



Final Access Determination No.1 of 2019 (NBN Service Standards)

Competition and Consumer Act 2010

The AUSTRALIAN COMPETITION AND CONSUMER COMMISSION makes this final access determinations under section 152BC of the *Competition and Consumer Act 2010*.

Date of decision: 2019

1. Application

- 1.1 This instrument sets out the final access determination (FAD) in respect of the declared services (the Declared Services):
- (a) nbn Ethernet Product, and
 - (b) nbn Platform Interfacing Service
- as set out in NBN Co's WBA.
- 1.2 This FAD is an NBN-specific access determination for the purposes of section 152BC(4A) of the CCA.

2. Definitions and interpretation

- 2.1 Schedule 1 applies to the interpretation of this instrument.
- 2.2 The Schedules form part of this instrument.

3. Commencement and duration

- 3.1 This FAD commences on X Month 2020.
- 3.2 This FAD remains in force up until the earlier of:
- (a) 31 December 2022, and
 - (b) the commencement of WBA5.

4. Terms and conditions of access

- 4.1 If NBN Co is required to comply with any or all of the standard access obligations as defined in the *Competition and Consumer Act 2010* in respect of the declared services, NBN Co must comply with those obligations on the terms and conditions set out in this clause 4.

Note:

NBN Co must comply with its standard access obligations on such terms and conditions relating to a matter set out in a FAD where terms and conditions on that matter are not specified in an access agreement, no special access undertaking is in operation setting out terms and conditions on that matter and no binding rules of conduct have been made setting out terms and conditions on that matter: section 152AY of the *Competition and Consumer Act 2010*.

- 4.2 If NBN Co is required to supply the declared services to a service provider, NBN Co must supply the declared services in accordance with the terms and conditions in Schedule 2 of this instrument.
- 4.3 The price terms and conditions as specified in an applicable access agreement, special access undertaking, binding rules of conduct, or access determination, as they apply from time to time, apply to access to the declared services in accordance with Part XIC of the CCA.

Schedule 1 – Interpretation and definitions

Interpretation

In this FAD, unless the contrary intention appears:

- (a) the singular includes the plural and vice versa;
- (b) the words “including” and “include” mean “including, but not limited to”, and
- (c) terms defined in the CCA or the *Telecommunications Act 1997* (Cth) have the same meaning.

Definitions

ACCC means the Australian Competition and Consumer Commission

Access Agreement has the meaning given to that term in section 152BE of the CCA

Access Seeker has the meaning given to that term in section 152AG of the CCA

Activity has the meaning given to that term in the WBA

AVC has the meaning given to that term in the WBA

AVC TC-4 has the meaning given to that term in the WBA

Average 28 Day Busy Hour Link Packet Loss means, in respect of a Wireless Network backhaul link in a week, the average percentage of packet loss across that backhaul link in the busiest hour of that link in each of the 28 days ending at the end of that week

Average 30 Day Downlink Throughput has the meaning given to that term in the WBA

Business Day has the meaning given to that term in the WBA

CCA means the *Competition and Consumer Act 2010* (Cth)

Cell Capacity Upgrade Threshold means where a Wireless Network cell has an Average 30 Day Downlink Throughput of less than 6 Mbps.

Consumer Safeguards Event means:

- (a) any enactment, amendment, replacement or repeal of any law; or
- (b) the lawful making, amendment or withdrawal of any determination, order, directive, consent or finding by a regulator, Commonwealth government minister, or government agency;

relating to telecommunications consumer safeguards

CSG Compensation has the meaning given to that term in the WBA

Declared Services has the meaning given to it under clause 1.1 of this instrument

Downstream Service Provider has the meaning given to that term in the WBA

End User means a person who is the ultimate recipient or user of services provided by a Downstream Service Provider who is an Access Seeker in relation to the Declared Services to which this FAD applies

End User Connection has the meaning give to that term in the WBA

End User Fault has the meaning given to that term in the WBA

FAD means an access determination made by the ACCC under 152BC of the CCA and described as a Final Access Determination

Force Majeure Event has the meaning given to that term in the WBA

FTTB Network has the meaning given to that term in the WBA

FTTC Network has the meaning given to that term in the WBA

FTTN Network has the meaning given to that term in the WBA

In-building Wiring has the meaning given to that term in the WBA

In-building Wiring Consent has the meaning given to that term in the WBA

NBN Co means nbn

nbn has the meaning given to that term in the WBA

nbn Location ID has the meaning given to that term in the WBA

Order Acknowledgement has the meaning given to that term in the WBA

PIR has the meaning given to that term in the WBA

PIR Objective has the meaning given to that term in the WBA

Premises has the meaning given to that term in the WBA

Priority Upgrade Backhaul Link means a Wireless Network backhaul link that has an Average 28 Day Busy Hour Link Packet Loss of 0.25% or more

Priority Upgrade Cell has the meaning given to that term in the WBA

TCPS Act means the *Telecommunications (Consumer Protection and Service Standards) Act 1999* (Cth)

Trouble Ticket Acknowledgement has the meaning given to that term in the WBA

Upgrade has the meaning given to that term in the WBA

WBA means NBN Co's standard form of access agreement available on the NBN Co website as amended from time to time

WBA5 means the fifth version of the WBA that commences immediately after the expiry of the fourth version of the WBA

Wireless Network has the meaning given to that term in the WBA

Schedule 2 – Service Level Terms and Conditions

1. Appointments

- 1.1 The service level for appointments is for NBN Co to attend Premises at the appointment time, during the appointment window, or within 15 minutes after the appointment time or appointment window, as confirmed by NBN Co.
- 1.2 NBN Co may only change an appointment time or appointment window where the End User is required to be in attendance at the premises:
- (a) by giving Access Seeker at least 26 hours’ notice prior to the appointment time or appointment window, or
 - (b) by obtaining the agreement of the End User (or their representative) prior to the appointment time or appointment window.

The service level will then only apply to the changed appointment time or window.

Missed appointment rebates

- 1.3 NBN Co will pay a rebate of \$75 for each appointment not attended by NBN Co in accordance with the service level in clause 1.1 (Missed Appointment Rebate).
- 1.4 Access Seeker must take reasonable steps to ensure that Missed Appointment Rebates paid by NBN Co are credited to End Users affected by missed appointments.

2. End User Connections

- 2.1 The service levels for End User Connections begin from the time of Order Acknowledgement and are as set out in the WBA.
- 2.2 NBN Co may only notify Access Seeker that an End User Connection is completed, and begin charging for that service, after successfully completing installation testing on the relevant AVC.

Connection Rebate

- 2.3 NBN Co will pay a rebate for each End User Connection that is not completed by NBN Co in accordance with the relevant service level in clauses 2.1 (Connection Rebate).
- 2.4 The Connection Rebate is equal to the total of \$13.50 for each full or partial Business Day that the End User Connection is completed in excess of the relevant service level, up to a cap of \$270.

3. End User Faults

- 3.1 The service levels for rectification of End User Faults that begin from the time of Trouble Ticket Acknowledgement are:

Location/Description of Premises	Service level by NBN network	
	Fibre network, FTTB Network, FTTN Network, FTTC Network, HFC Network and Wireless	Satellite Network

	Network	
Urban Area and other locations where End User Fault does not require external or internal plant work or NBN Co attendance at Premises	5:00pm next Business Day	5:00pm next Business Day (external or internal plant work or NBN Co attendance not required) 5:00pm third Business Day (external or internal plant work or NBN Co attendance required)
Major Rural Area or Minor Rural Area where End User Fault requires external or internal plant work or NBN Co attendance at Premises	5:00pm second Business Day	5:00pm third Business Day
Remote Area where End User Fault requires external or internal plant work or NBN Co attendance at Premises	5:00pm third Business Day	5:00pm fourth Business Day
Isolated Area where End User Fault requires external or internal plant work or NBN Co attendance at Premises	N/A	5:00pm tenth Business Day
Priority Assistance – Urban Area, Major Rural Area or Minor Rural Area. Remote Area where Priority Assistance Fault does not require external or internal plant work or NBN Co attendance at Premises	24hrs	N/A
Priority Assistance – Remote Area where Priority Assistance Fault requires external or internal plant work or NBN Co attendance at Premises	48hrs	N/A

Fault rectification rebate

- 3.2 NBN Co will pay a rebate for each End User Fault that is not rectified by NBN Co in accordance with the relevant service level in clause 3.1 (Fault Rectification Rebate).

3.3 The Fault Rectification Rebate is equal to the total of \$20.00 for each full or partial Business Day in the first 5 Business Days, and \$30.00 for each full or partial Business Day thereafter, from the day after the relevant service level until the End User Fault is rectified, up to a cap of \$1150.

4. FTTN/B/C service speed assurance

4.1 This section applies to AVC TC-4 services provided over the FTTN Network, FTTB Network and FTTC Network.

4.2 For each month that the downstream PIR that a service is capable of achieving is less than the PIR Objective (downlink) NBN Co will pay a rebate of \$20.

4.3 For each month, if the downstream PIR that a service is capable of achieving is less than:

- (a) 50 Mbps for an AVC TC-4 that specifies an downstream PIR of up to 100 Mbps
- (b) 25 Mbps for an AVC TC-4 that specifies an downstream PIR of up to 50 Mbps, or
- (c) 12 Mbps for an AVC TC-4 that specifies an downstream PIR of up to 25 Mbps

NBN Co will pay a rebate of \$[X].

5. Wireless Network service speed assurance

5.1 This section applies to AVC TC-4 services provided over the Wireless Network.

5.2 For each month, if a Wireless Network cell:

- (a) meets the Cell Capacity Upgrade Threshold; and/or
- (b) is connected via a Priority Upgrade Backhaul Link,

NBN Co will pay a rebate of \$20 for each AVC TC-4 on that Wireless Network cell.

6. Payment of rebates

6.1 NBN Co will pay rebates by applying the rebate amount to Access Seeker's invoice. For the avoidance of doubt, Access Seeker is not required to apply to NBN Co for the payment of rebates.

6.2 If NBN Co is liable to Access Seeker for CSG Compensation or under section 118A of the TCPSS Act in connection with any rebate, NBN Co may:

- (a) reduce the amount of any future rebates that are or become payable to Access Seeker; or
- (b) by giving notice, require Access Seeker to repay any previous rebates paid to Access Seeker,

up to an amount equal to the total of NBN Co's liability to Access Seeker for CSG Compensation and under section 118A of the TCPSS Act in connection with the rebate.

7. Availability of service information

- 7.1 NBN Co will make all regular and ongoing service specific information available to Access Seeker via automated IT systems, including:
- (a) the progress of appointments, order status, modify orders, and fault tickets,
 - (b) whether an exclusion to the measurement of a service level is relied on,
 - (c) the extent to which a relevant service level has been missed and a rebate payable, and
 - (d) the Wireless Network reporting information set out in clauses 10.1, 10.2 and 11.1 of this instrument.
- 7.2 Where NBN Co does not have IT systems in place for the automated provision of ongoing service specific information to Access Seeker, it will maintain a roadmap setting out timeframes for consulting on, developing and implementing these systems.

8. Service level exclusions

- 8.1 NBN Co may only extend the period for measuring End User Connection and End User Fault rectification service levels to the extent that the End User Connection or End User Fault rectification is subject to:
- (a) a request to change the date of an Appointment until the date of the new Appointment
 - (b) a 'pending' status awaiting further action from the Access Seeker or End User until the Access Seeker or End User has taken the necessary steps for NBN Co to progress the order (e.g. awaiting the End User to connect necessary in-home equipment)
 - (c) any act or omission of Access Seeker, any Downstream Service Provider or any End User, other than in accordance with the terms of supply, or that is otherwise unlawful, including the refusal to allow NBN Co to gain access to a location necessary to perform works
 - (d) any issues in connection with Common MDU Site Equipment or In-building Wiring (including any failure to obtain, or withdrawal of, an In-building Wiring Consent) until that issue is resolved
 - (e) any issues caused by the network, systems, equipment or facilities of the Access Seeker, Downstream Service Provider or End User until that issue is resolved, or
 - (f) a Force Majeure Event.

9. Service level reporting

- 9.1 NBN Co will provide a report to Access Seeker by 10 Business Days after the end of each month containing NBN Co's performance for that month broken down by location, service class and network (where applicable):
- (a) for each service level Activity relating to Access Seeker; and
 - (b) for each service level Activity relating to all Access Seekers.

10. Wireless Network performance reporting

10.1 NBN Co will provide a report to Access Seeker by 2 Business Days after the end of each week (Wireless Performance Report) which will contain:

- (a) if NBN Co supplies Ethernet (Wireless) to Access Seeker at any Premises in a Wireless Network cell that is a Priority Upgrade Cell and/or is connected via a Priority Upgrade Backhaul Link:
 - (i) a list of all Wireless Network cells which, in the relevant week, were Priority Upgrade Cells and/or connected via a Priority Upgrade Backhaul Link;
 - (ii) a list of nbn Location IDs for Premises at which NBN Co supplies Ethernet (Wireless) to Access Seeker which, in the relevant week, were in a Priority Upgrade Cell and/or connected via a Priority Upgrade Backhaul Link;
 - (iii) a forecast of the month or months in which NBN Co plans Upgrades for each Wireless Network cell which, in the relevant week, was a Priority Upgrade Cell and/or connected via a Priority Upgrade Backhaul Link; and
 - (iv) any action that may be required of Access Seeker or End Users in relation to any planned Upgrades described in clause 9.2(a)(iii);
- (b) a list of each Wireless Network cell in respect of which NBN Co supplies Ethernet (Wireless) to Access Seeker at any Premises, specifying whether that cell has an Average 30 Day Downlink Throughput of:
 - (i) less than 3 Mbps;
 - (ii) 3 Mbps to less than 6 Mbps; or
 - (iii) above 6 Mbps; and
- (c) a forecast of the month during the next six months (if any) in which each Wireless Network cell is expected to become a Priority Upgrade Cell.

10.2 On provision of a prospective Wireless Network End User address NBN Co will advise Access Seeker in respect of that prospective Wireless End User:

- (a) the identity of the Wireless Network cell the End User is likely to be connected to;
- (b) whether that Wireless Network cell is, or is forecast to become, a Priority Upgrade Cell;
- (c) whether that Wireless Network cell is currently connected via a Priority Upgrade Backhaul Link; and
- (d) where (b) and/or (c) are applicable, a forecast of the month or months in which NBN Co plans to undertake Upgrades in relation to that Wireless Network cell.

11. Wireless Network maximum attainable speed information

11.1 NBN Co will provide the maximum attainable throughput information based on the signal levels recorded at time of installation to Access Seeker for each AVC TC-4 Wireless Network service that is installed, within two days of the installation.

12. Implementation of future consumer safeguards

- 12.1 NBN Co will negotiate with Access Seeker in good faith and in a reasonable timeframe (being no more than 90 days) to amend the Access Agreement in order to give effect to the matters covered by a Consumer Safeguards Event, in accordance with the principle that NBN Co will supply Declared Services in a manner that supports Access Seekers satisfying their obligations to End Users in relation to telecommunications consumer safeguards.

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