

18 July 2014

statementdifferences@accc.gov.au

Stella.Leung@accc.gov.au

Ms Stella Leung
Australian Competition and Consumer Commission
Level 35, 360 Elizabeth Street
Melbourne, VIC 3000

Dear Stella,

Statement of differences—Channel Incentive Program and Optional Battery Backup Credit Notices

The Wholesale Broadband Agreement (**WBA1**) was the contractual vehicle that NBN Co used to supply products and services to its wholesale customers since its publication on 30 November 2011 until 30 March 2014.

On 12 December 2013, a new Wholesale Broadband Agreement (**WBA2**) was published as the contractual vehicle that NBN Co will use to supply products and services to its wholesale customers for the next two years. Since its publication, WBA2 has constituted a standard form of access agreement (**SFAA**) for the purposes of Part XIC of the *Competition and Consumer Act 2010* (**CCA**). On the same date, WBA1 ceased to be a SFAA.

Channel Incentive Program—Migration Offer Credit

On 6 November 2013, NBN Co notified all of its WBA1 Customers of amendments to the Price List and NBN Co Operations Manual to enable NBN Co to offer Customers a Migration Offer Credit to maximise the speed and volume take up of the NBN (a **Migration Offer Credit**), and to enable NBN Co to apply any Migration Offer Credit to NBN Co invoices. Customers were advised that NBN Co would notify Customers of the terms and conditions of any Migration Offer Credit program (**Program Notice**) that NBN Co may offer from time to time.

NBN Co issued Program Notices relating to the Channel Incentive Program on 19 December 2013 and 6 February 2014. The 14 Customers that had waived the full notice period applying to the Price List and Operations Manual Changes received a Program Notice relating to the Channel Incentive Program on 19 December 2013. All remaining Customers (those that had not waived the notice period) were issued a Program Notice relating to the Channel Incentive Program on 6 February 2014.

Due to the nature of the transition between WBA1 and WBA2, it was necessary to reissue the terms of the Channel Incentive Program under WBA2. A Credit Notice under WBA2, setting out the terms of the Channel Incentive Program—Migration Offer Credit, was issued to WBA2 Customers on 11 July 2014. This Credit Notice varies the WBA2 access agreements of the Customers listed at **Appendix A**.

The details of the variation relating to this Credit Notice (provided at **Appendix B** below), which are in substance identical to those in the notice issued under WBA1, are as follows:

- NBN Co will provide a Migration Offer Credit to Customer for each Eligible Activation occurring during the Program Period (1 April 2014 to 1 March 2016) within FSAMs identified by NBN Co.
- The FSAMs in which the Migration Offer Credit will be available, and the amount of the credit, will be as NBN Co determines from time to time.
- To be eligible for the Migration Offer Credit, a Customer must submit to NBN Co, prior to the commencement of the Program Period, a Channel Activity Plan setting out how Customer intends to encourage higher rates of activations in participating FSAMs. The Channel Activity Plan must be approved in writing by NBN Co for the Customer to be eligible for credits. Within 20 Business Days of the end of the Program Period, Customer must also provide NBN Co with evidence of activities undertaken as part of the Channel Activity Plan, which must evidence a minimum level of activity under that plan.
- Where a Program Period applied during the term of both WBA1 and WBA2, NBN Co will consider the Customer's Activations under WBA1 in determining the Eligible Activations.

Optional Battery Backup Credit

On 11 July 2014, NBN Co also issued a Credit Notice (**Appendix C**) outlining the availability of an Optional Battery Backup Credit (an **OBBC**) for all eligible connections to an F-NTD supplied by means of the Fibre Network, where the connection is completed in a defined period, the Customer has obtained Informed Consent and the Customer (or Downstream Customer) includes a No Battery Product in their product offering.

The Credit Notice for OBBC was issued to WBA2 Customers on 11 July 2014. This Credit Notice varies the WBA2 access agreements of the Customers listed at **Appendix A**.

The details of the variation relating to this Credit Notice are as follows:

- NBN Co will credit Customer an OBBC for each Eligible Connection occurring during the Credit Period (1 August 2014 until 31 December 2015, unless notified earlier by NBN Co).
- The value of the OBBC will be as notified by NBN Co from time to time.
- A Customer is eligible to receive an OBBC if Customer, and all of its Downstream Customers (excluding Designated End Users), if any, offers a No Battery Product. A No Battery Product means a retail product offered to an end user by Customer that does not involve the installation of a Power Supply with Battery Backup. In addition, a Customer will only be eligible if it completes an OBBC Eligibility Form and NBN Co, acting in its sole discretion, notifies Customer of its eligibility to receive OBBCs. Customer must also obtain Informed Consent from the End User, and comply with any guidance or requirements issued by the ACMA in respect of Informed Consent.

Statement of differences

The Credit Notices for each of the Channel Incentive Program—Migration Offer Credit and the Optional Battery Backup Credit described above vary the WBA2 access agreements of the Customers listed at **Appendix A**. As the SFAA for WBA2 was not updated before the Credit Notices were provided to Customers, we provide this statement of differences as between the varied access agreements and the SFAA for WBA2.

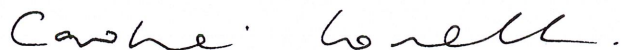
NBN Co provides statements of differences relating to both Credit Notices, having regard to section 152BEBA of the CCA.

With respect to the differences, we refer to the details of each variation as set out above. As stated above, these variations were provided to all Customers on 11 July 2014.

Variation agreements relating to both Credit Notices will be lodged as required by section 152BEA of the CCA in due course.

Capitalised terms used in this letter have the meaning given to them in the Credit Notices dated 11 July 2014 or in WBA2 unless otherwise defined.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Caroline Lovell'.

Caroline Lovell
Head of Regulatory Affairs

Appendix A: Customers receiving Credit Notice for Channel Incentive Program and Optional Battery Backup on 11 July 2014

1. AAPT Limited
2. AARNet Pty Ltd
3. Adam Internet Pty Ltd
4. Amcom Pty Ltd
5. Anittel Communications Pty Ltd
6. Aussie Broadband Pty Ltd
7. Australian National Telecom Pty Ltd
8. Australian Private Networks Pty Ltd
9. Bendigo Community Telco
10. Broadband Solutions Pty Ltd
11. Buroserv Australia Pty Ltd
12. Clear Networks Pty Ltd
13. Community Telco Australia Pty Ltd
14. Comscentre Networks Pty Ltd
15. DuxTel Pty Ltd
16. Eftel Pty Ltd
17. Ergon Energy
18. Exetel Pty Ltd
19. Gosford City Council
20. Government of South Australia
21. Harbour IT Pty Ltd
22. iiNet Limited
23. Internode Pty Ltd
24. Ivery Holdings Pty Ltd
25. Logic IT Solutions Pty Ltd
26. Luminet Pty Ltd
27. M2 Group Pty Ltd (formerly M2 Telecommunication Group Pty Ltd)
28. Macquarie Telecom Pty Ltd
29. Manage My Group Pty Ltd
30. Network Technology (Aust) Pty Ltd
31. Nextgen Networks Pty Ltd
32. Northern Technology Holdings Pty Ltd
33. On Q Network Operations Pty Ltd
34. Optus Networks Pty Ltd
35. Orion Satellite Systems Pty Ltd
36. SA Power Networks
37. SkyMesh Pty Ltd
38. Symbio Wholesale Pty Ltd
39. Tasmanian Networks Pty Ltd (recently novated from Aurora Energy Pty Ltd)
40. TasmaNet Pty Ltd
41. Telcoinabox Pty Ltd
42. Telstra Corporation Limited
43. TPG Internet Pty Ltd
44. TransACT Capital Communications Pty Ltd
45. VicTrack Pty Ltd
46. VMVault Pty Ltd

- 47. Vocus Pty Ltd
- 48. Vodafone Hutchison Australia Pty Ltd

Credit Notice

Credit name: Channel Incentive Program – Migration Offer Credit

Date: 11 July 2014



This Credit Notice is provided to Customer in accordance with the Wholesale Broadband Agreement (**WBA**) entered into between NBN Co and Customer.

1. Background

- 1.1 NBN Co is offering Customer the opportunity to participate in a “Channel Incentive Program” and receive a Migration Offer Credit, which is designed to encourage Customer to drive activations and the early migration of End Users to the NBN Co Ethernet Bitstream Service supplied by means of either the NBN Co Fibre Network or NBN Co Wireless Network (**NEBS**) within specified new and existing fibre and fixed wireless locations.
- 1.2 This Credit Notice applies only to NEBS under the WBA and does not apply to other products or services, including satellite.

2. Credit

- 2.1 Where Customer is eligible in accordance with paragraph 3 of this Credit Notice, NBN Co will give Customer a Migration Offer Credit for each Eligible Activation which occurs during the Program Period.
- 2.2 NBN Co will notify Customer from time to time of the amount of any Migration Offer Credit and the corresponding Participating FSAMs, Participating WSAs and Program Period by issuing a Program Location Notice. NBN Co will provide Customer with the Program Location Notice 20 Business Days prior to the commencement of the Program Period specified in the Program Location Notice.
- 2.3 The purpose of NBN Co offering the Migration Offer Credit is to encourage higher rates of activation and use of the NEBS across premises that have not yet connected to the NBN Co Fibre Network or the NBN Co Wireless Network, by Customer carrying out specific demand generation and migration activities to End Users within Participating FSAMs or Participating WSAs.
- 2.4 This Credit Notice is effective on and from 1 April 2014 until the earlier of:
 - (a) the date that NBN Co notifies Customer; and
 - (b) 1 March 2016.

- 2.5 NBN Co will give 20 Business Days prior notice to Customer of the date referred to in paragraph 2.4(a) of this Credit Notice and of the matters referred to in section 8.3 of the Price List.
- 2.6 The process outlined in section 8.3 of the Price List does not apply to the issue of a Program Location Notice under paragraph 2.2 of this Credit Notice.
3. **Availability of Credit**
- 3.1 Subject to paragraph 3.2, to be eligible for the Migration Offer Credit:
- (a) Customer, or a Downstream Customer, must be a party to a valid agreement with the relevant End User for the supply of a Customer Product, or a Downstream Product, as the case may be, to that End User;
 - (b) Customer must submit a Channel Activity Plan prior to the commencement of the Program Period, to be approved in writing by NBN Co, detailing the activities Customer plans to carry out in the Participating FSAM and/or Participating WSA to encourage higher rates of End User activation and use of the NEBS in that Participating FSAM and/or Participating WSA;
 - (c) Customer must submit to NBN Co evidence (including invoices and copies of marketing collateral and costs incurred) of the activities that the Customer carried out in the Participating FSAM and/or Participating WSA;
 - (d) the evidence referred to in paragraph 3.1(c) must, in NBN Co's reasonable opinion, evidence a minimum required activity required by the Channel Activity Plan; and
 - (e) Customer must use reasonable endeavours to target Service Class 1 Eligible Premises and Service Class 2 Eligible Premises within the Participating FSAM and/or Service Class 4 and Service Class 5 Eligible Premises within the Participating WSA.
- 3.2 Customer is not entitled to a Migration Offer Credit:
- (a) if NBN Co determines, acting reasonably, that an Eligible Activation is not a bona fide Activation made consistent with the purpose specified in paragraph 2.3 above, including where:
 - (i) an Activation is disconnected and re-Activated for the purpose of claiming a Migration Offer Credit;
 - (ii) the only costs incurred by Customer in carrying out the activities (such as special offers, demand generation and migration activity) are internal charges such as internal staff costs or internal IT system development;

- (b) if at the time of submitting a NEBS order, Customer or a Related Body Corporate of Customer, has an active NEBS service or has made a claim for a Migration Offer Credit, in respect of the relevant Eligible Premises;
 - (c) in respect of an Eligible Activation, if Customer submits (or has submitted) a disconnection order within 3 months of the date on which the order status in respect of the activation was updated to "Completed"; or
 - (d) if Customer receives a Migration Offer Credit other than in accordance with, or otherwise does not comply with, this Credit Notice or the provisions of the WBA relating to the Migration Offer Credit.
- 3.3 If paragraph 3.2 applies to any Activation in respect of which NBN Co has provided a Migration Offer Credit to Customer, Customer must repay to NBN Co an amount equal to that Migration Offer Credit in accordance with the process in paragraph 4 of this Credit Notice.
- 3.4 Where a Program Period applied during both a Prior WBA and the WBA, in determining Eligible Activations during the effective period of:
- (a) a Prior WBA, NBN Co will consider Customer's Activations under the Prior WBA; and
 - (b) the WBA, NBN Co will consider Customer's Activations under the WBA.
4. **Process to claim or receive Credit**
- 4.1 Customer must submit to NBN Co, within 20 Business Days of the end of the Program Period the evidence detailed in paragraph 3.1(c) of this Credit Notice.
- 4.2 NBN Co will assess the evidence received from Customer in accordance with paragraph 3 and determine the Migration Offer Credit payable to Customer in accordance with section 6.5 of the Operations Manual and the provisions of this paragraph 4. Customer is not required to submit a claim to NBN Co.
- 4.3 If Customer is entitled to receive a Migration Offer Credit in accordance with paragraph 3 of this Credit Notice:
- (a) NBN Co will use reasonable endeavours to provide the Migration Offer Credit to Customer within 40 Business Days of the end of the relevant Program Period;
 - (b) where there is an NBN Co invoice with an outstanding balance against which the Migration Offer Credit can be applied, NBN Co will apply the Migration Offer Credit against the amount payable by Customer; and
 - (c) where there are no NBN Co invoices that have an outstanding balance against which the Migration Offer Credit can be applied, NBN Co will apply the Migration Offer Credit against the amounts payable by Customer in subsequent NBN Co invoices.

4.4 Where Customer has received a Migration Offer Credit to which it was not entitled under paragraph 3, NBN Co may either (in its discretion):

- (a) apply the amount of the credit provided against any Migration Offer Credits to which Customer may be entitled; or
- (b) invoice Customer for the amount of the provided credits to be repaid.

5. **Special terms**

5.1 For the purposes of this Credit Notice, any capitalised term used but not defined in this Credit Notice has the meaning given to that term in the WBA, and:

- (a) **Activation** means a NEBS order for a Premises which:
 - (i) is submitted by Customer within the Program Period;
 - (ii) is accepted by NBN Co; and
 - (iii) has its Order Status updated to "Completed", in accordance with the NBN Co Operations Manual.
- (b) **Channel Activity Plan** means Customer's proposed special offer, demand generation and/or migration activities in a Participating FSAM or Participating WSA for the Program Period, set out in the template provided by NBN Co to Customer.
- (c) **Eligible Activation** means an Activation in respect of an Eligible Premises:
 - (i) which occurs during the Program Period; or
 - (ii) is submitted by Customer and accepted by NBN Co during the Program Period, which has had its Order Status updated to "Completed" after the end of the Program Period, where Customer scheduled an installation appointment for a date within the Program Period and:
 - (A) NBN Co rescheduled that installation appointment (other than because an End User was not at the Premises); or
 - (B) NBN Co and the End User each rescheduled that installation appointment,

to a date after the end of the Program Period.
- (d) **Eligible Premises** means Premises in a Participating FSAM or Participating WSA.
- (e) **Migration Offer Credit** means, in respect of each NEBS service, a credit of such amount notified in a Program Location Notice.

- (f) **Participating FSAM** means the Fibre Serving Area Module (with FSAM identifier) that NBN Co determines to be subject to a Migration Offer Credit during the Program Period as notified in a Program Location Notice.
- (g) **Participating WSA** means the Wireless Serving Area (with WSA identifier) that NBN Co determines to be subject to a Migration Offer Credit during a Program Period as notified in a Program Location Notice.
- (h) **Program Location Notice** means a notice provided by NBN Co to Customer that details the amount of any Migration Offer Credit and the corresponding Participating FSAMs, Participating WSAs and Program Period.
- (i) **Program Period** means, in respect of any Participating FSAM and/or Participating WSA, the period commencing and ending on the dates notified in a Program Location Notice.

Credit Notice

Credit name: Optional Battery Backup Credit

Date: 11 July 2014



This Credit Notice is provided to Customer in accordance with the Wholesale Broadband Agreement entered into between NBN Co and Customer.

1. Background

NBN Co is offering a Credit (an **OBBC**) for all eligible connections to a F-NTD supplied by means of the NBN Co Fibre Network that are completed over a defined period to customers that obtain Informed Consent and include a No Battery Product in their offering.

2. Credit

2.1 NBN Co will notify Customer from time to time of the value of an OBBC that will apply to an Eligible Connection.

2.2 This Credit Notice is effective on and from 1 August 2014 until the earlier of:

(a) the date that NBN Co notifies Customer; and

(b) 31 December 2015,

(the **Credit Period**).

2.3 NBN Co will give 20 Business Days prior notice to Customer of the date referred to in paragraph 2.2(a) of this Credit Notice and of the matters referred to in section 8.3 of the Price List.

3. Availability of Credit

3.1 Customer is eligible to receive an OBBC for an Eligible Connection if:

(a) Customer, and all of its Downstream Customers (excluding Designated End Users) (if any), offer a No Battery Product;

(b) Customer signs and returns to NBN Co an OBBC Eligibility Form; and

(c) NBN Co, acting in its sole discretion, notifies Customer of its eligibility to receive OBBCs.

4. Process to receive Credit

4.1 NBN Co will credit Customer an OBBC for each Eligible Connection made after NBN Co notifies Customer of its eligibility to receive an OBBC in accordance with paragraph 2.3.1(c) of this Credit Notice. Customer does not need to submit a claim to receive the OBBC for an Eligible Connection.

4.2 Subject to paragraph 4.3 of this Credit Notice, NBN Co will apply an OBBC:

- (a) as a credit to an NBN Co invoice containing Charges payable by Customer in the billing cycle following the Eligible Connection; or
 - (b) if there is no outstanding balance payable by Customer against which an OBBC can be applied in accordance with paragraph 4.2(a), as a credit in subsequent NBN Co invoices.
- 4.3 Where an eligible Customer accrues an OBBC between 1 August 2014 and the end of the OBB Transition Period, NBN Co will apply the OBBC to NBN Co invoices containing Charges payable by Customer:
 - (a) after the end of the OBB Transition Period; and
 - (b) within 6 months of the end of the OBB Transition Period.
- 5. **Special terms**
 - 5.1 Customer must comply with any guidance or requirements issued by ACMA in respect of Informed Consent.
 - 5.2 If NBN Co considers that:
 - (a) Customer is no longer eligible to receive an OBBC in accordance with paragraph 3.1;
 - (b) Customer is not compliant with paragraph 5.1 of this Credit Notice; or
 - (c) an Eligible Connection is not bona fide, for example:
 - (i) Informed Consent was not obtained from the End User;
 - (ii) one or more Eligible Products relating to the Eligible Connection are disconnected and re-activated for the purpose of claiming an OBBC; and/or
 - (iii) one or more Eligible Products relating to the Eligible Connection are activated and disconnected for the purposes of claiming an OBBC,

NBN Co may issue a written notice requesting that Customer provide NBN Co with such information as NBN Co may reasonable require to assess whether Customer is compliant with paragraphs 3.1, and/or 5.1 or that the Eligible Connection is not bona fide (as applicable).
 - 5.3 Customer will comply with a notice issued in accordance with paragraph 5.2 of this Credit Notice within 10 Business Days of receipt of the notice.
 - 5.4 If:
 - (a) Customer fails to comply with a notice issued in accordance with paragraph 5.2 of this Credit Notice within 10 Business Days of receipt of the notice; or
 - (b) NBN Co is not (in its sole discretion) satisfied that Customer is compliant with paragraph 3.1 and/or 5.1 of this Credit Notice, and/or that the Eligible Connection is not bona fide (as applicable),

NBN Co may immediately on written notice withdraw Customer's eligibility to receive OBBCs, and no OBBC will accrue from the date of issue of that notice.

- 5.5 If Customer has received any OBBCs to which Customer is not entitled, NBN Co may at its discretion:
- (a) invoice Customer the amount of any OBBCs to which the Customer was not entitled, and Customer must pay the invoice within 30 calendar days; or
 - (b) apply that amount of any OBBCs to which Customer was not entitled against any other OBBCs to which Customer is entitled, and reflect such offsetting via current billing arrangements.

6. Definitions

6.1 For the purposes of this Credit Notice:

- (a) **Eligible Connection** means an order for an Eligible Product in respect of which the:
 - (i) Ready For Use Date is within the Credit Period; and
 - (ii) Informed Consent of the End User has been obtained.
- (b) **Eligible Product** means an AVC TC-4 and UNI-D bundle supplied to an F-NTD by means of the NBN Co Fibre Network, and excludes standalone orders for an AVC TC-1 or a second UNI-V and AVC TC-1 bundle.
- (c) **OBBC** has the meaning given in paragraph 1 of this Credit Notice;
- (d) **OBBC Eligibility Form** means the form set out in the annexure of this Credit Notice; and
- (e) **No Battery Product** means a retail product offered to a Designated End User by Customer that does not involve the installation of a Power Supply with Battery Backup.

6.2 In addition, any capitalised terms used but not defined in this Credit Notice have the meaning given to that term in the Wholesale Broadband Agreement entered into between NBN Co and Customer.

OBBC Eligibility Form

NBN Co is offering a Credit (an **OBBC**) for all eligible connections to a F-NTD supplied by means of the NBN Co Fibre Network that are completed over a defined period to customers that obtain Informed Consent and include a No Battery Product in their offering.

Following receipt of Customer's OBBC Eligibility Form, NBN Co will notify Customer whether Customer is eligible to receive OBBCs.

NBN Co has the right, acting in its sole discretion, to determine that an OBBC Eligibility Form is not in accordance with the requirements in the Credit Notice and that Customer is not eligible to receive OBBCs.

Customer Details

Customer Name			
Primary Contact Name		Primary Contact Title	
Phone Number		Email Address	
Date of Submission		Access Seeker ID (6 digits)	

OBBC Program Application

Customer warrants that it, and all of its Downstream Customers (excluding Designated End Users) (if any):	
<input type="checkbox"/>	include a No Battery Product in its offering.
<input type="checkbox"/>	obtains the Informed Consent of the Designated End User in respect of each Eligible Connection.
By completing and submitting this form to NBN Co Customer agrees that:	
<input type="checkbox"/>	Customer will notify NBN Co within 10 Business Days where either or both of the above warranties are no longer true and accurate.
<input type="checkbox"/>	Customer will reimburse to NBN Co at NBN Co's request any OBBCs in accordance with the terms of the OBBC Credit Notice.

Signed for Customer by its authorised representative

Signature	
Name	
Date	

Please email your OBBC Eligibility Form to stephenroberts@nbnco.com.au or to your NBN Co Marketing Relationship Manager.

For NBN Co use:

NBN Co acknowledgement of Customer eligibility to receive OBBCs

Signature	
Name	
Date	