



19 December 2018

**Submission in response to ACCC Report on effectiveness of broadband speed claims guidance and consultation on further enhancement dated 21 November 2018**

MyRepublic welcomes the opportunity to provide feedback on the effectiveness of the Broadband Speed Claims Guidance as well as our thoughts on extending them to incorporate the fixed wireless access technology.

MyRepublic had reservations at the time of implementation of the Commission's Guidance that instead of achieving the intended goal of educating the consumer and making their comparison and selection of plans easier, we believed the Guidance had the potential to work counter to this goal and make the products and the task of product selection by the consumer, of the most appropriate service for their needs, even more confusing.

Apart from the information that is now provided reasonably consistently by Retail Service Providers (RSPs) via Fact Sheets and Critical Information Summaries, which has gone some way to educate the consumer or end user, a comparison of RSP advertising and websites today presents an even greater mish-mash of data and claims than existed prior to the Guidance being introduced.

We now have every RSP claiming a different typical peak time speed, with some using the product labels and some choosing not to, and this inconsistency has been applied against a backdrop of existing information that was already being used by some retailers to confuse and in ways that baffle the consumer.

MyRepublic has seen these tactics employed by many incumbent RSPs across our markets, particularly as consumers are presented with the opportunity to move to new infrastructure and access new services from a greater range of providers. The challenge in Australia is that this new infrastructure is viewed with some scepticism and trepidation by consumers. As we all know and have come to accept, this is due to the extensive media coverage and political points scoring and interference in the NBN programme since its inception nearly ten years ago.

The Commission has recognised this risk to some degree and hence adopted measures such as introducing this Guidance, that although technically voluntary, has been strongly encouraged to be adopted by RSPs. The Guidance attempts a noble and necessary goal, but although MyRepublic generally supports the overarching principles behind the Guidance, we disagree with many aspects of the detail as to how they are to be achieved. MyRepublic believes the major fear we outlined prior to the introduction of the Guidance has been realised and its adoption has played into the hands of the incumbent RSPs.

The Commission claims the Guidance has resulted in the shift by consumers to higher speed plans. MyRepublic respectfully submits that the Guidance will have had minimal impact, if any, on consumer behaviour in this regard and instead the increase in volume of 50Mbps services is solely due to the NBN pricing strategy of offering the service at the same price as the 25Mbps plan. This has halted the incumbent RSP's practice of simply "lifting and shifting" their existing customers onto the cheapest modestly performing NBN plan of 25Mbps and, instead, for the same price, substituted this service for a better performing 50Mbps plan.

Over the same period, uptake of the 100Mbps service has declined, so one could argue that were it not for this pricing strategy from NBN, and the associated change in practice by the incumbent RSPs, the uptake of higher speed plans (50 and 100Mbps) would have declined.

We believe the Commission was wise to treat FTTN/B connections differently in the Guidance, but could have gone further to ensure consumer expectations were fairly set. MyRepublic believes this access technology warrants its own specific guidelines and this would allow the remaining, better performing fixed line access technologies to be more appropriately treated within the Guidance, or exempted altogether, as FTTP, HFC and FTTC are all capable of achieving the higher speed tiers.

Fixed wireless is an access technology that has even more variables that affect its performance than FTTN/B and therefore MyRepublic believes the current Guidance cannot be readily extended to apply to this technology. If the goal is to extend the Guidance to apply to fixed wireless, the best course of action would to separate out fixed wireless and FTTN/B from the other access technologies and develop Guidance specifically for these two variably performing access technologies.

Upon making this distinction the Commission would find that FTTP, HFC and FTTC can be governed by the existing consumer law, as all three access technologies, if operated according to standard practice, can achieve the stated theoretical speeds of each speed tier.

MyRepublic remains supportive of the intent behind the Commission's principles, but believes strongly that the application of the current Guidance has thwarted our efforts as a challenger RSP to deliver a better broadband experience to more Australians enabled by the NBN. We welcome the opportunity to provide feedback and work with the Commission on the most appropriate measures to achieve the intent behind the Guidance in the context of Australia's unique mixed access technology NBN.

Our detailed submission including responses to questions posed in the consultation paper follow. We appreciate the opportunity to provide feedback and comment and we look forward to discussing this further with you.

## DETAILED RESPONSE TO CONSULTATION

### Effectiveness of the Guidance to date

As we stated in our introduction above, MyRepublic believes that the Guidance has led to greater confusion for consumers. The consistent explanations and disclaimers across most retailers are an improvement and have helped educate consumers on the nature of the service provided under NBN, but the varying typical peak time speed claims have hindered consumers ability to easily understand, compare and select plans. Although every RSP is claiming a different typical peak time speed for each speed tier, the actual range and delta between these speed claims is minimal in the context of the overall performance of the service. Despite the relatively small variation in typical peak time speeds, some RSPs are placing great emphasis on these figures, despite the fact they are an average speed calculated across a number of access technologies, resulting in a blended peak time average speed that has been optimised within the bounds of what the RSP thinks they can claim and still act in accordance with the Guidance. To this end, we are of the opinion that many RSPs are simply gaming this process, so to make the figures or results meaningless.

Small RSPs appear to be exempt from compliance with the Guidance, yet medium sized RSPs like us must adopt them. The cost associated with deploying probes, designing and running tests in order to calculate typical peak time speeds is disproportionately high for a medium sized RSP versus the large RSPs that already have, or can easily extend existing, capability for this purpose. This has introduced a further barrier to any new entrants that wish to be more than a regional or niche provider and challenge the incumbents, providing greater competition through service differentiation, innovation and offering choice to consumers.

Although MyRepublic takes issue with many aspects of the Guidance, we do agree with Principle 4 and its importance in the context of the Australian NBN which has a variety of access technologies that all perform slightly differently, with some having significant service limitations and external factors affecting their performance. The period of co-existence for FTTN/B connections is an example of this, but we believe this was already being disclosed by RSPs to potential customers prior to the introduction of the Guidance. The Guidance has contributed though by introducing a degree of consistency as to how this is now conveyed.

MyRepublic agrees that the introduction of descriptive labels has contributed to the consumers' ability to compare plans, but ironically the labels are based on a speed range, that although the Commission and ACMA have not been keen on RSPs stating such ranges, or using terms such as "up to", this has actually helped educate consumers on the varying maximum and typical speeds they are each likely to experience on the NBN, depending on their designated access technology and in particular if they reside within the FTTN/B footprint. The effectiveness of the labels though is compromised somewhat by the fact that not all RSPs have adopted them, yet some of those same RSPs are publishing typical peak time average speeds. RSPs should not be able to only partially adopt the Guidance thereby taking advantage of the aspects they like and making it difficult for consumers to compare plans and performance claims with the rest of the market.

Apart from the consumer education aspects achieved by the current Guidance which is welcome and necessary, MyRepublic strongly disagrees with the Commission's conclusion that the fact that more consumers are choosing higher speed plans, more CVC is now allocated by RSPs per connection and there has been a reduction in complaints are all the result of the introduction of the Guidance. The Guidance has had minimal, if any, impact on this, as all three outcomes are due to the change in NBN pricing strategy and the collective adoption by all RSPs of the 50Mbps bundle.

### **Issue 1: ACMA Information Standard and Determination**

*Proposed enhancements: Update background section of the Guidance to identify complementary nature of the ACMA Information Standard and Determination*

MyRepublic is generally supportive of this proposed change as the ACMA Information Standard and Determination do assist with the goal of educating consumers. We would welcome the opportunity to review and comment on the language proposed.

### **Issue 2: Services provided using the NBN fixed wireless network**

*Proposed enhancements: elements of the Guidance to apply to services delivered over fixed wireless networks with detailed changes to the Guidance regarding Principle 4 and new Attachment C*

MyRepublic does not support the extension of the Guidance to apply to fixed wireless connections. Although connection speeds of FTTN/B access technology vary by customer premise, there are many more factors that affect the performance of a fixed wireless connection versus the service limitations of VDSL technology. Any estimated likely performance from the network provider, NBN, is an educated guess, at best. Without visiting each customer premise, one cannot be sure of all the environmental factors likely to impact on the performance of a fixed wireless connection. In the case of VDSL, a reasonable estimate can be provided based on line speed and expected attenuation.

We believe that busy period testing will have a significant detrimental impact to the service performance for each customer in the sample and additionally in MyRepublic's case the additional cost of monitoring the speed of fixed wireless services is likely to make continued promotion and operation of the service economically unviable and we may have to discontinue it.

We also believe that the customer conducting their own speed test, either immediately post, or during, the sale process, will be unworkable. Most customers do not have access to ethernet cables and would therefore be conducting speed tests over Wi-Fi which would introduce yet another variable into the base information used to ascertain the likely performance of the fixed wireless connection.

Another factor that needs to be taken into account and explained to all potential fixed wireless customers is that their maximum attainable speed will deteriorate over time, regardless of other environmental factors. Although cell site congestion will be managed by NBN, every new connection that is added to a site will cause slight degradation for the existing fixed wireless customers on that site. This will continue until the typical speed attained by each connection on a site approaches 6Mbps, and at such time NBN will plan to add further capacity to that cell site. It is imperative that this is explained clearly to fixed wireless consumers prior to connecting to the service and they understand that their service will not continue to perform at the same level as when they first connected.

### **Questions regarding services provided using fixed wireless networks**

*1. Do RSPs require further information to understand and implement the proposed changes to the Guidance regarding services supplied over fixed wireless networks? If so please explain.*

The further information that would be required does not exist. The recent reporting on fixed wireless implemented by NBN and released on 18 December 2018 is solely for the purpose of advising timing of capacity upgrades, rather than assisting in setting performance expectations for individual end users,

“The purpose of the new Wireless Performance Report is to provide Customers with information relating to the performance of each fixed wireless cell, and assist Customers to determine if an End User is in an area that has been targeted for a cell/site upgrade”.

The fixed wireless network provides a “best efforts” service that has significant service limitations and many of which are outside the control of the RSP and NBN. In other markets that we operate in, fixed wireless is a service that is typically provided by a niche or regional RSP that has local knowledge and can assess the likely impact of the topology and other environment factors on the quality and performance of the service for each potential customer at the point of sale. Unfortunately NBN does not possess this level of information and will be unable to provide a reasonable estimate of fixed wireless network performance for each potential connection.

The Commission’s suggestion that the RSP conduct the testing of the fixed wireless connection would limit the testing to post sale, rather than prior, as the customer would require router equipment and possibly a local client installed on their own device. The suggested alternative of the customer conducting their own testing is likely to lead to variable and unreliable results due to factors such as the level of a customer’s technical skill and whether they conduct a wired test (assuming they have access to an ethernet cable) or over Wi-Fi, and the device they use.

*2. Do RSPs plan to develop separate retail offerings, in terms of price, data inclusions and advertised speeds, for services provided using fixed wireless networks?*

MyRepublic has no plans to develop a separate retail offering for fixed wireless services. We are currently reviewing whether we discontinue fixed wireless as the cost to serve is already very high compared to the fixed line NBN services. The prospect of potentially developing a separate product and/or advertising it differently and adopting a new onboarding process specific to fixed wireless will likely confirm the service as economically unviable.

As the Commission will be aware, NBN has recently revised its fixed wireless services and plans to discontinue the top 50Mbps speed tier and replace it with a “Plus” service that delivers the fastest speed attainable. Any Guidance applicable to fixed wireless would obviously have to take this into account, along with the continuation of the existing data constraints and usage policy that NBN already applies to fixed wireless services. These significant differences warrant specific fixed wireless Guidance rather than treating it similarly to fixed line services.

*3. Should specific labels be developed for plans that are specific to fixed wireless networks, e.g. to better manage consumer expectations when RSPs are marketing fixed wireless specific plans?*

MyRepublic does not believe specific labels should be developed for fixed wireless services. The descriptive labels convey the concept that speeds vary by access technology and, for some access technologies like FTTN/B and fixed wireless, by individual customer premise.

In addition to the application of the labels, MyRepublic believes any guidance for fixed wireless services should include an explanation of the access technology and the reasons for its variable performance. For consistency, we would recommend that this is provided by the network provider by linking to their explanation, rather than each RSP attempting to explain this themselves.

*4. Does the Guidance need to be further developed to address issues that may arise in respect of fixed wireless specific plans?*

MyRepublic believes the Guidance necessary for fixed wireless services is significantly different to that which would apply to fixed line services. The focus for fixed wireless needs to be educating the consumer on the nature and performance of the technology rather than prescribing in detail the manner of any performance representations. It will prove too difficult for a realistic expectation to be set at the point of sale with the customer, and testing afterwards will produce unreliable and variable results. Conducting tests during peak times will also significantly impair performance of the customer’s fixed wireless connection if they are within the sample group.

It is our opinion that there is merit in reviewing fixed wireless, together with the other variable performing NBN access technology, FTTN/B, to determine what more can be done from an education and expectation setting perspective with the customer. Specific guidance for

these two access technologies is certainly warranted, but needs to be based on the quality and ability of information at hand to accurately estimate the likely service performance.

Further to this, and as a natural extension of this approach, FTTP, HFC and FTTC can be removed altogether from the Guidance as all three access technologies are capable of delivering the maximum attainable speed of each NBN speed tier when operated within standard operating procedures by the RSP.

*5. Should the Guidance outline a default methodology for testing maximum attainable speeds on fixed wireless connections where this information is not provided by the network operator, e.g. in terms of time of day to test and number of tests to conduct?*

MyRepublic believes that any methodology for reliably testing maximum attainable speeds for fixed wireless connections would be fraught due to a number of factors:

- Testing at peak time will significantly impair the quality of the service being tested;
- The cost of deploying probes or similar technology to conduct such tests is likely to add significant cost to the service; and
- If the customer was to conduct their own testing, their results are likely to be unreliable and inconsistent due to a variety of factors such as what device the test was conducted on, or whether it was conducted using an ethernet cable or over Wi-Fi, etc.

### **Issue 3: Ensuring consumer information remains current and appropriate**

*Proposed enhancements: Further guidance added to Principle 3 and Attachment A*

MyRepublic supports in principle the proposed enhancements to ensure consumer information remains current and appropriate. As we only promote the higher speed NBN services, the currently anticipated applications are all supported. We expect the worked examples are targeting the suitability of speed tiers less than 50Mbps for certain applications and uses. While generally supportive of such an approach, we would not want to see such calculations used as a justification for the promotion of lower speed services over the higher speed plans due to a lower speed tier plan being “all the consumer will ever need”. As the Commission will be aware, the higher speed services also provide a level of service that ensures multiple devices are able to seamlessly connect to a variety of applications at the same time without any negative impact on each individual user experience.

MyRepublic believes it is reasonable that a service should be re-tested if there is a material change in the retail or underlying wholesale plan, and we also welcome the proposed note of clarification regarding the acceptable treatment of individual test results within a sample.

### **Question regarding ensuring consumer information remains current**

*6. In addition to the proposed changes to the Guidance on Principle 3 and Attachment A, are there further enhancements that could be made to assist RSPs in ensuring consumer*

*information remains current and claims based on support for online applications are reasonably based?*

MyRepublic is generally comfortable with the changes as proposed but would welcome the opportunity to review and provide feedback on the final worked examples.

### **Questions regarding clarity and useability of the Guidance**

*7. Is the worked example in Attachment D sufficiently clear? If not, how could Attachment D be improved to ensure RSPs understand how to determine typical busy period speeds in accordance with the Guidance?*

MyRepublic has no issue with Attachment D as drafted.

*8. Are there other refinements to the drafting of the Guidance that would improve its useability?*

MyRepublic believes greater consistency could be achieved if the Commission also provided sample templates of how they envisage the Guidance is best applied across the various advertising mediums. For example the font size and prominence of descriptive labels and typical peak time speeds applied in the context of a small digital banner advertisement, versus a TV commercial, or a pricing table on a website.

These templates could also extend to sample processes, including the language used to convey those processes to consumers. In particular, most RSPs have adopted Model Two from Attachment B for marketing and setting expectations with customers on the performance of their FTTN/B connection and their associated plan selection, yet all RSPs describe this process on their websites in slightly different language. This may result in some consumers perceiving a difference in how they will be treated by an RSP despite the RSPs all adopting the same process.

*9. Are there other enhancements that could be made to the Guidance that would improve the information and support available to broadband consumers and to promote competition among RSPs?*

MyRepublic believes that the Guidance is largely unnecessary for the better, consistently performing fixed line access technologies, FTTP, HFC and FTTC. Education of consumers remains an important goal for all of us and any consistency that can be applied in that regard could continue to be promoted via the Guidance, but the need to publish typical busy period speeds could be removed for services provided via these three access technologies, as they are all capable of delivering the maximum attainable speed of each of the NBN speed tiers when operated in accordance with standard operating procedures.

Instead the Guidance should focus on the access technologies that have significant service limitations, such as FTTN/B and fixed wireless, and ensure that appropriate expectations are set with each customer.

Currently RSPs calculate their typical busy period speeds in accordance with the Guidance, based on their own blend of access technologies, with only some applying the standard plan labels in their advertising, but they then enter into meaningless points scoring style advertising campaigns when the difference between each of their typical busy period speeds is minimal in the context of the maximum attainable speed for each plan. MyRepublic believes this exercise has only baffled and confused the consumer and made them even more reluctant to select an alternative RSP and/or migrate to the NBN, thereby constraining competition and potentially jeopardising the rate of uptake of NBN services overall.

#### **Principle 4 - Services utilising FTTB and FTTN technologies**

MyRepublic understands the intent of the proposed markup to point 5.23 of the consultation paper is to ensure that there is appropriate disclosure to consumers prior to migration, but we would not want such a change to be mis-used by incumbent RSPs to resist or delay moving their base to the NBN. We suggest that the proposed changes outlined in point 5.28 of the consultation paper are sufficient in this regard, as they simply focus on ensuring the appropriate plan is recommended, rather than suggesting the incumbent RSP reconsider migrating the customer at all.