



Report on effectiveness of broadband speed claims guidance and consultation on further enhancement

Submission by Aussie Broadband

December 2018

About Aussie Broadband

Aussie Broadband is a small, high quality internet service provider based out of the Latrobe Valley in Gippsland, Victoria.

To date, we are the only ISP outside the big four to build a network to all 121 NBN POIs across Australia. We provide services via all NBN technologies other than satellite with a focus on a congestion-free, quality network and all-Australian support. We are the fifth largest provider of new fixed wireless NBN services.

Whilst our services can and do cover nearly all Australians, we have a particular affinity with rural and regional Australia. Many of our leadership team and staff – including our Managing Director Phillip Britt – receive their home NBN via fixed wireless.

Executive Summary

While Aussie Broadband has successfully implemented the original Speed Claims Guidelines into its policies and its communications with its customers (not without considerable effort) we have concerns about the proposal to incorporate Fixed Wireless services into a Guidance originally created for fixed line speeds, due to the significantly different nature and behaviour of the technologies involved.

With the vagaries of Fixed Wireless cell performance with from both congestion as well as a broad range of environmental factors in the path to the consumer, we are concerned that additional regulation and/or penalties for speed variances or instability outside of the RSP's control has the potential to discourage (especially smaller and regional) RSP's from offering Fixed Wireless services to consumers and/or to significantly increase the price of the service, penalising both the RSP AND the consumer who has no alternative service possibilities available to them.

The reasons for these concerns are outlined in this submission.

This submission by Aussie Broadband Pty Ltd focusses primarily on the issues surrounding Fixed Wireless broadband services.

Speed and Performance Representations

It is stated in the Guidelines:

Where reliable pre-sale maximum attainable line speed information is not available

5.29. RSPs have the responsibility to deliver the services consistent with the speed and performance representations they have made, or when they are unable to supply that service, to provide the appropriate remedies, operational support and information.

Response:

While Aussie Broadband absolutely agrees with the principle of not selling something you can't deliver (as seen in action through our current 80% POI usage stop-sell policy), the issue revolves around the information currently supplied by the Network Operator to the RSP for the Fixed Wireless product.

Using Attachment C to the Guidance as an example, where it suggests the following "model for the marketing of fixed wireless products in the absence of accurate pre-sale speed information for the service location or network cell"

Once the service is activated, the RSP must as soon as practicable obtain congested network cell information, as well as obtain actual attainable connection speed information, or support the consumer obtaining and reporting a reliable measure of maximum attainable connection speed and accept the consumer's speed measure.

- A. An RSP would require much more comprehensive, accurate and timely congested cell information from NBN Co. This could even allow Aussie Broadband to a stop-sell on cells that are currently congested – saving customers and Aussie Broadband from undertaking expensive and time consuming installation and testing before deciding if a suitable service was achievable. An order could then be taken and queued awaiting a cell upgrade.
- B. NBN Co would need to provide the tools to provide accurate and timely information about cell performance.
- C. Even if the required information was made available in a timely manner and the RSP was to activate a Fixed Wireless service for a customer, there is no guarantee this information would remain valid where:
 - The process of adding new services to the cell may cause congestion
 - Even the "peak time" testing measures being used by new customers could cause congestion.

- D. A definition of congestion would need to be included in the Code/Standard. Any conversation about the fixed wireless network performance is difficult without a publicly-agreed definition of congestion.

Current definitions in the telco universe include:

- i. 6Mbps, judged by measuring the average throughput of all end-users in a cell in the busiest hour, averaged over a month (NBN)
- ii. below a 40% drop in evening speed between 7-11pm (ACCC's monitoring program)
- iii. below a 15-25% drop in speeds during peak hours (what our customers very clearly tell us)

The fact there is no agreed industry standard on what constitutes "congestion" leads to confusion for customers and stakeholders.

- E. With "congestion" being such a "moveable feast", as is the service speed that it affects, being required to "advise the consumer they are free to exit the contract without penalty" (and remove the wireless installation) because congestion or slow speeds arose after the connection was achieved and without the option for resolution of the issue would place a significant financial burden on (particularly smaller) RSPs.
- F. To "obtain actual attainable connection speed information" is not something currently available from NBN Co or something that RSPs can achieve through automation, as we currently do for fixed line services. It would require significant additional resources to "support the consumer obtaining and reporting a reliable measure of maximum attainable connection speed" – and there is doubt this consumer generated information would be accurate and reliable enough in a contractual proposition.
- G. Unless and until the Network Provider provides this capability, to achieve any form of automated testing of consumer-end speeds would require the purchase and deployment of considerable additional equipment, time and human resources, reducing the commercial viability of providing the service at prices a customer is likely to be willing to pay.
- H. With the discussion of "congestion" there has been NO discussion of the other factors which could affect the "speed" of a Fixed Wireless service, such as environmental factors which could include anything from growing vegetation, moisture levels in vegetation (tall trees) and even structures that could be built between or affecting the path between the tower and the consumer. These are outside of the control of either the consumer or the RSP (and even the Network provider) and could render the measurement of the "maximum attainable speed" irrelevant not long after the measure was taken.

Consumer Law:

The Guidance quotes the ACL *“The consumer guarantees as to fitness for purpose and reasonable time for supply apply to services utilising fixed wireless technologies, including in circumstances where a consumer’s actual attainable line speed is lower than the off peak speed of the plan they have purchased”*.

And notes that *“The ACL also provides remedies for false or misleading representations or conduct”*

As previously stated, with “congestion” and “environmental factors” making it difficult if not impossible to accurately gauge the maximum attainable or “off peak” line speed of a fixed wireless service from time to time, RSPs would be required to exercise extreme caution in labelling and describing Fixed Wireless services, and actively offer plan downgrades where required so as not to inadvertently mislead customers. We have no objection to offering customers appropriate downgrades (we do this already at no charge for fixed line customers as part of our “no bull” approach to customer service) but we think this could again put smaller ISPs off providing fixed wireless services, leading to less competition in the market for consumers.

To this end Aussie Broadband endorses the following statements from the submission to this consultation by the industry representative body, Communications Alliance

- *“RSPs should only provide speeds information that can be supported. On fixed wireless, they should instead provide education and information about what consumers can expect to experience on a fixed wireless connection.”*
- *“There is unfortunately no practical way to determine “typical” speeds to publish for customer information, which is why fixed wireless advertising Guidance should be dealt with separately from fixed line Guidance.”*
- *“Industry considers that the previously agreed upon Principles in the Guidance can be applied to services delivered over fixed wireless technology. However, expanding the fixed line speed Guidance to fixed wireless services is not appropriate. It will cause confusion for consumers, and possibly put RSPs in the impossible position of either abiding by the Guidance but not complying with the ACL (by providing peak speeds information that is not reliable), or complying with the ACL by only providing reliable information, but contradicting the Guidance.”*

Recommendations:

Our recommendations for this Guidance are that the ACCC consider:

- adopting an industry supported/agreed definition of “congestion” as it relates to Fixed Wireless broadband services
- a “stop supply” process where services are not sold on Fixed Wireless cells experiencing severe congestion until that congestion is rectified
- that information on all cells experiencing severe to light congestion be made publicly available by the network operator so the customer can make informed decision about obtaining a Fixed Wireless service
- including provision for the network provider to put in place the capability to test the maximum connection speed and user experience (average and peak speed/throughout) for individual services connected to a cell if these measure are to be required when advertising/supplying Fixed Wireless services to customers
- recognition of the difficulties surrounding the determination of “typical speeds” of Fixed Wireless services when considering advertising Guidance, and instead encouraging RSPs to provide education and information about what consumers may experience on a fixed wireless connection to more closely align a customer’s expectations with the service they are subscribing to.