



Infrastructure Record Keeping Rules

***An ACCC Consultation Paper on proposed amendments to the
Audit of Telecommunications Infrastructure Assets –
Record Keeping Rules 2007***

November 2012



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1 Introduction

The Australian Competition and Consumer Commission (ACCC) collects information from industry to undertake its telecommunications regulatory functions under the *Competition and Consumer Act 2010* (the Act) and relevant telecommunications legislation.

Under section 151BU of the Act, the ACCC may make record keeping rules (RKR) specifying records to be kept and requiring reports of information in those records to be provided to the ACCC. The ACCC cannot require records to be kept unless they contain information relevant to the ACCC's responsibilities under the Act or certain other legislation. Carriers and carriage service providers must comply with RKRs.

In March 2007 the ACCC issued a discussion paper proposing an audit of telecommunications infrastructure to be implemented through a new RKR which would further inform its analysis of competition in relevant telecommunications markets. The ACCC subsequently issued the *Telstra Customer Access Network Record Keeping and Reporting Rules* (Telstra CAN RKR) in September 2007, which primarily require the quarterly reporting of unconditioned local loop (ULL) and line sharing services (LSS) take-up. On 19 December 2007, the ACCC made the *Audit of Telecommunications Infrastructure Assets - Record Keeping Rules 2007* (Infrastructure RKR) requiring specified carriers to report the locations of their core network and customer access network (CAN) infrastructure.

1.1 Purpose

The purpose of this Consultation Paper is to advise industry of proposed changes to the Infrastructure RKR and seek submissions on those proposed amendments.

The ACCC seeks comment from industry participants, other stakeholders (including end-users) and members of the public.

1.2 Why amend the infrastructure RKR?

The Infrastructure RKR has been in place since 2007. The data collected under the RKR has been used by the ACCC in a number of its regulatory decisions. In particular, information collected about infrastructure has assisted the ACCC in assessing the level of competition on specific transmission routes or in exchange service areas.

The ACCC considers that this information remains relevant and will be a key input into the ACCC's decisions about the need for regulation and to monitor competitive developments in the industry in relation to infrastructure assets. The ACCC also considers that it is appropriate in the current market to update the list of record keepers required to report to the ACCC as well as amend the information required to be reported under the RKR.

Industry participants have changed substantially since the RKR was first issued in 2007. There have been a number of new entries, exits and mergers and/or takeovers between market participants which have rendered the list of 22 record keepers set out

in Part 1 of Schedule 1 in the Infrastructure RKR out of date. The updated RKR will require new entities to report for the first time and clarify those entities that are currently required to report. An updated list of record keepers is set out in this consultation paper and in the draft amendments to the RKR.

The ACCC has also identified several areas where clarification and further information is considered to be relevant to assist the ACCC in exercising its regulatory functions.

1.3 Use of data collected under the Infrastructure RKR

The ACCC has used the data provided under the Infrastructure RKR in various regulatory processes. Examples where the information provided under the RKR is directly relevant include:

Domestic Transmission Capacity Service (DTCS) Telstra exemption decisions in 2008

In 2008 Telstra applied for exemption from the standard access obligations (SAOs) in respect of a number of capital-regional, inter-exchange and tail-end transmission services. Using maps of the location of fibre obtained through the Infrastructure RKR, the ACCC assessed the level of competition by examining the number of fibre competitors on these routes and identifying where the fibre was connected. For example, the maps of optic fibre routes from the Infrastructure RKR showed whether the competing fibre interconnects to a Telstra exchange, passes within a close proximity of an exchange, or connects to contiguous ESAs which also have competitive fibre infrastructure.

DTCS Declaration decision in 2009

The ACCC used the analysis of the Infrastructure RKR from the Telstra exemption decision of 2008 to inform the scope of the DTCS declaration decision in 2009.

Advice to government on NBN POIs in 2010

As part of the ACCC's advice to the government in December 2010 on the number and location of POIs to be used by NBN Co, the ACCC used maps of the location of optic fibre from the Infrastructure RKR to determine the location and extent of competitive fibre infrastructure and the number of competitors at these locations. For example, the analysis of the Infrastructure RKR showed the extent of competitive fibre deployed. This analysis informed the ACCC's recommendation of a semi-distributed approach to the location of POIs to the NBN.

Confirming the final location of, and establishing, the NBN list of POIs under s151DB

The ACCC used the Infrastructure RKR in assessing and confirming the final locations of the NBN POIs. This process included an assessment of the final POI locations to determine whether they met the competition criteria developed by the ACCC in its advice to government. In doing this analysis, the ACCC used the Infrastructure RKR to assess whether there was competitive fibre infrastructure at or

near the nominated POI locations and whether that fibre connects to a fibre network which connects to a capital city.

Publication of information for stakeholder benefit

In February 2011 the ACCC published aggregated information on the availability of competitive fibre infrastructure based on the information received under the RKR. The information is in the form of an aggregated list of Exchange Service Areas (ESAs) with more than two fibre infrastructure owners present. The ACCC considered that publishing the information would enhance the information available to industry on the extent of potential competition in fibre services.

Upcoming DTCS declaration review

As part of the next DTCS declaration review, the ACCC intends to use maps of optic fibre from the Infrastructure RKR to assess where new competitive fibre infrastructure has been rolled-out and the extent of fibre capable of being used to provide competing DTCS services. The ACCC considers that the roll out of NBN Co's fibre access network and the provision of business and enterprise services by NBN Co is likely to provide substitute services to current DTCS services in areas where the NBN roll out is completed. Information obtained through the Infrastructure RKR will assist the ACCC in considering whether it should remove DTCS regulation in these areas.

Other ACCC processes

The ACCC has used data obtained from the Infrastructure RKR to inform its decision making in a number of other processes within the telecommunications sector.

1.4 Consultation Timetable

The ACCC requests written submissions in response to this consultation paper and draft RKR amendments from interested parties before 5.00 pm on **25 January 2013**.

The ACCC will then finalise the variation to the RKR in March 2013.

1.5 Making submissions

The ACCC encourages industry participants, other stakeholders and the public to make submissions to the ACCC to assist it in determining the appropriateness of the proposed amendments to the Infrastructure RKR.

To foster an open, informed and consultative process, all submissions will be considered as public submissions and will be posted on the ACCC's website. If interested parties wish to submit commercial-in-confidence material as part of their submission to the ACCC, parties should submit both a public and commercial-in-confidence version of their submission. The public version of the submission should clearly identify the commercial-in-confidence material by replacing the confidential material with an appropriate symbol or 'c-i-c'.

Please forward submissions by email to the following contact officers:

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2 The Infrastructure RKR

2.1 Regulatory framework

Section 151BU of the Act provides that the ACCC may make record-keeping rules (RKR) which require carriers and carriage service providers to keep records and provide reports of information in those records to the ACCC. Subsection 151BU(4) limits the information that can be collected to information that is relevant to various specified statutory functions of the ACCC.

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

2.2 Identifying relevant record keepers required to provide information

Part 1 of Schedule 1 to the Infrastructure RKR contains a list of 22 record keepers that are required to provide specified information to the ACCC. The list of record-keepers was compiled on the basis of the Australian Communications and Media Authority's (ACMA's) annual assessment of sales revenue in connection with the Universal Service Obligation. The ACCC used the ACMA assessment to identify and exclude from the operation of the RKR those carriers who were considered to operate on a relatively small basis. However, it also excluded those carriers who do not own or operate their own infrastructure.

The list of record keepers has not been updated since the Infrastructure RKR was first made and is now out of date. For example, the list does not take account of industry changes such as the merger of Vodafone and Hutchison, the developments relating to NBN Co or the provision of telecommunications services over core networks from alternative carriers such as utility organisations. To ensure the ongoing usefulness of the data collected, the ACCC considers that it is appropriate to review the record keepers that could provide relevant information about the extent of infrastructure in the market.

Table 1: Current and proposed list of Record Keepers under the Infrastructure RKR

The current list of record keepers in Part 1 of Schedule 1 of the RKR includes:	Proposed amended list of record keepers:
AAPT	AAPT
AARNET	AARNET
Agile Communications	Agile Communications (iiNet)
Amcom	Amcom
Austar	Austar
Ergon	Ergon

Hutchison	Hutchison
Macquarie Telecom	Macquarie Telecom
Neighbourhood Cable	Neighbourhood Cable
NextGen	Nextgen
Opel	Opel
Optus	Optus
Personal Broadband Australia	Personal Broadband Australia
PIPE Networks	PIPE Networks (TPG Telecom)
Primus	Primus (M2 Group)
Silk Telecom	Silk Telecom (TPG Telecom)
Soul Communications	Soul Communications
Telstra	Telstra
Transact	Transact (iiNet)
Unwired	Unwired
Verizon	Verizon
Vodafone	Vodafone Vodafone Hutchison Australia
	Additional record keepers to be added to the list
	Aurora (Auroracom)
	Basslink Telecoms
	Essential Energy
	NBN Co (including NBN Co Tasmania)
	Railcorp NSW
	SA Power Networks
	VicTrack
	Vocus

2.3 Amendments to infrastructure data under the RKR

The ACCC has identified several areas where clarification and further information may assist the ACCC to monitor competitive developments in the industry in relation to infrastructure assets. The ACCC considers that the following information would assist the ACCC in performing its functions under relevant legislation. For example, the following information is likely to be relevant to the ACCC's consideration of the review of the declared DTCS service which will expire in March 2014. The ACCC seeks comment on the draft RKR amendments that record keepers are required to submit relating to the following issues:

- *Infrastructure deployed over the last year*

Whether record keepers should be required to submit information identifying infrastructure deployment in the last 12 months. This information would assist the ACCC to observe more effectively changes in competition within relevant markets over the preceding 12 month period. The ACCC proposes that record keepers be required to indicate the extent of infrastructure deployment over the previous year.
- *Ownership/lease/operation of infrastructure*

The ACCC considers that it would assist its identification of the level of competition within relevant markets if it was able to identify whether significant infrastructure assets are being leased or operated by another carrier or carriage service provider. For example, fibre deployed as part of the Commonwealth Government's Regional Backbone Blackspots Program. Identifying leased infrastructure or other arrangements will assist the ACCC to better understand the extent of infrastructure based competition and the use of such infrastructure.

The ACCC seeks comments on whether the RKR should require record keepers to identify and differentiate where they own, lease or operate assets on behalf of a third party.
- *Decommissioning of infrastructure*

As the NBN is progressively rolled out Telstra has cease sale and disconnection obligations for its fixed line network infrastructure within the relevant NBN fibre footprint. The disconnection process will impact a number of regulated services such as the DTCS and fixed line services. The provision of information relating to the withdrawal of services and infrastructure will assist the ACCC to monitor the state of competition and determine the timing of regulation rollback during the transition period to the NBN.

2.4 Timeframe for lodgement of 2013 records

The ACCC proposes that the amendments to the RKR would apply from the next reporting date, that is, 31 January 2013. This would require reports to be lodged with the ACCC by 1 March 2013. However, given the nature of the amendments proposed

in the consultation paper and the requirement that some new (or consolidated) entities be required to report on infrastructure assets for the first time, the ACCC proposes an extension to the reporting date to require that 2013 reports be lodged no later than 1 September 2013, giving record-keepers an additional six months to comply with the rule. In subsequent years, entities would be required to report on infrastructure assets as at 31 January each year with a report to be provided to the ACCC by 1 March each year. New entities required to report under the RKR will not be required to report on deployment or decommission of assets in their first reporting period.

2.5 Format of data

No change is proposed to the format required for reporting purposes. The ACCC recognises that carriers and carriage service providers may use different record-keeping systems and processes for their own internal purposes. The Infrastructure RKR currently requires information to be provided in TAB vector format (a MapInfo proprietary format that contains a spatial representation of data using points, lines and polygons) or a format agreed between the ACCC and the reporting party.

The ACCC has generally accepted requests to use formats that can be incorporated into existing ACCC databases or that are consistent with those of the ACMA. By way of example, the ACCC has accepted data in GIS format ESRI SHP and written formats consistent with the radio communication database produced by ACMA.

3 Issues for comment

The ACCC is seeking submissions from industry, other stakeholders and the general public on the issues set out below and the attached draft amendments to the instrument.

- Are the proposed amendments to the list of telecommunications infrastructure providers required to report under the RKR appropriate?
- Are there additional entities that are not included on the proposed list but who should be included on the list?
- Should any entities on the proposed list not be required to report? For what reason?
- Are there any significant impediments in providing the additional information proposed to be reported under the amended RKR?
- Should the information reported under the RKR be updated to include identification of CAN and core infrastructure deployment in the preceding 12 months?
- Should the identification of major infrastructure ownership, lease and operating arrangements be reported separately?
- Are there any obstacles that might prevent record keepers reporting the decommissioning of infrastructure assets in the preceding 12 months?
- Is the additional six months allowed for compliance with the amended RKR sufficient time to lodge returns? If not, what impediments are there to meeting this timeframe and what period of time would be needed?
- Do you have any additional comments on the proposed changes to the Infrastructure RKR as marked-up in the attached draft instrument?