



ACCC Inquiry into NBN Wholesale Service Standards: Second discussion paper

Submission by the Australian Communications Consumer Action
Network to the Australian Competition and Consumer Commission

1 March 2019

About ACCAN

The Australian Communications Consumer Action Network (ACCAN) is the peak body that represents all consumers on communications issues including telecommunications, broadband and emerging new services. ACCAN provides a strong unified voice to industry and government as consumers work towards communications services that are trusted, inclusive and available for all.

Consumers need ACCAN to promote better consumer protection outcomes ensuring speedy responses to complaints and issues. ACCAN aims to empower consumers so that they are well informed and can make good choices about products and services. As a peak body, ACCAN will represent the views of its broad and diverse membership base to policy makers, government and industry to get better outcomes for all communications consumers.

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Attachment – ACCAN submission to the Department of Communications and the Arts Consumer Safeguards Review – Part B/Reliability of Services

1. Introductory Comments

ACCAN thanks the Australian Competition and Consumer Commission (ACCC) for the opportunity to submit to its inquiry into NBN wholesale service standards.

The absence of communications services - even for short periods - can result in social isolation, reduced economic livelihood and participation in social life, insecurity, and can potentially pose a risk to safety.¹ The reliability of broadband services is therefore very important for consumers and poor performance can reduce the benefits they derive from services.² With Government and many businesses pursuing a 'digital first' agenda, reliable access to the internet has become a necessity for most consumers.

Consumers may have no choice in the network that services them as nbn is, in effect, a monopoly. Therefore, it is important that minimum connection, repair and reliability standards apply. While consumers deal directly with retail service providers it is important that incentives and accountability measures apply to the body responsible for delivering each element of the end-to-end services. Consumers currently do not have guarantees in relation to connection, reliability and repair timeframes for broadband and this puts their services at risk.

The existing wholesale service standards do not achieve this and do not adequately protect consumers. The Wholesale Broadband Agreement (WBA) is an agreement between nbn and its retail customers (e.g. Telstra, Optus and TPG), and its focus is on network management rather than consumer demand.³ Creating lines of accountability from the wholesale provider to the retailer and thence from the retailer to the consumer is more likely to create a network responsive to consumer needs.

However, the Consumer Safeguards Review Part B has proposed to address this deficiency by implementing mandatory connection and repair timeframes on wholesale and retail providers.⁴ ACCAN has proposed that wholesale obligations be recognised in the pricing framework to ensure that providers are compensated for meeting obligations. The NBN is no different to an electricity or water network in many parts of Australia and so should be regulated like one.

The significant increase in complaints to the Telecommunications Industry Ombudsman (41% in 2016/2017), specifically complaints about the NBN (up by 159% in 2016/2017), and the fact that the top issues are connection delays and unusable services, demonstrates that the current arrangements are not working.⁵

¹ Garnham, Nicholas. "Amartya Sen's capabilities approach to the evaluation of welfare: Its application to communications." *Communication, citizenship and social policy: Rethinking the limits of the welfare state* (1999): 113-124.

² <https://accan.org.au/our-work/policy/1245-the-future-of-consumer-focused-communication-services> and see attachment.

³ *Wholesale Broadband Agreement* 3

⁴ <https://www.communications.gov.au/have-your-say/consumer-safeguards-review-consultation-part-b-reliability-services>

⁵ TIO 2016-2017 Annual Report <https://annualreport.tio.com.au/>

For an obligation to be sustainable, it should provide for a level of network service which realistically balances consumer need with the technical and resource limits of the network. The obligations should deliver a baseline level of adequate service to individual consumers. These should include:

- a) Customer service standards that set timeframes for:
 - Fault rectification
 - New connections
 - Existing connections (where infrastructure is in place), and
 - Appointment keeping.

- b) Reliability measures consisting of agreed independent performance benchmarks for network availability to encourage overall high performance across urban, regional and rural/remote geographies, that ensure end users experience a high level of network connectivity. These need to be targeted to address the severity of impact of unreliable services and include metrics such as the: ⁶
 - Number of minutes that a customer is without services in a year
 - Number of times a customer's supply is interrupted per year
 - Duration of each interruption, and
 - Number of momentary interruptions per customer per year.

- c) Interim migration targets consisting of:
 - New connection timeframes (legacy service in place)
 - New connection timeframes (no legacy service in place)
 - Appointment keeping, and
 - Enhanced fault rectification for services that were disconnected in error.

Using these measures, network reliability can be improved by identifying areas for remediation which are causing significant consumer detriment.

Attached is ACCAN's submission to the Consumer Safeguards Review Part B which includes our policy position paper *A Telecommunications Guarantee for the Future* which sets out a consumer focused approach to address gaps in the provision of essential telecommunications services.

The remainder of this submission addresses the questions in the ACCC's second Discussion Paper. Some questions are out of scope for ACCAN and have been flagged accordingly.

⁶ These mirror the measures used to monitor network reliability in the energy sector. Further discussion in Houston Kemp, 2014, 'Electricity Network Service Standards: An Overview', p.2.

2. Responses to Questions

1. What are the key principles you consider should underpin NBN service level rebates?

NBN service level rebates should be applicable for each service and for each unit of time that NBN breaches the service level. NBN service level rebates should also be automatic and high enough to provide an incentive to comply with the service level.

2. How should rebates be structured to ensure that they provide the right incentives to NBN Co and RSPs to contribute to good end user experiences?

ACCAN agrees with the ACCC that a daily rebate will provide additional incentives for timely connections and fault rectification. Likewise there should be parallel obligations on retailers to provide compensation to consumers. This ensures that all parties that contribute to end user services have an incentive to provide good end user experiences.

In ACCAN's submission to the Consumer Safeguards Review Part B,⁷ we argued for synchronised complementary obligations at a wholesale and retail level. Many faults occur at the network level but some faults can be caused by retail service provider errors such as wrongful disconnection or the incorrect information being provided to the infrastructure provider. Rebates should be structured with the objective to provide a good end-user experience, which means both the retailer and the wholesaler needs to be liable for automatic rebates when there are failures to meet service levels.

3. What factors should the ACCC refer to when considering the rebate structure and amount?

The ACCC should refer to the existing Customer Service Guarantee (CSG) structure and amounts. These are the structures and amounts to which Retail Service Providers (RSPs) are exposed. ACCAN has recommended that the Department maintain the current CSG compensation amounts and direct the ACMA to conduct a review to determine an appropriate future compensation arrangement. The existing CSG compensation amounts are for voice-only services so a review is necessary to determine what an appropriate level is for broadband as well as to assess if the amounts for voice are appropriate for the current environment.

Thus, should such a recommendation proceed, the existing CSG levels could be applied immediately and effects monitored to determine if they provide sufficient incentive to meet service levels.

⁷ See <http://accan.org.au/our-work/submissions/1529-consumer-safeguards-review>

4. Should connection rebates also be available to standard connections where the service level is one business day? Are there any reasons why these connections should be treated differently to other standard connections?

Rebates should apply to all connections.

5. What processes do RSPs expect to apply to ensure end users affected by service level misses receive a benefit from wholesale rebates?

Not applicable.

6. What records will RSPs keep to demonstrate compliance with the pass through requirement? Would there be benefit in requiring RSPs to publish how they intend to pass through a benefit?

Not applicable.

7. Are there any additional wholesale measures required to support RSPs in identifying and passing through fair value benefit from rebates to affected end users?

Not applicable.

8. Does the information NBN Co makes available to RSPs about service speeds appropriately support RSPs advertising and selling of services?

Not applicable.

9. Please indicate what, if any, additional fixed wireless performance information is necessary to enable RSPs to better set consumer expectations for current and prospective customers.

Not applicable.

10. What wholesale commitments should apply where service performance consistently falls below what is ordered or

reasonably expected?

ACCAN does not consider that NBN Co should charge for higher speed products during remediation or co-existence on FTTN/B services, where speeds specified in the product cannot consistently be achieved.⁸ NBN Co should use the mechanisms available to it to ensure the services sold are accurately described, so that RSPs are able to sell services to end users that can perform as expected.

11. If a fixed wireless rebate was introduced, how should it be structured to ensure that it provides the right incentives to NBN Co and RSPs and contributes to good end user experiences?

Rebates for congested fixed wireless services should be introduced and maintained until the upgrades are in place to deliver the service at the speeds specified. It is not acceptable for end users to purchase a product in good faith that cannot work reliably as specified at peak hours, and continue to be charged the full cost of the service. The rebate should be automatically applied and passed through to end users connected through congested fixed wireless cells promptly.

12. How should the PA connection and fault rectification service standards be designed to support the needs of PA customers, having regard to:

- The availability of PA connection fault rectification service levels
- The process for claiming interim service amounts
- The interaction between interim service amounts and connection rebates and service fault rebates
- The appropriateness of the WBA PA service standards to RSPs other than Telstra who would seek to supply PA or equivalent services.

Priority Assistance is a very important service for consumers. Accelerated connection and fault repair timeframes can be critical in emergencies, and provide peace of mind for older people with medical conditions to support independent living.

It is imperative that NBN provide a service that enables Telstra to meet its licence conditions. Thus NBN needs to face strict penalties for failing to do so, including paying compensation for missed timeframes and Telstra's costs for providing interim services. The

⁸ <http://accan.org.au/our-work/submissions/1419-variation-to-nbn-co-sau?highlight=WyJhY2NjliwiYWNjYydzliwiJ2FjY2MncylslInhdSlslmFjY2Mgc2F1lI0=>

onus should be on NBN to identify its failures and compensate Telstra. This enables Telstra to proactively manage its PA customers by providing interim services, with the assurance it will be compensated where a delay is due to NBN, as well as creating sufficient incentives for NBN to provide the underlying service promptly.

The Department of Communications and the Arts (the Department) has proposed expanding priority assistance obligations to all retailers.⁹ ACCAN supports this proposal so that priority assistance customers have more choice. A universal priority assistance policy requires access to the underlying infrastructure at priority levels.

13. How could the CSG compensation processes be simplified to better support RSPs' retail obligations?

ACCAN proposes that all rebate systems are automatic. There should be no process that requires an injured party (whether it is an end-user or RSP) to request, apply or provide evidence of a breach. There should be sufficient systems in place to determine the minimum standards and when they are breached to automatically trigger a payment. Furthermore, these payments should be made within one billing cycle. End-users (and thus RSPs) should not be waiting *months* to receive compensation when the damage is immediate. Immediate and automatic compensation is crucial for retailers that are required to provide interim services as costs will be incurred immediately and if compensation does not follow the retailer will effectively be financing NBN's poor performance.

14. Are additional measures required at the wholesale level to support the ACMA's instruments? If so, what measures should be introduced?

Not applicable.

15. Is the categorisation of "new service never worked" installations a concern for stakeholders? If so, how should these cases be dealt with?

ACCAN supports the ACCC's concerns in the discussion paper about the issuing of completion advice by NBN Co to RSPs in cases where end user installation and connection has failed. We are concerned that this practice can contribute to delays and confusion for end users, who are not in a position to understand why their service has not been connected as expected. In such circumstances it can be very frustrating for end users who follow up with their RSP to be told that records show the installation has been completed. The new ACMA Service Continuity Standard and Service Migration Determination should assist with these scenarios, but underlying systems should be adjusted to support the smooth implementation of the new rules.

⁹ See <https://www.communications.gov.au/have-your-say/consumer-safeguards-review-consultation-part-b-reliability-services>

16. Is there any reason why end user fault rectification should not begin from the time a trouble ticket is raised or acknowledged by NBN Co? Are there any other changes that should be made to more closely align wholesale processes with end users' experience of faults?

End-user fault rectification should start from when the trouble ticket is raised with NBN Co by the RSP, to closely align with when end-users experience a fault and encourage timely responses from NBN Co

17. What are the key service level outcomes that NBN Co should report to RSPs?

Not applicable.

18. What additional wholesale arrangements should be put in place in relation to operation information to facilitate RSPs providing a reasonable level of customer service to end-users?

Not applicable.

19. How do the liability and indemnity terms in WBA3 compare with liability and indemnity terms in other wholesale telecommunications customer agreements?

Not applicable.

20. To what extent would an improved rebates regime address RSP concerns about the liability framework?

Not applicable.

21. Are the limitations on third parties bringing claims against NBN Co reasonable?

Not applicable.

22. Are there any other wholesale service level terms that you consider should be implemented? How should these be implemented, and why?

Not applicable.