

Friday 18th December



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Re: Consultation on reasonable connection and supply requests for statutory infrastructure providers

ACCAN would like to thank the Department of Infrastructure, Transport, Regional Development and Communications for the opportunity to comment on the draft Telecommunications (Statutory Infrastructure Provider – Circumstances for Exceptions to Connection and Supply Obligations) Determination 2020.

The Statutory Infrastructure Provider (SIP) regime requires SIPs within designated service areas to connect premises and supply wholesale services to carriage service providers on ‘reasonable request’. ACCAN considers that by ensuring that premises are only refused connections and supply of services in limited and reasonable circumstances, the Determination strengthens the SIP regime. Strengthening the SIP regimes supports the Telecommunications in New Developments Policy and the proposed amendments to Part 20A of the Telecommunications Act 1997 to reduce delays and costs to consumers,¹ as it ensures developers are able to connect their premises to a network, a requirement of the policy approach and proposed legislation.

ACCAN considers that a Ministerial determination is necessary as NBN’s current connection policy gives the default SIP a considerable amount of flexibility and opportunity to refuse to connect premises. For example, currently NBN can refuse to connect premises that have been allocated for connection to Fixed Wireless and capacity on all available cells is constrained, or premises that have been allocated to connect to NBN Satellite but capacity on all available beams is constrained.² In these instances, NBN will take steps to increase capacity ‘*as soon as reasonably practicable.*’ Whilst we are aware that capacity limitations may prevent connections in the short term, we consider the lack of certainty as to when the capacity will be increased allows NBN the opportunity to refuse a connection for an indefinite amount of time. This has the potential to result in considerable harm to the consumer as it’s likely that a consumer being served by Fixed Wireless or Satellite technologies will not have appropriate mobile coverage to provide a mobile broadband substitution. As the default SIP, NBN should not be provided excessive opportunity to refuse to connect consumers to the network.

¹ <https://www.communications.gov.au/have-your-say/options-boosting-pit-and-pipe-new-developments>

² <https://www.nbnco.com.au/content/dam/nbnco2/2020/policies/NBN%20Co%20Connection%20Approvals%20Policy%20November%202020.pdf>

ACCAN supports the idea to draw on the Universal Service Obligation (USO) determination³ as well as taking a more principles-based approach towards the draft Determination in preference to the more complex and onerous list of premises provided in the USO. Making the Determination simpler will assist consumers in understanding SIP's obligations to connect and supply their premises. However, ACCAN recommends that the principles and definitions are reviewed periodically to ensure that they remain comprehensive enough to ensure that all premises that need to be connected are connected.

ACCAN considers it important to include that where a consumer has been refused a connection request previously, that they are able to request connection again at a later date.

Question 1: Although the USO instrument specifically qualifies an eligible residence as having certain characteristics (i.e. 'access to permanent sanitation facilities'), is the definition of residential premises in this draft instrument appropriate and sufficiently clear?

ACCAN considers that the definition of residential premises is generally appropriate and easy to understand. However, part (b) should be removed, the requirement for the premises to be situated at a location that has a street address or physical mailing address. Not all homes have one physical mailing address, with 300,000 rural and regional homes only using a Post Office (PO) Box address to access their mail and parcels.⁴

Additionally, the requirement for a premise to have a street address may exclude certain residences. The roll out of NBN has shown there are multiple ways to identify a premises. ACCAN is aware of instances where NBN has used latitudinal and longitudinal coordinates in order to locate and connect a home. Given that this has already been an issue with NBN in the roll out in remote areas, the requirement for a street address should be removed from the Determination in order to prevent situations where a consumer may be left unconnected.

Question 2: Are the above circumstances appropriate? Are there additional circumstances where it would be unreasonable for a SIP to accept a request to connect services?

ACCAN considers that the draft Determination largely provides appropriate circumstances in which a SIP may refuse to connect a premise. However, we are concerned regarding the inclusion of section 1(d), which states that a connection can be refused where civil works such as trenching and conduit are required to adequately support the connection, and this has not been supplied. We understand that civil works may be required for connection however this should be the responsibility of the network. Given that it is the networks responsibility to arrange the civil works required for connection, it should not be a reason to refuse a connection.

We also question the inclusion of 1(h)(i) that allows a network to refuse connection when access has not been facilitated within the applicable statutory timeframe (if any) or such other reasonable timeframe requested by the SIP. This provides space for networks to decide themselves what is considered a reasonable timeframe. Furthermore, whilst we understand that (h)(i) is included to

³ <https://www.legislation.gov.au/Details/F2011L00417/Controls/>

⁴ Australia Post, *Home isn't your customers' only delivery address brochure*.
<https://www.innerwest.nsw.gov.au/ArticleDocuments/1582/Australia%20Post%20Brochure%20-%20Home%20isn't%20your%20customers'%20only%20delivery%20address.pdf.aspx>

reflect that there may be cases where a SIP cannot undertake installation of facilities under the powers and immunities arrangements, from a consumer perspective we are concerned that this could lead to situations where a consumer has failed to meet a timeframe to provide access and is consequently refused connection. Given this concern, we believe there should be a level of flexibility provided, for example the obligation for networks to request access again if the consumer fails to meet the timeframes the first time.

Question 3 in the draft Determination: Are there any additional types of premises that should be included (or not)? Should there be some form of attestation that the end user has, or expects to, occupy or use a particular type of premises for a minimum duration?

The draft Determination appears to cover all types of premises that should have access to broadband. However, many community centres and spaces are likely to be not for profit premises, and ACCAN seeks confirmation that these are encompassed by the current list of premises. Again, ACCAN considers that the list of premises should be reviewed periodically to ensure that it is comprehensive enough and fit for purpose.

There should not be a requirement for the end user to attest that they have, or expect to, occupy or use a particular type of premises for a minimum duration. ACCAN is assuming that the benefit of doing so is to avoid situations where a premises is connected and then not occupied for an extended period of time, meaning nbn and other SIPs are unable to recover the cost of connecting consumers. However, we do not consider that this benefit outweighs the cost of connection, as seeking proof that an end user will use the network for a minimum time period would add an unnecessary layer of complexity to the Determination and could lead to a higher number of unconnected premises, contrary to the intent of SIP arrangements.

We have three additional concerns in regard to the attestation proposal:

- Firstly, when a developer contracts a network to connect a premises, there is no guarantee that the future residents of the development will use the network despite occupying the premises for an extended duration. An example is if a developer leases the property to tenants who live in the premise but do not use the network because they have chosen a mobile broadband service. This a financial risk that networks will factor into their costing and is a fact of operating within the wholesale market.
- Secondly, what would the minimum duration be for the attestation? And what would justify the duration? Whilst we are aware that nbn is required to be commercially viable, this needs to be balanced with the policy objective of ensuring that all Australians have access to very fast broadband. If an end-user intends to occupy a premise for only a year or two, we do not consider this sufficient ground for refusal to connect their premises.
- Thirdly, another issue with providing attestations is difficulties identifying the required information. Evidence required that an end user intends to occupy or use a premise for a particular amount of time may be difficult to obtain in many cases, making the requirements to connect unachievable.

Question 4: Would there be benefit in providing a minimum specific threshold to quantify what is intended by ‘continuously located’?

We do not consider that there should be a minimum duration for what is intended by ‘continuously located’ as there will be, in certain circumstances, difficulties for consumers around providing evidence that they have met the minimum threshold requirement. Similarly to question 3, how would a consumer who moves a mobile home on to a premises provide proof that their home is to be continuously located for a certain amount of time? Given that end users will have to pay a fee for the connection, there will be a disincentive for residents to requests a connection for a movable structure that is to be located on a temporary basis. The practicalities involved in requiring a minimum specific threshold may result in unconnected premises, whilst the benefit of doing so would be minimal.

Question 5: Does the proposed drafting above appropriately balance the interests of SIPs, carriers operating third party networks, and consumers?

ACCAN considers that the drafting in relation to third party networks appropriately balances the interests of SIPs, carriers operating third party networks and consumers. It is reasonable to not connect a premises which is already connected to another qualifying telecommunications network. However, we seek clarification on the note in the consultation draft which states that an end user could cancel a service provided by a third party network.⁵ In this instance, an end user would cancel a service with their retail service provider, however we would assume their premises remained connected to the network even if the service was not active. It is not clear how an end user would arrange for the disconnection of a third-party network to allow a new network connection.

Please note ACCANs comments in Division 1 also apply to Division 2.

ACCAN welcomes the opportunity to meet with the department to discuss some of the questions raised in our submission and to gain further clarification.

⁵ *Telecommunications (Statutory Infrastructure Providers – Circumstances for Exceptions to Connection and Supply Obligations) Determination 2020. Consultation Draft. Pg. 5.*