



TELSTRA CORPORATION LIMITED

Telstra Submission responding to the ACCC Report on effectiveness of broadband speed claims guidance and consultation on further enhancement

Public version

19 December 2018



CONTENTS

EXECUTIVE SUMMARY	3
01 SERVICES PROVIDED USING THE NBN FIXED WIRELESS NETWORK	5
1.1. The proposed measurement of fixed wireless broadband performance is not realistic	5
02 RSP INITIATED SPEED TIER CHANGES	7
2.1. Asking RSPs to reconsider offering speed tier increases is not helpful	7
03 SPEED TIER LABELLING	8
3.1. Consistency of speed tier labelling	8
3.2. Retail fixed line broadband plans	8
APPENDIX 1: Response to the specific questions in the report	9
APPENDIX 2: Comments on the Fixed Wireless measurement assumptions	11



EXECUTIVE SUMMARY

Telstra welcomes the opportunity to comment on the ACCC's report on the effectiveness of broadband speed claims guidance and consultation on further enhancement.

Telstra is committed to providing our customers with clear information to ensure they can make informed choices about their broadband service. We were the first to adopt the Broad Speed Claims – Industry Guidance (**Guidance**) and since that time have applied many of the principles in the Guidance to other technologies, included Fixed Wireless services.

The proposed measurement of fixed wireless broadband performance is not realistic

The maximum attainable speed performance measurement the ACCC is proposing to include for Fixed Wireless (**FW**) is not possible to predict with any accuracy. At most, a network operator could provide a theoretical technical estimate, which would not take into account congestion in the wireless access network, or the fact that the performance of FW networks is variable due to the nature of the technology and environment.

The ACCC should not impose obligations on RSPs through the Guidance based on an assumption that the maximum attainable speed can be predicted and easily measured. It will not be possible for RSPs to comply with such obligations.

Asking RSPs to reconsider offering speed tier increases is not helpful

Where a higher speed tier has been bestowed upon a customer *at no additional cost* to them, or where a customer, having been informed that they will not receive the full benefit of a higher speed tier nonetheless chooses that speed tier, RSPs should not be required to take any steps to reverse this outcome. Not only will the customer lose any additional speed they have gained, they may also lose any increase in data allowance that the higher plan provides.

RSPs should have flexibility to give the customer the best possible experience and value for money. This includes being able to move customers to a higher speed tier, either at no additional cost or at their request, even though they may not be able to enjoy the full benefit the higher speed tier can offer because of inherent limitations in their access technology. Of course, RSPs must not represent that the customer will enjoy the full benefit of a higher speed tier when they cannot, but provided this is made clear, RSPs and customers, should be free to bestow or choose whatever speed tier they prefer.

In the event this proposed change to the Guidance proceeds, the ACCC should employ language less vague than that used in the consultation draft. Requiring an RSP to “reconsider” its actions is so imprecise as to render the obligation meaningless. We do not see how compliance with such a requirement could be assessed. If it is the ACCC's position that this is behaviour that RSPs should not engage in, it should say so in unambiguous terms.

Speed tier labelling

Telstra has adopted the standard labelling in the current Guidance but notes that some other RSPs are choosing their own taxonomy and it is not clear that they are using the measurement methodology in the Guidance to represent the advertised speeds. In particular, it is not clear whether RSPs are referring to the typical minimum speed in busy periods or some other measure.

To ensure that consumers can rely on the labelling when comparing the performance of RSPs, Telstra considers the ACCC should take steps to check that the Guidance is being applied correctly and consistently across the industry. Additionally, the Guidance should be updated to clarify that descriptions of the speeds associated with the standard labels should refer to the typical minimum speeds in the busy



period, calculated in accordance with Attachment A of the Guidance. To avoid misleading consumers, Telstra believes that such descriptions should be required to include the word 'minimum', e.g. the typical minimum busy period speed.

Need to clarify that mobile broadband services are not covered by the Guidance

With the proposal to remove the reference to “fixed-line” retail service plans it is important the Guidance clearly states that mobile broadband services are excluded.



01 SERVICES PROVIDED USING THE NBN FIXED WIRELESS NETWORK

1.1. The proposed measurement of fixed wireless broadband performance is not realistic

The broadband performance measurement the ACCC is proposing to include for Fixed Wireless (FW) in the Guidance is not realistic for the reasons outlined below. We have already made a number of enhancements to our FW proposition including the introduction of 'must mention' information for our sales team, provision of congestion information to customers prior to connection (if they are likely to be connected to a congested FW cell), and spelling out typical speeds and factors that affect the customer's experience using the products.

Many of the ACCC's recommended changes (refer to Appendix 2) are underpinned by an assumption that it is possible to accurately predict and measure the maximum attainable speed of a FW connection.

This is a flawed assumption. Unlike an FTTN or FTTB connection where it is possible to determine with reasonable precision the maximum speed a connection can deliver, it is not possible for the network operator, an RSP, or an end user to determine the maximum attainable speed of a FW connection. There is no reliable way to understand prior to or after connecting a customer the consistent speed a customer can achieve.

At most, a network operator or RSP could determine the theoretical maximum speed a FW connection can deliver. However, this is an inherently unhelpful measure and should not be considered a proxy for user experience as it cannot take into account variable factors such as local conditions that affect radio propagation (e.g. geography, trees/foliage, and weather) and cell congestion, all of which impact the received speed experience. In addition, these factors can change over time due to variations in the physical environment (e.g. changes in foliage, weather conditions and man-made obstructions impacting the radio path) and the level of electromagnetic interference.

A process where an end user determines their received speed experience is equally flawed, and cannot be a sustainable basis upon which to regulate, particularly where financial consequences flow from the end user assessment. Not only does this process rely on the end user's ability to perform a speed test, it also involves other variable factors such as home network issues (e.g. poor home network configuration or Wi-Fi issues that would bias the result), and the risk that consumers would not perform the test correctly or report it accurately.

A possible alternative approach is to focus on the impacts of congestion and the information RSPs make available to customers, rather than achievement of a maximum attainable speed. That is, where a customer is impacted by congestion and was not sufficiently forewarned at the point of purchase, some form of remediation is made available. Remediation should however:

- Only be made available to customers where they are not forewarned about the potential impacts of congestion. Customers who are forewarned and make informed choices should not be remediated.
- Be required for only so long as a customer is impacted by congestion.
- Not include, as a mandatory component, RSPs offering costless exits to customers, or the option of downgrading their plan, where they are also offering financial remediation. No consumer benefit accrues through offering either of these remedies in circumstances where financial remediation takes place.

The FW cell to which a customer is connected cannot be fully determined until after the connection has been established. As a result, any pre-sale information on FW can only be general in nature or provide a broad indication of the likely speed experience. Further, the cell congestion data is not sufficient to enable RSPs to estimate a maximum attainable speed for a specific premise.



This view is also supported by the section 2.1.5 of nbn's close out paper on the Fixed Wireless Plus Product¹ which states that "The fixed wireless network will be capable of supporting a maximum potential network speed for Fixed Wireless Plus of up to 60/20Mbps (initially) and up to 75/10Mbps (after implementation of the frame configuration change). Actual speeds experienced by an end user will vary and may be significantly lower than the maximum potential network speed due to a number of factors including the number of other simultaneous users on the network, distance of the end user from the tower, and other factors detailed in the WBA."

The ACCC should not impose obligations on RSPs through the Guidance based on an assumption that the maximum attainable speed can be accurately predicted and easily measured. It will not be possible for RSPs to comply with such obligations.

¹ nbn Product Close Out Paper "Fixed Wireless Plus product" December 2018



02 RSP INITIATED SPEED TIER CHANGES

2.1. Asking RSPs to reconsider offering speed tier increases is not helpful

The proposed Guidance suggests that an RSP should reconsider migrating a customer to a higher speed tier where the off-peak speed of that tier is unachievable. However, where the higher speed tier has been bestowed upon a customer *at no additional cost* to them, reversing this migration is likely to detriment the customer as they will lose any additional speed they have gained, and may also lose any increase in data allowance that the higher plan provided.

Equally, a customer who has been fully advised of the limitations of their access technology should be free to choose whatever speed tier they wish, and an RSP, having given full and frank advice, should be free to act upon the customer's wishes without wondering whether they are acting in breach of the Guidance.

With FW, Telstra does not believe downgrading customers to lower speed tiers is a suitable remediation option. Telstra wants to be able to provide FW customers with the best speeds available and downgrading them to lower speeds will not achieve this objective. It is also necessary to consider that nbn intends to replace its 50/20 Fixed Wireless product with the Fixed Wireless Plus product. This means there will effectively only be one plan speed for FW noting that the 12/1 and 25/5 offerings will have the same wholesale cost under the bundled pricing, and the 25/5 offering is to eventually be withdrawn from the market.

RSPs should be permitted to give the customer the best possible experience and value for money and this includes providing higher tier speeds at no additional cost to the customer, or giving the customer their choice of speed tier where they are fully informed about the technology limitations.

In the event this part of the proposed changes to the Guidance proceeds, the ACCC should employ language much less vague than that used in the consultation draft. Requiring an RSP to "reconsider" its actions is so imprecise as to render the obligation meaningless. We do not see how compliance could be assessed. If it is the ACCC's position that this is behaviour that RSPs should not engage in, it should say so in unambiguous terms.



03 SPEED TIER LABELLING

3.1. Consistency of speed tier labelling

Telstra has adopted the standard labelling in the current Guidance but notes that some other RSPs are choosing their own taxonomy and it is not clear that they are using the measurement methodology in the Guidance to represent the advertised speeds. In particular, it is not clear whether RSPs are referring to the typical minimum speed in busy periods or some other measure.

To ensure that consumers can rely on the labelling when comparing the performance of RSPs, Telstra considers the ACCC should take measures to check that the Guidance is being applied correctly and consistently across the industry. Additionally, the Guidance should be updated to clarify that descriptions of the speeds associated with the standard labels should refer to the typical minimum speeds in the busy period, calculated in accordance with Attachment A of the Guidance. To avoid misleading consumers, Telstra believes that such descriptions should be required to include the word 'minimum', e.g. the typical minimum busy period speed. If an RSP uses anything other than 'minimal' attainable speed then it needs to be clearly qualified in the advertising.

3.2. Retail fixed line broadband plans

Section 5.1 on page 13 of the consultation paper removes the reference to “fixed-line” retail service plans. The Guidance should state clearly that mobile broadband is out of scope.



APPENDIX 1: Response to the specific questions in the report

No.	Question	Response
1	Do RSPs require further information to understand and implement the proposed changes to the Guidance regarding services supplied over fixed wireless networks? If so please explain.	We require an improved interface to automate access to the data, instead of spreadsheets or files that require manual handling. We have requested that nbn make this information available via an API ² . In the meantime, it is important that the spreadsheets and files are provided in a timely and consistent manner and don't change over time.
2	Do RSPs plan to develop separate retail offerings, in terms of price, data inclusions and advertised speeds, for services provided using fixed wireless networks?	The features of the FW product vary from other nbn technologies. Telstra already promotes a standard set of home broadband bundles across ADSL, Telstra Cable, Telstra's FTTP Product and nbn Technologies, while also ensuring customers are aware of the features available. Creating completely separate plans across different technologies creates complexity in promoting our products which ultimately leads to confusion for our customers. Telstra does not currently intend to create separate plans for the current FW product.
3	Should specific labels be developed for plans that are specific to fixed wireless networks, e.g. to better manage consumer expectations when RSPs are marketing fixed wireless specific plans?	We don't believe specific labels are necessary for the existing FW speed tiers. However, the new Fixed Wireless Plus 75/10 speed tier is a different construct and therefore a new label will need to be introduced for this tier.
4	Does the Guidance need to be further developed to address issues that may arise in respect of fixed wireless specific plans?	As a result of the 75/10 speed tier, FW plans will essentially be homogenised into a single best efforts speed tier. With the adoption of bundled pricing and no entry level bundle existing for FW, there will be no other plan for the RSPs to downgrade customers to.
5	Should the Guidance outline a default methodology for testing maximum attainable speeds on fixed wireless connections where this information is not provided by the network operator, e.g. in terms of time of day to test and number of tests to conduct?	The proposed broadband performance measurement methodology for FW in the Guidance is not realistic for a number of reasons, as outlined in section 1.1 of our submission.
6	In addition to the proposed changes to the Guidance on Principle 3 and Attachment A, are there further enhancements that could be made to assist RSPs in ensuring consumer information remains current and claims based on support for online applications are reasonably based?	Telstra is of the view that Guidance should require consistent speed tier labelling and calculation methods to be adopted across the industry. We also recommend that the Guidance be updated so that speed tier descriptions reflect the minimum attainable speeds in busy periods.
7	Is the worked example in Attachment D sufficiently clear? If not, how could Attachment D be improved to ensure RSPs understand how to determine	This clarification is clear, however it would be helpful if the ACCC would also provide an example of how a small number of services can be excluded from a measurement, as per the statement:

² Application Programming Interface



	typical busy period speeds in accordance with the Guidance?	<i>“Note: A small number of services failing to record a speed measurement in a test hour would not invalidate the results for that data or mean that the RSP had not maintained a suitable test sample over the entirety of the 14 day period; provided that each of the services in the sample were regularly reporting test results over the 14 day period and a high proportion of the services were reporting in each test hour.”</i>
8	Are there other refinements to the drafting of the Guidance that would improve its useability?	<p>Section 5.1 on page 13 of the consultation paper removes the reference to “fixed-line” retail service plans. The Guidance should state clearly that mobile broadband is out of scope.</p> <p>There are a material number of ways a speed test can be undertaken. The use of an industry body such as the Communications Alliance to develop guidance on how these tests are undertaken would add to the consistency and reliability of results presented by RSPs.</p>
9	Are there other enhancements that could be made to the Guidance that would improve the information and support available to broadband consumers and to promote competition among RSPs?	No other enhancements are proposed other than those already identified above.



APPENDIX 2: Comments on the Fixed Wireless measurement assumptions

5.18 – b) where line length, distance/line of sight to the tower or other factors specific to the end-user connection will or will likely result in service limitations.

We cannot know the distance or line of site to the tower accurately at point of sale as it is not clear which cell a customer will connect to prior to the connection being established. This can only be considered in general terms.

5.34. In this regard, RSPs should have regard to premise specific information that fixed wireless network operators make available, such as maximum attainable speeds and/or whether the service location is situated in a congested network cell.

Maximum attainable speed information is not available from nbn for its FW service.

5.35. Should network operators not provide maximum attainable speed data, RSPs should take either of the following courses of action. The preferred option is for the RSP to test the maximum attainable speeds of individual connections themselves. If it is not practicable for the RSP to test individual connections, they should provide support to consumers undertaking and reporting to the RSP on their own tests. RSPs should accept the validity of those results provided by their customers.

RSPs cannot test the maximum attainable speed of a FW connection. Each FW service has variable performance over time and any measurement by an RSP cannot properly account for this variability. The network operator is best placed to understand the design factors and assess maximum speed performance, or at a minimum provide advice to the ACCC on a test method that can cater for this variability across the wide range of deployment scenarios for FW services.

Consumers cannot be expected to provide a reliable measurement of speed. The variability of FW performance will render one off customer measures statistically limiting. Home network issues and setup are also factors. Further, there is the challenge of ensuring that the measurements are conducted in accordance with an agreed methodology and that the results are faithfully reported to the RSP.

5.38. Where likely maximum attainable speed and/or congestion information is available for the location as outlined in paragraph 5.34

This information is not available. nbn should be the single source of truth for this information as per FTTN/B arrangements.

ACCC Report APPENDIX C

Both options 1 and 2 require ongoing monitoring of the maximum attainable speed.

Maximum attainable speed information for NBN fixed-line services is provided regularly by nbn. The ACCC approach assumes a similar approach can be made for NBN Fixed Wireless. However, as explained in section 1.1, the maximum attainable speed of FW services cannot be reliably ascertained.