

*NBN Services in Operation*

*Record Keeping Rules*

Explanatory statement

**September 2017**

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## Introduction

This explanatory statement accompanies the NBN Services in Operation Record Keeping and Reporting Rules (Rules).

## Regulatory framework

Under section 151BU of the *Competition and Consumer Act 2010* (CCA), the ACCC can make record keeping rules (RKRs) that require one or more specified carriers to keep and retain records and give reports to the ACCC consisting of information contained in those records.

The ACCC cannot require a carrier to keep and retain records unless they will contain information relevant to specified matters, which are:

* determining compliance with the Competition Rule (section 151AK of the CCA)
* determining compliance with tariff filing directions
* the operation of Part XIB of the CCA (other than Division 6)
* the operation of Part XIC of the CCA
* the operation of the *National Broadband Network Companies Act 2011* or regulations under that Act
* the operation of Part 9 of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* which deals with regulation of Telstra’s charges
* the operation of Division 3, Part 20 of the *Telecommunications Act 1997* which deals with the Rules of Conduct relating to dealings with international telecommunications operations

Sections 151BUA, 151BUB and 151BUC of the CCA give the ACCC the power to disclose, or to require carriers or carriage service providers to disclose, reports prepared in accordance with an RKR.

## NBN Services in Operation RKR

The Rules were first issued in September 2014 in order to obtain information that is relevant to the operation of Part XIB and Part XIC of the CCA.

The objective of Part XIC of the CCA is to promote the long-term interests of end-users (LTIE), which comprises the objectives of:

* promoting competition
* achieving any-to-any connectivity in relation to carriage services that involve communication between end-users
* encouraging the economically efficient use of and investment in infrastructure supplying telecommunications services.

The ACCC has a number of statutory functions under Part XIC of the CCA, including declaration of listed carriage services, conducting inquiries for access determinations (containing price and non-price terms of access) for declared services, and the assessment of special access undertakings and anticipatory exemption applications. The ACCC also has ancillary enforcement functions under Part XIC including ensuring access providers (incl. NBN Co) comply with the standard access obligations set out in sections 152AR and 152AXB of the CCA.

Under Part XIB, the ACCC is responsible for enforcing the telecommunications specific anti-competitive conduct provisions as well as providing the Minister with annual reports including a report on competitive safeguards within the telecommunications industry.

The ACCC’s performance of these statutory functions, and the operation of Part XIB and Part XIC of the CCA more generally, is predicated on the ACCC receiving timely and reliable information concerning the state of competition in telecommunications markets and how competitive dynamics are changing over time, as well as the efficient use of and investment in telecommunications infrastructure.

In this regard, the Rules enable the ACCC to receive information on the demand for NBN Co services – in terms of services in operation, referred to as access virtual circuits (AVC) and network capacity, referred to as connectivity virtual circuits (CVC).

It is crucial for the ACCC to be able to monitor how competition develops over the NBN, and that the use of and investment in the network occurs in an efficient manner.

The extension of the Rules will continue to facilitate this by providing information on the rate and level of take-up of different NBN access services, as well as individual components and features of these services, and the resulting market shares by NBN wholesale access seekers.

## Explanatory Notes

#### Commencement (clause 2)

The RKR was set to expire on 30 September 2017. The effect of this amendment is that it will now expire on 30 September 2020.

The ACCC consulted on the extension of the Rules with stakeholders in August 2017 and received submissions from seven industry participants. All submissions to the consultation agreed that the Rules should be extended.

NBN Co raised no objection to the RKR being extended. Telstra, Communications Alliance and NBN Co submitted that the RKR should be extended for three years.

New Street Research (an institutional investor research firm) submitted that the Rules should be extended for at least three years, but supported a five year extension when migration of services would be completed in 2022.

Optus, the Competitive Carriers Coalition and ACCAN supported an extension of the Rules for five years.

The ACCC considers that extending the Rules for a further three years is appropriate. A review of the Rules at three years, rather than five years, would be the appropriate point to consider the continued operation of the Rules.

The Rules may be reviewed at any further time as the roll-out of the NBN progresses and new services become available. The ACCC is undertaking further consultation a variation to the reporting requirements of the Rules that will be completed in 2017. This Explanatory Statement relates only to the extension of the expiry of the Rules.