



ACCC inquiries into NBN access pricing and wholesale service standards

Submission by the Australian Communications Consumer Action
Network to the ACCC

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About ACCAN

The Australian Communications Consumer Action Network (ACCAN) is the peak body that represents all consumers on communications issues including telecommunications, broadband and emerging new services. ACCAN provides a strong unified voice to industry and government as consumers work towards communications services that are trusted, inclusive and available for all.

Consumers need ACCAN to promote better consumer protection outcomes ensuring speedy responses to complaints and issues. ACCAN aims to empower consumers so that they are well informed and can make good choices about products and services. As a peak body, ACCAN will represent the views of its broad and diverse membership base to policy makers, government and industry to get better outcomes for all communications consumers.

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1. Executive Summary

ACCAN thanks the ACCC for the opportunity to comment on its inquiry into NBN access pricing and wholesale service standards. ACCAN supports the resumption of the inquiries as the proposals made represent significant progress and will improve consumer outcomes.

Telecommunications is a critical enabler for the Australian economy. The COVID-19 pandemic has highlighted the extent to which individuals and businesses rely on continuous access to telecommunications services in order to conduct business, receive healthcare, work, learn, and access a range of government services. Reliability of broadband services is therefore essential for consumers and poor performance reduces the benefits they derive from the services.

Consumers may have no choice in the network that services them. NBN being the monopoly provider of wholesale broadband has significant power in negotiating access terms. Therefore, it is important that minimum service standards apply. Given that the ACCC's access determination will have no effect to the extent to which it is inconsistent with the WBA4, the service standards proposed in the Wholesale Broadband Agreement (WBA) 4 are instrumental to ensuring consumer outcomes improve.

Generally, the proposals made by NBN are a significant step towards improving the long-term interests of end-users (LTIE). With the build of NBN nearing completion and the end of the migration period for many consumers approaching, ACCAN believes that a focus on the customer experience is vital. However, ACCAN does have some concerns with NBN's proposals. In particular, we consider that the proposed amount for rebates is insufficient to incentivise NBN to improve service standards.

Furthermore, ACCAN remains disappointed that the ACCC and NBN continue to focus on providing a service which is equivalent to legacy services. Striving for a service which ensures consumers are 'no worse off' does not represent a benefit to the long-term interests for the consumers about to migrate to NBN. Furthermore, ensuring consumers can achieve the same speeds at the same cost as they were roughly a decade ago does not represent an efficient use of infrastructure.

Wholesale service standards should reflect the essential nature of telecommunication services. Appropriate service standards should be made to provide an underpinning for reliability, across all network providers. ACCAN considers that the issues raised in the ACCC's inquiries, the price and reliability of broadband, should not only be subject to commercial negotiations. The Telecommunications Reform Package has allowed the Minister for Communications to make standards, rules and benchmarks for Statutory Infrastructure Providers (SIPs). ACCAN considers that many of the wholesale service standards might be better overseen by the Ministerial rule making powers proposed under the SIP arrangements.

1. Part A: NBN Co's access pricing proposal

In this section, ACCAN has considered the following questions asked by the ACCC in the consultation paper in relation to NBN's access pricing:

1. Do you consider that the contents of the proposed access arrangements on pricing will be beneficial to the long-term interests of end users?

2. Are there any deficiencies or unforeseen consequences that would need to be addressed before the intended benefits of the proposed access arrangements on pricing could be realised?

1.1. Improving the commercial value of NBN Co's entry-level access bundle

ACCAN understands the rationale behind the ACCC's interest in protecting consumers under the forced migration model. However, by providing an NBN service which equates to a legacy service in terms of price and performance, we consider that the LTIE will not be promoted.¹ Migrating consumers to an equivalent service disadvantages consumers who forgo time and money in order to receive the same value and quality they were receiving prior to connecting to NBN.

As ACCAN has stated in previous consultations,² we are supportive of measures being taken in order to allow consumers to smoothly transition to NBN services without facing material increases in the price of their existing services. We maintain that consumers should not be made worse off from the forced migration to NBN. However, consumers incur costs when they migrate to the NBN, these include the cost of time researching which retail provider to choose, time spent waiting for a technician for installation, potentially being without a connection for a short period of time, in addition to paying for connection costs or modem fees. These costs are incurred when consumers migrate to NBN without any issues occurring. When problems arise such as missed appointments or delays in connection, consumers face higher levels of frustration and economic costs. ACCAN receives calls from consumers who are distressed when they are forced to migrate, and issues occur. The appendix contains a recent case study of a consumer's problems from migrating to NBN. Ensuring consumers either receive a lower cost, or better performing service compared to their legacy service enables consumers to retain the same level of utility they experienced prior to the NBN.

ACCAN maintains that the creation of a 25/5 Mbps bundle at a regulated price point of \$30 is appropriate for contemporary user requirements and would set an anchor price which is more reflective of the needs of consumers. The COVID-19 pandemic has resulted in upload speeds becoming increasingly important for consumers to be able to continue to engage in their usual activities despite lock downs and restrictions. NBN experienced a 92% increase in upstream business hour traffic compared to pre-COVID-19 baseline levels, whilst download network usage increased by 59%.³ The

¹ Defined by the ACCC as the provision of; goods and services at lower prices, goods and services of a higher quality, and/or a greater diversity of goods and services. ACCC (2020) *ACCC Inquiry into NBN access pricing and wholesale service standards Consultation Paper*. Pg.30

² ACCAN (2019) *Submission to ACCC inquiry into NBN access pricing*. <https://www.accc.gov.au/system/files/ACCAN%20-%20Submission%20to%20NBN%20access%20pricing%20inquiry%20discussion%20paper.pdf>

³ NBN (2020) *Network Usage COVID-19* <https://www.nbnco.com.au/corporate-information/about-nbn-co/updates/dashboard-july-2020>

behaviour change produced from the pandemic is likely to continue, with wider use of telework and higher demand for upload speeds becoming the norm. ACCAN believes that a 1 Mbps upload speed is insufficient to meet the needs of consumers, and that encouraging consumers onto lower speeds is likely to result in dissatisfaction with the service.

Regulating the price of the 25/5 Mbps bundle will also reduce the cost of 12/1 Mbps service offerings, ensuring an easy migration path for those who wish to maintain the quality of service from ADSL networks. Moreover, regulating the price of a 25/5 Mbps to ensure it aligns with the definition of a high-speed broadband service under the statutory infrastructure of last resort regime⁴ and statement of expectations⁵ allows the service to function as the intended baseline broadband service for consumers to transition onto.

Due to the reasons mentioned above, ACCAN has been disappointed with the ACCC's position of a minimum charge of between \$24.80 and \$25.70 with between 1.31 and 1.42 Mbps of CVC, in order to achieve a 12/1 Mbps at a monthly cost of \$35. ACCAN believes that more must be done to ensure that the service is affordable for low income consumers, and we continue to call for a 50 Mbps concessional service targeted at disadvantaged Australians.⁶

NBN are proposing to supply 1.71 Mbps at an effective \$35 wholesale charge by May 2021 as part of the modified Entry Level Bundle (mELB). Due to this pricing structure, ACCAN is concerned that there is a risk for RSPs to be incentivised to sell 12/1 Mbps services to consumers who require higher speeds for their usage needs. This will result in consumers being subject to a poor performing service. In attachment 2 of the consultation paper, NBN states that poor performance issues experienced by high-use customers purchasing 12/1 bundles can only be resolved by moving the consumer onto higher AVC speed tiers. ACCAN believes that this issue can be resolved by regulating the price of the higher speed bandwidth to ensure it is at an affordable price range for all consumers. A targeted concessional service would resolve the issue of high-use low income consumers purchasing entry level products. This would allow consumers to move up to higher speed bundles as opposed to purchasing what they can afford, which is often the 12/1 Mbps service, and receiving a poor performance.

1.2. Price certainty

ACCAN supports the measures proposed by NBN to create greater certainty over how price-related terms of all NBN's access products will change over time.

Including the Discounts Credits and Rebates (DCR) list into the WBA and having clear rules as to how much notice is required for changes to the DCR is expected to increase certainty for RSPs. Previously, using discounts, credits and rebates as a way of introducing products and price changes meant they could be rapidly withdrawn or altered, creating uncertainty for RSPs. Furthermore, committing to

⁴ Department of Infrastructure, Transport, Regional Development and Communications (2020) *Telecommunications Reform Package* [https://www.communications.gov.au/what-we-do/internet/telecommunication-reform-package#:~:text=The%20Statutory%20Infrastructure%20Provider%20\(SIP\)%20obligations%20ensure%20that%20all%20Australian,broadband%20services%20on%20reasonable%20request.](https://www.communications.gov.au/what-we-do/internet/telecommunication-reform-package#:~:text=The%20Statutory%20Infrastructure%20Provider%20(SIP)%20obligations%20ensure%20that%20all%20Australian,broadband%20services%20on%20reasonable%20request.)

⁵ Department of Infrastructure, Transport, Regional Development and Communications (2016) *Statement of Expectations* <https://www.communications.gov.au/publications/nbnstatementofexpectations>

⁶ ACCAN (2019) *No Australian Left Offline: ACCAN pushes for affordable broadband* <https://accan.org.au/media-centre/1572-nalo-media-release>

releasing a two-year roadmap of charges and CVC inclusions for the TC-4 bundles discount is vital to ensuring RSPS know what to expect in their provision of services to end-users.

The more uncertainty and risk that RSPs face, the higher the costs for consumers as RSPs factor in the risk that discounts may be removed at any given time. Thus, ACCAN believes that the proposals will be beneficial to end-users. ACCAN does not foresee any unintended consequences from this proposal.

1.3. Simplification of access terms

ACCAN supports NBN's recently revised approach where an additional charge is payable should an RSP use more than 95 per cent of its purchased CVC capacity in more than 30 hours in a 30 day period, which would provide additional time to correct network management practices and avoid the charge where network utilisation levels are at high levels. Despite the additional charge being rarely used in practice, if the amount payable for the additional charge varies month to month and the method to calculate it is complex, it may add a layer of uncertainty and risk for RSPs. ACCAN questions whether it is not possible to provide more certainty regarding the fees for the additional charges.

1.4. Reducing and standardising charges that are imposed when services are transferred

AVC activation charges are currently being offered at the rate of \$5 until November 2020. ACCAN supports making the charge for activating AVCs a flat rate of \$5 part of the WBA4, as this provides RSPs with certain and simplified costs for service transfers, transfer reversals and access component reactivations. A flat rate removes financial trade-offs regarding various methods of connecting, making it more likely that RSPs will choose the method which benefits the consumer most. ACCAN does not foresee any unintended consequences from this proposal.

3. Do you consider the proposed price related access arrangements are reasonable having regard to the regulatory assessment framework?

Long term interests of end-users

The proposed price access arrangements will only benefit consumers who are already purchasing an NBN service with a speed of 12/1 Mbps. For these consumers, they will experience a decrease in cost and/or an increase in quality of service as the CVC provision is increased. Thus, the proposals will benefit 1.2 million consumers, 15% of NBN's services.⁷

ACCAN is concerned that the implementation of the proposed price for the 12/1 Mbps product would not operate as an effective anchor for higher speed NBN services. NBN's pricing approach will be focused on ensuring financial outcomes are met, thus there is nothing to suggest that decreasing the price of the entry level bundle will result in prices decreasing for higher speed tiers.

Lastly, ACCAN disagrees that the ADSL customers transitioning to the NBN that do not require a higher speed service will be key beneficiaries of NBN's proposed access arrangements. Usually, consumers do not switch services in order to continue paying a similar price and to receive a similar quality service. This is because switching takes time, effort and often comes at a cost. ACCAN considers it inequitable that consumers are being forced to switch if they are not receiving benefit from either price or quality of service improvements.

ACCAN believes the proposal to create greater certainty will promote the LTIE. Reducing risk from the wholesale market should result in lower costs for consumers in the downstream market as RSPs will not have to account for the risk of discounted bundles being removed at short notice.

In the consultation paper, the ACCC states that ADSL/2+ services will remain available in areas serviced by NBN's fixed wireless and satellite access networks. ACCAN believes that ADSL has a relatively short life span and has heard from consumers who have moved into these areas to find that there are no ports available for ADSL services. Whilst ACCAN is aware that the ACCC will not adopt measures to regulate price related terms for fixed wireless and satellite access networks, we are concerned that there are consumers who are being impacted by the assumption that ADSL/2+ is available in these areas. For these consumers, the proposals do not promote the LTIE.

Promoting competition

It is likely that the simplification of access terms will improve competition for the entry level bundle. Making it easier for RSPs to predict costs from month to month should encourage RSPs to retail the 12/1 product. Furthermore, ACCAN agrees with the ACCC that fixed wireless and mobile networks will see increased competition from falling prices of the entry level bundle supplied over the NBN. This would suggest that this bundle is less suited to price regulation given it already faces competition from these services.

⁷ ACCC (2020) *NBN Wholesale Market Indicators Report*. <https://www.accc.gov.au/regulated-infrastructure/communications/national-broadband-network-nbn/nbn-wholesale-market-indicators-report/june-quarter-2020-report#:~:text=The%20NBN%20Wholesale%20Market%20Indicators,Traffic%20Class%20or%20TC4>.

Any-to-any connectivity

ACCAN maintains that there is a proportion of the population that will continue to be unable to afford NBN services, estimated to be around 1 million households.⁸ A wholesale price of \$35 will be unaffordable to many low-income households. A lower wholesale cost is required in order to increase access to broadband services.

Efficient use of and investment in infrastructure

ACCAN is concerned that the proposed pricing arrangements will not result in an efficient use of and investment in infrastructure. As mentioned previously, the Statement of Expectations and the SIP obligations sets the broadband policy objective of providing at least 25 Mbps to all premises.⁹ We believe that NBN's pricing structure should align with the government's policy objective in providing *'all Australians access to very fast broadband as soon as possible'*.¹⁰ It is difficult to see how a \$50 billion infrastructure project is being efficiently used if a proportion of the population can only stand to receive a service equivalent to what previous networks could provide. Encouraging greater take up of the network can be achieved by regulating the price of a higher speed tier which would result in a more appropriate use of the network infrastructure.

There is concern that the proposed pricing arrangements will not foster allocative efficiency. The cost of broadband, which is currently set by a monopolist, is prohibiting consumers from purchasing the service, resulting in underconsumption. We believe that this is one of the main reasons why over a third (36.23%) of premises have not connected to the NBN.¹¹ Allocative efficiency can be increased by lowering the wholesale price, however we are concerned that the proposed pricing arrangements do not go far enough in making the service affordable. Furthermore, the pricing arrangements will not encourage dynamic efficiency. By encouraging consumers to take up a low speed service, NBN will not have the incentive to upgrade technologies.

In regard to the increased pricing certainty, ACCAN agrees that it should improve predictability of wholesale pricing outcomes and hopefully assist RSPs in making investment decisions, thus improving dynamic efficiency.

Legitimate business interest

ACCAN agrees with the ACCC that the proposed price-related access arrangements do not undermine NBN's legitimate business interests. There is potential for the increased revenue from new connections to offset revenue loss from decreased wholesale prices.

⁸ ACCAN (2019) *No Australian Left Offline: Affordable broadband for all Australians*.
<http://accan.org.au/files/Affordability/No%20Australian%20Left%20Offline-1.pdf>

⁹ Department of Infrastructure, Transport, Regional Development and Communications (2020)

¹⁰ Department of Infrastructure, Transport, Regional Development and Communications (2016)

¹¹ NBN (2020) *National Broadband Network- Rollout Information*
https://www.nbnco.com.au/content/dam/nbnco2/2019/documents/weekly-progress-report/Public_Progress_Data%20-%20270820.pdf

Persons who have a right to use the declared service

ACCAN agrees that improving certainty over future pricing will support access seekers by mitigating a significant source of risk.

Direct costs of providing access

As NBN proposed the access pricing arrangement, it can be assumed that NBN will be able to recover the direct costs of providing access.

The pricing of NBN services should be defined by reference to the theoretically efficient market outcome. Accordingly, rather than benchmark prices against ADSL+ pricing observed in the market approximately a decade ago, the focus should be on the current cost of providing the service. ACCAN questions the rationale that as the mELB enables delivery of a service equivalent to the supply of a competitive ADSL retail service, that the proposal does not allow NBN to recover monopoly profits. The ability of NBN to recover monopoly profits depends on the level of current demand and NBN's costs and market power. It is not unrealistic to assume that demand for broadband and the cost of supplying it has evolved since the legacy era.

Economically efficient operation

ACCAN agrees with the ACCC that the mELB is likely to better accord with low-speed end customer's willingness to pay compared to current arrangements as it will retail at a cheaper rate. However, we have concerns that it does not accurately account for the budget constraints faced by some consumers and that more could be done in order to expand the provision of high-speed services.

Other restrictions on pricing

The proposed price access arrangements are reasonable regarding restrictions on pricing in that they do not undermine NBN's ability to provide uniform pricing or provide services on non-discriminate terms to access seekers.

2. Part B: NBN Co's service standards proposals

Overall, the proposals made by NBN represent a benefit to consumers when compared to the service level commitments in WBA3. However, ACCAN is disappointed that the ACCC is prepared to accept terms which are less beneficial to consumers than those proposed by the ACCC's position paper. With the exception of rebates for priority assistance customers, NBN's proposals for rebates are lower, and therefore less beneficial to consumers in 5 out of 6 rebates discussed.¹² The rationale behind rebates is to provide incentives for NBN to prevent issues from occurring, and when they do occur to compensate whoever is affected, consumers, appropriately. Setting the rebates at appropriate amounts is vital to ensuring they achieve their purpose and promote the long-term interest of end-users.

As telecommunications services have become essential to every day lives, ACCAN considers that reliability of broadband should not solely be subject to commercial negotiations. Given the Telecommunications Reform Package,¹³ we consider it more appropriate that the Minister for Communications set the benchmarks for Statutory Infrastructure Providers regarding wholesale service standards. This would provide long term certainty to network operators, RSPs and consumers concerning baseline service levels.

ACCAN has considered NBN's proposals with the following questions in mind:

1. Do you consider that the contents of the proposed access arrangements on service standards will be beneficial to the long-term interests of end users?

2. Are there any deficiencies or unforeseen consequences that would need to be addressed before the intended benefits of the proposed access arrangements on service standards could be realised?

2.1. Connections and faults

Failed connections

Regarding New Service Never Worked (NSNW) issues, ACCAN would prefer to see the RSP not being charged until a service is working. However, ACCAN is supportive of the implementation of an automated process that applies a credit to the RSP invoice for charges that accrue between the billing period and a resolution to NSNW as a next best solution. Providing credit to cover the billing period where there is no service being provided creates an incentive for NBN to rectify the issue in a timely manner. ACCAN does not consider there are any unforeseen consequences of this proposal.

¹² NBN's rebates which represent less consumer benefit compared to the ACCC's proposals are connection rebates, Service fault rebates, missed appointment rebates, PIR objective rebates and underperforming speed rebates.

¹³ Department of Infrastructure, Transport, Regional Development and Communications (2020)

Delayed connections and unresolved faults

ACCAN welcomes the day by day automatic rebate paid for missing service level agreements as this provides an incentive to resolve the miss as soon as possible, which should lead to quicker resolutions in connection failures and unresolved faults. There is additional support for creating higher incentives for PA consumers as well as providing rebates to businesses. The proposals create greater incentives whilst recognising the additional harm to these consumers caused by the miss.

Delayed connections

The rebates proposed by NBN¹⁴ are lower than those suggested by the ACCC (\$13.50/day) and are insufficient to compensate for the considerable cost to consumers for delayed connections. ACCAN believes that the minimum rebate should be in line with the Customer Service Guarantee (CSG) of \$14.52 per day, for business customers the rebate should be a minimum of \$24.20 per day. Additionally, the escalation of rebates as time progresses would provide a stronger incentive to resolve connection issues for consumers facing ongoing delays in connecting in a timely manner. Furthermore, ACCAN believes the rebate should be larger where consumers do not have an existing broadband connection to reflect the harm caused to the consumer from not having access to the internet.

ACCAN is strongly opposed to the introduction of a rebate cap, noting that a cap provides weakened incentives to rectify complex connections where it may be cheaper for NBN Co to ignore these connections and pay the maximum rebate fee. There are considerable losses faced by consumers due to prolonged delays in connecting, so the terms should be drafted to alleviate any incentive to ignore complex cases where the harm faced is of the greatest magnitude.

There are currently 4.4 million homes and businesses which may be looking to migrate in the next 1-2 years.¹⁵ So whilst new connections are likely to become less prominent with the end of the NBN rollout, given that the time period of the WBA 4 coincides with when millions of customers will be looking to migrate to the NBN, we believe the incentives to avoid connection failures should be appropriately set.

Unresolved faults

ACCAN is supportive of providing day by day fault rectification rebates. However, the rebate should be escalated as time goes on as originally proposed by the ACCC. This will ensure continuing incentives and provide better consumer outcomes.

Additionally, the rebate amount proposed by NBN¹⁶ is insufficient to compensate the consumer for the harm caused by the fault. A rebate of \$20 per day for the first 5 days and \$30 per day for the subsequent days, as previously proposed by the ACCC in the Wholesale Service Standards Inquiry,¹⁷ more appropriately reflects the harm caused to consumers. The COVID-19 pandemic has highlighted the importance of reliable internet access, when faults occur there are tangible economic costs to

¹⁴ \$7.50 per business day, \$10 per business day for priority assistance customers.

¹⁵ NBN (2020)

¹⁶ \$15 day or \$20/day for PA customers

¹⁷ ACCC (2020) *NBN Wholesale Service Standards Inquiry Position Paper*.

<https://www.accc.gov.au/system/files/NBN%20Wholesale%20Service%20Standards%20Inquiry%20-%20Position%20paper%20-%20April%202020.pdf>

consumers. ACCAN considers higher rebates regarding unresolved faults to be particularly vital to ensure NBN has the appropriate incentives to resolve issues.

As mentioned previously, ACCAN believes that there should not be a cap to rebates, as once the time period has passed, NBN will not have any incentive to rectify the fault. ACCAN remains concerned that for some complex faults, the cost of rectification may be higher than the cost of paying the rebate. Accordingly, consumers with complex faults may be de-prioritised over alternative simpler rectification processes.

2.2. Missed appointments

The proposal to increase the rebate for missed appointments and escalating the rebate amount based on subsequent missed appointments will create greater incentives to prevent the miss occurring. This will be beneficial to end users. However, again ACCAN is disappointed to see that NBN has proposed a lower amount¹⁸ than suggested by the ACCC in their position paper (\$75 for each missed appointment).

ACCAN considers a rebate of \$100 minimum for the first missed appointment is required.¹⁹ In 2019, ACCAN commissioned Synergy Economics to provide guidance on the appropriate valuation techniques for customer wait times.²⁰ The report recommended the application of a valuation of \$19.14 per hour of customer time spent waiting. The cost to a consumer for a 4-hour wait is \$79.56. The effective cost of waiting 4 hours for the initial appointment, and an additional 4 hours for a second appointment is \$153.12. Therefore, setting the rebate at \$100 for the first missed appointment, \$150 for a second, and \$200 for a third will better reflect the cost to the consumer.

Not only do missed appointments cost consumers time, but they can result in consumers not having internet access until another appointment is made. There are many instances where a consumer may be left with no internet access due to missed appointments, for example, someone with satellite broadband with no mobile coverage. Additionally, individuals who are able to use their mobile for internet may have to upgrade mobile plans with greater to data capacity at an added cost. In this instance, ACCAN considers that the consumer should receive both the missed appointment rebate and the daily connection rebate to fully compensate them.

2.3. Underperforming service speeds

FTTN/B/C services

Speed performance information

ACCAN welcomes the proposal to provide RSPs with daily line rate report and weekly speed reports through the service health platform and application programming interfaces. Being able to access a

¹⁸ \$50 for each initial missed appointment, \$75 for each subsequent rescheduled missed appointment.

¹⁹ ACCAN (2019) *Submission to Wholesale Service Standards Inquiry 2019 Draft Decision Consultation* <https://www.accc.gov.au/system/files/ACCAN%20-%20NBN%20wholesale%20service%20standards%20inquiry%20-%20public%20submission%20to%20the%20draft%20decision.pdf>

²⁰ ACCAN (2019) *Please Hold – costing telco customer wait times* <https://accan.org.au/our-work/research/1629-please-hold-costing-telco-customer-wait-times>

Historical Supported Speed (HSS) and a minimum assured speed (assured rate) will assist RSPs in managing consumer expectations regarding the service they can receive.

Speed performance rebate

ACCAN supports the proposed arrangement where a speed performance rebate is not payable when the RSP knows at the time of order the maximum speed the line is capable of, as well as the minimum assured rate. This creates accountability and should hopefully incentivise RSPs to ensure that the speed of the service they provide to their customers is achievable.

NBN's proposal to provide a \$20 rebate on a once-off basis for the purpose of compensating the RSP for their costs of managing the customer in accordance with the ACCC Broadband Speed Claims Guidance does not acknowledge the fact that a consumer will be inconvenienced by this experience. ACCAN considers that there should be a pass-through rebate to the consumer for when this issue occurs.

PIR Objective rebate

Whilst ACCAN agrees that the rebate should be scaled higher in proportion to the length of time since the Trouble Ticket was acknowledged for the service, ACCAN would prefer to see the ACCC's proposal of a flat rebate of \$20 a month to compensate all instances of service speed underperformance as this will represent a greater amount of compensation compared to NBN's proposed rebate²¹ to consumers for the inconvenience caused in addition to greater incentives for NBN to resolve the issue sooner.

Fixed wireless services

Wireless service speed information

ACCAN is supportive of measures taken to provide RSPs with as much information as possible regarding speed information. This allows RSPs to take responsibility in informing their customers with accurate information before placing an order.

Wireless speed performance rebate

NBN's proposal aligns with the ACCC's approach of providing a \$20 rebate for each month that a fixed wireless AVC TC-4 product component is supplied using a wireless network cell that is persistently congested. Nevertheless, the rebate amount should increase with every subsequent month for which the wireless speed underperforms to provide a greater incentive to NBN to rectify the issue as soon as possible. This would also acknowledge that the longer a consumer is subject to poor performance, the consumer will experience increasing amounts of harm and frustration.

Additionally, ACCAN considers the metric for measuring fixed wireless speed performance remains too low to provide an acceptable service standard. A consumer must be supplied a service via a wireless network cell that has an average downlink throughput of less than 6Mbps over a month for them to receive the rebate. As modern-day applications and user needs such as video streaming and

²¹ \$10 per month for the first 3 months, \$15 per month for 4-6 months, and \$20 per month for over 6 months of missed PIR objectives.

video calls are not possible at this service speed, ACCAN considers that the level of intervention is set too low which will likely result in consumer dissatisfaction.

2.4. Service information and operational matters

Availability of operational service information

ACCAN supports any proposals which provide RSPs with as much information regarding connections, faults and SLA outcomes. By providing RSPs with this information in a timely manner, RSPs can better manage customer expectations and respond to issues in a timely manner.

Service level measurement and exclusions

Service level measurement and exclusions are important as they refer to the starting point in which NBN measures its performance against a service level timeframe, and the instances in which it can pause the measurement of its performance. NBN has proposed to accept the proposals by the ACCC in which to 'stop the clock' but has included additional items. Generally, the exclusions are sensible, however ACCAN is unsure what is required for a trouble ticket to require a 'monitoring' status. Clear guidance should be provided for which instances NBN can monitor a trouble ticket to prevent the status from being unnecessarily used, as a potential unintended consequence could be that many trouble tickets are monitored, reducing NBN's incentive to provide high service levels.

Reporting of service level metrics

NBN are proposing to adopt all changes suggested by the ACCC, that NBN should provide monthly reporting to RSPs regarding performance for each service level activity completed for the RSP as well as NBN's performance across all RSPs, broken down by location, service class and network where applicable, except for where aggregating reporting results in NBN disclosing confidential information. ACCAN welcomes NBN's acceptance of the ACCC's proposal and does not foresee any unintended consequences of this proposal.

2.5. Consumer safeguards

Customer service guarantee and Priority Assistance

ACCAN supports the simplification of the claims process for CSG compensation, allowing RSPs to claim where NBN has contributed to the RSP's CSG liability to the consumer. We hope this encourages accountability and strengthens the incentives to prevent issues from occurring.

Adapting to new or changing consumer safeguards

NBN has proposed to provide RSPs with a contractual commitment to conduct a 4 week consultation period with RSPs with respect to potentially changing the WBA if a regulatory event occurs and the RSP identifies that they cannot comply with an obligation imposed under an applicable law as a result of a regulatory event and comply with the WBA, unless the WBA is changed.

ACCAN believes that it is sensible to consult on the WBA if a change in regulation results in RSPs not being able to comply with an obligation imposed under an applicable law and comply with the WBA. This acknowledges that a level of flexibility is required in order for RSPs to respond to the regulatory arrangements.

Pass-through of wholesale rebates to consumers

Providing pass-through of wholesale rebates to consumers is crucial as it is the end-user who is affected by poor service levels. NBN has proposed to pass through the fair value benefit of the following rebates: the connection rebate, the failed connection rebate, the service fault rebate, the PIR objective rebate and the wireless speed performance rebate. NBN has suggested that it will develop guidance on what constitutes fair value pass through rate. ACCAN considers that the guidance should be developed by the ACCC and ACMA, as the ACMA has already suggested an intention to do so.²² We believe the ACMA will be better positioned to develop the guidance to ensure the best outcomes for consumers.

ACCAN agrees with the ACCC that if there are to be stronger requirements in enforcing the pass-through terms, that this can be achieved through retail regulation rather than wholesale arrangements carried out by NBN.

As mentioned previously, ACCAN maintains that NBN should propose RSPs to pass-through the FTTN/B/C speed performance rebate on the basis that not achieving expected speeds comes at an inconvenience to consumers.

²² ACMA (2020) *ACMA proposes new rules for broadband service failures* <https://www.acma.gov.au/articles/2020-08/acma-proposes-new-rules-broadband-service-failures>

3. Do you consider the proposed access arrangements on service standards to be reasonable having regard to the regulatory assessment framework?

Clear service level commitments

The proposed access arrangements on wholesale service standards provide clear service level commitments. Commitments to service levels creates accountability and thereby incentives for NBN and RSPs to deliver services to a certain standard. Creating certainty for RSPs allows them in turn to provide certainty to consumers regarding service level commitments.

Appropriate allocation of risk and responsibility

ACCAN agrees that NBN's proposals improve the allocation of risk and responsibility between NBN and RSPs.

Effective incentives to improve service outcomes

ACCAN considers commercial rebates to have two objectives, to create effective incentives to ensure NBN meets its service level commitments, and where it fails to do so, compensates the affected party appropriately. ACCAN maintains that for the majority of the proposals, the level of rebates proposed by NBN remain insufficient to achieve both of these objectives. Therefore, the proposed wholesale service standards do not create effective incentives to improve service outcomes.

Improved end-user outcomes

ACCAN agrees with the ACCC that compared to the current WBA3, NBN's proposals in WBA4 represent an increase in the LTIE. However, we are concerned that the incentive structure is not adequate in increasing incentives for NBN to meet its service commitments. Not setting the rebates at appropriate amounts will harm users over the span of the WBA4 as service commitments will continue to be missed.

3. Appendix

Case Study 1: Lucy's story

Lucy is an elderly woman who had been a customer with Telstra for over 20 years. When her apartment building had been connected to NBN she started receiving letters telling her that she had to switch to the NBN or her phoneline would be disconnected. She was not told that she had 18 months to migrate service. This caused her a significant amount of anxiety.

With the assistance of a friend, Lucy ordered an NBN connection and switched to TPG. Her phone was cut off for 4 days before her modem arrived. She was informed that there were not enough technicians on the ground and was send instructions on how to set her internet up. She had to ask for help from her friend. Once this was completed, she was able to use her phone again, and considered that this was finally sorted.

However, for months Lucy continued to receive bills from Telstra. She tried to call Telstra but due to the COVID-19 pandemic and subsequent call centre closures she was unable to get through to anyone. Instead she had to travel to the nearest Telstra store, 6km away, to talk to someone at Telstra. She is partially disabled and needs assistance every time she visits the store. She has so far visited the store 7 times, and no one has been able to resolve this issue. Telstra are threatening to cut her phone line if she does not pay the bills, this is causing her an incredible amount of distress. In tears, Lucy wished that she had never switched provider.

Case Study 2: Frank's story

Frank migrated over to NBN last year. He found the experience frustrating and very time consuming. They have been Telstra customers for years and have stayed with Telstra in migrating to NBN.

They contacted Telstra in February 2019 to arrange the switch. They then received a modem in the mail from Telstra, and an NBN technician called in and confirmed that the NBN service was ready to connect and told them that Telstra would be in touch. There did not appear to be good liaison between Telstra and NBN in this process, and Telstra did not get in touch.

When they tried to connect using the modem supplied by Telstra, they were unable to do so. Frank spent hours on the phone trying to sort this out, sometimes for 1.5 hours, and this went on for days. No technician ever showed up from Telstra to help. Eventually Frank's son (who has ICT expertise) looked into it and identified that the modem was faulty. He then took the faulty modem into the local Telstra store, and received 2 modems by mail shortly after. He said that two other households in the area had the same problem. While Frank only lost his internet and phone connection for a day in this process, he says he would have been without a service for much longer without his son's intervention.

Frank took the better part of a week to resolve this issue, and notes that he couldn't have done this had he still been working. It took from the end of February to 18 March to resolve.