



**Superseded**

ACCC Broadband Performance Monitoring and Reporting  
Record Keeping and Reporting Rules

Explanatory statement

December 2017

## Contents

1. Introduction .....	2
2. Regulatory framework .....	2
3. ACCC Broadband Performance Monitoring and Reporting RKR .....	2
4. Consultation .....	3
5. Explanatory Notes .....	4

## 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.<sup>1</sup>

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

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

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

- 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. 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)<sup>2</sup> - FTTP, FTTN, FTTB, HFC and FTTdp technologies.

### ***Record keeping rules (rules 5-7)***

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 certain technologies only), and
- Any relevant faults to the access service.

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.

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<sup>2</sup> 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-%202016%20-%20public%20version.pdf>

Rule 7 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 8-11)***

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.

### ***Attachment: Template for NBN Co reporting to ACCC***

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