

Investigation Report: iiNet Limited

File No.	ACMA2018/1141
Carriage Service Provider	iiNet Limited ACN 068 628 937
Type of Service or Product	Landline and internet services
Relevant Legislation	<p><i>Telecommunications Act 1997</i></p> <p><i>Telecommunications (NBN Continuity of Service) Industry Standard 2018</i></p> <p><i>Telecommunications Service Provider (NBN Service Migration) Determination 2018</i></p>

Findings

The Australian Communications and Media Authority (**ACMA**) finds that iiNet Limited (ACN 068 628 937) (**iiNet**) has contravened:

- subsection 128(1) of the *Telecommunications Act 1997* (**the Act**) by failing to comply with subsection 7(1) of the *Telecommunications (NBN Continuity of Service) Industry Standard 2018* (**Service Continuity Standard**) on one occasion between 7 November 2018 and 29 November 2018, and
- subsection 101(1) of the Act by failing to comply with:
 - subsection 9(1) of the *Telecommunications Service Provider (NBN Service Migration) Determination 2018* (**Service Migration Determination**) on one occasion between 13 November 2018 and 29 November 2018, and
 - section 11 of the Service Migration Determination on one occasion between 13 November 2018 and 29 November 2018.

Background

1. On 9 January 2019, the ACMA gave iiNet a notice (**the Notice**) under subsection 521(2) of the *Telecommunications Act 1997* (**the Act**) requiring the provision of information and documents relating to specified consumers of its services and to its processes for complying with the Service Continuity Standard and the Service Migration Determination.

2. On 1 February 2019, iiNet provided the ACMA with information and documents in response to the Notice.
3. On 14 March 2019, the ACMA advised iiNet that it had commenced an investigation into iiNet's compliance with the Service Continuity Standard, the Service Migration Determination and the *Telecommunications (Consumer Complaints Handling) Industry Standard 2018*.
4. On 14 June 2019, the ACMA issued preliminary findings. iiNet provided a submission in response to the preliminary findings on 2 July 2019.

Findings and Reasons

Findings on the material questions of fact

5. On 26 May 2018, an existing customer of iiNet (the **Customer**) entered into a consumer contract with iiNet for the supply of a service delivered over the national broadband network (an **NBN service**) to the Customer's premises.
6. The Customer's order for an NBN service was a pre-order, meaning that eventual processing of the order was to occur on an automated basis, when it was triggered by the area in which the Customer's premises are located being declared by NBN Co to be 'ready for service'.¹
7. On 23 October 2018, iiNet sent an SMS to the Customer stating that the estimated date for NBN availability was 3 February 2019.²
8. At 8:03:36am on 2 November 2018, iiNet sent an email to the Customer stating that iiNet had received the Customer's order for NBN Fibre to the Curb (FTTC) internet and that iiNet would send a reminder about the Customer's connection closer to the date.³
9. On 2 November 2019, the NBN Service Qualification tool used by retail service providers (including iiNet) to determine the serviceability of a customer's address received an update that the Customer's order was NBN Serviceability Class 33 (Service Class 33). According to iiNet's response to the ACMA's preliminary findings, Service Class 33 means that:
 - work involved for migration is purely exchange based;
 - there is no requirement to access the customer's premises; and
 - the customer only needs to plug in and set up the NBN connection equipment for the NBN service to work.

¹ Letter from iiNet dated 1 February 2019; Response to Schedule B of the Notice.

² Attachment F – Extract of Task Notes relating to Customer A Complaints.

³ Attachment F – Extract of Task Notes relating to Customer A Complaints.

10. On 2 November 2018, iiNet commenced work to action the Customer's pre-ordered NBN service.⁴ An iiNet task note in relation to the Customer dated 9:19 am on 2 November 2018 states that '[t]he request for a new NBN FTTC service has been submitted to FrontierLink for automatic provisioning'.⁵ ('FrontierLink' is the provisioning system operated by iiNet's related body corporate, AAPT (**Frontier**)).
11. iiNet received an automated communication from Frontier at 4:17:27 pm stating that the 'new service is due to be installed by NBN on the date below'. The relevant date given was 2 November 2018 (pm).⁶
12. On 5 November 2018, iiNet processed the Customer's hardware order and sent an SMS to the Customer advising of processing. On 6 November 2018, iiNet provided the Customer with a tracking number.⁷
13. On 7 November 2018, Frontier sent iiNet the following communications:
 - (a) at 4:13:43 pm a message which stated 'Cutover Date:2018-11-07', and
 - (b) at 4:54:02 pm a 'Port Completion Notification' which stated 'AAPT is pleased to confirm the completion of your port order'. The services belonging to the order were 'Port In Number: 0353911983'.⁸
14. On 7 November 2018, the Customer's ADSL service (**legacy service**) was disconnected without prior notice being provided to the Customer by iiNet. According to iiNet, the disconnection was due to 'premature' porting of the Customer's phone number to the Netphone (VoIP) service as part of the automated process. The porting occurred in preparation of the Customer's NBN service order. As a consequence of this porting, iiNet lost the ability to identify the copper line into the Customer's premises and the service delivered over that line. In turn, due to being unable to identify the copper line and service, the Customer's phone and ADSL services were disconnected.⁹
15. The Customer called iiNet to report the loss of his legacy service on 7 November 2018. The iiNet Customer Service Representative (**CSR**) advised the Customer that the disconnection was due to the cutover to the NBN (when in fact it was as a result of the premature porting of the Customer's phone number prior to the cutover occurring). The CSR followed up on the hardware delivery for the NBN service and advised that the hardware was due to be delivered on 8 November and that the service should work when the new equipment was plugged in.¹⁰

⁴ Attachment A – the Customer – Chronology of events; Attachment F – Extract of Task Notes relating to the Customer Complaints.

⁵ Attachment F – Extract of Task Notes relating to Customer A Complaints.

⁶ Attachment E – AAPT Frontier Order.

⁷ Attachment A – the Customer – Chronology of events.

⁸ Attachment E – AAPT Frontier Order.

⁹ Letter from iiNet dated 1 February 2019; Response to Schedule B of the Notice.

¹⁰ Attachment A – Customer A – Chronology of events.

16. On 8 November 2018, the Customer received the hardware from iiNet. At this point the Customer connected the hardware but the NBN service did not work. In the days following 8 November 2018, there were numerous contacts between the Customer and iiNet as iiNet attempted to successfully connect an NBN service to the Customer's premises.
17. On 16 November 2018, iiNet lodged a fault with NBN Co. and advised the Customer that the next available appointment for connection of an NBN service to the premises was 26 November 2018.¹¹
18. On 26 November 2018, the Customer called iiNet to confirm that the technician had been unable to fix the service and had advised the Customer that the ADSL service should be able to be reconnected.¹²
19. iiNet became aware that the serviceability class of the Customer's address was no longer Service Class 33 and that the Customer's order had apparently been put on hold by NBN Co, following the NBN Co. technician visiting the Customer's property. iiNet submitted in its response to the ACMA's preliminary findings that neither it nor its wholesale partner, AAPT, had been advised of the serviceability class change or whether the cutover process had been completed successfully.
20. On 27 November 2018, iiNet received a TIO complaint in relation to the Customer, which was assigned to an iiNet case officer on 28 November 2018.
21. On 28 November 2018, the iiNet case officer contacted the Customer about resolving the complaint. The Customer had proposed that his complaint could be resolved by having his ADSL service restored. In response, the iiNet case officer advised that iiNet was unable to restore ADSL services to the Customer's location due to the 'copper cease sale' in the area.¹³ The iiNet case officer also advised that NBN Co had provided iiNet with a planned remediation date of 11 December 2018. The iiNet case officer also offered to supply the Customer with a mobile broadband temporary service.¹⁴
22. On 28 November 2018, the Customer advised iiNet that he did not wish to receive a mobile broadband temporary service and that he had changed providers.¹⁵

¹¹ Attachment A – Customer A – Chronology of events.

¹² Attachment A – Customer A – Chronology of events.

¹³ 'Cease sale' is a concept referred to in the Migration Plan given by Telstra Corporation Limited (**Telstra**) to the Australian Competition and Consumer Commission under section 577BDA of the Act. Under clause 17 of the Migration Plan, Telstra generally cannot supply a new copper service or HFC service after an area becomes 'NBN serviceable', either directly to a retail customer or, as in the case with iiNet, to a wholesale customer. Therefore, a customer whose premises are in an NBN serviceable area and have been disconnected from a legacy copper or HFC service will generally be unable to reconnect to their legacy service and instead will be required to migrate to the NBN.

¹⁴ Attachment F – Extract of Task Notes relating to Customer A Complaints.

¹⁵ Attachment F – Extract of Task Notes relating to Customer A Complaints.

23. On 29 November 2018, iiNet and the Customer agreed to cancel the Customer's NBN application, VOIP number and email service.¹⁶

Compliance with relevant obligations

24. Section 128 of the Act states that if an industry standard that applies to participants in a particular section of the telecommunications industry is registered under Part 6 of the Act, each participant in that section of the industry must comply with the standard.

25. The Service Continuity Standard is an industry standard determined under subsection 125AA(1) of the Act and was registered under Part 6 of the Act. It therefore applies to participants in the telecommunications industry including carriage service providers (**CSPs**).

26. iiNet supplies internet and landline services to the public, which means that it is a CSP as defined in the Act. As a participant in the section of the telecommunications industry to which the Service Continuity Standard applies, iiNet is required to comply with the Service Continuity Standard under subsection 128(1) of the Act.

Failure to take all reasonable steps to manage the Customer's migration

27. Part 2 of the Service Continuity Standard imposes requirements on CSPs and carriers to minimise disruption to the supply of carriage services to consumers who are migrating to the NBN. Subsection 7(1) imposes requirements on 'NBN CSPs'. An 'NBN CSP' is a CSP 'which supplies a service to a consumer under a consumer contract using an NBN ethernet product.' Subsection 7(1) states:

An NBN CSP must take all reasonable steps to manage the migration at a consumer's premises in order to minimise disruption to the continuous supply of carriage services to the consumer and expedite the supply of an operational NBN service to the consumer.

28. iiNet is a CSP that supplies carriage services to consumers over the NBN using NBN ethernet products which means it is an NBN CSP as defined in the Service Continuity Standard.

29. For the reasons set out below, the ACMA has formed the view that iiNet contravened subsection 7(1) of the Service Continuity Standard with respect to the Customer between 7 November 2018 and 29 November 2018.

30. The Customer experienced a disruption to the continuous supply of carriage services to his premises. This began on 7 November 2018 when the Customer's ADSL service was disconnected, and continued until 29 November 2018 when the Customer and iiNet agreed to cancel the Customer's NBN application, VOIP number and email service. At no point during this period did iiNet supply an operational NBN service to the Customer.

¹⁶ Attachment F – Extract of Task Notes relating to Customer A Complaints.

31. The ACMA considers that a reasonable step would have been for iiNet to ensure that the cutover process had been completed successfully before the porting of the Customer's phone to the NBN was initiated. By iiNet's own submissions, if this had occurred, the Customer's service would not have been disconnected.
32. Despite iiNet not having the benefit of knowing that the NBN serviceability class of the Customer's premises had changed when attempting to troubleshoot the Customer's service issue, the ACMA considers that it was not reasonable to take nine days (seven working days) after the service was reported lost before lodging a fault with NBN Co.
33. Due to the acts and omissions of iiNet set out above, the Customer was left without a carriage service being supplied to his premises from 7 November 2018 to 29 November 2018. This represents a significant disruption to the continuous supply of carriage services to the Customer. The ACMA considers that, in contravention of subsection 7(1) of the Service Continuity Standard, that iiNet did not take all reasonable steps to manage the migration at the Customer's premises in order to minimise disruption to the continuous supply of carriage services to the Customer and expedite the supply of an operational NBN service to the Customer.

Failure to offer to supply an interim service to the Customer

34. The Service Migration Determination is a determination made under subsection 99(1) of the Act. As a CSP, iiNet is required to comply with the service provider rules set out in the Service Migration Determination in accordance with subsection 101(1) of the Act.
35. Part 3 of the Service Migration Determination imposes rules about the supply of an interim service.
36. Where prerequisites for offering to supply an interim service in section 8 of the Service Migration Determination are met, subsection 9(1) imposes a requirement on an NBN CSP to supply an interim service to a consumer. Subsection 9(1) states:
 - (1) *An interim service must be supplied to a consumer by the NBN CSP where:*
 - (a) *the migration at the consumer's premises has been unsuccessful, and is unlikely to be successful within three working days of the NBN CSP becoming aware of the unsuccessful migration; or*
 - (b) *the migration at the consumer's premises has been successful, but an operational NBN service has not been supplied to the consumer and cannot be supplied to that consumer within three working days of the NBN CSP becoming aware that the consumer's NBN service is not operational,*

unless an exception in subsection (2) applies.
37. The Customer had entered into a contract with iiNet for the supply of an NBN service using FTTC technology in an area that had been declared ready for service by NBN Co. In addition, NBN services using FTTC technology are not connected to a consumer's

premises as a parallel migration (meaning that disconnection of a consumer's legacy service is not required in order to connect the new NBN service). Accordingly, the prerequisites in section 8 of the Service Migration Determination are met.

38. None of the exceptions to subsection 9(1) contained in subsection 9(2) of the Service Migration Determination apply in relation to the Customer.
39. The Customer's ADSL service was disconnected by iiNet on 7 November 2018 in circumstances where the Customer was advised by iiNet that it would be connecting his premises to the NBN. That connection did not occur. A successful migration at the Customer's premises had not occurred within a further three working days (i.e. on or before 12 November 2018), a fact that was known to iiNet.
40. It follows that from 13 November 2018, in accordance with subsection 9(1) of the Service Migration Determination, iiNet was required to supply an interim service to the Customer.
41. In addition, as the requirement to supply an interim service under subsection 9(1) applied, under section 11 of the Service Migration Determination, iiNet was required to advise the Customer of:
 - (a) the applicable timeframes for the supply of the interim service set out in sections 12 and 13 of the Service Migration Determination, and
 - (b) details of the key features and limitations, fees and charging arrangements that apply to the proposed supply of the interim service to the consumer, as soon as possible after becoming aware of the unsuccessful migration.
42. iiNet did not offer to supply the Customer with a mobile broadband temporary service until 28 November 2018. In addition, when it made this offer on 28 November 2018, iiNet did not advise the Customer of the matters specified in section 11 of the Service Migration Determination.
43. Accordingly, iiNet contravened subsection 9(1) and section 11 of the Service Migration Determination in respect of the Customer's NBN service migration.

Failure to comply with subsection 101(1) and subsection 128(1) of the Act

44. For the reasons set out above, the ACMA finds that iiNet has contravened:
 - (a) subsection 128(1) of the Act by failing to comply with subsection 7(1) of the Service Continuity Standard, and
 - (b) subsection 101(1) of the Act by failing to comply with subsection 9(1) and section 11 of the Service Migration Determination.