



AUSTRALIAN COMPETITION
& CONSUMER COMMISSION

Broadband Speed Claims – Industry Guidance

Consultation report on updating the Guidance

April 2019

Version Control

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Version 1

1. Introduction

About this report

This report explains the changes that we have made to our *Broadband Speed Claims – Industry guidance* in April 2019.

In August 2017, we released the *Broadband Speed Claims – Industry guidance (Guidance)* in order to promote best practice in advertising of next generation broadband services and to remedy a significant market failure stemming from the unavailability of information about the typical speeds of broadband plans.

In November 2018, we reported on the effectiveness of the Guidance and proposed a small number of enhancements, as per the [Report on effectiveness of broadband speed claims guidance and consultation on further enhancement \(Guidance Update Consultation\)](#).

The key change we proposed was to extend the Guidance to cover services supplied over fixed wireless infrastructure. We also proposed giving illustrative examples and some further changes to improve the clarity and useability of the Guidance.

The ACCC received [12 submissions](#) in response to the Guidance Update Consultation (**Submissions**) which we published in January 2019. This report provides a summary of key aspects of the Submissions and the position that the ACCC has adopted in its [revised Broadband Speed Claims – Industry guidance](#) which was published in April 2019 (**Revised Guidance**).

2. Fixed Wireless Enhancements

The Guidance has been extended to cover fixed wireless services.

- When advertising a broadband plan that can be supplied over a fixed wireless network, retail service providers (**RSPs**) should include a disclaimer that fixed wireless speeds will need to be confirmed on activation. This is because the maximum attainable speeds of fixed wireless services reduce depending on distance from the tower and other factors, and plan level speed claims may therefore not always be a reliable indicator of service performance.
- A plan's advertised typical busy period speed should continue to be based on a representative sample of services on the plan drawn from across each of the network types over which the plan is supplied. If the broadband plan is supplied over a fixed wireless network as well as other networks, some fixed wireless services should be included in the sample. If the broadband plan is supplied only over a fixed wireless network, then only fixed wireless services should be included.
- An RSP can exclude certain fixed wireless services from the sample, provided it gives clear point of sale/activation advice and remediates its affected customers. Services that may be excluded are services that are located in a network cell that NBN Co reports is subject to congestion, as well as services with a limited maximum attainable speed.

This is consistent with the approach taken with services supplied over other networks with variable speed outcomes.

Sufficiency of network information

A number of RSPs expressed the view that they would require further information from NBN Co to adopt the proposed extension of the Guidance to cover fixed wireless services. RSPs submitted that they required more timely and detailed congested cell information, maximum attainable speed information and an improved interface with NBN systems.

The information that NBN Co makes available to RSPs has improved considerably since these RSPs expressed these views.

In late December 2018, NBN Co commenced providing weekly reports to RSPs that list congested fixed wireless cells, and cells that are forecast to become congested in the next 6 months. The reports also identify for each RSP which of their services are located in these cells, as well as providing a forecasted upgrade date.

As a consequence, RSPs can determine whether an ordered service is likely to be connected to a congested cell when taking an order, and this will be confirmed on activation.

NBN Co is yet to make maximum attainable speed information available to RSPs. The Revised Guidance provides that until this information becomes available, RSPs should either conduct their own testing to determine a customer's maximum attainable speed, or assist its customers to do so, and accept the speeds results from such testing.

NBN Co has committed in its integrated product roadmap to making relevant network information available via its business-to-business (B2B) and service portal later this year.

Limitations and variability of fixed wireless technology

Several RSPs expressed concern that the significant variation in fixed wireless performance would make any typical busy period speed information misleading, and an expectation that such information would be supplied could discourage RSPs from offering these services in future.

RSPs are already advertising the broadband plans that they supply over fixed wireless networks by reference to busy period and off peak speeds. The consequence of the Guidance being extended to cover fixed wireless is that some fixed wireless services should be added to the test sample. In this regard, fixed wireless speeds can be tested in the same way as other broadband services.

The Revised Guidance deals with the variable nature of fixed wireless services via the provision of point of sale/activation information that is specific to the service.

Effect of RSP speed testing on fixed wireless network congestion

Some submissions suggested that RSP testing of fixed wireless services could contribute to network congestion.

Speed tests are short in duration, approximately 15 seconds, and are run a small number of times a day during four fortnightly test periods per year. In the fixed wireless context, an RSP could select the services it wished to test so that not more than one service per cell would be included within its test base. Consequently, it is highly unlikely that the testing could have a material impact on consumer experience.

More generally, RSPs conducting network testing on behalf of their customers could minimise the need for their customers to run speed tests of their connections, which would be conducted in a less coordinated manner.

This is important because increased customer testing as a result of poor network performance is likely to have a greater impact on network congestion than planned network testing, particularly where that network testing is used to properly set customer expectations at the outset.

Pending wholesale product changes

One RSP suggested that the ACCC delay including fixed wireless services in its guidance until NBN Co replaces its NBN50 Fixed Wireless access product with its 'Fixed Wireless Plus' product, which is scheduled for mid-2019¹.

However, the Revised Guidance can be readily applied to the new retail broadband plans, should RSPs develop them as a consequence of the replacement of this wholesale access product, or otherwise.

3. Other enhancements

Migration of services to new plans or speed tiers

The Guidance has been amended to make clear that it is best practice for RSPs to have regard to the maximum attainable speed of its customers' connections before deciding whether or not to migrate customers to faster broadband plans, even in circumstances where there is no immediate price difference.

The RSP could consider factors such as the extent of the speed limitation and its preparedness to remediate the network connection to overcome the limitation before deciding whether or not to proceed.

This clarification is intended to minimise the risk that an RSP-initiated plan upgrade would result in confusion or dissatisfaction for those customers who do not in fact receive any material improvement in their service speeds.

Some submissions pointed to the benefits for customers of being moved to a higher speed plan even if they achieve only a partial speed increase, and expressed the view that RSPs should be encouraged to migrate their customers regardless of whether the customer would be able to realise the advertised speed of the new plan.

However, that approach would risk leaving many customers with services that cannot achieve the full speed of the new plan without a clear path to resolving the speed limitation.

4. Ongoing monitoring and review

The ACCC will continue monitoring steps taken by RSPs to apply the Revised Guidance and will periodically review it, including considering whether further updates are appropriate.

¹ <https://www.nbnco.com.au/corporate-information/media-centre/media-statements/nbn-co-unveils-new-plans-for-fixed-wireless-network>