



29 November 2019

Mr. Scott Harding
Director, NBN & Pricing Coordination
Australian Competition and Consumer Commission
Email: nbn@acc.gov.au
cc: Scott.Harding@acc.gov.au;
Nathan.Sargent@acc.gov.au

Dear Mr. Harding,

Supplementary submission to ACCC Consultation on NBN Wholesale Service Standards Inquiry Draft Decision

This letter provides Telstra's further response to the ACCC's NBN Wholesale Service Standards Inquiry Draft Decision and accompanying Draft Final Access Determination (**FAD**), specifically in relation to Principle 5 in the Draft Decision and Clause 4.3 in the Draft FAD in the requested timeframe.

Underperforming service speeds

The draft FAD includes terms that will require NBN Co to pay a rebate of \$20 for each month that the maximum attainable downlink information rate for a service is less than the PIR Objective. As set out in our initial submission, Telstra is supportive of the \$20 per month rebate for those fixed line services that cannot meet the PIR Objective. We are also supportive of the \$20 per month rebate for Fixed Wireless services within a cell where the 30 day average busy hour speed falls below the 6Mbps design metric or packet loss is greater than 0.25%.

It is worth noting, however, that these metrics are focussed on ensuring services meet a minimum level of expectation; in other words, they are targeted at minimum standards for the worst services. They do not address throughput or other network performance expectations for all services, or service consistency. These aspects of service performance are arguably more important to customers and should be the focus of ensuring the benefits of the nbn are fully realised. That said, determining alternative metrics focused on these elements of service performance would require further consideration by the ACCC and consultation with industry.

At a minimum, Telstra reiterates that NBN Co should be required to support RSPs in meeting their obligations, e.g. supporting typical busy period speeds across all access technologies.

The draft FAD also includes terms requiring NBN Co to pay a rebate for each month that the maximum attainable downlink information rate is: less than 50 Mbps for an AVC with a PIR of up to 100 Mbps, less than 25 Mbps for an AVC with a PIR of up to 50 Mbps and less than 12 Mbps for an AVC with a PIR of up to 25 Mbps. No rebate amount is specified in the draft FAD with the draft decision specifically requesting submissions on the proposed mechanism



and what the appropriate rebate amount would be to achieve the aim of ensuring the wholesale products NBN Co supplies are suited to the capabilities of the line.

As indicated in our initial submission, this is a complex area to address due to the various scenarios that may come into play when a service is not meeting its PIR. Specifically, RSPs have an obligation to offer customers a costless exit, downgrade of their plan or provide other remedies (e.g. a rebate) when a customer's service is not performing in accordance with the plan they are paying for. Where the disparity between the PIR and the maximum attainable speed is so extreme (as per Clause 4.3 of the draft FAD), it is likely that an RSP will move the customer onto a more suitable plan and, at the same time, change the speed tier it purchases from NBN Co. In this case, the customer and RSP would be paying less meaning no ongoing financial detriment may be experienced by either party if the change is made quickly.

That said, there will be costs imposed on both parties in making the change – the RSP will incur administrative and operational costs, while there will also be customer detriment. This implies that a one-off rebate would be most appropriate (equivalent to, say, the wholesale cost of the initial bundle selected). However, there may be legitimate reasons why the change may not be made sufficiently quickly such that the customer and RSP pay ongoing monthly access charges for a plan that is not capable of being supplied by NBN Co. In this instance, it would be appropriate to pay a rebate per month or part month before the customer is moved to a more suitable plan. In the event that a customer is not moved to a more suitable plan due to, for example, the way an RSP markets its NBN plans, it is reasonable to assume that an RSP will act rationally to reduce its costs by reducing the speed tier ordered from NBN Co. In this case, a rebate for each month or part month is appropriate until the speed tier ordered is changed.

There is, however, still a gap that needs to be addressed in that the customer is not receiving the NBN service that meets their expectations and/or needs. For example, the customer was on a 100Mbps speed tier (with a PIR range of 25-100 Mbps), but their line is only capable of achieving say, 49Mbps. The customer would be paying a lower monthly charge as a result of being offered a remedy by the RSP which resulted in them being downgraded to a lower speed plan, however the lower speed is not what the customer wants and/or needs. While NBN Co may be arguably meeting the Statement of Expectations in some circumstances¹, there should be some recognition that customer expectations or needs are not being met in this scenario, potentially through an obligation on NBN Co to remediate the line where certain criteria are met.²

Further, the default option in this scenario should not be NBN Co pointing the customer to the Tech Choice program, where the customer could end up paying a significant amount for an FTTP/C upgrade. While arguably a monthly rebate could apply until the line is remediated, Telstra does not consider this the best approach. It is important to recognise that, while rebates are appropriate in some circumstances (particularly where there is direct customer and/or RSP detriment or financial impost) alternative obligations may provide a more effective or efficient incentive for NBN Co to meet specific service standards or address ongoing concerns.

In this scenario, Telstra proposes it would instead be preferable to include a reporting obligation in the FAD that requires NBN Co to report to the ACCC and industry on its

¹ Specifically, the Government expects the network will provide peak wholesale download data rate (and proportionate upload rates) of at least 25 Mbps to all premises, and at least 50 Mbps to 90 per cent of all fixed lines as soon as possible.

² For example, the remediation obligation could apply for all lines not achieving a service speed of 25 Mbps and for lines not meeting 50 Mbps where NBN is able to remediate without breaching specified cost thresholds.



progress in meeting (and preferably exceeding) the service expectations of customers, which are most effectly described in the Statement of Expectations:

- peak wholesale download data rates (and proportionate upload rates) of at least 25Mbps to all premises; and
- at least 50Mbps to 90% of fixed line premises.

The reporting should be broken down geographically to enable identification of 'hot spots' of underperformance, as well as by technology type. It would also be desirable to include terms in the FAD that require NBN Co to remediate lines so they are capable of meeting the higher speeds and to report on the number of lines that require remediation.

If you would like to discuss or have any questions on the submission, please contact Justine Bond on (02) 9866 0269 or Justine.Bond@team.telstra.com.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Iain Little', is located below the 'Yours sincerely' text.

Iain Little
Executive, Economic Regulation
Legal & Corporate Affairs
Iain.Little@team.telstra.com