

To: The Manager
National Interests Section
Australian Communications and Media Authority
By online submission

Date: 13 March 2025

Re: Submission in relation to proposed amendments to the
Telecommunications (Consumer Complaints Handling)
Industry Standard

Part A – Introduction

Cooper Mills Lawyers acts for a number of Australian telecommunications CSPs and makes this submission in that capacity. The submission particularly relates to CSPs that are mobile virtual network operators (MVNOs).

Part B – Executive Summary

1 Proposed section 13(1)(aa)

The proposed section 13(1)(aa):

- (a) should be amended so as to clarify its application; and
- (b) should refer to ‘reasonable needs’ rather than ‘needs’.

2 Proposed sections 17A(c)(i) and 17B(2)

There is a material inconsistency between sections 17A(c)(i) and 17B(2) that requires to be resolved.

3 Proposed section 17B

Improved consumer outcomes can be achieved by:

- (a) encouraging MNOs to provide better data in better ways;
- (b) encouraging MNOs to develop capacity for (near) real-time identification and reporting of mobile services known to be active in an area at or about the time it became subject to an outage; and
- (c) encouraging MNOs and MVNOs to cooperate such that MNOs satisfy direct end user notification obligations on behalf of MVNOs.

4 Proposed sections 17B(1)(a) and (b)

There should be refinement as to what constitutes grounds to ‘suspect’ an outage.

5 Proposed section 17B(2)

The time limits in this section will not be feasible in very many cases.

6 Proposed section 17D(1)

An MVNO cannot comply with this section, beyond asking its MNO to do so.

Part C – Dictionary

In this submission:

the expression:	means:
carriage service provider	as in the Telco Act
carrier	as in the Telco Act
CCO Standard	the <i>Telecommunications (Customer Communications for Outages) Industry Standard 2024</i>
comms channels	the ways in which an MNO and an MVNO communicate, directly or via an intermediary
CSP	carriage service provider
direct MVNO	an MVNO that operates under an MVNO agreement with an MNO
end-user	as in the Standard
indirect MVNO	an MVNO that operates under an MVNO agreement with an intermediary, rather than with an MNO
MNO	mobile network operator
mobile network	a telecommunications network by means of which a public mobile telecommunications service is supplied
mobile network operator	a carrier that operates a mobile network
mobile virtual network operator	a CSP that supplies a public mobile telecommunications service by means of an MNO's mobile network
MVNO	mobile virtual network operator
MVNO agreement	an agreement under which a person obtains access to an MNO's mobile network so as be able to to operate as an MVNO
public mobile telecommunications service	as in the Telco Act

the expression:	means:
Standard	<i>Telecommunications (Consumer Complaints Handling) Industry Standard 2018</i>
Telco Act	<i>Telecommunications Act 1997</i>
telecommunications network	as in the Telco Act

Part D – About the attachment to this submission

Attached is an extract from our separate submission in relation to the ACMA’s proposed amendments to the *Telecommunications (Customer Communications for Outages) Industry Standard 2024*.

It is attached because it also has relevance to the matter of complaint handling. To a large extent, an MVNO only knows (in relation to a mobile network) what it is told by its MNO, and has no capacity to cure any fault in the network.

The same kinds of measures as are advocated for in our other submission – measures directed to improving the quality, clarity, usability and timeliness of MNO information about outages – would promote the achievement of the objectives of the complaint handling amendments.

Part E – Section 13

7 Section 13(1)(aa) – ‘resolve in a manner that best suits the needs of the consumer’

Is the proposed amendment intended to relate to process or outcome?

The original drafting of parts of section 13 tends to be confused, and this is aggravated by the proposed section 13(1)(aa).

Some elements of section 13 are clearly about the *process* of (attempted) resolution. Others (e.g. section 13(1)(e)) are more directed to the *outcome* of the process.

In that context, it is difficult to know whether the proposed section 13(1)(aa) means that:

- a CSP must make all reasonable efforts to resolve a complaint using a process that best suits the needs of the consumer (e.g. communicating by email rather than voice if that works best for the consumer); or
- a CSP must make all reasonable efforts to achieve a resolution that best suits the needs of the consumer.

This needs clarification. Pending clarification, this submission assumes that section 13(1)(aa) is intended to relate to a resolution outcome rather than a resolution process.

8 Section 13(1)(aa) – ‘needs of the consumer’

This should refer to ‘reasonable needs’ so that there is an element of objectivity in the requirement. MVNOs should not be at risk of an interpretation that ‘needs’ are whatever a consumer says their needs are, reasonably or otherwise.

9 Section 13 – Problematic drafting

As noted in paragraph 7, there are pre-existing drafting issues in section 13 that are aggravated by the proposed section 13(1)(aa).

Multiple qualitative standards for complaint outcomes

By virtue of the definitions of ‘resolve’ and ‘resolution’ in section 5 of the Standard, an MVNO must seek to ‘bring a complaint to a conclusion in accordance with the requirements of the Standard’.

Section 13, as proposed to be amended, incorporates three different formulae of words that can be seen as ‘requirements of the Standard’.

- Section 13(1)(c) applies where it is not possible to resolve a complaint to the satisfaction of the consumer.
- The proposed section 13(1)(aa) requires that a complaint should be resolved in a manner that best suits the needs of the consumer.
- Section 13(1)(e) requires that a remedy should address the individual circumstances of the consumer.

Those three formulations tend to obscure what is required to ‘bring a complaint to a conclusion in accordance with the requirements of the Standard’.

Section 13(1)(e) – ‘remedy’

This is the only provision of the Standard that uses the word ‘remedy’. The difference between a ‘remedy’ and a ‘resolution’ is unclear.

Part F – Section 17A

10 Section 17A(c)(i) – CSP to ensure that personnel can comply with section 17B(2) time limits

We refer to paragraphs 12 to 14 below as to the infeasibility of complying with those time limits in a very large number of cases.

In addition, there is a material inconsistency between sections 17A(c)(i) and 17B(2).

Section 17B(2) is not expressed as an absolute obligation. An MVNO’s obligation is limited to taking ‘all reasonable steps’ to achieve an outcome within a certain time.

Section 17A, on the other hand, is an absolute obligation to ensure that an MVNO’s personnel can comply with the timeframes in section 17B(2). So an MVNO could comply with section 17B(2) while simultaneously being in breach of section 17A(c)(i).

Section 17A(c)(i) should be amended to provide that a carriage service provider must ensure that its personnel dealing directly with consumers or network outage complaints *comply with section 17B(2)*.

Part G – Section 17B

11 Section 17B(1) – overall

Any issues in connection with section 17B(1) would be obviated if all MNOs communicated with their MVNOs about outages in a clear and easily understood way, through a dedicated outages comms channel, and without any avoidable delay. The ideal is that an MVNO has no need to ‘pull’ information from its MNO because it is given that the MNO will ‘push’ all available information in as close to real-time as possible.

An MVNO should be able to assume that, if it has not been told about an outage, its MNO has nothing to tell it. There should be no reason for an MVNO to harbour ‘suspicions’ about outages. The best available relevant network information should be made accessible to MVNOs in as close to real-time as possible.

12 Section 17B(1)(a) – ‘reason to suspect a network outage is occurring’

This wording sets the bar too low. The mere fact that there is a service outage report can be regarded as a ‘reason to suspect’ an outage. In almost every case, a possible explanation of loss of service would be an outage.

The phrase is partially defined by section 5 of the Standard, which (relevantly to an MVNO) provides that receipt of a section 8 notification under the CCO Standard constitutes ‘reason to suspect’. However the definition is inclusive rather than exclusive, creating considerable uncertainty as to what less objective conditions may be considered as ‘reason to suspect’. As noted, the fact of a service outage report may qualify.

The Standard should be amended such that a single report is not taken to be a reason to suspect an outage, unless there is some other factor that suggests otherwise. For instance, multiple service outage reports from end-users in the same area might be indicative of an outage in that area.

13 Section 17B(1)(b) – ‘whether the consumer is affected or likely to be affected by that network outage’

If the possibility that a single service outage report may constitute reason to suspect a network outage is occurring is not excluded, section 17B(1)(b) has no work to do in those cases.

If a single service outage report is a reason to suspect an outage, it must be concluded that the reporting end-user is affected by that (suspected) outage.

Again, the cure is to provide that a single report, without more, is not taken to be a reason to suspect.

14 Section 17B(2) – ‘all reasonable steps to make a determination ... no later than 30 minutes after a report’

This section also runs headlong into the difficulties canvassed in the attachment to this submission. It assumes that MVNOs have access to real-time, or nearly real-time, information about their MNO’s mobile network. In a very large number of cases, they do not.¹

In these cases, an MVNO has little or no prospect of complying with the proposed timeline. The comms channels are simply not responsive enough to supply the necessary information immediately or within half an hour.

The gold standard would be that all MNOs communicated with their MVNOs about outages in a clear and easily understood way, through a dedicated outages comms channel, and without any avoidable delay. The ideal is that an MVNO has no need to ‘pull’ information from its MNO because it is given that the MNO will ‘push’ all available information in as close to real-time as possible.

The ACMA should be promoting that outcome because, unless it is addressed, there will be many cases where the objective of section 17B(2) cannot be achieved.

Part H – Section 17D

15 Section 17D(1) – CSP to effect network restoration

A direct MVNO can request, demand, plead with and urge its MNO to restore service. Beyond that, an MVNO has no ability whatsoever to take any – let alone all – necessary actions to restore its MNO’s network.

If it is intended that section 17D(1) only requires an MVNO to do that which is within its power, the clause should be amended to that effect.

Otherwise, the clause should be amended to exclude MVNOs from the operation of the clause.

Peter Moon

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¹ We make the same qualification as we made in our CCO Submission, that we do not assert that 100% of cases are as described. But it is, as stated, a very large number.

Attachment

Extract from Cooper Mills Lawyers submission in relation to proposed amendments to the *Telecommunications (Customer Communications for Outages) Industry Standard 2024*.

Part I – Operational realities

This submission reflects the operational realities of the MNO / MVNO relationship. The observations in this Part will underpin comments in subsequent Parts.

Limitations on MVNO information and capabilities

In short, an MVNO typically has:

- limited, or no, information about the status of the MNO's network – beyond information that the MNO provides; and/or
- no ability to cure network outages – beyond requesting the MNO to do so.

An indirect MVNO may be even more constrained than a direct MVNO, because it has no contractual relationship with the relevant MNO, and is potentially required to communicate with the MNO via the intermediary, rather than directly.

The term *mobile virtual network operator* is arguably a misnomer, as it is not the *mobile network* that is virtual. The mobile network is real. It is the *operator* that is virtual, as:

- it does not in reality operate the mobile network; and
- it does not have the information about the mobile network that a real operator has.

Existing comms channels

MNOs do provide information about the status of their mobile networks to MVNOs, either:

- directly, or
- indirectly i.e. some MVNOs may be required to communicate only with their contracted intermediary.

The comms channels in place between MNOs and MVNOs differ in the case of each of the three major mobile networks in Australia. What they have in common is that they were designed and have been developed to address the bilateral operational requirements of MNOs and MVNOs in each case. The comms channels were (obviously) not designed or developed to anticipate or accommodate the *Telecommunications (Customer Communications for Outages) Industry Standard 2024*, either in its initial form or as now proposed to be amended.

Comms channels may not enable MVNO compliance

The Standard requires an MVNO to deliver various items of information:

- to each of its end-users affected or likely to be affected by an outage;
- in an 'easily accessible form', meaning a manner that is 'easy to understand and accessible'; and
- 'as soon as practicable'.

However:

- predominantly (or even exclusively), the only source of the relevant information is the MNO; and

- in a very large number of cases, there is a significant deficit in the capacity of existing comms channels to provide to an MVNO the information it requires in order to effectively comply with the Standard.

We do not comment on the circumstances of any particular MNO, and this submission is not to be taken as criticism of any MNO. The effect of the Standard is to repurpose long established comms channels which, in a very large number of cases, do not adequately support MVNO compliance.

Part J – Volume and format of MNO-supplied data

This Part details difficulties that can arise from the limitations of existing MNO/MVNO comms channels in supporting processes under the Standard. The potential problems associated with this issue could be mitigated by the solutions proposed in Part K of this submission.

16 Comms channels for outage notifications not always efficient

In a very many cases, MNO outage notifications form a component of a nearly continuous stream of messaged communications about various network-related matters. It is not unusual for an MVNO to receive several hundred of these general communications a day, with outage notifications embedded. Identifying messaging about relevant outage notifications has been compared to finding a needle in a haystack.

Frequently, information from a number of (not necessarily sequential) messages needs to be pieced together and understood and, frequently, messaged information is complex and requires interpretation. It can be a time consuming process.

In cases where an MVNO requires important clarification of the contents of an MNO notification, the MNO response time may be several hours.

Where an outage notification is received outside an MVNO's business office hours, it may not be feasible for on-duty call centre personnel to identify, understand and action it.

As noted in Part I, this is not a criticism of any MNOs. The difficulties described simply reflect the fact that existing comms channels pre-date the Standard.

17 Issues repeated across many MVNOs

Where the difficulties described in paragraph 16 arise, they likely impact all MVNOs that operate on an MNO's network. Each MVNO must independently identify and decipher what elements of the message stream are relevant to their compliance with the Standard. This is inefficient, wasteful of time and resources, and error-prone.

Part K – Enhancing consumer outcomes under the Standard

MVNO experience since the commencement of the Standard suggests several ways to improve consumer outcomes.

18 Clearer outage notifications

The Standard requires:

- carriers to communicate outage information to the public *in easily accessible form*; and
- CSPs to communicate outage information to end users and the public *in easily accessible form* –

but it does not require carriers to communicate outage information to CSPs *in easily accessible form*. This deficiency should be addressed:

- in the interests of improved consumer outcomes; and
- as a matter of fairness to MVNOs, which should not be tasked with creating information in an easily accessible form from carrier information that may not be in easily accessible form.

MNOs should be encouraged to communicate with MVNOs about outages in a clear and easily understood way, through a dedicated outages comms channel.

- This would greatly simplify MVNO compliance with the Standard.
- It would reduce the number of occasions on which an MVNO had cause to query an MNO notification, and potentially wait several hours for a necessary clarification.
- It would enable MVNO personnel on duty outside the office hours of its senior administration to more confidently and competently action outage notifications with minimal delay.
- If done appropriately, it may even facilitate automation of end user notifications so that they can be effected in nearly real-time.