

OPTU5G

Submission in response to
ACCC draft decision and Draft
Final Access Determination

**NBN Wholesale Service
Standards Inquiry**

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Section 1. EXECUTIVE SUMMARY

- 1.1 Optus welcomes the Australian Competition and Consumer Commission (ACCC) draft report and draft Final Access Determination (draft FAD) on the NBN wholesale service standards inquiry.
- 1.2 There has been considerable focus on customer experience in the fixed broadband market over recent years. The experience of a number of end-users over the NBN has not been good enough. As a result, regulators (both the ACCC and the ACMA) have intervened in the retail broadband market. While the regulatory focus has been on retail service providers (RSPs), the majority of service issues fall within the responsibility of the network owner and operator, NBN Co.
- 1.3 Notwithstanding NBN Co having a clear role in addressing many customer service issues – including under-performing access lines, missed appointments, and congestion in the NBN access network – NBN Co has so far largely avoided regulatory scrutiny. RSPs continue to rely on commercial arrangements with NBN Co in order to fulfil these retail regulatory obligations. This arrangement has been identified by industry and government to not be ideal.¹
- 1.4 This inquiry and draft FAD provide the opportunity to reset the regulatory landscape and ensure that obligations in the vertically separated fixed market lie with the appropriate company – and that regulatory obligations flow consistently across the wholesale network provider, to RSPs, and ultimately onto end-users.
- 1.5 Optus submits that this inquiry should establish a set of minimum service level standards that hold NBN Co to account for the service performance expected by RSPs and end-users. While WBA4 may be used to build upon the minimum standards, this FAD should set the initial minimum performance benchmark.
- 1.6 To that end, Optus supports the finalisation of this FAD in a timely manner. The ACCC should ensure these improvements are implemented within the current WBA3 – as committed to by NBN Co.
- 1.7 Optus agrees the focus for NBN service standards should be on delivering on its service commitments to customers, including both the RSP and the downstream end-user. The key concept that customers should get what they pay for should apply to wholesalers and their RSP customers as much as it applies to RSPs and their end-user consumers.
- 1.8 This is intended to be achieved through a general approach to put customers first and include:
 - (a) Provision of clear service level commitments (on a per-service basis);
 - (b) Appropriate allocation of risk and responsibility between NBN Co and RSPs;
 - (c) Provision of effective incentives for NBN Co to meet its service commitments and improve performance; and
 - (d) Improved customer outcomes for end-users.

¹ <https://www.communications.gov.au/have-your-say/consumer-safeguards-review-consultation-part-b-reliability-services>

- 1.9 Optus also welcomes the ACCC's recognition that service level commitments and rebates be structured in a way that retain incentives for RSPs and NBN Co to both work together to improve customer experience. There are two key proposals that will help to achieve this:
- (a) NBN Co should not be permitted to charge RSPs for services that are not working and which RSPs cannot charge end-users; and
 - (b) NBN Co should not charge for speed profiles their network cannot deliver.
- 1.10 Optus submits these provisions should form the basis of the proposed FAD and should be implemented as soon as practical in the current WBA3.
- 1.11 Optus further support the proposal to adopt *"clear service level commitments on a per-service basis"* with strong rebates set at a level that will provide clear financial incentives for NBN Co to *"improve its service level performance on a per-service basis and beyond its 90 per cent performance objective."*²
- 1.12 Optus supports the proposed principles and objectives in the draft decision, including the specific proposals to address these principles in the draft FAD. However, the effectiveness of these proposals will depend on how they are implemented into the WBA framework and the NBN-RSP ecosystem. To that end, the ACCC should ensure that the terms of the draft FAD are implemented consistent with the intent and ensure the effectiveness of such changes to the service level commitments by NBN Co once the FAD is finalised.

² ACCC, 2019, NBN Wholesale Service Standards Inquiry, draft decision, October, p.16

Section 2. FAD SHOULD BE FINALISED

- 2.1 The industry is approaching the end of the third Wholesale Broadband Agreement (WBA3), which sets the terms and conditions on which NBN Co supplies services to RSPs. WBA3 was originally due to expire in November 2019, however NBN Co has extended the term of WBA3 until 30 November 2020. NBN Co has begun initial discussions with RSPs on a new WBA4.
- 2.2 Under Part XIC, regulatory determinations only have effect during the short period before the signing of a new WBA. That is, RSPs can only request regulated terms be included in commercial contract prior to the signing of the commercial contract. Once a WBA is signed, its terms and conditions will have precedent over any regulatory determination. After WBA4 is finalised, the ACCC will have no ability to regulate NBN services without the agreement of NBN Co.
- 2.3 Optus raised concerns that the extension of WBA3 by NBN Co would have the effect of delaying the implementation of this inquiry and resultant FAD. As a result of these concerns, NBN Co agreed a commercial contract which includes commitments to implement the outcomes of this inquiry during the lifetime of WBA3.
- 2.4 **[CiC]**
- 2.5 **[CiC]**
- 2.6 **[CiC]**
- 2.7 The fact that NBN Co is willing to address these issues within WBA3 should give the ACCC comfort that it should progress these issues as a matter of urgency.
- 2.8 Given this Inquiry captures many of the pain points RSPs are currently experiencing, Optus is in favour of the final ACCC determination being implemented as soon as practicable by variation to WBA3 rather than waiting for the WBA4 to come into effect in December 2020.
- 2.9 There exists a process to incorporate the outcomes of this inquiry into the contractual arrangement between NBN Co and RSPs. Optus submits that the ACCC should take advantage of these arrangements and seek to finalise the terms of the FAD as soon as practical.

Section 3. SERVICE LEVEL COMMITMENTS

- 3.1 The draft decision addresses service level commitments and rebates for the supply of NBN Co's ethernet product. In particular;
- (a) Ensuring new connections for wholesale services are successfully completed;
 - (b) Service commitments in relation to connections and fault timeframes, including any recourse available where these commitments are not met;
 - (c) Commitments and rebates for missed appointments; and
 - (d) Commitments relating to service speeds and performance.
- 3.2 Optus supports the broad principles established under each of these issues and welcomes the implementation through specific terms in the draft FAD. We welcome the acknowledgement that end-user outcomes are better addressed through a combination of improved service reporting and introduction of per-service rebates for missed service level commitments.
- 3.3 The challenge, however, relates to how these principles and FAD terms will be implemented in practice by NBN Co. History has demonstrated that regulatory instruments have not always been implemented in a manner consistent with the intent of the instrument.
- 3.4 It is therefore important that the ACCC focuses on ensuring these principles are appropriately implemented to achieve the end-user outcomes. These issues are further discussed below.

New connections should be successfully completed before NBN Co charges

- 3.5 Connection issues comprise a large proportion of customer frustrations when connecting to the NBN for the first time. In particular, the disconnect between RSPs and NBN Co on failed connection issues arise from several underlying issues relating to the WBA including definitions, lack of provisions dealing specifically with failed connections (wholesale obligation), and requirements under the ACMA NBN rules (retail obligations).
- 3.6 The disconnect between the obligation on RSPs to not charge end-users until the NBN service is working; and the ability of NBN Co to charge RSPs the wholesale access fee before this has been confirmed has led to material financial impacts on RSPs. **[CiC]**
- 3.7 In the second Discussion Paper, the ACCC noted the class of failed connections termed 'new services never worked' (NSNW). Almost all respondents expressed concern with the NSNW categorisation, and it was subsequently noted that NSNW faults are more prevalent on some NBN access technologies than others.
- 3.8 Optus agrees there is scope for improvement on connection processes across all network technologies to reduce the number of failed connections. First and foremost, Optus submits that NBN Co should not be permitted to charge for services that are not working and for which RSPs cannot charge end-users. Under current processes, NBN Co face little financial impact from services that are not operational.
- 3.9 Wholesale rules should state that a completion advice for a connection order can only be provided once line testing for the relevant AVC is successful. NBN Co already performs such testing for FTTC services and Optus considers that NBN Co should implement this testing at the NTD for HFC, FTTP and Fixed Wireless services. We understand that

NBN Co has been investigating how it can implement such testing for FTTN and FTTB services. It should be possible for NBN Co to implement such testing to confirm that the connection has been completed successfully and that this requirement be implemented as a matter of priority.

3.10 The ACCC principle is implemented in the draft FAD at clause 2.2.

Principle:	NBN Co should only confirm to the access seeker that a connection is completed, and begin charging for that service, after conducting appropriate testing to ensure installation activities are successful.
Draft FAD:	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.

3.11 An important improvement here is the recognition that the same expectation is to be realised across all NBN access technologies – that is, all connection orders should be successfully completed before any charging for that wholesale service can begin. This will address RSP and end-user concerns of incorrectly completed wholesale services that impact on the RSP's ability to meet its retail obligations with end-users.

3.12 However, it is Optus' view that the Draft FAD clause does not go far enough and that NBN Co should not be able to charge until a line is activated, that is, being used by the end-user. RSPs are unable to charge end-users unless a service is working, yet, NBN Co continues to charge RSPs as soon as the completion advice is provided. Even in cases where the completion advice is provided and the work is done successfully, Optus does not consider that NBN Co should be able to charge until the service has completed activation and is being used.

3.13 We are aware that NBN Co has this information available to it and can determine when data is successfully being transmitted over the connection. It is only at this time, when the wholesale service is actually being used, do we consider that NBN Co should start charging RSPs.

3.14 **[CiC]**

3.15 In summary,

- (a) Optus supports the ACCC's principle and intent at clause 2.2 in the draft FAD that NBN Co should only notify RSPs that an End User Connection is completed, and begin charging for that service, after successfully completing the relevant installation testing on the AVC.
- (b) The Draft FAD should go further and require that that NBN Co cannot charge for a wholesale service until the service has been activated and NBN Co detects data usage over the line.

Effective incentives are required to ensure connection timeframes are met

3.16 Delayed connections remain an ongoing customer frustration when connecting to the NBN. As raised in submissions to this Inquiry, service commitments for connections do not proportionately incentivise NBN Co to improve its ongoing performance. For example, NBN Co is only required to complete standard connections within the performance objective of 90 percent (across all NBN Co customers, on all network technologies). While NBN Co has generally met its overall performance objective on many occasions, this 'overall' metric masks the significant number of end-users each month with limited disaggregation for the reporting of lengthy delays and aged orders.

- 3.17 Since the commencement of this Inquiry, NBN Co has committed to paying a one-off rebate of \$25 to RSPs for each missed connection service level where it relates to delayed connections for certain service classes³ completed by NBN. It expressly excluded all services classes where the service level has been set at one business day.
- 3.18 However, this one-off rebate structure did not address RSP concerns for delayed connections nor did it provide enough incentives to minimise the extent of lengthy delays and aged orders.
- 3.19 The ACCC principle is implemented in the draft FAD at clauses 2.3 and 2.4.

Principle:	Connection rebates should apply to all standard connections and should accrue on a daily basis if the relevant service level is not met.
Draft FAD:	NBN Co will pay a rebate for each End User Connection that is not completed by NBN Co in accordance with the relevant service in clauses 2.1 (Connection Rebate). 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.

- 3.20 Optus agrees that NBN Co should take clear responsibility for connecting customers in a timely manner, and that it is appropriate to provide incentives for this through the introduction of a daily rebate on a per-service basis. In addition, Optus also welcomes the clarification that the service levels for NBN connections begin from the time of Order Acknowledgement.
- 3.21 An important improvement here is the recognition that the same service level commitments are applied to all standard connections, irrespective of service class and network technology. The ACCC also clarifies the starting point from which the service level commitments are expected to commence. We see three key benefits of the approach proposed in the draft FAD:
- (a) First, the draft FAD removes the current distinction for exclusion of certain service classes for the purposes of calculating the End User Connections performance objective.
 - (b) Second, the draft FAD applies the same linear daily rebate structure to all standard connections, capped at 20 business days. It also confirms that the payment of any connection rebate (on a per-service basis) will be directly payable to the Access Seeker's invoice.
 - (c) Third, the draft FAD clarifies that the start of any service level timeframes commences from the time of Order Acknowledgment.
- 3.22 Optus welcomes the proposed change to the rebate structure from one-off to a linear structure capped at 20 business days. Relative to the current one-off \$25 rebate, this shift in rebate structure should incentivise NBN Co to resolve all delayed connections to no more than two business days from the standard connection timeframe.
- 3.23 In addition, Optus submits the ACCC should continue to monitor the level of delayed connections which extend beyond these thresholds. Continued monitoring of volumes relating to lengthy delays (beyond the 10 business days threshold) should also occur

³ These include service classes 1, 2, 5, 8, 11, 12, 21, 22, 23, 31, 32 and 33

and further review of rebates be considered where there is ongoing increase in the volumes of new aged orders observed over consecutive months.

- 3.24 Finally, and despite ongoing concerns with existing CSG arrangements, there remain limited alternatives to address customer-focused outcomes and compensation for lengthy connection delays.
- 3.25 The proposed quantum for connection rebates only represents a proportion of the current rebates payable under CSG arrangements. For example, extending the comparison set out at Figure 4.1 in the draft decision, it can be clearly demonstrated that while the draft FAD rebate is a considerable improvement on the current \$25 flat rate connection rebate, the total quantum still falls well short of the financial incentives required under the CSG Standard. This is set out at Figure 1 below.

Figure 1 Comparison of WBA3 rebate, draft FAD rebate and CSG for delayed connections

Service level missed by	WBA3 rebate (as varied)	Draft FAD rebate	CSG (residential)	Delta (draft FAD vs CSG)
1 day (1 BD)	\$25	\$13.50	\$14.52	- \$1.02
1 week (5 BD)	\$25	\$67.50	\$72.60	- \$5.10
2 weeks (10 BD)	\$25	\$135	\$314.60	- \$179.60
4 weeks (20 BD)	\$25	\$270	\$798.60	- \$528.60
>4 weeks (21 BD)	\$25	\$270	\$847*	- \$577*

Note: Connection rebates are all effectively capped at different rates under the various commercial and regulatory mechanisms. WBA3 rebate is one-off, draft FAD rebate is linear and capped at 20 business days, and CSG (residential) rebate is not capped but the rate scales up after 5 business days.

- 3.26 Optus considers that where applicable, the FAD should explicitly provide that Access Seekers continue to have access to CSG Compensation⁴ from NBN Co in connection with any rebate, with any CSG amount payable equal to the difference less any amount that may have already been received as part of any connection rebate received for delayed connections.
- 3.27 In summary,
- (a) Optus supports the ACCC's principle and intent at clauses 2.3 and 2.4 in the draft FAD that connection rebates should apply to *all* standard connections and subject to *daily accrual* if the relevant service level is not met.
 - (b) CSG Compensation arrangements should continue to apply, with any amount to be recovered from NBN Co to be set equal to the difference of any approved CSG amount less the Connection rebate received for any delayed End User Connection.

⁴ As noted in the ACCC draft decision, the daily rate payable for delayed connections under CSG (residential) is \$14.52 for the first five business days, then escalating to \$48.40 per working day thereafter. This is compared to \$13.50 (capped at 20 business days, i.e. \$270) set out in the draft FAD.

- (c) Optus will also welcome improved transparency on the service level reporting to allow for the appropriate tracking of service level information for all End User Connections.

Service commitments for the resolution of fault timeframes should be improved

3.28 Consistent with the above section, Optus agrees that NBN Co should also take clear responsibility for resolving faults in a timely manner, and that it is appropriate to provide incentives for this through the introduction of a daily rebate on a per-service basis. In addition, Optus also welcomes the clarification that the service levels for NBN connections begin from the time of Trouble Ticket Acknowledgement.

3.29 The ACCC principle is implemented in the draft FAD at clauses 3.2 and 3.3.

Principle:	Fault rebates should accrue on a daily basis if the relevant service level is not met.
Draft FAD:	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). 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.

3.30 An important improvement here is recognition that a significant number of end-users are impacted by unresolved faults, and that end-users who are left without a working NBN service for an extended period of time experience significant detriment. It also clarifies the starting point from which the service level commitments are expected to commence. see two key benefits of the approach proposed in the draft FAD:

- (a) First, the draft FAD clarifies that the start of any service level timeframes commences from the time of Trouble Ticket Acknowledgment. It also sets out the relevant service level commitment by NBN network.
- (b) Second, the draft FAD applies the a two-tiered daily rebate structure to all unresolved faults and capped at \$1150. It also confirms that the payment of any connection rebate (on a per-service basis) will be directly payable to the Access Seeker's invoice.

3.31 Optus welcomes the proposed change to the rebate structure from one-off to a two-tiered structure capped at 40 business days (or \$1150 as set out in the draft FAD). Relative to the current one-off \$25 rebate, this shift in rebate structure should incentivise NBN Co to resolve all delayed faults to no more than two business days from the fault rectification timeframe.

3.32 Optus also considers it is appropriate that the wholesale rebate escalate after 5 business days to acknowledge that harm increases with the length of delay experienced.

3.33 In addition, the ACCC should continue to monitor the level of delayed connections which extend beyond these thresholds. Continued monitoring of volumes relating to lengthy delays (beyond the 10 business days threshold) should also be required and further review of rebates be considered where there is ongoing increase in the volumes of unresolved faults observed over consecutive months.

3.34 Finally, there remain limited alternatives to address customer-focused outcomes and compensation for lengthy delays for unresolved faults. The draft FAD should be

amended to include a resolution process for long running faults that extend beyond 40 business days.

- 3.35 The proposed quantum for fault rectification rebates only represents a proportion of the current rebates payable under CSG arrangements. For example, extending the comparison set out at Figure 4.2 in the draft decision, it can be clearly demonstrated that while the draft FAD rebate is a considerable improvement on the current \$25 flat rate fault rectification rebate, the total quantum still falls well short of the financial incentives required under the CSG Standard where the service level is missed by more than 5 business days. This is set out at Figure 2 below.

Figure 2 Comparison of WBA3 rebate, draft FAD rebate and CSG for unresolved faults

Service level missed by	WBA3 rebate (as varied)	Draft FAD rebate	CSG (residential)	Delta (draft FAD vs CSG)
1 day (1 BD)	\$25	\$20	\$14.52	\$5.48
1 week (5 BD)	\$25	\$100	\$72.60	\$27.40
2 weeks (10 BD)	\$25	\$250	\$314.60	- \$64.60
4 weeks (20 BD)	\$25	\$550	\$798.60	- \$248.60
6 weeks (40 BD)	\$25	\$1150	\$1524.60	- \$374.60
>6 weeks (41 BD)	\$25	\$1150	\$1573	- \$423

Note: Connection rebates are all effectively capped at different rates under the various commercial and regulatory mechanisms. WBA3 rebate is one-off, draft FAD rebate scales up after 5 business days and capped at 45 business days, and CSG (residential) rebate is not capped but the rate scales up after 5 business days.

- 3.36 Optus considers that where applicable, the FAD should explicitly provide that Access Seekers continue to have access to CSG Compensation⁵ from NBN Co in conjunction with any rebate, with any CSG amount payable equal to the difference less any amount that may have already been received as part of any fault rectification rebate received for unresolved faults.
- 3.37 Optus considers that careful monitoring will need to be done of NBN Co's stop the clock reports to ensure that service levels are only stopped in accordance with WBA requirements. This is discussed further in Section 4 on service level exclusions.
- 3.38 In summary,
- (a) Optus supports the ACCC's principle and intent at clauses 3.2 and 3.3 in the draft FAD that fault rectification rebates should apply to *all* end user faults and subject to *daily accrual* if the relevant service level is not met.
 - (b) CSG Compensation arrangements should continue to apply, with any amount to be recovered from NBN Co to be set equal to the difference of any

⁵ As noted in the ACCC draft decision, the daily rate payable for delayed fault rectification under CSG (residential) is \$14.52 for the first five business days, then escalating to \$48.40 per working day thereafter. This is compared to \$20 for the first five business days, then escalating to \$30 per working day thereafter (capped at \$1150, i.e. 45 business days) set out in the draft FAD.

approved CSG amount less the Fault Rectification rebate received for any delayed End User Fault.

- (c) Optus will also welcome improved transparency on the service level reporting to allow for the appropriate tracking of service level information for all End User Faults.

Effective incentives are required to reduce instances of missed appointments

- 3.39 Optus agrees with the ACCC that further incentives are required to reduce the number of missed appointments. Optus submits that current service commitments for missed appointments do not proportionately incentivise NBN Co to improve its ongoing performance. For example, NBN Co is only required to meet a performance objective of 90 percent (across all NBN Co customers, on all network technologies).⁶
- 3.40 Since the commencement of this Inquiry, NBN Co has committed to paying a one-off rebate of \$25 to RSPs for each missed appointment in relation to end user connections and end user fault rectification. The introduction of the \$25 missed appointment rebate addressed an initial concern that NBN Co did not face any direct financial consequences when it failed to keep an appointment. However, this one-off rebate structure does not address end-user or RSP concerns for missed appointments nor does it provide sufficient incentives to minimise the extent of missed appointments experienced each month.
- 3.41 Optus agrees that the proposed rebate should be set sufficiently high to compensate for poor customer experience and incentivise NBN Co to improve its services. To this end, Optus supports the *“view that \$75 is the minimum amount required to sufficiently take into account consumer harm from missed appointments and provides an appropriate balance with potential costs to NBN Co.”*⁷
- 3.42 The ACCC principle is implemented in the draft FAD at clauses 1.3 and 1.4.

Principle:	Missed appointment rebates should take into account the cost and inconvenience to the end-user when an appointment is missed, while at the same time provide a stronger incentive to reduce the rate of missed appointments.
Draft FAD:	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). 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.

- 3.43 An important improvement is recognition that missed appointments is a key driver of poor customer experience. It also clarifies the conditions in which the service level for appointments (or rescheduled appointments) will be considered missed. For example, appointments can only be rescheduled prior to the appointment time or appointment window by either: giving the Access Seeker at least 26 hours notice; or by obtaining agreement of the End User. The service level then applies to the changed appointment time or appointment window. We see two central benefits:

⁶ This excludes rescheduled appointments, which are subject to a performance objective of 95 percent.

⁷ ACCC, 2019, NBN Wholesale Service Standards Inquiry, draft decision, October, p.36

- (a) First, the draft FAD clarifies that the service level for missed appointments occurs if there is no show by NBN Co during the appointment window or up to 15 minutes after the appointment time or appointment window.
 - (b) Second, the draft FAD applies the one-off rebate to all missed appointments at a fixed rate. It also confirms that the payment of any missed appointment rebate (on a per-service basis) will be directly payable to the Access Seeker's invoice.
- 3.44 Optus welcomes the proposed change to the rebate amount from \$25 to \$75. Relative to the current one-off \$25 rebate, this shift in rebate amount provides additional incentives for NBN Co to further reduce its missed appointment rates. However, Optus is concerned that notification of whether an appointment is missed remains "as confirmed by NBN Co" hence remains reliant on a self-policing system of compliance.
- 3.45 Regardless, the ACCC should continue to monitor the volumes of missed appointments.
- 3.46 The draft FAD also proposes imposing a pass-through obligation for the missed appointment rebate at clause 1.4, which would require the missed appointment rebate to be passed in full to affected end-users.
- 3.47 Optus notes the ACCC's comments that pass-through is required for missed appointments because end-users are the ones primarily impacted by the missed appointment. Optus agrees that end-users are impacted by missed appointments but also notes that rescheduling appointments is a significant impost on RSPs as well. Rescheduling appointments (whether as a result of misses or for other reasons) is a significant driver of call volumes. This is time that Optus staff could be spent supporting customers in other ways. There is a resource impost on RSPs as a result of missed appointments.
- 3.48 We note a frustration of customers is where the technician turns up early ahead of the scheduled appointment window. For example, the customer may not be expecting the technician early and may not be at home. In these cases, these instances should not be recorded as end-user not in attendance. Rather it should be categorised as a missed appointment. We consider in these cases NBN Co should also have to pay a rebate.
- 3.49 NBN Co currently waives the charges if an end-user is not in attendance. We are concerned that with an increase in rebate, NBN Co will remove that waiver and begin charging where end-users are not in attendance. If this were the case, Optus is unlikely to be able to absorb such a charge and may have to pass that on to the end-user. The FAD should make clear that NBN Co cannot charge in such circumstances.
- 3.50 Optus is also concerned that we could find ourselves in situations in the future where there are disputed versions of attendance and whether a rebate is owed. For example, if an end-user alleges an appointment was missed, yet NBN Co alleges an end-user was not in attendance. We consider it would be beneficial to require NBN technicians to be tracked and for end-users to sign something for attendance would ensure in future there are no disputes as to whether a technician or end-user was in attendance or not. Where such tracking is not possible, or where an end-user alleges an appointment was missed, we believe NBN Co should be liable for the rebate unless NBN Co can establish otherwise.
- 3.51 We also note that if a customer cancels their NBN order prior to completion of the connection and activation, it may not be possible for RSPs to pass on a rebate. Irrespectively, NBN Co should be required to include the Product Reference Identifier (PRI) for end-users to enable RSPs to easily identify end-users that are owed a rebate.

In addition, applying rebates currently requires a high degree of manual intervention, including reconciling entries provided by NBN Co with NBN Co's bill.

3.52 In summary,

- (a) Optus supports the ACCC's principle and intent at clause 1.3 in the draft FAD that missed appointment rebates should apply to *all* end user appointments if the relevant service level for attendance during the scheduled appointment window is not met.
- (b) Optus will also welcome improved transparency on the service level reporting to allow for the appropriate tracking of service level information for all missed appointments.

Setting appropriate rebate structures to incentivise improved customer outcomes

3.53 As discussed above, there are several changes proposed in the draft FAD to provide increased incentive for NBN Co to lift its performance. These include both changes to the rebate structure to a per-service basis, and recognition that it should apply to all relevant NBN services.

3.54 First and foremost, the draft FAD proposes to extend the rebate arrangements to apply to *all* affected connection, assurance and appointment activities. This is an important change that will require ongoing scrutiny.

3.55 Optus accepts that the application of rebate arrangements should be service agnostic. For example, [CiC] It is clear that applying the proposed changes to the rebate arrangements, the payment received for missed service levels could have been significantly greater.

3.56 Second, Optus acknowledges that the proposed quantum for the rebates have been separately set for each of the applicable service level activities subject to rebates. Notably, it increases the current rebate level from the existing one-off \$25 amount to an incremental level that may be considered proportionate to the customer inconvenience experienced. For each missed SLA outcome, these include:

- (a) Connections – \$13.50 per day, capped at 20 business days;
- (b) Faults – \$20 per day for first 5 business days, increasing to \$30 per day, capped at 40 business days; and
- (c) Missed Appointments – one-off rebate of \$75.

3.57 We do not necessarily disagree with the methodology used by the ACCC to establish these rebate amounts. However, we remain cautious with respect to the implementation, including the calculation of the service levels by NBN Co, of such rebates to existing RSP NBN accounts.

3.58 Finally, any changes to the rebate arrangements will need to be actively monitored to ensure payments have been correctly applied, but more importantly to track the effectiveness of the rebate incentives in improving the downstream customer outcomes. The main objective is to minimise customer frustrations when dealing with wholesale providers; and ensuring that any service requests can be completed without unnecessary delays.

Commitments to service speeds and performance should lead to improved customer outcomes

- 3.59 Retail and wholesale NBN broadband services continue to be defined or marketed on the basis of maximum and typical busy period speeds. However, as issues of underperforming service speed have arisen, retailers have been increasingly subject to regulatory impost through a range of monitoring, reporting and consumer safeguard obligations. While some issues related to speed lie under RSPs' control, the majority of current issues can only be addressed at a network level. Regulations and obligations remain largely targeted at the retail level (between RSPs and their downstream customer) and which is often at times in conflict with obligations at the wholesale level.
- 3.60 For example, RSPs have responsibilities to end-users through contractual arrangements and relationships with customers. They are also required under Australian Consumer Law (ACL) to deliver services as promised to and paid for by the end-user, and to provide an appropriate remedy in the event of non-delivery. However, at the wholesale level there is no additional requirement similar to the ACL that requires NBN Co to deliver services as promised and as paid for by the RSP.
- 3.61 Underperforming service speeds and NBN lines can arise for a number of reasons, however it remains that *"There are no obligations on NBN Co to downgrade services to a lower speed product if service speed does not perform to expectations."*⁸
- 3.62 Addressing this disconnect will be an important driver of addressing consumer concerns and frustrations with their NBN broadband service.
- 3.63 As discussed above, NBN Co should only begin charging for a NBN service connection only after it has been successfully connected and after conducting appropriate testing to ensure installation activities are successful.
- 3.64 Optus also agrees that stronger wholesale commitments as considered in the draft decision be introduced. In particular, the wholesale commitments relating to service speeds are required in respect of:
- (a) The information NBN Co provides about the speed and performance of services;
 - (b) The clarity of the commitments for how services should perform; and
 - (c) The remedies available when services are underperforming.
- 3.65 In general, the wholesale commitments, and wholesale speed performance standards, provided by NBN Co should be clarified to support the retail obligations that RSPs must comply with under the strict ACL requirements and ACMA rules.
- 3.66 The draft FAD therefore seeks to provide clearer service speed commitments and remedies. Notably, the ACCC also differentiates its consideration of fixed line services (FTTN/B/C) and fixed wireless services (FW).
- 3.67 Optus considers similar treatment to speed and performance of services should also apply to the other access technologies. The NBN is viewed to be largely technology agnostic, therefore the treatment of wholesale commitments should also be agnostic.

⁸ ACCC, 2019, NBN Wholesale Service Standards Inquiry, draft decision, October, p.37

Underperforming fixed line services

- 3.68 Optus agrees that *“For fixed-line services, at minimum NBN Co should not sell wholesale services at higher tiers where their maximum attainable service speed falls below the upper range of a lower speed tier.”*⁹ This is consistent with the principle that NBN Co should not charge for services it is not providing.
- 3.69 The introduction of rebates will further incentivise NBN Co to resolve line issues in a more efficient and timely manner. NBN Co should be held to account for delivery of the wholesale service it supplies to RSPs, and ultimate the end-user.
- 3.70 Optus also agrees that even where remedies are applied, for example, where an end-user elects to go down to a lower speed tier, the obligation on NBN Co to address any further service speed and performance issues on the same line should continue. As such, *“NBN Co should continue to remediate lines even if a customer downgrades, as this is necessary to provide the end-user with a choice of higher speeds once remediation is complete.”*¹⁰
- 3.71 The ACCC principle is implemented in the draft FAD for ‘FTTN/B/C service speed assurance’ at clauses 4.2 to 4.3.

Principle:	NBN Co should be responsible for the speed and performance of its wholesale product and not charge for services that it does not provide.
Draft FAD:	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. 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].

- 3.72 Optus notes that it remains unclear what additional rebate be set where the downstream PIR is less than 50 percent of the acquired service. At a minimum, the rebate should reflect the additional charges associated with the unobtainable AVC product. For example, for lines acquired at 100 Mbps with an associated \$65 bundle price that can only achieve 50 Mbps, the rebate should be \$20, reflecting the different between the wholesale bundle prices. It is important that any FAD terms remain flexible as to the actual quantum due to the ongoing fluctuation of NBN wholesale terms and conditions.
- 3.73 It is also important to note that underperforming fixed line services is not limited to the FTTN/B/C technologies, therefore any discussion on appropriate service commitments and remedies for underperforming fixed line services should also consider HFC. Currently, the HFC access network is subject to congestion. This congestion lies on the

⁹ ACCC, 2019, NBN Wholesale Service Standards Inquiry, draft decision, October, p.43

¹⁰ ACCC, 2019, NBN Wholesale Service Standards Inquiry, draft decision, October, p.44

NBN network and can only be addressed by NBN Co. Notwithstanding, RSPs remain liable to end-user for compensation. This liability should be passed through to NBN Co.

- 3.74 Similar to the FTTN/B/C technologies, HFC was introduced as part of the NBN multi-technology mix (MTM) access model. As a result, the remedies proposed for underperforming fixed line services should be technology agnostic, and not limited to just the FTTN/B/C technologies.
- 3.75 In summary, Optus does not believe it is acceptable for NBN Co to continue charging the headline rate for services unable to reach the speeds that the RSP and end user are paying for. Where a service is knowingly underperforming and needs to be remediated or downgraded to a lower speed tier, NBN Co should rebate the difference in charges between the higher tier or bundle and the lower speed tier or bundle.
- 3.76 This obligation should apply to all access technologies.

Underperforming fixed wireless services

- 3.77 Optus similarly agrees that the supply of fixed wireless services should be consistent with the principle that NBN Co should not charge for services it is not providing.
- 3.78 The ACCC principle is implemented in the draft FAD for 'Wireless Network service speed assurance' at clause 5.2.

Principle:	NBN Co should be responsible for the speed and performance of its wholesale product and not charge for services that it does not provide.
Draft FAD:	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.

- 3.79 Further clarification on information to be provided under Wireless Network performance reporting and maximum attainable speed information at time of installation is also set out in the Draft FAD at clauses 10 and 11.

HFC network congestion

- 3.80 We note the ACCC is proposing rebates for performance and congestion issues for FTTN/B/C and fixed wireless technologies. Optus considers rebates are also applicable for HFC services. Optus can confirm that many HFC nodes are subject to congestion and are awaiting remediation from NBN Co. As result of this, RSPs are liable for compensation to end-users, but there is no off-setting rebate from NBN Co to RSPs. Consistent with the principles above, Optus submits that the FAD ensure there are sufficient incentives placed on NBN Co to remediate impacted HFC nodes and compensate RSPs for costs incurred.
- 3.81 [CiC]
- 3.82 [CiC]
- 3.83 [CiC]

- 3.84 To that end, Optus believes that where network congestion is due to NBN Co and can only be resolved by NBN Co upgrading infrastructure, RSPs should receive rebates for services on those impacted nodes. Such rebates should also provide an incentive for NBN Co to more quickly address the underlying network issues contributing to network congestion and upgrade nodes when they say they will.
- 3.85 Optus considers NBN Co should have to provide a rebate of \$30 per month for each impacted service on a congested node. Therefore, if an HFC node is at 90% or more utilisation rate during peak times, then NBN Co should have to pay a rebate of \$30 for each AVC in that congested node.

NBN Co should be required to provision wholesale services to achieve maximum speeds

- 3.86 We note the ACCC's recent Measuring Broadband Australia report acknowledges that NBN Co's wholesale services are not provisioned in a way that allows services to achieve the maximum speed available for the speed tier.¹¹ That is, the ACCC's report notes that services across all tiers are only capable of achieving around 95% of the potential maximum speed available.¹² The ACCC notes this is because currently provisioned wholesale speeds do not appear to allow for the additional data attached to each communication that ensures the communication reaches the correct address. This issue is something that RSPs have raised previously with the ACCC.
- 3.87 Therefore, even where there is no technical limitation to the underlying network infrastructure or where RSPs ensure there is sufficient capacity, consumers will never be able to achieve the maximum attainable speed, even outside of busy hours, because NBN Co does not provision services at sufficient capacity to take this data into account. NBN Co effectively imposes an artificial limit on consumers' services so that consumers never completely achieve the maximum speed available.
- 3.88 Optus considers this to be a performance issue the ACCC could address via the draft FAD by requiring that NBN Co provide wholesale services capable of achieving the maximum attainable speed as specified in the wholesale speed tier. Optus consider the ACCC should include a term to this effect in the FAD.

¹¹ ACCC media release 'Differences in RSP download speeds are growing', 7 November 2019, at <https://www.accc.gov.au/media-release/differences-in-rsp-download-speeds-are-growing>

¹² ACCC, Measuring Broadband Australia Report 7, November 2019, p.11.

Section 4. SERVICE INFORMATION, SERVICE LEVEL MEASUREMENT AND EXCLUSIONS

- 4.1 There have been ongoing concerns in relation to the measurement and transparency of service levels for various NBN activation and assurance activities. Correct reporting and clarity in the allocation of responsibility between NBN Co and RSPs, particularly where a commercial rebate is payable, plays an important role in determining NBN Co's liability and the integrity of the wholesale arrangements.
- 4.2 The draft decision seeks to clarify the current ambiguities in relation to the provision of service level information, as well as measurement and exclusion terms that affect the reporting of service level timeframes and determination of NBN Co's liability where a service level has not been met. In addition, it also addresses the issue of 'stop the clock' exclusions and measurement of service levels for faults.
- 4.3 Optus welcomes this clarification.

Service level measurement and exclusions

- 4.4 Optus remains concerned over the level of transparency in relation to 'stop the clock' reporting for the measurement of service timeframes. Specifically, it is not always clear when NBN Co 'stops the clock' in measuring the service level and some of the conditions and criteria it applies for 'stopping the clock' or excluding the service level.
- 4.5 The ACCC principle is implemented in the draft FAD at clause 8.1.

Principle:	To ensure a robust service level framework, NBN Co should only extend service level timeframes under limited specified circumstances, for example if NBN Co is waiting for customer or RSP action before completing a connection or remediating a fault, or NBN Co's operations are affected by a force majeure event.
Draft FAD:	<p>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:</p> <ul style="list-style-type: none">(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.

- 4.6 An important improvement here is the clarification provided on how service levels should be reported. When implemented, it is envisaged that this would also provide greater transparency over the service timeframes experienced and tracking of overall service performance for NBN activations and assurance activities.
- 4.7 Under current arrangements, commercial rebates on missed service levels for activations and assurance activities have only been based on a 'Met' or 'Not Met' classification. This did not take into account the age or length of the delays experienced.
- 4.8 **[CiC]**
- 4.9 **[CiC]**
- 4.10 Optus considers that transparency around stop the clock reports is important. We are concerned that if these reports are not transparent and subject to scrutiny, the reports would not assist in ensuring good customer outcomes. For example, Optus has discovered concerns when investigating a small sample of stop the clock reports. **[CiC]**
- 4.11 Optus strongly supports the amendments the ACCC proposes to in terms of what can be considered an exclusion for application of a service level timeframe, particularly in the case of weather. We note that the CSG Standard defines specified weather events that are an exception for meeting CSG performance standards (and requires these to be linked to a weather report before these can be relied upon) and we consider any such exception in relation to weather should be the same for NBN Co. Further, we support the ACCC's comments that minor weather events or traffic incidents should be expected as part of NBN Co's work.

Availability of service information

- 4.12 The availability of service information is particularly relevant in the case of connection and assurance activities completed each month. While existing service information can be viewed on an individual basis through the NBN Portal, this access is ad hoc and manual. In contrast, the monthly reports should capture all key details in a single file format. The provision of this information is invaluable for SLA tracking and for influencing changes for customer experience improvements.
- 4.13 The ACCC principle is implemented in the draft FAD at clauses 7.1 and 7.2.

Principle:	NBN Co should record service specific information about the progress of appointments, connections and faults and make this available to Access Seekers in a way that is accurate, timely and accessible. This should include whether a relevant service level has been missed and is able to be used by RSPs to inform end-users where appropriate.
Draft FAD:	NBN Co will make all regular and ongoing service specific information available to Access Seekers via automated IT systems, including: <ul style="list-style-type: none"> (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 rebate payable, and
- (d) the Wireless Network reporting information set out in clauses 10.1, 10.2 and 11.1 of this instrument.

Where NBN Co does not have IT systems in place for the automatic 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.

- 4.14 An important improvement here is the introduction of the requirement to specify whether an exclusion term to the service level has been relied on, as well as the extent to which a service level has been missed and a rebate payable. The provision of this information improves the transparency of service level commitments that was previously lacking.
- 4.15 Optus submits that service information should be made available which shows, for example,
- (a) Date of Order Acknowledgement, where it is not the same as the date of Order Placed;
 - (b) Any time period where service level exclusions, i.e. 'stop the clock', has been applied, including the reason for that exclusion;
 - (c) Total service level time period calculated on a per-service basis; and
 - (d) Any applicable rebate amount that applies to each service where the SLA outcome has been missed.
- 4.16 The provision of this additional information would minimise any ambiguity in the reporting and calculation of service levels achieved (irrespective of any 'Met' or 'Missed' categorisation), as well as any applicable rebates relevant to each connection, assurance and appointment activities.
- 4.17 In addition, where an automated system is not in place, Optus considers that the service specific information should continue to be made available in an accurate, timely and accessible manner and maintains a consistent format.

Service level reporting

- 4.18 Optus supports the proposals relating to service level reporting. The ACCC principle is implemented in the draft FAD at clause 9.1.

Principle: NBN Co should provide regular reports to Access Seekers about the overall performance of its network. This should include its performance meeting service levels by location, service class and network.

Draft FAD: 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.

- 4.19 An important improvement here is the improved service level reporting that should be implemented. At the very minimum, service level reporting should be provided on a

granular basis to provide greater transparency over the reporting and tracking of service level performance across all end-users, by location and access technology.

Mass Service Disruption Processes

4.20 The Mass Service Disruption (MSD) process is a well understood framework used by network operators to notify end-users and Access Seekers of major network outage events and possibly delays. Industry MSD frameworks are informed by Part 3 of the *Telecommunications (Customer Service Guarantee) Standard 2011*, which set out the criteria that needs to be met in order to be exempt from complying with a performance standard on a provisional basis. Examples of when these may apply include (but are not limited to): damage to a facility of the CSP that is not the CSP; a natural disaster; or extreme weather condition. Importantly, section 21(4) provides that:

*Also, a carriage service provider is not exempt from compliance with the performance standard **unless the carriage service provider has procedures in place to ensure that the provider does not rely on the exemption in circumstances that are not beyond the control of the provider.** [Emphasis Added]*

4.21 In addition, the CSG Standard also specifies notification requirements that must be met. The ACMA website also clarifies that notification of an MSD must be provided and made publicly available within 10 days of the start of the disruption.¹³ For example, Telstra, Optus and iiNet make available on their websites the records of these MSD public notices.¹⁴ The total number of MSD Notices issued is also reported each year in the ACMA's Annual Report.

4.22 In contrast, it was not until WBA3 negotiations that NBN Co began developing processes to address RSP needs in relation to MSD processes. Such a step is essential for RSPs to limit their liability in situations where they have no control over the network operations and circumstances impacting these operations. The notification is also important for the Customer Experience of end-users who may need to be aware that NBN Co is unable to perform to its committed service levels in a specific area due to a major service disruption. However, these still need further work which we have identified to be an area for improvement as part of WBA4 negotiations. However, despite issues raised during WBA3 consultations not yet being resolved, we are yet to receive any drafting (or commenced further discussions) on improvements to these processes.

4.23 While NBN Co does not recognise the concept of MSDs, the WBA Operations Manual refers to either a Risk of Network Impact (RONI) notice or Force Majeure Event as the mechanism to determine if there is a risk of network impact or if NBN Co is the Affected Party in a Force Majeure Event. Notably, "*A RONI will not always lead to a Force Majeure Event. A Force Majeure Event will not always be preceded by a RONI.*"¹⁵ However the current operation of these processes is not ideal.

4.24 For example, there is a lack of transparency over the level of detail provided and the issue of notifications. Even with high-level information criteria set out in the WBA Operations Manual there is no clear standard in which NBN Co issues either its RONI or Force Majeure Event notifications. [CiC] RONI notices have also been identified to show

¹³ ACMA, The Customer Service Guarantee, <https://www.acma.gov.au/customer-service-guarantee>

¹⁴ Telstra, Mass Service Disruption Exemptions, <https://www.telstra.com.au/consumer-advice/customer-service/mass-service-disruption>; Optus, Mass Service Disruption Archive, <http://www.optus.com.au/shop/notices/mass-service-disruptions>; and iiNet, Public Notices for Mass Service Disruptions, <https://www.iinet.net.au/about/legal/mass-disruptions/>

¹⁵ NBN WBA Operations Manual, Module 5, Section 6.1

a lack of detail provided, including information on the geographic area affected, method to identify affected services, weather event impacts and estimated duration of the event impact. This is despite the Operations Manual clarifying that RONI notices include information on the “*geographic areas that nbn considers are at risk*” and that in RONI Updates “*nbn will use reasonable endeavours to update a RONI if there are meaningful or substantial changes to the information provided in a previously issued RONI (for example, to update RONI details to include new areas affected by a growing fire hazard)*.”¹⁶ There is also no timing obligation on NBN Co to issue RONI notices following the start of a major service disruption event.

- 4.25 In contrast, Force Majeure Event notices are required to include additional information requirements, which must provide further detail, quantify the impact and provide supporting evidence on how the event impacts on the Affected party. Examples of Force Majeure Events that may affect NBN Co may include flooding, earthquake or loss of a technical facility due to a fire. Notably, “*If nbn is unable to provide all the details listed above, nbn will issue an update as soon as reasonably practicable after the information becomes available to nbn.*”¹⁷ [CiC]
- 4.26 Optus considers that where appropriate, similar information requirements and the same level of detail should be provided in RONI notices as required under MSD obligations. Of particular relevance is the requirement to link any event impacts to a separate link to a publicly available reference to the actual event with a clear incident identifier where relevant, such as a BOM notice in respect of a severe weather event or natural disaster.
- 4.27 In addition to information transparency, there appear to be no timing obligations on NBN Co to issue RONIs, and therefore assist RSPs with relevant information to issue MSDs where relevant and meeting their CSG obligations. Accessibility to RONI notices is also reliant on a self-check basis, whereby RSPs must regularly login to the NBN Service Portal to check whether any RONIs have been issued.
- 4.28 [CiC]
- 4.29 [CiC]
- 4.30 Optus submits that the standard MSD processes need to be reflected in the service levels FAD so as to ensure end-to-end support for NBN services.

¹⁶ NBN WBA Operations Manual, Module 5, section 6.2.2

¹⁷ NBN WBA Operations Manual, Module 5, section 6.3.1