comments.

In Part 4, Section 20 the obligation to record in electronic form may already be addressed by the *Electronic Transactions Act 1999*⁵.

Part 4 CSP record keeping rules

Other methods of verifying compliance exist e.g. auditing service provider processes instead of obliging retention of records for every single customer. Communications Alliance suggests that such an approach would be preferable than the arrangements proposed under Part 4 of the draft Determination.

Section 22 **Provision of records to the ACMA** –This might duplicate the existing ACMA obligation for monitoring the performance of carriers and CSPs under s105 of the *Telecommunications Act 1997*⁶. Communications Alliance notes the ACMA already requests by using the powers under s521 of the Telecommunications Act to obtain information from CSPs that may be relevant to fulfil the ACMA's obligation to monitor and report on an annual basis. A similar approach that monitored trends would be of less burden to both CSPs and ACMA alike, most importantly, without having to retain individual customer consent information for a period of 3-4 years in case an audit is required.

General – The large number of instances in this response to the consultation paper where there is no data available to answer the questions is an argument in favour of adopting a 'watch and wait' approach.

⁵ <http://www.comlaw.gov.au/Series/C2004A00553>

⁶ <http://www.comlaw.gov.au/Series/C2004A05145>



**Published by:
COMMUNICATIONS
ALLIANCE LTD**

**Level 12
75 Miller Street
North Sydney
NSW 2060 Australia**

**Correspondence
PO Box 444
Milsons Point
NSW 1565**

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

Care should be taken to ensure the material used is from the current version of the Standard or Industry Code and that it is updated whenever the Standard or Code is amended or revised. The number and date of the Standard or Code should therefore be clearly identified. If in doubt please contact Communications Alliance