

Broadband speed claims guidance

nbn submission to the ACCC in response to the 'Report on effectiveness of broadband speed claims guidance and consultation on further enhancement'





1 Effectiveness of broadband speed claims guidance

nbn welcomes the opportunity to respond to the ACCC's Draft 'Report on the Effectiveness of broadband speed claims guidance and consultation on further enhancement' (**Report**) and on the ACCC's review of the 'Broadband speed claims guidance' (**Guidelines**). The ACCC's review of its Guidelines is appropriate and timely.

nbn agrees that the Guidelines have assisted in promoting more competitive and efficient markets for the provision of services delivered over the **nbn**TM broadband access network. There are several factors which point to this outcome including:

- a significant number of Retail Service Providers (**RSPs**) which have adopted the Guidelines. For example:
 - RSPs representing over 90 per cent of the broadband market now provide typical busy period speed information;
 - 13 RSPs provide a disclosure warning for the maximum attainable speeds in relation to Fibre-to-the-Basement/Node (**FTTB/N**) services and 8 RSPs have provided undertakings that they will confirm maximum attainable speeds on activation and offer remedies to end users who have a maximum attainable speed lower than the advertised speed of the plan; and
 - the descriptive labels which were recommended in relation to broadband performance (i.e. 'basic', 'standard', 'standard plus' and 'premium') have been adopted by 10 RSPs including some of the larger RSPs like Optus, TPG and Telstra; and
- the number of complaints made to the Telecommunications Industry Ombudsman (**TIO**) fell in the six months after the Guidelines were released. In the 'Telecommunications Industry Ombudsman Annual Report 2018' the TIO reported that complaints about service quality for services delivered over the **nbn**TM access network reduced by 7 per cent from July - December 2017 to January - June 2018. At the same time, the number of end users on services delivered over the **nbn**TM access network increased by 19 per cent.

Over the last 18 months, **nbn** has initiated a range of programs, incentives and discounts to improve end user experience and address speed related issues on the **nbn**TM access network. **nbn** views the ACCC's Guidelines as complementary to our initiatives and **nbn** therefore remains supportive of the Guidelines and the ongoing implementation of these Guidelines by RSPs. **nbn** notes that these Guidelines are only one part of the ACCC's broader strategy to improve end user experience in the broadband industry. Furthermore, end user experience must continue to be seen as a priority for both retailers and wholesalers and **nbn** remains committed to working with the industry to improve end user experience.

nbn has considered the proposed updates to the Guidelines and is of the view that any future updates or changes to the Guidelines should be considered in the context of the long term interests of end users (**LTIEs**) and in the context of Australia's highly dynamic broadband market. In relation to the latter, **nbn** notes that Australia's broadband market is currently experiencing rapid technological change, changes in market structure and changing consumer preferences so it remains important that these Guidelines continue to be further refined to reflect these ongoing market dynamics.

Regarding the proposed enhancements to the Guidelines, **nbn** would like to make the following comments.



Principle 2 of the Guidelines

This Principle proposes that ‘wholesale network speeds or theoretical speeds taken from technical specifications should not be advertised without reference to typical busy period speeds’. Whilst **nbn** agrees with this principle we note that given the effective adoption of typical busy period speed references by RSPs in advertising there is an argument that the publication of the underlying wholesale network speed is no longer relevant, and may be confusing for end users. Accordingly, **nbn** questions the utility of RSPs making reference to the wholesale network speed alongside typical busy period speeds. Increasingly, competition and product differentiation will be best served if the focus of end users is on the retail speeds which they can expect during the busy hour (which are now being more clearly articulated by RSPs) rather than on the wholesale network speed.

Additionally, an end user typically measures the service speed using tools operating at layer 3 and higher (of the OSI stack). **nbn** offers a layer 2 service and the measured layer 3 (or higher) speed will typically be between 5-10 per cent lower than the **nbn** layer 2 provisioned speed. Additionally, as the ACCC is aware, there are a number of factors at a retail level which impact the speed received by end users including, but not limited to, the way that an RSP contends its network, in home wiring and modem performance. These external factors limit the relevance of providing a wholesale underlying speed to an end user.

We understand that some RSPs are of the view that because the ACCC Guidelines make specific reference to *wholesale network speeds or theoretical speeds taken from theoretical specifications* that they are obliged to make reference to this information in their advertising material. This is not **nbn**’s understanding of the Guidelines.

Appropriateness of the ‘labels’

nbn continues to be supportive of the use of standardised labels amongst RSPs so that end users are easily able to compare retail broadband plans between providers. **nbn** notes that the Guidelines do not propose that these labels apply to retail plans delivered over the **nbn**[™] Fixed Wireless network. Given the technological characteristics of fixed wireless network technology, **nbn** is supportive of not extending the use of these labels to fixed wireless services.



2 Extension of Guidelines to Fixed Wireless

nbn understands the ACCC's intention to broaden the Guidelines to include guidance for RSPs in relation to fixed wireless. **nbn** remains committed to enabling the best possible end user experience for services provided over the **nbn**TM Fixed Wireless network and also being transparent and providing more information to RSPs about available speeds so that appropriate information can be shared with end users. In addition, **nbn** has committed to publishing additional information in relation to the performance of the **nbn**TM Fixed Wireless network in our monthly progress reports, with the first such reporting published on 18 December 2018.

nbn understands that the intention of these Guidelines is to be focused on RSPs. However, it is worth emphasising that in relation to **nbn**'s fixed wireless technology, **nbn**'s design standard for upgrading cells is a minimum design criteria of six megabits per second in the busy hour in a fixed wireless cell. This is an average across all end users connected to that cell. Actual speeds experienced by an end user will vary and may be significantly lower than the maximum potential network speed due to a number of factors including the number of other simultaneous end users on the network and distance of the end user from the tower. Furthermore this design standard is a capacity planning standard that **nbn** builds and maintains its network to; it is not a committed information rate for services provided over the network.

A particular challenge in relation to fixed wireless is that performance in the busy hour can vary widely between cells. As shown in our December Monthly Progress Report, whilst almost 47 per cent of **nbn**TM Fixed Wireless cells have an average monthly busy hour performance of 25 Mbps or above and 78 per cent have a monthly busy hour performance of 12 Mbps or above, there are just under 4 per cent of cells which have a monthly busy hour performance under 6 Mbps.

nbn understands that the intention of the Guidelines is to encourage RSPs to provide end users with accurate information about typical busy period speeds, but this may be challenging in the context of fixed wireless, given the characteristics of wireless technology. Accordingly, a number RSPs do not make speed claims in respect of services provided over **nbn**'s fixed wireless network. Instead, RSPs advertise the underlying wholesale speed tier.

We note that currently, the Guidelines do not apply to mobile services and that there is no intention to bring them within the scope of the Guidelines. This is the case even though **nbn** notes that fixed wireless and mobile rely on very similar technologies to deliver their service and that the underlying technology used for fixed wireless and mobile technology is the same. Because of this, **nbn** submits that the approach for marketing of fixed wireless plans should be the same as it is for mobile services and **nbn** queries why fixed wireless should be subject to different standards to mobile services given that the underlying technology is the same.

In Table A, **nbn** has set out some of the claims made by some of the four largest RSPs in relation to retail plans provided over mobile technology. It is unclear to **nbn** why the ACCC does not consider this approach to be appropriate for services provided over the fixed wireless network.



Table A

Retail Service Provider	Nature of Claims made
Telstra	'In 4GX areas, typical download speeds are 2-75Mbps for 4GX category 4 devices, 2-100Mbps for 4GX category 6 devices and 5-150Mbps for 4GX category 9 devices. With a Telstra 4G device in 4G areas, typical download speeds are 2 – 50Mbps.'
Vodafone	'On our Plus Plans, Tablet Plus Plans and Business Advance plans you'll get a generous allowance of data to use at Your Max Speed (the fastest speed the Vodafone network can deliver to your phone or tablet at the time and place you are using data) and then, once that is used up, access to data at speeds of up to 1.5Mbps.'
TPG	'Unlimited data – 1 GB per day at our max speeds, then speeds capped at 1Mbps.'

nbn would also like to reiterate that **nbn** remains committed to enabling the best possible end user experience on the **nbn**TM Fixed Wireless network. As noted in the ACCC's Guidelines, **nbn** has committed to expand its reporting of service levels for the fixed wireless network. These commitments are set out in **nbn**'s section 87B undertaking entered into between the ACCC and **nbn** on 11 September 2018 and include:

- reporting to RSPs about service level performance sooner via a report published each week; and
- providing additional transparency to RSPs and to end users on the performance of the **nbn**TM Fixed Wireless network, published each month.

Additionally, **nbn** notes that earlier this year, the Australian Communications and Media Authority (**ACMA**) released its Telecommunications (**NBN** Consumer Information) Industry Standard 2018 (**Standard**) which sets out key information that RSPs should provide to end users about their retail broadband plans. In relation to this Standard, it is important that it not be inconsistent with any updated ACCC Guidelines and that these two documents complement each other. In particular, **nbn** notes that currently the Standard requires an RSP to include in a key fact sheet about an end user's service, the maximum possible speed that is available during off-peak periods (if speed tier information is used to describe the plan). Given the inherent challenges associated with **nbn**'s fixed wireless technology, including this information in a key facts sheet for fixed wireless would prove exceptionally challenging for RSPs (given that they do not receive this information from **nbn**). Should the Guidelines be updated to include fixed wireless, the ACCC should work with the ACMA to update its Standard to ensure consistency with the Guidelines.

nbn thanks the ACCC for the opportunity to respond to the Guidelines and would be pleased to have further discussion with the ACCC in regard to any aspect of this submission.