



ACCC Broadband Performance Monitoring and Reporting Record Keeping and Reporting Rules

Competition and Consumer Act 2010

The AUSTRALIAN COMPETITION AND CONSUMER COMMISSION makes these Rules under subsection 151BU(1) of the *Competition and Consumer Act 2010*.

Dated 29 April 2020

A handwritten signature in black ink, appearing to read 'C. Cifuentes', written over a horizontal dotted line.

Cristina Cifuentes

Commissioner

Australian Competition and Consumer Commission

TITLE

- 1 These rules made by the Australian Competition and Consumer Commission pursuant to subsection 151BU(1) of the *Competition and Consumer Act 2010* (Cth) may be referred to as the ACCC Broadband Performance Monitoring and Reporting Record Keeping and Reporting Rules.

REPLACEMENT OF PREVIOUS RULES, COMMENCEMENT AND EXPIRY

- 2 The Rules made on 15 December 2017, as amended on 1 March 2018, are revoked and replaced by these Rules. These Rules take effect on the date this instrument is signed, and expire on 19 December 2021.

APPLICATION

- 3 These Rules apply to NBN Co Limited (ACN 136 533 741).

INTERPRETATION

- 4 The following terms have the meaning set out in this clause.
 - (a) **'Access Seeker'** has the same meaning as in section 152AG of the CCA.
 - (b) **'ACCC'** means the Australian Competition and Consumer Commission.
 - (c) **'AVC'** means Access Virtual Circuit as defined in an applicable Standard Form of Access Agreement.
 - (d) **'Broadband Performance Monitoring and Reporting Program'** – means the Broadband Performance Monitoring and Reporting Program announced by the ACCC in April 2017.
 - (e) **'Broadband Performance Monitoring and Reporting Service'** means a Superfast Carriage Service provided by a Carriage Service Provider over the fixed-line network of NBN Co to a residential customer, which is notified to NBN Co by the ACCC in accordance with Rule 5.
 - (f) **'Carriage Service Provider'** has the same meaning as in section 87 of the *Telecommunications Act 1997* (Cth).
 - (g) **'CCA'** means the *Competition and Consumer Act 2010* (Cth).

- (h) **'CVC'** means Connectivity Virtual Circuit as defined in an applicable Standard Form of Access Agreement.
- (i) **'Eligible Party Identification Code'** means an Eligible Party Identification Code issued by Communications Alliance Ltd to a Carriage Service Provider.
- (j) **'FTTC'** means the fibre to the curb network used by NBN Co to supply the product defined as the NBN Co Ethernet Bitstream Service over fibre and copper in an applicable Standard Form of Access Agreement.
- (k) **'FTTP'** means the fibre to the premises network used by NBN Co to supply the product defined as the NBN Co Ethernet Bitstream Service over fibre in an applicable Standard Form of Access Agreement.
- (l) **'FTTN'** means the fibre to the node network used by NBN Co to supply the product defined as the NBN Co Ethernet Bitstream Service over fibre and copper in an applicable Standard Form of Access Agreement.
- (m) **'FTTB'** means the fibre to the basement network used by NBN Co to supply the product defined as the NBN Co Ethernet Bitstream Service over fibre and copper in an applicable Standard Form of Access Agreement.
- (n) **'HFC'** means the hybrid fibre coaxial network used by NBN Co to supply the product defined as the NBN Co Ethernet Bitstream Service over fibre and coaxial cable in an applicable Standard Form of Access Agreement.
- (o) **'NBN Co'** means NBN Co Limited (ACN 136 533 741) (NBN Co).
- (p) **'Reporting Date'**, in relation to a report containing information required under Rule 6 or Rule 7, means the last day of a calendar quarter (i.e. 31 March, 30 June, 30 September, 31 December), or such later date as may be approved in writing by the ACCC for any particular quarter.
For the avoidance of doubt, the ACCC may approve separate Reporting Dates for reports in respect of Rule 6 and reports in respect of Rule 7.
- (q) **'Retail Service Provider'** means a Carriage Service Provider that provides Superfast Carriage Services over the fixed-line network of NBN Co to residential customers, which is notified to NBN Co by the ACCC in accordance with Rule 5.
- (r) **'Rules'** means the ACCC Broadband Performance Monitoring and Reporting Record Keeping and Reporting Rules.
- (s) **'Standard Form of Access Agreement'** refers to NBN Co's standard forms of access agreement, published on its website, that relate to the supply of the relevant products and services to Access Seekers.
- (t) **'Superfast Carriage Service'** has the same meaning as in s142A of the *Telecommunications Act 1997* (Cth).

- (u) **'TC-4'** means AVC traffic class 4 and CVC traffic class 4 (as applicable) as defined in an applicable Standard Form of Access Agreement.

RECORD KEEPING RULES

- 5 Once each calendar quarter, the ACCC may notify NBN Co that:
- (a) the Superfast Carriage Services provided by Carriage Service Providers to particular customers are Broadband Performance Monitoring and Reporting Services. The ACCC may only do so
 - (i) in respect of Superfast Carriage Services provided to residential customers which have:
 - (A) volunteered to be active participants in the Broadband Performance Monitoring and Reporting Program; and
 - (B) have provided written consent for the disclosure of data relating to their Superfast Carriage Service to the ACCC for the purpose of the Broadband Performance Monitoring and Reporting Program; and
 - (ii) in respect of a maximum of 4,000 residential customers per calendar quarter.
 - (b) particular Carriage Service Providers are Retail Service Providers. The ACCC may only do so in respect of Carriage Service Providers that provide Superfast Carriage Services to the residential customers referred to in Rule 5(a).

Note: The ACCC will endeavour to provide this notification to NBN Co by no later than the last calendar day of the first month of that quarter.

- 6 For each Broadband Performance Monitoring and Reporting Service, NBN Co must establish and maintain an electronic record containing the following information:
- (a) the Carriage Service Provider which provides the Broadband Performance Monitoring and Reporting Service to the relevant residential customer;
 - (b) the Eligible Party Identification Code of the Carriage Service Provider which provides the Broadband Performance Monitoring and Reporting Service to the relevant residential customer;
 - (c) the relevant access network technology;
 - (d) the relevant service class, as defined by NBN Co from time to time;
 - (e) the relevant Service Area Module (SAM);
 - (f) the relevant geographic location in reference to a Connectivity Service Area;
 - (g) the relevant CVC and AVC traffic class, as defined by NBN Co from time to time;
 - (h) the relevant wholesale speed tier;

- (i) actual wholesale line speed data (in respect of FTTB, FTTC and FTTN services only) as measured by NBN Co;
- (j) maximum wholesale line speed data (in respect of FTTB, FTTC and FTTN services only) as measured by NBN Co; and
- (k) line / trouble ticket status of the relevant premises of the relevant residential customer
- (l) congestion status of the relevant premises of the relevant residential customer (in respect of HFC services only).

7 For each Retail Service Provider, and for the combined total of all Carriage Service Providers, NBN Co must establish and maintain an electronic record containing an aggregate count of all TC-4 FTTB, FTTC and FTTN Superfast Carriage Services within each AVC speed tier that have a maximum wholesale line speed of:

- (a) less than 50 per cent of maximum wholesale speed of the relevant AVC speed tier net of a reasonable allowance for packet headers;
- (b) 50 to 75 per cent of maximum wholesale speed of the relevant AVC speed tier net of a reasonable allowance for packet headers; and
- (c) above 75 per cent of maximum wholesale speed of the relevant AVC speed tier net of a reasonable allowance for packet headers.

For the purposes of this Rule 7, the AVC speed tiers are:

- (d) 25 Mbps;
- (e) 25–50 Mbps; and
- (f) 25–100 Mbps.

8 Records made under Rule 6 and Rule 7 must be kept by NBN Co for 12 months from the date on which the record is made.

REPORTING REQUIREMENTS

9 For each calendar quarter after the ACCC first notifies NBN Co of the Broadband Performance Monitoring and Reporting Services and Retail Service Providers under Rule 5, NBN Co must provide the ACCC with reports containing the information required by Rule 6 and Rule 7 on or before the relevant Reporting Date.

10 Reports in respect of Rule 6 and Rule 7 must be:

- (a) Subject to Rule 11, provided by NBN Co to the ACCC by no later than the relevant Reporting Date; and

- (b) prepared and submitted to the ACCC electronically as a Microsoft Excel file in the format prescribed by the ACCC and annexed at:
 - (i) **Attachment A** for reports in respect of Rule 6; or
 - (ii) **Attachment B** for reports in respect of Rule 7.
- 11 Should the ACCC provide a notification under Rule 5 to NBN Co after the end of the first month of a quarter, the time within which NBN Co must provide its Report will be extended by the number of calendar days after the end of that month that pass before the ACCC gives that notification.
- 12 The reports in respect of Rule 6 and Rule 7 must be provided to the ACCC by email or by another mode of delivery approved in writing by the ACCC. Such reports provided by email must be sent to the broadbandperformance@acc.gov.au email address.
- 13 The ACCC:
 - (a) may amend the formats referred to in Rule 10(b); and
 - (b) must provide NBN Co with adequate notice of any such amendment.

