

Submission to the ACCC – ACCC inquiries into NBN access pricing and wholesale service standards

11 September 2020





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1 Summary

- 1.1 **nbn** welcomes the opportunity to respond to the ACCC's Consultation Paper on the two ACCC inquiries conducted in relation to **nbn**'s access pricing and **nbn**'s wholesale service standards (**Public Inquiries**).
- 1.2 Given the challenging year experienced by everyone in the telecommunications industry, and indeed, all Australians during the COVID pandemic, the uncertainty this has created and the increasing importance of fast, reliable and affordable broadband with so many people working and schooling from home, **nbn** believes that it is important to now finalise these inquiries so that we can move forward together to provide an even better customer experience.
- 1.3 With this in mind, **nbn** believes that the issues that have been the subject of the ACCC's Public Inquiries can best be resolved through the commercial measures that **nbn** has committed to include in the forthcoming update to our Wholesale Broadband Agreement (**WBA4**) should the ACCC determine this to be an acceptable resolution and decide to conclude both its Public Inquiries.
- 1.4 We welcome and support the ACCC's view that the WBA4 proposals we have made that relate to the Public Inquiries constitute reasonable access terms and remove the need for regulatory intervention.
- 1.5 The proposals in WBA4 will deliver better customer experience for all Australians, give RSPs greater certainty and simplicity, and ensure **nbn** is able to continue to invest in the maintenance and upgrade of the **nbn** network over time to respond to end user needs. Delivering these benefits as soon as possible will be achieved by the timely finalisation of the ACCC's Public Inquiries.

nbn's WBA4 proposal

- 1.6 In response to the issues raised by the ACCC and RSPs over the course of the Public Inquiries and the negotiation of WBA4, **nbn** has developed an integrated package of measures to address many of the ACCC's key concerns, after extensive consultation with the ACCC, as described in detail in Attachment 2 to the ACCC's Consultation Paper. This package is also intended to better align incentives as between **nbn** and RSPs so the whole industry is incentivised to improve the customer experience for end users and work together to resolve issues.
- 1.7 **nbn** has also been conscious of the need to balance its interests with those of different RSPs, the Government and end user groups. This inevitably involves a degree of compromise and one or more parties may feel that **nbn** has not met all their needs on specific issues. Our guiding principle has been to ensure that WBA4 provides the foundation for delivery of a better customer experience by **nbn** and RSPs and delivers long term benefits for end users.
- 1.8 We note that **nbn** has not adopted exactly the same positions that were outlined by the ACCC in its Position Papers on the Public Inquiries issued in April 2020. This is because **nbn** has voluntarily offered to deliver other benefits in WBA4 which were not the subject of the Public Inquiries, but still require significant investment by **nbn**. We believe our WBA4 proposal, which builds on the ACCC's positions, puts the right focus on the roles played by each part of the industry to deliver the best possible customer experience outcomes. Our approach balances the level of compensatory measures against those measures that drive longer term benefits for end users which will be valued for years to come.



- 1.9 In some cases, **nbn** has chosen to offer measures which will deliver a lasting improvement to the end user's experience on the **nbn** network ahead of higher rebate amounts. **nbn** provided a detailed list of these measures in the second table of Attachment 2 in the ACCC's Consultation Paper. Some examples include:
- (a) the new Service Health Summary test and diagnostic tool which will draw together the key metrics for a service in one place, using the best information available to **nbn** at the time, to help RSPs more quickly and effectively identify and resolve service issues experienced by end users when they contact RSPs;
 - (b) assurance appointments being made available six days per week for residential end users in urban areas to provide greater flexibility to end users and help manage demand for appointments on Mondays and Tuesdays;
 - (c) customer modem testing and performance information which helps prevent end user equipment degrading the end user experience, unbeknownst to either the RSP or the end user; and
 - (d) introducing a new Performance Incident framework intended to improve the management of services with performance issues, and reduce the likelihood of an end user being stuck in a "fix loop".
- 1.10 As the table in Attachment 1 to the ACCC's Consultation Paper which outlines the comparison between the current WBA3 position and WBA4 shows, **nbn**'s WBA4 proposal represents a step change improvement which will benefit RSPs and end users.
- 1.11 **nbn** considers that the overall package of significant enhancements proposed in WBA4 will resolve the key issues raised in the Public Inquiries by:
- (a) providing greater pricing certainty for end users migrating to the **nbn** network for the first time;
 - (b) giving RSPs the best information available to **nbn** at the time, on service performance to help manage expectations at the retail level regarding speed; and
 - (c) providing **nbn** with even stronger incentives to meet its service standards for connections, fault repair, appointment keeping, and network performance.
- 1.12 In summary, **nbn**'s proposal delivers the following key outcomes for RSPs and end users:
- (a) Increased CVC capacity available for **nbn**'s modified Entry Level Bundle discount (**mELB**) for a given wholesale price point, aimed at supporting the smooth migration of end users from legacy networks to the **nbn** network, committed through to 30 November 2022.
 - (b) Increased certainty for RSPs about future pricing for **nbn**'s key residential services through publication of a 2-year pricing roadmap.
 - (c) Permanent reduction of the Service Transfer charge from \$22.50 to \$5.
 - (d) Introduction of a billing solution to rebate charges to RSPs when a new service does not work after it is initially connected.



- (e) Introduction of new daily rebates where **nbn** does not meet its connections or fault rectification timeframes, rather than a one-off payment.
- (f) Increased rebates where **nbn** does not attend to end user appointments in the time window on the day the appointment, with rebates escalated if subsequent appointments are also missed.
- (g) A new PIR Objective rebate where a service does not meet the minimum speed objective if that service is provided over **nbn**'s FTTB/N/C networks, paid from the time when the relevant trouble ticket is acknowledged until the service is remediated to achieve the minimum speed objective, with the rebate escalating the longer it takes to resolve the issue.
- (h) Enhanced Site Qualification (SQ) and reporting information provided to RSPs to assist them in placing end users on suitable speed tiers that are supported by the capabilities of **nbn**'s FTTB/N/C networks. Where the SQ information is not available or proves to be inaccurate, **nbn** will provide a one-off rebate to contribute to the costs RSPs incur in managing this with their customers. This rebate will apply if the service is not able to achieve at least 50% of the maximum of the ordered speed range for that service, and if available, the assured rate indicated by **nbn** in the SQ information.
- (i) A new rebate where **nbn**'s fixed wireless network does not meet service performance targets for downstream throughput and backhaul transmission links.
- (j) Additional fixed wireless reporting commitments for RSPs.
- (k) For the rebates described above, and for all rebates other than for Enhanced SLAs and those related to Enterprise Ethernet services, **nbn** will automatically pay rebates to RSPs.
- (l) Enhanced reporting provided to RSPs to allow them to better manage their customers during connection and fault rectification activities.

1.13 The key milestone ahead of us now is to reach agreement as an industry on WBA4 and for the ACCC to close the Public Inquiries, so that the benefits of WBA4 can be realised for everyone. WBA3 expires on 30 November 2020 and we have the opportunity to move seamlessly to WBA4. Given the significant benefits that WBA4 will offer to end users and RSPs, our preference is that we now finalise WBA4 so that its benefits can begin to be delivered this year.

Commercial resolution of the ACCC's Public Inquiries delivers the best outcomes in a timely manner

1.14 **nbn** was created to build a national broadband network and bridge the digital divide, so that all Australians get the benefit of high-speed broadband at affordable prices regardless of where they live. **nbn** was also established to level the playing field in Australian telecommunications, to create real and vibrant competition within the industry and provide choice for consumers and businesses. The importance of **nbn** achieving these objectives has never been clearer than in 2020.

1.15 Prior to the challenges experienced in 2020, **nbn** had prioritised customer experience even where this involved a substantial short-term cost or revenue sacrifice. This was while **nbn** navigated the challenges of completing the initial network build and connecting over seven million premises to the



network. **nbn**'s investments in customer experience have paid dividends with significant improvements in customer satisfaction since 2018 for the benefit of not just **nbn** but all RSPs and end users.

1.16 In addition, **nbn** has materially improved key aspects of our pricing and discounting arrangements over the past 12 months, following extensive consultation with RSPs in 2019, including in relation to aspects of our successful TC-4 Bundles Discount arrangements which are available when RSPs order and associate existing eligible product components (CVC and AVC/UNI) with each other. These changes included:

- reductions in the effective charge for mELB in October 2019 and May 2020, with a further planned reduction in October 2020;
- increases in CVC inclusions for a number of bandwidth profiles in the TC-4 Bundles Discount in May 2020;
- the introduction of national pooling of CVC inclusions in May 2020 accompanied by significant increases in the Overage Waiver Threshold;
- simplification of CVC utilisation conditions in May 2020; reduction in effective charge and CVC inclusions for the 25/5 Mbps bundle discount in November 2019;
- increase in CVC inclusions for 50/20 Mbps bundle discount in May 2020; and
- introduction of new Higher Speed Tiers with higher CVC inclusions in May 2020.

1.17 Throughout 2020, **nbn** has invested significantly to upgrade the capacity and capability of our network, provided additional CVC capacity at no cost to RSPs, and made available significant relief packages to assist end users so that as many Australians as possible have access to the connectivity they rely on to be able to live and work in the extraordinary times we find ourselves in.

1.18 This is because **nbn** is, at its core, a customer-led service delivery company with strong commercial incentives to deliver the outcomes expected of us by all Australians.

1.19 As a wholesale-only service provider, entirely reliant on RSPs to market and sell our products, **nbn**'s inherent incentives are already strongly aligned with RSPs. However, in an effort to ensure that RSP and **nbn** incentives are even more closely aligned and drive a step change improvement in customer experience, **nbn** has proposed that RSPs pass through the fair value benefit of wholesale rebates to end users so that **nbn** and RSPs are both incentivised to ensure that service levels are met.

1.20 This alignment of incentives is the most effective way to ensure a good customer experience. And alignment is best served via commercially driven solutions (e.g. those proposed in WBA4) as the primary vehicle to address both current and any emerging issues with pricing and service delivery. This will best allow the market to evolve efficiently, for service standards and product differentiation to develop, and for **nbn** and access seekers to be incentivised to deliver services to end users with the performance that is expected.

1.21 The alternative to commercial resolution, regulatory intervention, is not justified in the current circumstances where **nbn** has already taken such significant steps voluntarily to proactively address concerns and pre-empt emerging issues. There must be clear evidence of market failure for such



intervention. **nbn** submits that this is not the case in relation to our pricing or wholesale service standards.

- 1.22 Indeed, as **nbn** has argued previously, there is strong evidence that regulatory intervention is not necessary and would be contrary to the long term interests of end users¹.
- 1.23 **nbn** submits that the long term interests of end users (**LTIE**) would be best served by **nbn** and RSPs agreeing, through commercial negotiations on WBA4, a set of commitments to be made by each of **nbn** and RSPs to undertake initiatives that will improve the experience of end users on the **nbn** network.
- 1.24 The WBA4 proposal that **nbn** has made to the ACCC in response to issues raised by the ACCC and RSPs does that. **nbn** welcomes the ACCC's view that this proposal would constitute reasonable access terms, and looks forward to finalisation and closure of the ACCC's Public Inquiries so that these commercial terms can be implemented in December 2020.
- 1.25 **nbn**'s submission is limited to providing some additional information to facilitate the finalisation of the ACCC's assessment process:
- (a) Section 2 provides some further context for our WBA4 proposal, additional details of the approach that **nbn** is proposing in relation selected aspects of our proposal in relation to pricing and wholesale service standards, and provides additional examples of WBA4 commitments that **nbn** is making which benefit RSPs and end users;
 - (b) Section 3 describes why **nbn**'s proposal is reasonable and therefore why commercial resolution of the issues raised in the ACCC's Public Inquiries should be preferred.

¹ See, for example, **nbn**'s *Submission to the ACCC – Draft Decision on the NBN Wholesale Service Standards Inquiry*, 13 November 2019, Sections 3 and 5.



2 Further details on **nbn**'s WBA4 proposal

Context for our WBA4 proposal

- 2.1 In developing the proposals included in the ACCC's Consultation Paper, **nbn** has considered issues raised by the ACCC in the course of its Public Inquiries, those raised by RSPs during WBA4 negotiations, as well as incorporating **nbn**'s own insights developed over time as we have deployed the network, brought end users onto it, and managed the ongoing delivery of the services we provide.
- 2.2 The measures described in Attachment 2 to the ACCC's Consultation Paper should be considered an integrated package of responses to issues raised in the Public Inquiries and should also be viewed in conjunction with the wider set of commitments in WBA4. That is, the commitments in our WBA4 proposal to the ACCC are not the only means by which **nbn** has been and will continue to deliver improved customer experience outcomes.
- 2.3 Some examples of these additional commitments in WBA4 which will benefit RSPs and end users in the longer term, but which are not directly related to issues raised by the ACCC in the Public Inquiries are shown in the separate table in Attachment 2 to the ACCC's Consultation Paper. Further examples are provided in paragraph 2.46 below.
- 2.4 These additional commercial commitments should be considered in assessing the reasonableness of **nbn**'s WBA4 proposal, as many of these items come at a significant cost to **nbn** and deliver significant benefits to RSPs and end users.
- 2.5 These are not commitments that **nbn** is obliged to make, but are investments **nbn** has proactively chosen to offer because we believe they will help improve customer experience and/or reduce costs and complexity for industry. As noted previously, **nbn** has been guided by customer experience in weighing up the appropriate ways to focus our investments.

Additional information on **nbn**'s WBA4 access pricing proposal

- 2.6 In this section, **nbn** expands on two key aspects of our access pricing proposal, to provide additional context on how they operate, and in support of the reasonableness of the access terms they deliver.

mELB price commitments

- 2.7 **nbn** has proposed an approach that would see the mELB effective charge reduce to \$24.70 at the commencement of WBA4 (following a reduction to \$26.60 in October 2020), with a further reduction to \$22.50 in May 2021 which would continue until November 2022.
- 2.8 **nbn** has proposed these future charges for mELB taking into account a number of factors. These include future data growth for mELB-supported retail services, other enhancements **nbn** has made to its pricing in 2020, and the interaction of mELB pricing with the broader ELB pricing construct.
- 2.9 In relation to the expected growth in data use for mELB, **nbn** notes that the ACCC has proposed there should be a 20% annual growth in CVC inclusions for mELB (at a total wholesale price of \$35). While **nbn** considers that, for mELB-supported retail services, such a growth rate overstates the historical and



likely future demand growth, we have largely reflected this in our WBA4 proposal and believe that it provides significant additional headroom for future growth for the foreseeable future.

- 2.10 This is particularly the case when considering the enhancements to CVC arrangements made by **nbn** in May 2020 which reduced the amount of CVC capacity that RSPs are required to pay for when acquiring services under the TC-4 Bundles Discount. Key elements of these enhancements include the introduction of National CVC Pooling (to replace the previous CSA-level pooling of CVC inclusions), and an increase of the Overage Waiver Threshold from 300 Mbps to 1.5 Gbps per CSA. In addition, **nbn** substantially simplified CVC utilisation conditions in May 2020 in response to feedback received from RSPs, reducing operational complexity, and likely reducing costs, for RSPs. This included simplifications to the CVC utilisation conditions themselves, the amounts payable when breaches occur, and the process by which RSPs can manage compliance with the CVC utilisation conditions. As a result of reducing the amount of CVC that RSPs are required to pay for, the effect of these changes is to reduce the future growth trajectory for the amount RSPs are required to pay for CVC (including for mELB) which means that a 20% growth rate for CVC inclusions for mELB is even more generous than it first appears, as RSPs will effectively be able to support a higher growth rate in CVC for the same total price.
- 2.11 It is also important to remember that CVCs acquired by RSPs and used to supply AVCs subject to the mELB discount are also used to supply other Bundled AVCs under the TC-4 Bundles Discount. CVC inclusions for any of these Bundled AVCs are pooled with CVC inclusions from other Bundled AVCs (including but not limited to mELB). Thus, to the extent there is surplus included CVC capacity from other Bundled AVCs that is not required to support those Bundled AVCs, that CVC capacity can be used in addition to the mELB CVC inclusions to support entry level retail services. As a result, in assessing **nbn**'s response to the ACCC's access pricing inquiry, mELB effective charges and CVC inclusions should not be considered in isolation from other services being acquired by RSPs.
- 2.12 However, directly implementing a 20% CVC growth rate for mELB creates practical implementation issues for **nbn**, given the current mELB discount construct. To deliver the ACCC's proposed outcome of a CVC growth rate of 20% p.a. for a total wholesale charge of \$35, **nbn** is required to reduce the "additional charge" that RSPs incur in respect of ELB AVCs associated with Bundled CVCs for which the Average Peak ELB Usage over the billing period exceeds 0.15 Mbps. As the target amount of included CVC capacity for a total wholesale charge of \$35 increases, the additional charge reaches a point where it becomes negative, resulting in an mELB charge that is less than the ELB charge, an outcome which is neither reasonable nor intended. Such an outcome can be avoided by reducing the additional charge over the period up to May 2021 by an amount that increases the CVC inclusions (for a total wholesale charge of \$35) at a rate greater than 20% p.a., and then "levelising" the mELB effective charge and CVC inclusion over the period from May 2021 to November 2022.
- 2.13 By "levelising" the effective charge for mELB, and hence the level of CVC inclusions at a total wholesale charge of \$35 over the period from May 2021 to November 2022, the following benefits are delivered:
- (a) Equivalence between the ELB and mELB pricing constructs will occur in May 2021, reducing the level of complexity for RSPs in managing 12/1 Mbps services;
 - (b) Additional CVC inclusions are brought forward in time to a period where significant service migrations from legacy ADSL services to the **nbn** network will be occurring; and



(c) Between May 2020 and May 2021, the effective CVC inclusion for mELB at a \$35 wholesale charge will increase from 1.1 Mbps to 1.7 Mbps, an increase of 56%.

2.14 While the WBA4 proposal will allow RSPs to provide significantly greater CVC inclusion for mELB-supported services, supporting increased usage by these end users, **nbn** notes that CVC capacity is not the only factor that determines end user performance outcomes. As the number of concurrent devices in use in a household increases, and/or end users attempt to access multiple streams of data, the AVC bandwidth itself (12/1 Mbps) will be fully utilised and will constrain throughput, irrespective of CVC capacity. At this point, the only solution to maintain or improve customer experience outcomes is to upgrade the speed tier being used the service the end user. **nbn** is aware of a growing number of cases in which AVC bandwidth (upstream and/or downstream) capacity appears to be limiting performance outcomes, and for which mELB pricing changes will not be the solution.

Pricing certainty

2.15 The WBA4 proposal provides significantly increased certainty for RSPs as to how **nbn** will be able to modify any discount arrangements that apply to our prices. It does so via an integrated package of commitments that work together to deliver improved certainty to both long-term discounts (e.g. the “bundle discounts” which apply to TC-4 AVCs and CVC inclusions) as well as shorter-term, more tactical discounts.

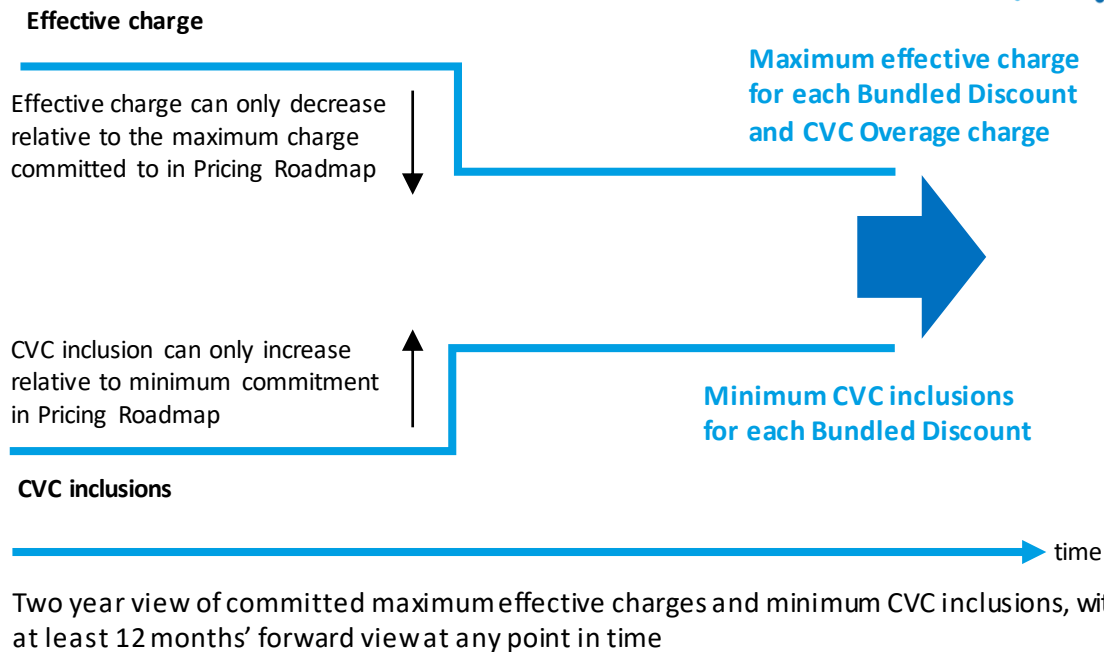
2.16 One of the central elements of this package is **nbn**’s commitment to publish a 2 Year TC-4 Bundles Discount Roadmap (the **Pricing Roadmap**), which will lay out **nbn**’s commitments over at least a 2-year period in respect of the following TC-4 Bundles Discount elements:

- the maximum TC-4 Bundles Discount effective charge and maximum CVC overage charges that apply to the AVC and CVC components over the coming 2 years;
- the minimum CVC capacity inclusions that make up the Bundles Discount over the same 2 years.

2.17 The Pricing Roadmap will at all times provide forward visibility of the elements described above for at least the next 12 months. While this means that at various times, the Pricing Roadmap will have less than 2 full years of forward commitments, when updated, the new Pricing Roadmap:

- will cover at least the 2-year period from the date of that update, and
- can only maintain or improve on existing effective charges or CVC inclusions already committed to for the remaining duration of the then current Pricing Roadmap.

2.18 The combined effect of these commitments is shown in the diagram below. This illustrates that the Pricing Roadmap provides clearly defined boundaries for the effective charges and included value which **nbn** cannot step outside. **nbn** can continue to offer improved conditions throughout the term of the Pricing Roadmap but cannot offer terms which are less favourable than those already committed to on the Pricing Roadmap.



2.19 **nbn** introduced the concept of the Pricing Roadmap as an outcome of its pricing consultation with RSPs in 2019. Since that time, **nbn** has effectively been operating under the terms of that Pricing Roadmap, providing increased pricing certainty for RSPs. WBA4 will enshrine these existing operating arrangements as contractual terms between **nbn** and RSPs. At the time WBA4 commences, the existing Pricing Roadmap (provided to RSPs in draft form on 4th September 2020) will become the Initial TC-4 Bundles Discount Roadmap, with **nbn** being subject to the conditions described above. The Initial TC-4 Bundles Discount Roadmap will specify the TC-4 Bundles Discount effective charges and CVC inclusions that apply to the end of April 2022, with the exception of the commitments around the Entry Level Bandwidth Profile, which are set out until the end of November 2022. The WBA4 commitments mean that by the end of April 2021, **nbn** is required to publish a new TC-4 Bundles Discount Roadmap that extends out **nbn**'s commitments to at least 24 months from the date of publication. This extension of the TC-4 Bundles Discount Roadmap will be done in consultation with RSPs.

2.20 As outlined in Attachment 2 to the ACCC's Consultation Paper, **nbn** also proposes to commit to the following for the term of WBA4 to provide certainty to RSPs:

- **nbn** cannot withdraw the mELB Discount.
- **nbn** cannot increase the effective charge or decrease the CVC inclusions in the TC-4 Bundles Discount relative to the 2-year Pricing Roadmap.
- To decrease the effective charge or increase CVC inclusions in the TC-4 Bundles Discount relative to Pricing Roadmap, **nbn** must consult with RSPs and provide at least 1 months' notice.
- To introduce a new TC-4 AVC bandwidth profile into the TC-4 Bundles Discount or to make operational process changes, **nbn** must consult with RSPs and provide at least 3 months' notice.
- To withdraw a bandwidth profile from the TC-4 Bundles Discount (other than mELB, which **nbn** is not permitted to withdraw), **nbn** must give at least 12 months' notice. This will be the subject of extensive consultation with industry and **nbn** must provide RSPs with a replacement proposition and information on migration of affected services. Any replacement proposition will offer at least equivalent value to the withdrawn TC-4 Bundles Discount bandwidth profile unless the underlying bandwidth profile is being withdrawn in accordance with the SAU.



- **nbn** must give RSPs at least 6 months' notice of any other changes, for example, if it has:
 - decreased the effective charge of a TC-4 Bundles Discount bandwidth profile below the Pricing Roadmap commitment and wants to increase it again (but cannot go beyond the Pricing Roadmap commitment), or
 - increased the CVC inclusions for a TC-4 Bundles Discount bandwidth profile above the Pricing Roadmap commitment and wants to decrease again (but not below the Pricing Roadmap commitment)
- If RSPs agree to amend the WBA to incorporate new pricing approaches, then **nbn** would be entitled to replace/enhance the Pricing Roadmap commitments.
- **nbn** would also be able to change the Pricing Roadmap commitments in response to a Regulatory Event as defined in WBA4, as well as to comply with applicable law, a Tax Change Event, and as necessary to comply with our non-discrimination obligations.
- The change rights for discounts, credits, rebates and waivers (**DCRWs**) are standardised and set out in the WBA4 Head Terms:
 - For Long-term DCRWs (initial term of greater than 6 months) **nbn** will provide a minimum 1 month's notice for RSP-Favourable changes; minimum 2 months' notice to extend the relevant DCRW and a minimum 3 months' notice for all other changes.
 - For Short-term DCRWs (initial term of 6 months or shorter) **nbn** will provide minimum 1 month's notice for all changes, and minimum 10 Business Days' notice to extend the relevant DCRW.
- All price terms and conditions, including DCRWs will be consolidated into the WBA4 Price Lists for each product or service within the WBA contract.

2.21 **nbn** believes that these changes will substantially improve the level of pricing certainty and simplicity enjoyed by RSPs. The effect of these safeguards acting together will also provide certainty that any replacement discounting proposition will offer at least equivalent value to the withdrawn bundle discount over the remainder of the term of the Pricing Roadmap.

2.22 If **nbn** were to introduce any new discount arrangements separate to the TC-4 Bundles Discount, the commitments in the WBA4 proposal have the effect that any such new arrangements will be offered either in parallel with the TC-4 Bundles Discount or offer at least equivalent value to them over the term of the then current Pricing Roadmap. If any new discounting arrangements offered in parallel with the TC-4 Bundles Discount did not offer at least the same value, then RSPs would not acquire them. Thus, any new discount arrangements cannot result in worse outcomes for RSPs during the term of WBA4.

2.23 **nbn** recognises that ongoing growth in data usage has been and will continue to be an issue for the whole industry. This growth reflects the additional utility that end users enjoy from their use of services on **nbn**'s network and raises the question as to how this increased value of the services should be "shared" by all parties (end users, RSPs and **nbn**). There is a cost to providing additional capacity to deliver this increased value, (e.g. transit costs or capacity for services like fixed wireless). **nbn** believes that the WBA4 commitments provide an appropriate balance between the interests of end users, RSPs and **nbn** by providing a clear and stable framework for the evolution of **nbn**'s wholesale charges while allowing **nbn** to ability to develop new approaches that respond to RSP and end user requirements.



Additional information on the WBA4 wholesale service standards proposal

2.24 In addition to the information included in Attachment 2 to the ACCC’s Consultation Paper, in this section **nbn** has expanded on four of the key elements in our wholesale service standards proposal, to provide additional context on how they operate, and in support of the reasonableness of the access terms they deliver.

Pass-through of rebates to end users

- 2.25 A key feature of the WBA4 proposal is that a number of rebates have provisions that require RSPs to take reasonable steps to ensure that impacted end users receive a “fair value benefit” of the relevant rebate (whether in monetary or other form). **nbn** believes that this requirement is reasonable, as it recognises the inconvenience caused to the end user and provides some measure of compensation for the inconvenience caused to them. This approach also ensures a better alignment of interests between **nbn** and RSPs to resolve the issue that gave rise to the rebate as soon as possible, as RSPs will not be the sole recipients of any rebates paid by **nbn**.
- 2.26 The requirement to pass on a “fair value benefit” does not apply to all rebates offered in WBA4. In the case of missed appointments, **nbn** believes it is appropriate that the *full* monetary value of the rebate paid by **nbn** to RSPs is passed onto the end user, to reflect the inconvenience caused by having to wait at home for a technician who does not show up. For the new rebate related to FTTB/N/C Connection Performance, WBA4 does not require this rebate to be passed onto end users, as it is intended to contribute towards the RSP’s cost of managing any retail plan changes that are required.
- 2.27 In relation to “fair value benefit” pass-through of rebates, **nbn** recognises that there are a variety of ways in which an RSP could reasonably choose to do so. Rather than being prescriptive about how this could be achieved, **nbn** will develop guidelines that will assist RSPs in developing their approach. **nbn** considers that reasonable principles that RSPs could apply in determining a “fair value benefit” include:
- (a) Affected end users should always receive a meaningful percentage of the value of the rebate paid by **nbn** to the RSP; and
 - (b) RSPs must not recover more than their direct costs of managing the incident that resulted in the rebate being paid, with the remainder of the rebate benefiting the affected end user.
- 2.28 The direct costs incurred by RSP might include routine costs, such as the RSP’s costs of contacting the end user in relation to the delay (e.g. to reschedule an appointment), through to more substantial costs, such as providing the end user with an interim service. The key feature of the direct cost principle proposed above is the causal relationship between **nbn**’s failure to achieve the relevant service level in respect of which the rebate was paid and the costs incurred by RSP.
- 2.29 To be clear, **nbn** is not suggesting that in all cases an end user would receive monetary compensation from an RSP. For example, if an RSP can provide an acceptable functionally equivalent alternative service while the **nbn** service is unavailable, it would be reasonable that the RSP uses the rebate paid by **nbn** to offset their costs of doing so.



Connections and end user fault rebates

- 2.30 **nbn** recognises that some of the rebates proposed in WBA4 are lower than those proposed by the ACCC, however **nbn** has invested in other areas which will reduce costs for RSPs and improve the customer experience for end users, delivering longer term benefits than compensatory payments.
- 2.31 In the case of both the connections and end user fault rebates, there are significant enhancements in WBA4 relative to the existing WBA3 rebates. In particular:
- (a) Rebates now accrue for each business day after the applicable service level is missed, rather than as a one-off rebate. This provides **nbn** with strong incentives to continue to act to resolve the incident once the service level is missed.
 - (b) The number of days for which a rebate will continue to be paid is greater than that proposed by the ACCC in their Draft FAD, thus maintaining **nbn**'s incentives over a longer period. We believe this longer "capping" period will better address any "long-tail" delays in conjunction with **nbn**'s case management process whereby **nbn** employs case managers, including to resolve aged connection orders (28 calendar days or more).
 - (c) Connection rebates will be extended to also cover Accelerated Connections.
 - (d) For both connections and end user fault rebates, higher rebates are payable in relation to Priority Assistance end users, recognising their reliance on access to telecommunications services, and providing **nbn** with incentives to prioritise their services.
 - (e) The end user service fault rebate of \$15 per business day for non-Priority Assistance end users is many multiples of the typical daily wholesale charge (e.g. for the 50/20 Mbps bandwidth profile, the discounted charge under the TC-4 Bundles Discount is \$45 per month, resulting in the average charge per business day being around \$2.25).
 - (f) Rebates will be payable in respect of services with TC-2 AVCs, not just those with TC-4 AVCs.
- 2.32 Consistent with previous submissions made by **nbn** throughout the ACCC's NBN Wholesale Service Standards Inquiry, **nbn** notes that the connections and end user service fault rebates are paid to RSPs irrespective of whether the Customer Service Guarantee (CSG) applies to those services. Thus, even if RSPs have required end users to waive their CSG rights as a condition of supply of the retail service (which the majority of RSPs do), **nbn** will pay these rebates, without RSPs having to lodge a claim. Thus, while **nbn**'s service fault daily rebate is similar to the quantum of the CSG rebate that applies for the first five business days (\$15 for non-Priority Assistance end users, vs \$14.52 for CSG), it is made available to a far wider set of end users than the CSG rebate is.



PIR Objective rebate

- 2.33 This measure was proactively raised by **nbn** prior to Phase 2 of the Wholesale Service Standard Inquiry being commenced as we recognise that **nbn** needs to lift the digital capability for all Australians and ensure everyone can access a fast, reliable and secure broadband service. This aligns with the broadband policy objectives identified for **nbn** in its current Statement of Expectations².
- 2.34 **nbn** accepts that where a service is unable to meet the PIR Objective (12/1 Mbps when co-existence with legacy networks applies or 12/1 is the ordered speed tier; or 25/5 Mbps, including after the co-existence period) or a specified PIR (in the case of FTTC services with an ordered speed tier of 25/10 Mbps or higher only), there should be an appropriate response to address the issue. Where **nbn** has identified that the issue lies on its network (rather than on the RSP's network, or as a result of issues with the end user's premises), and has designated that service for remediation under a Network Activity, a rebate will be payable under WBA4 until the service is remediated by **nbn** and performs above the PIR Objective.
- 2.35 An important part of the WBA4 proposal for the PIR Objective rebate is that the RSP must first raise the potential underperformance of a service via a Trouble Ticket lodged with **nbn**. Without this Trouble Ticket, **nbn** is not in a position to undertake the steps necessary to investigate the underlying cause of the performance issue and confirm it lies within the boundaries of **nbn**'s network. Before raising a Trouble Ticket, RSPs are expected to conduct initial troubleshooting to eliminate potential issues on their network or with the end user's equipment.
- 2.36 Once **nbn** has Acknowledged the Trouble Ticket, it will investigate the underlying cause of the underperformance. If it is identified that the cause is within **nbn**'s network, **nbn** will notify the RSP accordingly and mark the Trouble Ticket as accepted. Where the issue lies outside **nbn**'s network boundaries, or no issue is found, the Trouble Ticket process may also mark the ticket as no fault found.
- 2.37 However, if **nbn** determines that there is an issue with its network, **nbn** may designate that it requires a Network Activity (currently described as Remediation in WBA3) rather than standard fault rectification, which could include activities such as replacing damaged or faulty cabling within **nbn**'s network, or implementing a different access technology. Having designated the service as subject to a Network Activity, the PIR Objective rebate is triggered, and will accrue from the time that **nbn** Acknowledged the Trouble Ticket. This means that the time spent by **nbn** investigating the cause of the service issue prior to the Network Activity will be included in the calculation of the rebate amount, providing **nbn** with incentives to act in a timely manner.
- 2.38 The monthly rebate amount paid by **nbn** while the service does not meet the PIR Objective or specified PIR (in the case of FTTC) and remains subject to a Network Activity will also increase over time, ultimately reaching a level of \$20 per month if the service has been eligible for more than six months. This provides strong incentives on **nbn** to continue working to address the underlying issue and complete the Network Activity in a timely manner.

² **nbn** Statement of Expectations, 24 August 2016. "The Government expects the network will provide peak wholesale download data rates (and proportionate upload rates) of at least 25 megabits per second to all premises"



Speed performance information

- 2.39 In their Draft FAD, the ACCC proposed that **nbn** should pay rebates for services that have a maximum attainable downstream speed of less than 50 per cent of the maximum speed specified by the wholesale speed tier (i.e. if the wholesale AVC speed is expressed as a range such as 25-100 Mbps, the rebate would be payable if the maximum attainable speed was less than 50 Mbps). In part, **nbn** understands a key concern of the ACCC is to address situations “...where maximum and typical busy period speeds do not meet the level customers were advised to expect when signing up to a service.”³
- 2.40 The measures included in our WBA4 proposal seek to address this concern by appropriately allocating responsibility for the issue between **nbn** and RSPs. WBA4 places the responsibility on **nbn** for providing reliable information about the speeds that can be expected from a service on **nbn's** FTTB/N/C networks, and the responsibility for selling a retail service based on that information on RSPs. Where available, **nbn** will provide historically supported speeds for a copper pair through Site Qualification (SQ), including a new “Assured Rate” parameter. If an Assured Rate is not available in an SQ prior to connection, or proves to be inaccurate (i.e. the service cannot achieve the Assured Rate), and as a result of that missing or inaccurate information, the RSP selects a service it thinks is available, but is subsequently unable to perform above 50 per cent of the maximum wholesale speed specified by that bandwidth profile (for FTTB/N/C speed tiers with a maximum peak downstream speed (or speed range) of 50 or 100 Mbps), **nbn** will pay a one-off rebate to the RSP to contribute to the cost of resolving the issue with their end user. However, if an RSP has access to information provided by **nbn** about the expected performance capability of a service prior to selling it to an end user, and chooses to sell a service which is above the expected capability of that service, no rebate is payable by **nbn**.
- 2.41 This approach provides RSPs with the flexibility to purchase higher speed tiers than the underlying access line is capable of supporting, for reasons that may include accessing higher CVC inclusions for that higher speed AVC, or to construct a retail plan that is “shaped” in some way compared to the raw wholesale AVC speed, as a means of differentiating their product offering.
- 2.42 **nbn** considers that WBA4 delivers a fair and reasonable approach which enables RSPs to make informed choices when dealing with their end users. Under this approach, the RSP either receives the information from **nbn** it needs before placing a connection order (and can make an informed choice up front as to what bandwidth profile to order). Alternatively, in the absence of that information, **nbn** will pay a rebate to contribute to the costs incurred by the RSP in managing the end user in accordance with the ACCC’s Broadband Speed Claims Industry Guidance where the line cannot achieve the peak wholesale speed threshold specified in WBA4 for the FTTB/N/C bandwidth profiles with a maximum peak downstream speed (or speed range) of 50 or 100Mbps.
- 2.43 Importantly, RSPs have the ability to manage their customers as they see fit, which enables RSPs to operate consistently with the ACCC Broadband Speed Claims Guidance. The one-off rebate with no pass-through requirement provided by **nbn** also allows RSPs to differentiate how they address any issues of compensation/remedy for end users when purchased speeds cannot be delivered. This encourages competition by enabling RSPs to develop unique solutions for their end users.

³ ACCC Draft Decision on NBN Wholesale Service Standards Inquiry, October 2019, section 4.1.5.1



Further WBA4 commitments which benefit RSPs and end users

- 2.44 **nbn** submits that it is the totality of end user and RSP improvements offered in WBA4 that is relevant to consideration of the reasonableness of **nbn**'s WBA4 proposal, not just those terms that directly address the matters raised in the Public Inquiries.
- 2.45 Attachment 2 to the ACCC's Consultation Paper includes a detailed table of additional WBA4 commitments which will be offered by **nbn** as part of WBA4. This includes measures such as:
- Access to a new Service Health Summary test and diagnostic tool;
 - 6-day per week assurance appointments for residential end users in urban areas;
 - RSPs able to cancel, reschedule or update appointments up to 4 hours prior to time;
 - Customer modem performance information and RSP modem testing;
 - Simplified CSG compensation claims process; and
 - Improved WBA-related communications.
- 2.46 In addition to the measures described in Attachment 2, **nbn** is making further commitments in WBA4 which benefit RSPs and end users, as described below:

Item	Benefit
Increasing the FTTC PIR Objective	nbn proposes to increase the PIR Objective for nbn services over the nbn FTTC network to at least double what it is now. This means nbn will assure services based on an expected peak information rate of 50/20 Mbps for ordered bandwidth profiles of 50/20 Mbps and above (under WBA4), rather than 25/5 Mbps (as is the case under WBA3).
Expanded scope of works for Professional Wiring Isolations	In order to provide RSPs with a more comprehensive service offering to resolve internal wiring issues and to support RSPs who wish to supplement their existing workforce or don't otherwise maintain a workforce who could conduct these works, where an RSP orders a Professional Wiring Isolation nbn proposes to expand the scope of works conducted by nbn to include isolation of wiring beyond the first telecommunication outlet and relocation of telecommunication outlet(s). These changes better align the scope of a Professional Wiring Isolation (applicable to FTTC) and the scope of a Professional Splitter Installation (applicable to FTTN/B). This has enabled drafting simplifications in the contract.
Expansion of RONI processes	nbn proposes to expand the current Risk of Network Impact (RONI) process to include a Risk of Service or Network Impacts (ROSNI) process to help alert RSPs to potential risks our systems identify to their services and not just the nbn network.
Validation of Enterprise Ethernet Trouble Tickets	nbn proposes to provide RSPs with 1 Business Day to validate the resolution of an Enterprise Ethernet Trouble Ticket prior to closure. Under WBA3 Enterprise Ethernet Trouble Tickets are automatically closed once resolved.
Clarifying Co-Ordinated Appointments definition	nbn proposes to clarify how Co-Ordinated Appointments are set out in the nbn Operations Manual so that RSPs are better informed to make choices on what Appointments are available and what best suits their needs.
Improved Trouble Ticket closure process and associated codes:	nbn proposes to provide more granular, supplementary information to RSPs in respect of the trouble ticket resolution, to assist the RSP in understanding the next best action or the specifics of information to communicate with end users, as well as manage compliance with retail contracts and regulations.



3 The WBA4 proposal promotes the LTIE and is reasonable

nbn supports the ACCC's views on the reasonableness of the WBA4 proposal

3.1 The ACCC's Consultation Paper outlines the ACCC's views on why it considers **nbn's** WBA4 proposal in relation to the matters which are the subject of their Public Inquiries would promote the long-term interests of end users (LTIE) and constitute reasonable access terms. **nbn** supports the positions expressed by the ACCC in the Consultation Paper in relation to their assessment of the reasonableness of **nbn's** WBA4 proposal, which can be summarised as:

- (a) The criteria used to assess the reasonableness of **nbn's** WBA4 proposal should be applied to the totality of the proposed measures, rather than to assess each component measure individually.
- (b) The analysis of reasonableness is made over a 2-year timeframe, consistent with the duration of the proposed access terms in WBA4.

Pricing

- (c) Consideration of price related matters is undertaken on a "with and without" basis (i.e. the prices that would apply with and without **nbn's** proposed WBA4 terms).
- (d) The WBA4 pricing measures will decrease the costs and improve the quality that can be supplied using 12/1 Mbps and other services to end users. ADSL end users transitioning to the **nbn** network will be the key beneficiaries.
- (e) RSPs specialising in the supply of 12/1 Mbps services should find it easier to compete due to the lower costs of mELB, which should also promote a competitive response by other RSPs, including those supplying services by competing fixed wireless and mobile networks.
- (f) The pricing measures should lead to an improvement in any-to-any connectivity.
- (g) The pricing measures should encourage the efficient use of **nbn's** infrastructure by encouraging greater take-up of entry level services on the network, and by reducing uncertainty over future pricing and simplifying the operation of some price-related terms.
- (h) The proposed price-related measures do not undermine **nbn's** legitimate business interests, although they will likely limit the revenue yields that **nbn** can earn from entry level products.
- (i) The mELB pricing and pricing certainty measures will lower the costs and/or improve the quality of **nbn** services provided to RSPs, which should allow them to improve their margins or pass on savings to end users.
- (j) The pricing arrangements should allow **nbn** to recover the direct costs of providing access and are well below the cost **nbn** is allowed to recover in its SAU, and thus does not allow **nbn** to recover monopoly profits.



Service levels

- (k) The WBA4 proposal for service levels significantly improves the clarity of the current service level commitments and provides a clear timeframe for the implementation of the proposed service standards.
- (l) The proposed WBA4 terms improve on the allocation of risk and responsibility between **nbn** and RSPs by clarifying and expanding **nbn**'s service level commitments.
- (m) The proposed WBA4 access arrangements provide greater incentives for **nbn** to improve its service outcomes by increasing its rebate liability if it fails to meet its service commitments through the introduction of rebates that increase over time.
- (n) The WBA4 proposal is a marked improvement over current WBA terms and will set the baseline for future commercial negotiations.
- (o) Improvements to the structure of **nbn**'s rebates and increased incentives on **nbn** to meet its service commitments should result in better overall performance.
- (p) Improved service levels at the wholesale level will enable RSPs to support better service outcomes for consumers in a competitive retail market.
- (q) Consumers will benefit from the operational arrangements in the WBA4 proposal to improve reporting, as RSPs will be better able to manage consumer experiences.

3.2 The positions expressed by the ACCC in the Consultation Paper support **nbn**'s view that the arrangements in our WBA4 proposal that respond to the issues raised in the Public Inquiries are reasonable and promote the LTIE. We have previously provided detailed views⁴ on whether a commercially led approach would better promote the LTIE than regulatory intervention in general, and we believe that the current WBA4 proposal specifically does so. In this section we provide a few additional comments in support of our position.

A commercially led solution best promotes the LTIE

- 3.3 The LTIE is best promoted by allowing the market to evolve efficiently, with downstream differentiation being allowed to develop, and the alignment of incentives between **nbn** and access seekers allowing good service outcomes to be achieved effectively and efficiently. In the absence of any demonstrated market failure, allowing parties to commercially negotiate terms of access is likely to be inherently more effective at promoting the LTIE.
- 3.4 Such commercially led negotiations allow for better alignment of the parties' interests and incentives, ensure that any operational or commercial constraints are addressed, and allow for "trading" of value across multiple commercial domains. Most importantly, commercial solutions are more likely to efficiently and effectively improve customer experience. **nbn** has previously provided more detailed

⁴ See, for example, **nbn**'s *Submission to the ACCC – Draft Decision on the NBN Wholesale Service Standards Inquiry*, 13 November 2019, Sections 3 and 5.



arguments in relation to the benefits of commercially led solutions⁵, which remain relevant, and which should be read in conjunction with this submission.

- 3.5 **nbn**'s WBA4 proposal to the ACCC in relation the matters in their Public Inquiries, in conjunction with the many other commitments offered in WBA4, effectively addresses issues that have been raised by RSPs and the ACCC, without introducing the potential distortions that can result from regulatory intervention.

The development of WBA4 demonstrates that there is no market failure justifying regulatory intervention

- 3.6 **nbn** submits that the WBA4 proposal, which the ACCC currently considers provides reasonable access terms, demonstrates that there is no market failure which justifies regulatory intervention.

- 3.7 In particular, **nbn** notes the following points in support of the absence of market failure in the development of the terms of WBA4:

- (a) there does not appear to be any evidence presented that **nbn** has adopted an inappropriate or excessively resistant posture in respect of any customer experience focused proposals put forward by RSPs during the course of WBA4 negotiations;
- (b) the terms offered by **nbn** in WBA4 have evolved over a considerable period of time, in response to feedback from both the ACCC and RSPs, reflecting **nbn**'s willingness to engage in commercial negotiations across a wide range of issues. In the course of multilateral negotiation with RSPs over the past year, **nbn** has engaged in five rounds of consultation with RSPs on WBA4 concepts, four rounds of negotiations on contractual terms, and has considered over 250 different items of feedback from RSPs, resulting in over 60 beneficial changes for RSPs relative to current WBA3 terms; and
- (c) while the terms in the WBA4 proposal are not the same as those proposed in the Draft FAD, these differences do not mean that there has not been an appropriate balance between the interests of RSPs and **nbn**. The terms of WBA4 include measures beyond those that respond directly to the matters in the Public Inquiry, which strike an appropriate balance across the totality of WBA4 terms.

- 3.8 In contrast to the outcomes of commercial negotiations, regulatory intervention would have the effect of significantly hampering the ability of **nbn** and RSPs to develop commercial positions which efficiently and effectively improve customer experience for end users using services supplied by **nbn**.

⁵ See **nbn**'s submissions:

(1) *Submission to the ACCC – Discussion Paper on NBN Wholesale Service Standards*, 2 March 2018, section 2.3;

(2) *Submission to the ACCC – Second Discussion Paper on NBN Wholesale Service Standards*, 1 March 2019, section 1.1.3



nbn's incentives will continue to drive improved outcomes for RSPs and end users

- 3.9 **nbn** submits that the market dynamics in the wholesale telecommunications market mean that **nbn** has considerable inherent incentives to remain focused on, and invested in, delivering improved outcomes for end users.
- 3.10 **nbn** has previously provided our detailed views on the operation of our existing incentives⁶, which remain relevant and should be read in conjunction with this submission. In summary:
- (a) **nbn** is already subject to competitive pressures, which incentivise **nbn** to optimise customer experience on our network to improve **nbn's** ability to recover the very significant upfront investments made in rolling out the network. These include:
 - (i) the risk of end users delaying their migration from legacy copper and HFC networks to the **nbn** network (which has significant revenue consequences for **nbn**);
 - (ii) the risk of mobile and fixed wireless access substitution; and
 - (iii) the risk that end users will acquire lower-value services if the network does not perform well or is not competitively priced;
 - (b) **nbn** negotiates the terms of the WBA with counterparties who include large, sophisticated entities, able to wield significant bargaining power in those negotiations with **nbn**;
 - (c) over the course of each WBA negotiation, **nbn** has made significant commitments on items of importance to access seekers to obtain the agreement by all parties to the WBA terms;
 - (d) **nbn** has implemented significant initiatives over many years to improve customer experience on the **nbn** network; and
 - (e) as the volume rollout of **nbn's** network has now been completed, **nbn** will have even greater capacity to progress its customer experience initiatives.

⁶ See **nbn's** submissions:

(1) *Submission to the ACCC – Discussion Paper on NBN Wholesale Service Standards*, 2 March 2018, section 1.3;

(2) *Submission to the ACCC – Second Discussion Paper on NBN Wholesale Service Standards*, 1 March 2019, section 1.1.2