



ACCC Broadband Performance Monitoring and Reporting Record Keeping and Reporting Rules

Explanatory statement

April 2020

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1. Introduction

This explanatory statement accompanies the *ACCC Broadband Performance Monitoring and Reporting Record Keeping and Reporting Rules (the Rules)*.

2. Regulatory framework

Under section 151BU of the *Competition and Consumer Act 2010 (CCA)*, the ACCC can make record keeping rules (RKR) that require one or more specified carriers to keep and retain records and give reports to the ACCC consisting of information contained in those records.

The ACCC cannot require a carrier to keep and retain records unless they will contain information relevant to specified matters, which are:

- determining compliance with the Competition Rule (s. 151AK of the CCA)
- determining compliance with tariff filing directions
- the operation of Part XIB of the CCA (other than Division 6)
- the operation of Part XIC of the CCA
- the operation of the *National Broadband Network Companies Act 2011* or regulations under that Act
- the operation of Part 9 of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* which deals with regulation of Telstra's charges
- the operation of Division 3, Part 20 of the *Telecommunications Act 1997* which deals with the Rules of Conduct relating to dealings with international telecommunications operations

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

3. Broadband Performance Monitoring and Reporting Rules

In April 2017, the Government announced it would fund the ACCC to implement the Broadband Performance Monitoring and Reporting Program (the Program) which will measure and regularly report on the typical performance of retail fixed broadband services and fixed access services, with a focus on services that utilise NBN wholesale services as an input.

In June 2017, the ACCC launched a call for consumer volunteers to express their interest in volunteering for the Program by completing an online form on the ACCC website.¹

Under the Rules, NBN Co will validate for the ACCC certain service information provided by the volunteers.

¹ The web form is accessed via the ACCC website at <https://www.accc.gov.au/consumers/internet-phone/monitoring-broadband-performance>

The Rules require NBN Co to validate the information provided by the volunteer to the Program about:

- the volunteer's address for service, and its relevant geographic area
- the access network technology at the specified address, and
- the wholesale RSP acquiring the underlying access service, and the Eligible Party Identification Code.

It also requires NBN Co to identify and disclose to the ACCC:

- the relevant CVC and AVC traffic class, and service class
- the relevant Service Area Module
- the actual and maximum wholesale line speed, and
- whether the relevant access service is subject to a fault.

This information is relevant to the operation of Part XIB of the CCA (other than Division 6) and the operation of Part XIC of the CCA because it will facilitate the ACCC aggregating data generated by the Program with additional confidence, and reporting the results with greater accuracy.

In particular, NBN Co's provision of this information to the ACCC for validation purposes will directly assist the ACCC in reporting the results of the Program as they relate to the speed and quality of services delivered on the NBN.

This in turn will lead to the Program information better informing access negotiations and regulatory decisions made pursuant to Part XIC of the CCA in respect of NBN access services, as well as more complete annual reporting by the ACCC to the Minister under section 151CL of the CCA on competitive safeguards within the Telecommunications industry.

Without establishing the Rules, the ACCC may not be able to report to the same extent or with the same confidence on these matters, and as well as impacting its annual report to the Minister, this would also act to weaken the standing of the Program reports to inform access negotiations or regulatory decisions undertaken under Part XIC of the CCA.

4. Consultation

The ACCC has consulted with NBN Co about how it could report the type of information that is sought by the Rules, and what form this reporting could potentially take. NBN Co assisted the ACCC during these initial scoping discussions to ensure there was clarity over the basis and practical mechanics for providing the information.

NBN Co has advised the ACCC that its costs in complying with the rules will include developing a reporting template and automating the extraction of data to populate the template each quarter.

The ACCC has also considered whether any other parties may be impacted by the Rules. In this regard, the Rules do not impose an obligation on any party other than NBN Co. The ACCC is of the view that the Rules will benefit retail service providers as they allow Program data to be compiled with greater assurance when reporting on retail NBN plans.

Consequently, the ACCC is of the view that the benefits arising from the rules outweigh the costs they will give rise to.

In 2014, the ACCC consulted with the Office of Best Practice Regulation in preparing the analogous rules, *NBN Services in Operation RKR* (September 2014). The ACCC considers

this current RKR is mechanical in nature, and the impact of this RKR is lower than the 2014 RKR.

5. Subsequent amendments

The ACCC made the original RKR in December 2017. As of April 2020, the ACCC has made two amendments to the RKR in consultation with NBN Co.

On 1 March 2018 the ACCC made minor amendments to the RKR to simplify its operation and update the report format.

On 29 April 2020, the ACCC replaced the RKR with a new RKR containing several amendments. Broadly, the amendments require NBN Co to provide further detail about the scope and distribution of impaired services² on the NBN fixed line network. This data will provide an additional level of assurance that MBA reports generated from Whitebox data reflect the performance of all NBN services acquired across the broader population. The three key amendments are set out in Table 1.

Table 1

Amendment	Reason
1. Extending the reporting of line speed data for volunteer services to also include Fibre to the Curb (FTTC) services (currently limited to the Fibre to the basement (FTTB) and fibre to the node (FTTN) access technologies)	To identify any volunteer FTTC services that have technical speed limitations similar to FTTB and FTTN
2. Adding a record of whether a volunteer's HFC service is congested	To identify any volunteer HFC services that are on segments that NBN Co identify as suffering from congestion
3. Adding a new dataset that reports aggregate counts of FTTB/C/N services by maximum attainable line speed range. Three maximum line speed ranges are specified. An aggregate count is to be reported for all NBN services and a separate count for each RSP reported on in an MBA report (which will vary depending the purchasing decisions of our MBA volunteers).	To enable the proportion of underperforming MBA volunteer services to be compared to the proportion of such services in the NBN customer base as a whole, as well as the NBN customer base for each RSP included in MBA reports.

² Impaired services refer to NBN fixed line connections where technical limitations or other issues negatively impact on the attainable throughput rate of the service.

6. Explanatory notes

Commencement (rule 2)

The Rules will take effect for an initial period of 4 years from 18 December 2017 to 19 December 2021. The Rules may be reviewed prior to this expiry date.

Application (rule 3)

NBN Co is the only party required to provide information to the ACCC under the Rules. It has informed the ACCC of the nature of the burden associated with doing so.

Interpretation (rule 4)

The Rules are technology-encompassing, and apply to any services supplied on the NBN fixed-line access network. These include those described in the ACCC's final decision for the *Superfast Broadband Access Service* (July 2016)³ - FTTP, FTTN, FTTB, HFC and FTTC technologies.

Record keeping rules (rules 5-8)

Rule 5 requires NBN Co to keep records and provide information to the ACCC about whether particular customers are in receipt of Broadband Performance Monitoring and Reporting Services. The ACCC may only notify NBN Co in respect of residential customers which have volunteered to be active participants in the Program, and in relation to those who have provided written consent for the disclosure of their data to the network operator (i.e. name, address and service details).

The ACCC may notify NBN Co within the first month of the reporting quarter that details of volunteers will be provided to NBN Co for validation. A maximum of 4,000 consumer volunteers will be provided each quarter.

Rule 6 requires specific records to be kept in relation to each potential volunteer's service at the specified premises, these include in relation to the volunteer's:

- Access technology
- Carriage Service Provider
- Service class and traffic class
- Actual and maximum wholesale line speeds (for FTTB, FTTC and FTTN only), and
- Any relevant faults to the access service.
- For HFC services, whether the service is supplied on a segment that NBN Co has identified as subject to congestion.

This information will ensure accurate, fulsome performance data is provided to the market, addressing the current information asymmetry.

Rule 6 requires NBN Co to retain records pertaining to the Connectivity Service Area that each volunteer is connected to. This relates to whether the volunteer is in a 'regional', 'metro' or 'outer metro' area. This information will ensure that the reports generated by the Program will provide information on 'metro' and 'regional' broadband performance. Rule 7 requires NBN Co to retain records for each RSP nominated by the ACCC regarding the aggregate

³ ACCC, *Superfast Broadband Access Service declaration inquiry*, Final Decision, July 2016, viewed 17 November 2017, <https://www.accc.gov.au/system/files/mea-final%20-%20%28published%29%20-sbas%20-%20declaration%20inquiry%20final%20decision%20-%202029%20july%202016%20-%20public%20version.pdf>

distribution of the maximum line speed of their wholesale services categorised into those that can achieve less than 50, between 50 and 75 and greater than 75 per cent of the relevant wholesale speed tier. NBN Co must retain this for the each of the 25Mbps, 25-50Mbps and 50-100Mbps speed tiers.

Rule 8 requires NBN Co to retain records under the Rules for a period of 12 months. This will ensure that records will remain current for Program and volunteer recruitment purposes.

Reporting requirements (rules 9-12)

NBN Co will be required to provide the ACCC with a report containing the information required under the Rules on a quarterly basis.

The form of the report is set out in the Attachment to the Rules and must be provided in Microsoft Excel format. The form of the report may be amended with adequate notice of any such amendment.

The report must be provided to the ACCC by email, or by a method of delivery approved in writing by the ACCC, within 28 days of the last day of the calendar quarter (i.e. 31 March, 30 June, 30 September, 31 December).

The information provided by NBN Co to the ACCC under the Rules will not be published by the ACCC, as personal information about program volunteers will be kept confidential.

Attachments: Templates for NBN Co reporting to ACCC

The Attachments provide the form of the report NBN Co is required to provide to the ACCC under the Rules.

Attachment A:

By providing information in this format, NBN Co will enable the ACCC to validate the following volunteer information:

- the volunteer's residential service address (location)
- wholesale speed tier
- RSP/Carriage service provider, and
- access network technology

For each consumer volunteer, NBN Co will provide the following information:

- confirmation that the address has been found/not found by indicating a simply 'Y' for yes or 'N' for No.
- CVC and AVC traffic class, and service class
- the relevant Service Area Module
- the relevant geographic location in reference to a Connectivity Service Area, by indicating 'R' for regional, 'M' for metro and 'OM' for outer metro
- the relevant Eligible Party Identification Code
- the actual and maximum wholesale line speed, and
- whether the relevant access service is subject to any known fault.

Attachment B:

By providing information in this format, NBN Co will enable the ACCC to view in aggregate the line capability of FTTB/C/N services across three speed tiers for all services and for RSPs reported on.

For each nominated RSP, NBN Co will provide data on:

- The aggregate number of services acquired by that RSP and the maximum line capability within three thresholds for each of the three NBN speed tiers.
 - The maximum line capability thresholds with respect to the three speed tiers are: less than 50 per cent, 50-75 per cent and over 75 per cent of the speed tier.
 - The speed tiers to be reported on for each nominated RSP are: 25Mbps, 50Mbps and 100Mbps.