

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

Date: 11 March 2025

Re: Submission in relation to proposed amendments to the
*Telecommunications (Customer Communications for
Outages) Industry Standard 2024*

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 In many cases, an MVNO is not supplied by an MNO with outage data that is sufficient to best comply with the Standard.
- 2 In particular, an MNVO may not hold, or be supplied with, sufficient information to ascertain which services are affected, or are likely to be affected, by an outage.
- 3 In many cases, MVNOs are supplied with MNO outage data that is unclear and difficult to work with.
- 4 The proposed new definition of ‘significant local outage’ has the effect that an MNVO may incur onerous obligations as a result of a single end user being affected by an outage.
- 5 Improved consumer outcomes can be achieved by:
 - encouraging MNOs to provide better data in better ways;
 - 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;
 - encouraging MNOs and MVNOs to cooperate such that MNOs satisfied direct end user notification obligations on behalf of MNOs.

Part C – Dictionary

In this submission:

the expression:	means:
amendments	the amendments proposed to the Standard as at the date of this submission
carriage service provider	as in the Telco Act
carrier	as in the Telco Act
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
intermediary	a person (other than an MNO) authorised to enter an MNO agreement with an MVNO e.g. a sub-wholesaler
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

the expression:	means:
public mobile telecommunications service	as in the Telco Act
Standard	<i>Telecommunications (Customer Communications for Outages) Industry Standard 2024</i>
Telco Act	<i>Telecommunications Act 1997</i>
telecommunications network	as in the Telco Act

Part D – 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 E – Definition of *significant local outage*

1 Proposed definition

The proposed definition is as follows:

significant local outage means any unplanned adverse impact to a telecommunications network in a distinct location in regional or remote Australia used to supply carriage services to end-users, that:

- (a) results in an end-user being unable to establish and maintain a carriage service;
- (b) affects, or is likely to affect 1,000 or more services in operation;
- (c) is expected to be, or is, of a duration longer than 6 hours; and
- (d) is not a major outage.

This definition is broadly adapted from the existing definition of ‘major outage’.

2 ‘Distinct location’

The meaning of ‘a distinct location in regional or remote Australia’ requires clarification. For instance, is an entire shire in remote Queensland or Western Australia a ‘distinct location’? In other contexts, such very large areas might not constitute distinct locations but, in the context of remote areas with very low population densities, it perhaps is the case that a shire is a distinct location.

3 ‘Affects, or is likely to affect 1,000 or more services in operation’

The following submission is applicable both to the existing definition of ‘major outage’ in the Standard, and to the proposed definition of ‘significant local outage’.

In very many cases,¹ the only items of location data available to an MVNO are:

- the postcode(s) affected by an outage – as notified by an MNO; and
- end user postcodes – as recorded in the MVNO’s customer database.

1 We use this and similar phrases advisedly. It is not suggested that the circumstances described necessarily apply in all cases. However, as stated, they do apply in very many cases.

While the MVNO can then notify end users whose recorded postcodes correspond to the notified affected postcodes, that is likely to be a very imperfect basis for determining which end users are (likely to be) affected, because, for instance:

- many mobile phone customers do not update their physical address details when they relocate; and
- many live, work or study outside the postcode recorded in their account details.

It would be far preferable that MNOs provided MVNOs with real-time or nearly real-time notification of the service numbers of services that are (likely to be) affected².

In the absence of receiving network data that more accurately identifies which of its mobile customers is actually in an affected location at or about the time of an outage, an MVNO can only either:

- make a best guess based on limited information such as recorded postcode; or
- take a scatter gun approach and notify all its end users of every outage.

The accurate identification of services that are (likely to be) affected could be promoted by the solutions proposed in Part G of this submission.

4 'Affects, or is likely to affect 1,000 or more services in operation'

The proposed definition of 'significant local outage' uses 1,000+ SIOs as the benchmark for 'significance'.

That may be appropriate in relation to an MNO. If it is the case that 1,000 end users on the MNO's network in a particular area are being affected by an outage, it seems reasonable to deem that there is a significant local outage in relation to the network, from the MNO's perspective.

However, the number of those 1,000 end users that are customers of a particular MVNO might be a handful, and conceivably just one or two. There are many MVNOs with very small customer bases in regional and remote Australia.

It is not suggested that a small customer base should be 'left in the dark' about an outage. However, the policy approach of the Standard is clearly that its rigorous mandatory requirements apply subject to threshold tests i.e.:

- in the case of a major outage: 100,000+ SIOs or all services in a State or Territory; and
- in the case of an MNO and an outage in a regional or remote locale: 1,000+ SIOs.

However, on the present drafting, in the case of an MVNO, the threshold for a relevant outage in a regional or remote locale is a single SIO. If there is a single MVNO customer in an affected place, the mandatory aspects of the Standard are triggered as against that MVNO, including obligations of public notification via a website and outage-specific call centre staff training (where the proposed clause 12A applies). Compliance in these circumstances could involve a very significant operational burden.

² For example, by providing the numbers associated with services that had registered on mobile base stations within the affected area in the hours preceding an outage.

One MVNO approach might be to discontinue sales to consumers in specific locations/postcodes so as to avoid the risk of having small customer bases in regional or remote Australia. That would be regrettable but understandable.

The potential problems associated with this issue could also be mitigated by the solutions proposed in Part G of this submission.

Part F – 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 G of this submission.

5 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 D, this is not a criticism of any MNOs. The difficulties described simply reflect the fact that existing comms channels pre-date the Standard.

6 Issues repeated across many MVNOs

Where the difficulties described in paragraph 5 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 G – Enhancing consumer outcomes under the Standard

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

7 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.

8 Identifying services that are (likely to be) affected

MNOs should be encouraged to use (near) real time network data to more accurately assess which services are in fact (likely to be) affected by an outage, and particularly a significant local outage.

For instance, at the time of notification of an outage, an MNO would report to an MVNO:

- the postcodes affected; and
- the service numbers of that MVNO's end users that 'touched' a mobile cell in the affected area in a particular period before the outage commenced.

The MVNO could then notify the outage to:

- all end users with recorded postcodes corresponding to the affected postcodes; and

- all end users whose devices are known to have been in the affected area at or about the time of the outage.

This would allow MVNOs to meaningfully address the issue of what services are 'affected, or are likely to be affected' by a particular outage.

An amended Standard should provide that, in the case of end users of public mobile telecommunications services, an MVNO is taken to comply with an obligation to notify end users that are 'affected or likely to be affected' if it notifies end users:

- with recorded postcodes (if any) that correspond to postcodes notified by a carrier; and
- whose services are notified by the carrier as having 'touched' a cell in the affected area within a specified period before commencement of an outage.

Whether it is this particular solution or an alternative solution that is adopted, it is unfair that an MVNO be obliged to notify any end user that is in fact affected when it cannot know which users are in fact affected, without further information from the carrier that operates the mobile network.

9 Expressly authorise delegation of MVNO obligations to the relevant MNO

Direct notification obligations

The most efficient way to achieve the objectives of the Standard would operate as follows.

- An MVNO supplies to its MNO a list of, in respect of each MVNO end user:
 - their service number;
 - their postcode (if any) as recorded by the MVNO; and
 - the email address associated with their account.
- On the occurrence of a relevant outage:
 - MVNO end users are included by the MNO in its notifications to the MNO's own end users; and
 - those notifications are customised (on an MVNO by MVNO basis) to the general effect of:
 - *You are a customer of FunnyTel, whose services are supplied on our CarrierCo network.*
 - *There's a network outage [and then details as required by the Standard].*
 - *If you need direct assistance, contact [FunnyTel's contact points].*
 - MNO notifies MVNO of service numbers in respect of which each notification has been despatched.

This would accelerate notifications, and reduce double handling and errors. Each MNO has a sophisticated capability for notifying its own end users and keeping the required records, and the marginal effort in providing for notification of all end users on a mobile network, and associated record keeping, is likely to be modest.

It may be objected that the MNO has no relationship with an MVNO end user. That is neither true nor relevant. An MNO has no *contractual* relationship with an MVNO end user but it has a very material *factual* relationship: the end user's service is *factually*

provided by the MNO, and the service is *factually* impaired as a result of an outage in that network. If the aim of the Standard is that telecommunication consumers should receive the best and most timely information about an outage, it is appropriate that the entity closest to the network and its outage, and which has (or can readily develop) the capacity to notify end users on behalf of its client MVNOs, should do so. The least that an amended Standard should do is to authorise MVNOs and MNOs to enter an arrangement of the kind described. While it can be argued that such an arrangement is available under current drafting, express authorisation would have the advantage of encouraging its adoption.

Website and ‘other media’ information

For similar reasons, MVNOs should be expressly authorised to satisfy obligations to provide information via its website and ‘other media’ by reference to the relevant MNO’s published information. As long as an end user is clear about where to find the best available information about an outage, it is not necessary or efficient that each MVNO is required to create its own ‘branded’ version of information sourced from its MNO.

10 ‘Encouragement’ of MNOs

While the gold standard of ‘encouragement’ may be black letter regulation, the ACMA may also consider auspicing a voluntary upgrade of MNO/MNVO communications capabilities and processes, so long as the ACMA recognises that, absent an upgrade, the effectiveness of MVNO compliance efforts will (in many cases) necessarily remain impaired.

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