

21st July 2021
nbn@acc.gov.au



ACCC Industry Roundtable on regulatory arrangements under NBN Co's Special Access

Undertaking

ACCAN thanks the ACCC for the opportunity to participate in the roundtable held on Friday 18th June 2021. At the roundtable ACCAN outlined some key expectations from consumers, which we believe, through the appropriate regulatory framework, nbn will be able to achieve. To summarise, ACCAN considers the Special Access Undertaking (SAU) should ensure:

- Nbn's services are able to meet appropriate minimum performance and service standards
- The 25/5 Mbps service is regulated as the entry-level product
- Prices are steady and affordable
- Retail competition is supported
- A range of service qualities are available

ACCAN will provide a response to nbn's discussion paper titled '*RMID1064 – nbn's Special Access Undertaking Variation 2021*' where we will recommend:

- For the Long-term Revenue Constraint Methodology (LTRCM) to be re-examined to ensure it is fit for purpose.
- For the Maximum Regulated Price to cover all access technologies and be updated to reflect the predominant method in which nbn's services are charged as well as the efficient cost of providing the service.
- For prices set in the SAU to be periodically reviewed in line with replacement modules.
- That any pricing changes are done in such a manner that ensures lower speed plans are an affordable option for consumers.
- Nbn should continue developing and implementing a targeted product aimed at improving affordability of services for low income consumers as initially planned as part of the 2021 Pricing Review, as well as the SAU variation process.

ACCAN will provide the ACCC with our response to nbn's discussion paper. Here we provide our views on the questions asked in the ACCC framing paper for the Roundtable.

Price controls

ACCAN agrees with the ACCC that it is important for the SAU to provide mechanisms that encourage the supply of nbn access products with certainty over cost and technical quality so as to promote downstream competition and the efficient use of the nbn. Certainty over cost is vital to ensuring consumers are not at risk of facing price shock in the future.

Australian Communications Consumer Action Network (ACCAN)
Australia's peak body representing communications consumers

PO Box A1158, Sydney South NSW 1235

Tel: (02) 9288 4000

www.accan.org.au | info@accan.org.au | [twitter: @ACCAN_AU](https://twitter.com/ACCAN_AU) | www.facebook.com/accanau

1. We have outlined three high level principles to use in assessing whether particular NBN access product and pricing arrangements would promote the long term interests of end-users. What additions, deletions or refinements would you recommend?

ACCAN supports the three high level principles. The first principle, *access arrangement should support a range of retail service offerings that represent value to different categories of end-users*, should acknowledge that there needs to be a minimum standard available for all consumers to prevent a situation where mediocre services are available for low-income consumers, and only those who are able to pay a premium can access services that perform at a level that is reasonably expected of a high-speed broadband network.

2. What ideas do you have so that NBN Co and access seekers can have reasonable certainty over their wholesale average revenues per user and access costs respectively?

Removing the variable CVC charge is the most direct way of ensuring RSPs have certainty over their wholesale costs. The disadvantage of this pricing construct is it could prevent RSPs from offering lower cost data limited plans on lower speed tiers which are valued by consumers who do not require large amounts of data. ACCAN considers that the nbn should work to ensure that end users currently purchasing lower speed data capped plans do not experience a price increase if the CVC charge is removed, in the short and longer term. This would also allow future low data users to be able to purchase access to the network at a reasonable price.

3. What suggestions do you have to preserve the breadth of retail products that are in market in the event that volumetric CVC charges were to be withdrawn or scaled back? Please consider how support for unique maximum speed products, diverse busy hour speeds, voice only and low data quota products could best be provided in such a wholesale pricing model.

Unique maximum speed products

Unique maximum speed products could be achieved via nbn selling a greater array of AVC speed tiers. This is particularly needed in situations where due to the access technology used, the end user can only receive a speed which falls between the speed tiers nbn currently sells, for example, in a situation where a FTN connection reaches a maximum speed of 40 Mbps. In this situation, a consumer has the choice between purchasing a 25 Mbps service or paying for a 50 Mbps service to allow them to reach the maximum speed of 40 Mbps attainable on the line. This issue is both an inefficient use of the network and unfair to the consumer and could be mitigated somewhat if nbn sold a greater selection of AVC speed tiers.

Pre-paid services

Additionally, nbn could provide an option to purchase access on a pre-paid basis. Many consumers are mobile-only due to pre-payment being more suitable to them. Yet mobile only plans often have lower data limits, and cost more per gigabyte, than fixed line broadband. If nbn offered services on a pre-paid basis this would support consumers who require pre-paid plans to assist with budgeting concerns. We envisage this option would increase take up of nbn services. ACCAN frequently hears from low income consumer groups that pre-paid NBN services are needed across all technologies, in order to meet the needs of households on limited fixed incomes.

If nbn is unable to adopt a pre-paid model, then other models of delivery should be explored. For example, one RSP, Launtel, sells services on a day-to-day basis, which shows there is demand from consumers to have more flexibility in how they pay for their service.

Diverse peak hour speeds

The ACCC discussion paper considers how peak hour speeds product differentiation can lead to more efficient outcomes by reducing the potential for over-investment in the network to meet unexpected demand peaks.

For speeds tiers of 50 Mbps and below it appears that most retailers advertise busy hour speeds as the maximum speeds attainable for that speed tier, so for the majority of services sold (81%)¹ there is not a lot of diversity regarding how busy hour speeds are retailed. This has likely led to many consumers expecting to experience speeds close to the speed tier they are purchasing at all hours of the day, including peak hour. We are unable to say how consumers will respond to peak speed performance add-ons and whether the add-ons will mitigate the risk of overinvestment in the network.

Our concern is that this proposal has potential to add further cost to the service and risks some consumers experiencing a sub-standard service during peak hours if they are unable to afford the add-on. Therefore, we consider that this proposal would need further consultation to understand the impact of peak hour speed add-ons.

Voice services

Whilst demand for fixed voice services has fallen significantly, the service remains essential to households who live in regional and remote areas, in bushfire prone areas, in areas with no or limited mobile coverage, and for older people or people with life threatening medical conditions. It is of the utmost importance that consumers in these circumstances should have the choice of a fixed line voice service at an affordable price. Basic entry-level fixed voice plans retail at \$25-\$40 a month and involve additional charges per call. However recent developments have seen entry-level plans being removed from the market, replaced by all-inclusive plans costing between \$40-\$70.² This service is prohibitively expensive, and it is unclear to us whether the price of fixed voice service reflects the cost of providing the service.

There need to be assurances, through an appropriate price cap, that consumers are able to purchase a basic voice service at an affordable price should they require one. It is important to understand why basic entry-level voice plans are being removed from the market, and measures need to be put in place to ensure that an affordable option remains available.

¹ ACCC, *NBN Wholesale Market Indicators Report*, 2021. <https://www.accc.gov.au/regulated-infrastructure/communications/national-broadband-network-nbn/nbn-wholesale-market-indicators-report>

² ACCC, 2020, *Communications Market Report*. https://www.accc.gov.au/system/files/20-47RPT_Communications_Market_Report_FA.pdf

4. Should we consider regulatory controls to safeguard against discounts again becoming the principal means by which NBN access products and pricing are implemented? What form could these take?

There is a trade-off between nbn having the flexibility to provide discounts, and the costs this creates through RSPs having to create a buffer in the event that discounts are withdrawn. We would like to understand to what extent the uncertainty created through discounting drives up costs for end users, acknowledging that consumers do benefit from these discounts.

ACCAN considers that nbn should retain the ability to introduce discounts, but there must be safeguards in place to prevent the possibility of significant price shock for consumers when discounts are withdrawn. We are aware of measures introduced in the Wholesale Broadband Agreement 4 which aimed to reduce uncertainty for RSPs. It would be useful to know if these measures have assisted RSPs in planning their retail offers. Any measures that have proven helpful in reducing uncertainty could be incorporated into the SAU.

Additionally, ACCAN considers that SAU prices should be updated in line with the replacement modules, which occur on a 3-5 year basis. This would ensure that prices in the regulatory framework are more up to date with market developments and will prevent a situation where there is potential for significant price shocks.

5. Do you support a cheaper broadband product for low income earners? What form should it take and how should it be funded?

ACCAN continues to call for a concessional service for low income households. Our position is that households receiving government financial support should be able to receive a 50 Mbps unlimited broadband service offered at a wholesale price of \$20 per month.³ This service will allow households struggling financially to fully engage in the digital economy.

ACCAN is aware of the financial implication on nbn if it were to provide the full discount for such a service, which is why we consider there needs to be a supplementary funding mechanism. We recommend that the Federal Government partially fund the broadband concessional service to financially stressed households.

A concessional service is justified given the social benefit from access to the network exceeds the private benefit. For example, take up of broadband services has been demonstrated to improve economic outcomes through increases in average incomes of 0.85% GDP per capita;⁴ creation of new business, with 1900 to 5400 businesses formed and an additional 3400 to 6400 individuals creating new employment opportunities for themselves in areas with high nbn rollout;⁵ and potential savings from government digital transformation in the order of \$20.5 billion.⁶ These benefits are in addition

³ ACCAN, 2019, *No Australian Left Offline: ACCAN pushes for affordable broadband*.
<https://accan.org.au/media-centre/media-releases/1572-nalo-media-release>

⁴ Greenstein, S. & McDevitt, R. 2012, *Measuring the Broadband Bonus in Thirty OECD Countries*, OECD Digital Economy Papers.

⁵ Nbn Co, 2018, *Connecting Australia: A report by AlphaBeta Consulting*.

⁶ Deloitte Access Economics, 2015, *Digital government transformation*.

to the impact broadband uptake can have on an individual's cost and time savings and improved health, social and educational outcomes.

ACCAN considers the eligibility criteria of the concessional service should include:

- Individuals and families on Disability Support Pension payments
- Individuals and families with members on JobSeeker payments
- Individuals on Youth Allowance payments
- Families on Parenting Payments
- Households receiving the carer payment
- Individuals and couples on the Age Pension
- Indigenous Australians on income support
- Families on Family Tax Benefit A (full rate) and Family Tax Benefit B

ACCAN considers that there is an immediate need for an offer which aims to provide affordable broadband to households who are receiving the supports above.

Mobile-only usage reduces digital inclusion⁷

There are 4 million households that access the internet through mobile services only. Whilst 19.9% of Australians are mobile-only users, we know this type of use is linked to socio-economic factors as the proportion of mobile-only users increases to:

- 32.8% of people in the lowest household income quintile
- 26.6% of those with low levels of education
- 26.7% of the unemployed are mobile only users
- 35% of Indigenous Australians
- 31.2% of Australians with disability
- 33.5% of low income families with school aged children

Being mobile-only reduces digital inclusion as it reduces the connectivity options available to a person as well as the amount of data allowance users have access to, since mobile plans tend to have significantly lower data allowances than fixed line broadband plans. There is also a greater prevalence of pre-paid users amongst mobile-only users, which also depresses data allowances. Mobile data costs more per gigabyte than fixed line broadband and mobile-only users are likely to be more restricted in heavy data use activities.⁸

Families with school age children without internet access⁹

The COVID-19 pandemic and subsequent shift to online learning highlighted the digital inclusion gap amongst school age children and illuminated the severity of the existing structural problem:

- In 2016, 9% of students with low family incomes had no internet access at home, while only 1% of students with high family incomes did not have access to the internet at home.

⁷ Thomas et al. 2020, *Measuring Australia's Digital Divide: The Australian Digital Inclusion Index 2020*, RMIT and Swinburne University of Technology, Melbourne, for Telstra.

⁸ Ibid.

⁹ Preston, 2020, *Digital inclusion for all public school students. A report prepared for the Australian Education Union*.

- Overall, 125,000 Australian students did not have internet access at home (including via mobile) in 2016.
- The report prepared for the Australian Education Union acknowledges that the roll-out of the nbn continued after the collection of the 2016 Census data, yet it highlights that there is a trend for an increasing percentage of Australian children living in poverty (around 17% in 2017), so that even where nbn or other internet providers are now available, it tends not to be affordable for those living in poverty.¹⁰
- For many First Nations students the closure of schools during COVID-19 lockdowns meant a stop to education altogether.¹¹ First Nations students were much more likely to have no internet access at home, at 21% compared to 5% of all public-school students.¹²

Broadband and financial stress indicators

ACCAN does not consider it acceptable that 1 in 8 households report affordability concerns with the nbn, an essential service.¹³ The cost of broadband can create a significant amount of financial stress for low income households:

- 20% of households not connected to the nbn cite price as their main concern with the network.¹⁴
 - Given there are approximately 4 million households not connected to the network, we estimate this to mean around 800,000 households who are not connected and cite price as their main concern with the network.
- Almost half (46%) of waged poor households¹⁵ with a broadband service reported having trouble paying for the ongoing cost of the service, around a third of households ‘usually or always’ had trouble paying.¹⁶
- For waged poor households living in rented accommodation, the proportion of households struggling to pay for the service was 53%. 28.2% of waged poor households reported cutting back on telecommunications services.¹⁷
- The ability to pay phone and internet bills was found to be the result of prioritising those bills and going without other goods and services.¹⁸
- During the COVID-19 pandemic, 20% of consumers last year were concerned about their ability to pay for telecommunications.¹⁹

¹⁰ Preston, 2020.

¹¹ World Vision & The Australian Literacy & Numeracy Foundation, 2021, *Connecting on Country*.

¹² Preston, 2020.

¹³ Accenture, 2021, *Moving to a fixed price wholesale pricing model: Risks for low data users*. Commissioned by Nbn Co.

¹⁴ *ibid*

¹⁵ Waged poor households are defined as those living below the poverty line (50% of median equivalised household disposable income) whose main source of household income is wages and salaries.

¹⁶ SACOSS, 2020, *Connectivity Costs II: Telecommunications affordability and waged poor households*.

<https://www.sacoss.org.au/sites/default/files/public/Affordability%20and%20Waged%20Poor%20Report%20final%20Web.pdf>

¹⁷ *Ibid*.

¹⁸ *Ibid*.

¹⁹ Consumer Policy Research Center, 2020, *COVID-19 and Consumers: From Crisis to Recovery Report Summary*. https://cprc.org.au/app/uploads/2020/09/Consumers-and-COVID-19_summary_25June2020_compressed.pdf

Affordability based on proportion of household income²⁰

- The Australian Digital Inclusion Index shows how the national average proportion of household income spent on internet services in 2020 was 1.16%, yet the proportion of household income spent on internet access by those living in the lowest household income quintile was above 4%.
- The proportion of household income spent on internet access by those living in the lowest household income quintile has increased every year since 2014, underpinning a widening gap in affordability between those in the lowest income quintile and those in the highest.
- Families in the lowest income quintile with school age children spend 5.3% of their household income on internet access each month.
- Australians with disability spend a greater proportion of their income on internet access than the Australian average and receive less data for each dollar of expenditure than the average.

Advertised price for lower speed plans has increased²¹

- Between 2018/19 – 2019-20 the advertised price for lower speed nbn plans experienced a price increase of 6.1%, and prices on the median price point increased by 1.2%.
- Between 2015/16 – 2019/20 consumers on the 25th and median price percentile experienced a price increase of 16.6% and 6.6% respectively.
- The average consumer may be receiving more value for their money as over time plans have increased their inclusions. However, a low income consumer may not value these additional inclusions and would prefer to access the service at a lower price.

6. Regulatory controls can conceivably take the form of direct controls over certain price related access terms, along with more flexible arrangements for other prices. For instance, some individual tariff items could be specified in a regulatory instrument while other tariff items could be included within a broad basket for which there is an overall regulatory control. In what circumstances (if any) should we consider providing greater flexibility for NBN access product and pricing commitments within a regulatory period? For which price related terms is certainty so important that we should not consider providing such flexibility?

In regard to price control measures ACCAN would want to see the tightest controls applied to an appropriate entry-level product. We consider that this product would be able to reach maximum download speeds of 25 Mbps and upload speeds of 5 Mbps. This would ensure that over the duration of the SAU, the entry-level product remains fit for purpose. Setting an appropriate entry-level product will also constrain prices for higher speeds by the fact that consumers can choose the entry-level service.

Additionally, we would also like to see price controls for a voice only product as well as a targeted product for low income households. It is important that price controls exist for the voice only service

²⁰ Thomas et al, 2020.

²¹ ACCC, 2020, *Communications Market Report*. https://www.accc.gov.au/system/files/20-47RPT_Communications_Market_Report_FA.pdf

as mentioned previously, the households and individuals who rely on this service do so out of necessity.

Beyond these key products, price controls could be applied to a basket of goods to allow nbn flexibility in responding to changes in the market. ACCAN believes the price controls within the SAU variation should be more ambitious than those currently set by the SAU; we consider there is scope for nbn to face stronger incentives to become more efficient via a CPI – X price cap, where X represents efficiency savings in order for consumers to experience real decreases in the price of services each year. The existing SAU price controls are ineffective at preventing significant price increases over time and it is unclear to ACCAN why prices for nbn’s services should be expected to rise against the general trend of telecommunications prices falling.

Alternatively, if there was significant concern that such price controls would not be feasible, at a minimum cost should be kept stable in real terms, balancing out the increased usage of the network with efficiency savings in providing the service.

7. How often should the price related regulatory controls be reset?

As mentioned previously, price related regulatory controls could be reset in line with the SAU replacement modules which occur on a 3-5 year basis.

Revenue Controls

ACCAN has previously expressed our concern regarding the impact of a lack of revenue constraint on a monopoly provider of an essential service.²² Specifically we have questioned whether the Weighted Average Cost of Capital (WACC) is appropriate in addition to the level of transparency within the Long-term Revenue Constraint Methodology (LTRCM).

1. Do you have any views on the ACCC’s objectives for the SAU revenue control mechanism? Are there any other objectives that should be considered?

ACCAN supports the ACCC’s objectives for the SAU revenue control mechanism.

2. What do you think would be an appropriate approach for incorporating ICRA in a BBM for the SAU?

We consider that the Initial Cost Recovery Account (ICRA) needs to be re-examined to understand what has contributed to the ICRA over the years and remove costs that have not been efficiently incurred. In a situation where an inefficient decision was made by nbn, consumers should not be made to pay more for the services because of that decision. It is feasible that not all of nbn’s decisions have been made efficiently as some decisions are made as a result of government policy and non-competitive processes.

Once the ICRA has been re-examined there should be a consideration of what proportion of the ICRA can be drawn down on each year, or if there should be a time limit to how long unrecovered costs can be kept in the ICRA.

²² ACCAN, 2020, *Submission to ACCC Long-term Revenue Constraint Methodology 2018-19 Draft Determination*. <https://www.accc.gov.au/system/files/ACCAN%20submission%20-%2029%20May%202020.pdf>

3. What would be an appropriate approach to ensure NBN Co has appropriate incentives to upgrade its network in a timely and efficient manner?

Whilst the ICRA is significantly negative, nbn may not necessarily be incentivised to invest in the network as they are able to increase revenue via price increases. If the ICRA is reduced, and becomes positive, nbn's ability to increase revenue will depend on them investing in the network. That said, there are also alternative incentives to ensure nbn continues to invest in the network over time, for example via appropriate performance benchmarks.

Earlier this year, the Government consulted on a draft Determination on standards, rules and benchmarks for Statutory Infrastructure Providers (SIPs).²³ Appropriate performance standards and benchmarks set by the Minister should provide nbn suitable incentives to maintain and upgrade the network in a timely and efficient manner. However, the outcome of the consultation is still uncertain, and if the Determination does not deliver appropriate service standards, then the SAU could be a suitable option to embed service standards in nbn's regulatory framework.

Given that performance and reliability of services are fundamentally important, ACCAN would like to see strong incentives for performance, reporting of performance metrics as well as an appropriate rebate scheme.²⁴ We consider that these issues should not be determined by commercial negotiations between nbn and RSPs as this will not necessarily result in the long term interest of end users.

4. Could elements of the arrangements that are currently intended to apply from 2023 under the current SAU provide a good blueprint for considering arrangements for new investment and expenditure proposals in a revised SAU?

ACCAN considers that current arrangements where nbn is to provide operating and capital expenditure forecasts to the ACCC as part of the replacement modules is appropriate.

5. What reporting or transparency requirements should be established to support arrangements under a revised SAU?

It is important that nbn is transparent regarding competitive segments. When the NBN is privatised, there could be greater incentives for the network operator to participate in predatory pricing in the enterprise market, subsidised by the residential market. Therefore, safeguards through increased transparency arrangements must be put in place to ensure that this does not occur in the future. This could involve segmenting the LTRCM. The extent to which this occurs would require careful consideration, however at the very least there should be oversight between residential and enterprise reporting.

²³ Department of Infrastructure, Transport, Regional Development and Communications, 2021, *Public consultation on draft standards, rules and benchmarks for statutory infrastructure providers (SIPs)* <https://www.communications.gov.au/have-your-say/public-consultation-draft-standards-rules-and-benchmarks-statutory-infrastructure-providers-sips>

²⁴ ACCAN, 2021, *Telecommunications (Statutory Infrastructure Providers – Standards, Rules and Benchmarks) Determination 2021 Consultation*. <https://accan.org.au/files/Submissions/2021/ACCAN%20submission%20to%20DITRDC%20SIP%20Standards%20rules%20and%20benchmarks.pdf>