



INTERNET ASSOCIATION OF AUSTRALIA
ABN 71 817 988 968
ACN 168 405 098
PO Box 8700
Perth Business Centre WA 6849
Phone: 1300 653 132

26th May 2022

Australian Competition and Consumer Commission
GPO Box 3131
Canberra ACT 2601

By email: telcoseparationrules@accc.gov.au

RE: Proposed Industry Guidance on the Carrier Separation Rules

INTRODUCTION

Thank you for the opportunity to express the Internet Association of Australia (IAA) perspective on the draft Industry Guidance on the Carrier Separation Rules. IAA appreciates the efforts and work of the Commission in preparing this guidance material for network operators, many of whom will likely benefit from the rules.

Many of IAA's members are small to medium sized internet service providers (ISPs) who are also NBN retail service providers (RSPs). Our response will be primarily in representation of the smaller entities we represent. We wish to draw attention to areas where we believe the proposed guidance should be amended to further clarify the rules to avoid any confusion.

RECOMMENDATIONS

Recommendation 1: Define 'embedded networks' under 'Key Terms' in Section 3

Recommendation 2: Define 'embedded networks' under 'Key Terms' in Section 3

Recommendation 3: Ensure hyperlinks to external material and websites are working

Recommendation 4: Include a copy of both class exemption and deemed functional separation undertaking written notices in the Appendix

Recommendation 5: Include any relevant obligations and conditions as found in the *Telecommunications (Superfast Broadband Network Class Exemption) Determination 2020* and *Telecommunications (Deemed Functional Separation Undertaking) Amendment Determination 2021 (No.1)* in the Industry Guidance under their relevant sections

OUR RESPONSE

KEY TERMS

IAA believes that both "embedded networks" and "white-label services" should be defined and clarified as part of 'Key Terms' in Section 3.

WRITTEN NOTICE

We note that multiple references to “written notice” is made throughout the Industry Guidance. Although the Guidance provides hyperlinks to the “ACCC website” for copies of these notices, the hyperlinks do not work. Moreover, searching the ACCC website directly for these notices proved to be a difficult task.

Moreover, we note that there are multiple determinations, and depending on the network operator, the operator may need to apply to the ACCC for either a class exemption or deemed functional separation undertaking. To avoid any confusion, the Industry Guidance should clearly outline the process through which network operators can elect to be bound by either a class exemption or deemed functional separation undertaking.

Even if the hyperlinks are correctly provided in the final copy of the Industry Guidance, we believe that the Industry Guidance should include a copy of both written notices in the Appendix of the Guidance to avoid any confusion.

CLASS EXEMPTION OBLIGATIONS AND CONDITIONS

IAA notes that in the written notice found through the ACCC website for the *Telecommunications (Superfast Broadband Network Class Exemption) Determination 2020* (Appendix A), the notice outlines “a number of other conditions and limitations.” These include:

- *a requirement to offer the Local Bitstream Access Service (LBAS) or the Superfast Broadband Access Service (SBAS) on a non-discriminatory basis*
- *an obligation on persons who have elected to be bound by the Determination to:*
 - *report to the ACCC on the number of fixed-line residential customers they have as at June 30 each year; and*
 - *notify the ACCC in writing within 14 days if the threshold number of fixed-line residential customers is exceeded.*

We note that only the obligation to provide SBAS on a non-discriminatory basis is included in the Industry Guidance. The additional conditions are not outlined in the Industry Guidance. The Industry Guidance should expressly outline all relevant obligations and conditions which apply to both the class exemption and deemed functional separation undertaking.

CONCLUSION

Once again, IAA appreciates the opportunity to contribute to the Industry Guidance on the Carrier Separation Rules. We look forward to continued cooperation with the government, industry and other stakeholders in the development of a Guidance Material that is clear and effective to assist network operators understand and comply with the Carrier Separation Rules.

ABOUT THE INTERNET ASSOCIATION OF AUSTRALIA

The Internet Association of Australia (IAA) is a member-based association representing the Internet community. Founded in 1995, as the Western Australian Internet Association (WAIA), the Association changed its name in early 2016 to better reflect our national membership and growth.

Our members comprise industry professionals, corporations, and affiliate organisations. IAA provides a range of services and resources for members and supports the development of the

Internet industry both within Australia and internationally. Providing technical services as well as social and professional development events, IAA aims to provide services and resources that our members need.

IX-Australia is a service provided by the Internet Association of Australia to Corporate and Affiliate members. It is the longest running carrier neutral Internet Exchange in Australia. Spanning six states and territories, IAA operates over 30 points of presence and operates the New Zealand Internet Exchange on behalf of NZIX Inc in New Zealand.

IAA is also a licenced telecommunications carrier, and operates on a not-for-profit basis.

Yours faithfully,

Narelle Clark
Chief Executive Officer
Internet Association of Australia