

Broadband Speed Claims Industry Guidance

nbn submission to the ACCC in response to the 'Consultation on further enhancements to the *Broadband Speed Claims – Industry Guidance*'





1 nbn Response - Overview

nbn welcomes the opportunity to respond to the ACCC's 'Consultation on further enhancements to the *Broadband Speed Claims – Industry Guidance*' (**Guidance**). To date, the Guidance has assisted in promoting more competitive and efficient markets for the provision of services delivered over the **nbn**TM network.

Over the last 3 years, **nbn** has worked with industry to undertake several programs to help continually improve end user experience and address speed related issues on the **nbn**TM network and is planning to do more under our new Wholesale Broadband Agreement 4 as outlined in the 'Consultation Paper on the ACCC Inquiries into **nbn** Access Pricing and Wholesale Service Standards' issued by the ACCC on 20 August 2020. **nbn** views the ACCC's Guidance as complementary to these programs and **nbn** therefore remains supportive of the ACCC's Guidance and the ongoing implementation of this Guidance by retail service providers (**RSPs**). **nbn** notes that this Guidance is only one part of the ACCC's broader strategy to continue to ensure that end users have information that readily identifies the performance and speed characteristics of retail fixed broadband services and plans.

With the recent introduction of **nbn**'s suite of wholesale higher speed tier services, **nbn** agrees that now is an appropriate time to update the Guidance to assist RSPs to provide appropriate information in their marketing material to end users about the performance of their broadband plan.

nbn has considered the proposed updates to the Guidance and is of the view that any future updates or changes to the Guidance 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 the ACCC continues to further refine the Guidance on an ongoing basis to reflect market dynamics. Regarding the proposed enhancements to the Guidance, **nbn** would like to make the following comments.

1.1 Principle 2 of the Guidance

Principle 2 of the current Guidance states that 'wholesale network speeds or theoretical speeds taken from technical specifications should not be advertised without reference to typical busy period speeds'. The ACCC is proposing to enhance this principle to give additional clarity to RSPs about how they 'can rely on wholesale access network speeds that are expressed in ranges when setting off-peak speed expectations for consumers', by suggesting that RSPs use the 'lowest end of any ranges provided if they rely on wholesale product specifications for their off-peak speed information, unless the RSP is confident that consumers will be able to achieve a higher off-peak speed'.

nbn's view is that publication by the RSP of the underlying wholesale network speed is becoming less relevant and potentially creates confusion for end users. Accordingly, **nbn** questions the utility of RSPs referring to the wholesale network speed.

The most relevant, useful and accurate information for end users will come from their RSP. The ACCC's Guidance requires the RSP to monitor the performance of their retail services in the busy period and **nbn** assumes that RSPs are also doing so in the off-peak period. **nbn** believes that the ACCC's Guidance should also encourage and allow RSPs to utilise the information that they gather in respect of off-peak performance when advertising to end users.



Information about the performance of the retail service is more relevant to end users compared to the wholesale speed tier of the underlying **nbn** product.

Importantly, competition and product differentiation will be best served if the focus of end users is on the actual retail speeds that they should expect during the busy hour (which are now being more clearly articulated by RSPs) and the off-peak time rather than on the wholesale network speed which is a theoretical speed. Competition and end user choice are maximised when there is differentiation between product offerings and RSPs have the ability to advertise their services based on actual performance rather than based on minimum wholesale network performance.

Additionally, an end user typically measures the service speed using tools operating at layer 3 and higher (of the open systems interconnection (**OSI**) stack). **nbn** offers a layer 2 service and the measured layer 3 (or higher) speed will operate at a lower rate than the **nbn** layer 2 provisioned speed. The measured layer 3 (or higher) speed will typically be between 5-15 per cent lower than the **nbn** layer 2 provisioned speed.

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.

nbn believes that Principle 2 should be updated such that the marketing of products reflects the actual speeds available to end users both during the off-peak and busy periods.

1.2 Appropriateness of the labels

nbn understand that the ACCC's current thinking is to update Principle 5 of the Guidance as follows:

- update the description of the 'Premium' label to include all services with speeds above 100 Mbps; and
- clarify that products with the same wholesale download speed, but different upload speeds, can be given the same label.

nbn does not believe these proposed updates to Principle 5 are appropriate as they represent a minimalist update to the Guidance in response to the introduction of **nbn**'s higher speed tier services. Instead, the ACCC should consider the appropriateness of Principle 5 and the extent to which prescribing labels for an ever-increasing range of differentiated services, which are optimised for a range of different applications (i.e. video-conferencing, gaming and movie downloads) is useful to end users.

The usefulness of the ACCC's current labels (which includes four labels) needs to be questioned when the premium label will be used to describe more than half of the speed tiers offered by RSPs. Such an approach implies that there is little end user benefit or value for money associated with services with a download speed of greater than 100 Mbps.

nbn submits that the four existing product labels reduce RSPs ability to differentiate their service offerings and highlight the extent to which a service caters to a particular end user segment. Additionally, if RSPs are required to factually communicate the actual busy hour performance plus the off-peak performance that the end user will likely experience (as per **nbn**'s recommended changes to Principle 2), the ACCC's product labels do not offer any additional benefit to the end user when comparing different service offerings.



1.3 Advertising requirements for services provided over fixed wireless technology

Even though the ACCC's industry consultation relates to proposed updates to the Guidance arising from the launch of **nbn**'s higher speed tiers, the ACCC should also take this opportunity to consider improvements in respect of the ACCC's Guidance regarding speed claims on fixed wireless networks.

As previously articulated in **nbn**'s response to the 'Report on effectiveness of broadband speed claims guidance and consultation on further enhancement', actual speeds experienced by an end user on **nbn**'s fixed wireless network will vary and may be significantly lower than the maximum potential network speed due to a number of factors common to wireless technologies, including the number of other simultaneous end users on the network and distance of the end user from the fixed wireless tower. Additionally, performance in the busy hour can vary widely between cells, and therefore it is challenging for RSPs to accurately communicate the busy hour performance to end users.

Furthermore, we note that currently the Guidance does not apply to mobile services and that there is no intention to bring them within the scope of the Guidance. This is the case even though **nbn** notes that fixed wireless and mobile rely on very similar technologies to deliver services and that the underlying technology used for fixed wireless and mobile technology is the same. Because of this, **nbn** continues to be of the view 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 different standards.



2 Specific Responses to ACCC Questions

Question 1: Do RSPs plan to market >100 Services uniformly regardless of underlying access technology?

nbn provides site qualification results at an individual location and general guidance to RSPs that services greater than 100Mbps are not uniformly available to all premises. Based on the information provided, the preference is that RSPs seek to actively use a targeted approach to their marketing so that end users are not misled and are able to immediately order and utilise services greater than 100Mbps as per their needs.

Question 2: Are there any issues with specifying that RSPs should utilise the lowest end of a range of speeds provided by a wholesale provider, where RSPs rely on that information in advertising typical off-peak speeds?

As noted above, the use of wholesale speed references in marketing is less relevant to the end user than the actual measured speed of the RSP service. **nbn** supports the elimination of wholesale speed references in marketing and the use of actual measured off-peak and busy hour RSP speeds to market the service to end users.

Question 3: Can the meaning of burst speeds be readily conveyed to consumers in marketing

nbn's preference is that RSPs reference actual measured off-peak and busy hour speeds when marketing products with burst capabilities, as there is a risk that the wholesale burst speed concept may be misinterpreted when utilised for retail marketing purposes.

Question 4: Do you have any comments on the proposal that RSPs clarify off peak speed expectations for particular consumers where they differ from what is described in retail marketing?

Previous Guidance suggests that it is the RSPs responsibility to measure the average busy hour speed and if the RSP chooses to advertise the underlying wholesale speed it must be less prominent than the busy hour speed. **nbn** has since released products where there is variability in how often the peak speed may be achieved. If RSPs advertise the off-peak speed, it represents a more accurate view of what an end user should expect from the retail service rather than the lower (or upper) bands of the wholesale speed tier. Accordingly, **nbn** submits that the advertised speeds should not be the bottom of the range of the wholesale speed as proposed by the ACCC, but rather the RSPs should have flexibility to monitor and report on the average busy hour and off-peak speeds.

Question 5: Are there any barriers to RSPs provisioning their networks to ensure a high-quality gaming experience?

nbn believes there is nothing in the wholesale product construct for the fixed line footprint that will degrade an end-users gaming experience.

That said however, we note that there is no industry standard regarding how networks should be optimised for gaming and many other applications. Like speed claims by RSPs that they have the lowest latency can be misleading, **nbn** suggests that further work by Comms Alliance or another suitably qualified industry body should be undertaken to define what key parameters are and what the targets should be for a good online gaming experience.



Question 6: Do you have any comments on our proposed changes to the Guidance in respect of principle 4?

nbn provides RSPs with updated geographical footprint information on a monthly basis. nbn has also recently enhanced nbn™ Service Portal and nbn™ B2B platforms to provide RSPs with visibility of the orderable speed tiers. Accordingly, nbn is supportive of both proposed changes in respect of Principle 4 of the Guidance.

Question 7: Should the 'Premium' label be applied to >100 Mbps Services or should new labels be developed for >100 Mbps Services?

nbn has no further comments in response to this question.

Question 8: What would be the benefits and downsides to consumers from the development of new labels in addition to 'Premium' to apply to >100 Mbps Services?

nbn submits that if RSPs are required to factually communicate the actual busy hour performance plus the off-peak performance that the end user will likely experience (as per nbn's recommended changes to Principle 2), the ACCC's product labels do not offer any additional benefit to the end user when comparing different service offerings.

Question 9: Is it appropriate to treat wholesale products that have the same download speeds, but different upload speeds, in the same way for the purpose to labels and typical busy period speed claims?

nbn submits that the four existing product labels reduce an RSPs ability to differentiate their service offerings and highlight the extent to which a service caters to a particular end user segment. The ACCC should further consider the extent to which prescribing labels for an ever-increasing range of differentiated services, which are optimised for a range of different applications (i.e. videoconferencing, gaming or streaming) is useful to end users.

Question 10: Do you have any other view on the proposed enhancements to the Guidance?

The ACCC should also take this opportunity to consider improvements in other aspect of its existing Guidance. As detailed above nbn submits that the ACCC should also take this opportunity to consider improvements in respect of the ACCC's Guidance regarding speed claims on fixed wireless networks.