



Supplementary Submission to the ACCC – Discussion Paper on NBN Wholesale Service Standards

8 June 2018

Public Version



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Supplementary Submission

This Supplementary Submission is provided in response to submissions lodged in March 2018 to the ACCC's "Inquiry into NBN wholesale service standards" (the **Inquiry**), as described in the discussion paper published by the ACCC in December 2017 (the **Discussion Paper**). In particular, **nbn** wishes to provide some comments in response to submissions made by Optus and Telstra, as claims are made in those submissions that **nbn** considers are either inaccurate or do not present the entire story about how **nbn**'s service standards actually operate.

While **nbn** has provided detailed responses to certain statements made in Optus and Telstra's submissions, this does not mean that **nbn** accepts the remainder of arguments presented in their (and other) submissions. Rather, the points we address here are targeted specifically at *factual* errors (rather than just matters of opinion) which **nbn** believes must be corrected to ensure the ACCC's consideration of **nbn**'s wholesale service standards is based on an accurate and complete understanding of how **nbn**'s service standards actually operate. **nbn** may provide additional material on submissions made as the ACCC's Inquiry progresses.

The table below provides **nbn**'s detailed response to specific statements made in the Telstra and Optus submissions, and indicates, where applicable, the relevant section of **nbn**'s submission lodged with the ACCC in March 2018 (**nbn's Submission**) that also addresses these points in greater detail.

More broadly, **nbn** would like to reiterate points raised in section 3.4.1 of **nbn**'s Submission about the negotiation process between **nbn** and RSPs, and the outcomes of that negotiation:

Just because an RSP has raised a 'concern' with the ACCC does not mean that negotiation was ineffective or unsuccessful (or that there was any imbalance of bargaining power). A negotiation should not be considered somehow ineffective or unsuccessful simply because one or other party to the concluded agreement would have liked to extract more from the other party. An RSP may be engaging in some commercially rational regulatory 'gaming'. The ACCC should test any unsubstantiated assertions about the manner in which the negotiation of WBA3 was conducted and inquire into the nature of an RSP's participation (or lack thereof) in those negotiations.

Professor Cave described the differences which might exist between RSPs as follows:

"Negotiating the service quality levels clearly takes some time and involves RSPs with preferences which no doubt differ. But I can see no reason why they should fail because of the complexity in the negotiations. This has not occurred in the past.

As indicated, I do not find, on the evidence available to me, that a market failure associated with unequal bargaining power has been proven and that regulation of service standards will encourage economically efficient use of, and investment in, infrastructure" (p. 33 [of Professor Cave's expert report]).

The issues raised by Telstra and Optus which we are responding to in this Supplementary Submission reflect their belief that they did not get everything they wanted to from the WBA3 negotiations. As argued below, **nbn** does not accept that the positions put by Telstra and Optus are necessarily accurate or reflect the entire set of arrangements in WBA3, but even if their issues were an accurate reflection of the operation of WBA3, this is not evidence of the negotiation process having failed. Rather, it would represent that commercial negotiation is a process of compromise between the parties, with neither party getting everything they want. Ultimately, the test of the negotiation process is whether parties have ultimately been comfortable enough with the terms of the agreement to execute it, which both Telstra and Optus (and all of **nbn**'s other customers) have done.



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			<p>rectification are 24 hours a day, 7 days a week, as set out in section 20.1(b) of the nbnTM Ethernet Service Levels Schedule. nbn's Service Levels in this area ensure that faults relating to services that are critical to end-users are resolved in a timely manner without the potential for delays, regardless of the time of day when the RSP lodges the relevant Trouble Ticket.</p> <p>The example provided by Telstra does not therefore represent nbn's Service Levels accurately, as it is only correct in respect of Service Levels for rectification of End User Faults, which have operational hours of 8am to 5pm Monday to Friday.</p> <p>The introduction of the 2 hour Service Level from Trouble Ticket Acknowledgement to Acceptance in WBA3, has seen the Mean Time to Restore (MTTR) decrease substantially [c-i-c].</p> <p>The responsibility for nbn to assess a Trouble Ticket submitted by a Customer by committing to this 2 hour Service Level has contributed to the improvement in the time it takes nbn to rectify an End User Fault.</p> <p>[c-i-c]</p>
3.	Page 13	<p><i>"If NBN Co does rectify the end-user's fault on Friday it will appear to have met its service level, yet the end-user has received a worse experience through delayed fault rectification and the RSP may be liable to the end-user for CSG compensation because NBN Co's service level measurement does not support the expected CSG timeframes."</i></p>	<p>Telstra submits that because nbn's service levels in respect of Service Fault rectification commence from the time of Trouble Ticket Acceptance and nbn's Service Levels applicable to Trouble Ticket Management only apply during Operational Hours, nbn's service levels do not support the CSG timeframes applicable to an RSP.</p> <p>This statement (in the context of the example provided by Telstra) implies that in such a scenario, an RSP is unable to claim reimbursement of the CSG damages that it paid to an end user.</p> <p>This is incorrect, as nbn's obligation to pay CSG Compensation under the nbnTM Ethernet Service Levels Schedule <u>does not depend on whether nbn has achieved an applicable WBA Service Level</u>. Under section 17.1 of the nbnTM Ethernet Service Levels Schedule, nbn's obligation to pay CSG Compensation is triggered if the RSP's obligation to pay CSG damages to an end-user is caused or contributed by nbn's act or omission (and whether a Service Level is achieved is not itself determinative of the claim).</p> <p>Perhaps more importantly, Telstra's comment misses or minimises the role of the RSP in co-ordinating the resolution of Service Faults. See the data and explanations in sections 3.4.5 and 4.3 of nbn's Submission regarding the reason that we have introduced the Trouble Ticket management process and the end-user experience benefits that we expect it will deliver.</p>



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4.	Page 13	<p><i>"As illustrated by the example above, the effect of the two-hour service level is to worsen the experience of the end user and conversely reduce the amount of assurance rebate and CSG compensation that NBN Co will be liable to pay. This outcome is clearly not in the best interests of customers."</i></p>	<p>Telstra suggests that due to the introduction of the Trouble Ticket management Service Level and the change in the commencement of the End User Fault rectification Service Level from the time of Trouble Ticket Acknowledgement to Trouble Ticket Acceptance worsens the end-user experience and reduces the amount of the rebates and CSG Compensation payable by nbn.</p> <p>This statement is inaccurate because:</p> <ul style="list-style-type: none"> As set out above, in the example provided by Telstra, nbn would still have to pay CSG Compensation to the RSP regardless of whether nbn achieves its contracted service levels (provided the relevant conditions for the payment of CSG Compensation in the nbnTM Ethernet Service Levels Schedule are satisfied) - the introduction of a 'two-hour service level' doesn't itself cut across or reduce the CSG Compensation payment obligation. The example provided is not an appropriate example, because it refers to a worst case scenario, being that a trouble ticket for a service fault is lodged at 3.30pm, and nbn does not accept it until 8.30am on the next Business Day. The two-hour service level represents the expected "upper bound" of nbn's response time, not the expected outcome for each end-user. In practice, nbn's response time for accepting trouble tickets, and therefore 'starting the clock' on the rectification service level' is approximately [c-i-c].
5.	Page 14	<p>Telstra provides the Warrnambool Exchange fire as an example of an event that could (and did) lead to the payment of compensation to end users and compares Telstra's compensation package to what nbn would be contractually required to pay under the WBA's Material Service Failure regime.</p>	<p>Telstra submitted that the compensation scheme it established in respect of the Warrnambool Exchange fire resulted in a better outcome for end users than that which would have been achieved under nbn's Material Service Failure regime.</p> <p>This example is not an appropriate comparison, as Telstra's payment of compensation in that instance was not pursuant to a <i>contractual</i> obligation under its supply agreements to pay end users compensation through its "compensation scheme".</p> <p>The availability of a "compensation scheme" in respect of a particular event is entirely at discretion of Telstra. [c-i-c].</p> <p>In other instances of widespread network outages, Telstra did not provide monetary compensation to end-users at all, but rather provided free data. See section 6.3.4 of nbn's Submission.</p> <p>It is not appropriate to compare a <i>discretionary</i> ex gratia compensation scheme established in relation to a specific event to a <i>contractually enforceable</i> liability provision. If Telstra has contractually enforceable liability provisions, these would be the relevant point of comparison to those provided by nbn under WBA3.</p> <p>Were similar circumstances to arise, it would of course be open to</p>



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			<p>nbn (entirely at its discretion and taking into account all relevant factors) to make ex gratia compensation payments as Telstra did via its "compensation schemes".</p>
6.	Page 15	<p><i>"The WBA3 includes provisions that <u>require RSPs to flow down 'model terms'</u> to all their downstream customer contracts, effectively barring end customers from bringing a claim against NBN Co. <u>If RSPs do not flow down these model terms, then they effectively indemnify NBN Co for claims made against it.</u> In practice, this means that if an RSP cannot flow down such drafting for whatever reason (such as agreements that are already on foot and cannot be reopened, or negotiated agreements with larger enterprise and government customers), <u>the RSP gives NBN Co an uncapped indemnity for all losses suffered by NBN Co for a claim brought against NBN Co by an end customer.</u>"</i> [emphasis added]</p>	<p>Telstra's submission suggests that RSPs are contractually obliged under WBA3 to flow down model terms to end users to bar claims against nbn or otherwise effectively provide an uncapped indemnity to nbn for claims brought against it by end users.</p> <p>As set out in section 6.3.1 of nbn's Submission, clause E2.5(a)–(e) creates the obligation for RSPs to protect nbn against liability to end users and downstream service providers in respect of pure economic loss which end users may suffer from failures of nbn's network, to the extent that RSPs can lawfully elect to exclude or limit such liability.</p> <p>Telstra's description of the downstream indemnity mechanism in the WBA Head Terms is incorrect for the following reasons:</p> <ul style="list-style-type: none"> The model undertaking is only one method by which RSPs can discharge the obligation under clause E2.5(a)–(e), and nbn does <i>not</i> mandate the use of the model undertaking. RSPs may use it or employ an alternative formulation of the model undertaking, or select another mechanism altogether, to exclude or limit nbn's exposure to claims from downstream parties for pure economic loss arising from failures of nbn's network. However, if an RSP does not take appropriate measures or chooses not to (as is their prerogative), nbn does require the RSP to indemnify nbn for the losses it suffers which the RSP could have excluded or limited. This reflects the principle that the party best able to manage the risks that may arise from an event should bear liability for that risk arising. This is further explained in section 6.3.1 of nbn's Submission. To say that an RSP gives nbn an uncapped liability "for all losses" is incorrect. The clause only protects nbn from downstream parties' claims in respect of pure economic loss. nbn remains liable to downstream parties for losses caused by network failures other than pure economic losses. For example, nbn would be liable to both its RSPs and to end users for damage to, and loss of, tangible property, and death or personal injury caused by network failures and will remain liable in respect of certain statutory causes of action, such as for misleading or deceptive conduct, which, by their nature, cannot be excluded by means of contract. This point is further explained in section 6.3.2 of nbn's Submission.
7.	Page 18	<p><i>"As noted elsewhere in this submission, Telstra has never been able to successfully claim reimbursement of CSG compensation from NBN Co."</i></p>	<p>[c-i-c].</p>



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8.	Page 23	<p><i>"With respect to the performance objectives for network availability, Telstra has no objections to the 99.90% target, however, concerns can arise from the actual calculation of network availability. <u>This is because there are a number of exclusions that apply to the calculation that could lead to the network availability being overstated.</u>" [emphasis added]</i></p>	<p>Telstra’s submission suggests that the calculation of Network Availability may be overstated due to exclusions applicable to its calculation.</p> <p>This statement contains no explanation as to which exclusions Telstra is concerned about or why the exclusions 'could' lead to Network Availability being overstated.</p> <p>Pursuant to section 14.1(c) of the nbnTM Ethernet Service Levels Schedule, Network Availability is calculated as follows:</p> <div style="text-align: center; border: 1px solid black; padding: 10px; margin: 10px 0;"> $\frac{(\text{Measurement Period} - \text{Unavailable Time})}{\text{Measurement Period}} \times 100$ </div> <p>Under this calculation, Unavailable Time means where TC-1, TC-2 and/or TC-4 connectivity between the NNI operating in chassis-diverse mode and the nbnTM Downstream Network Boundary is Lost.</p> <p>Section 14.2 provides a number of exceptions to the calculation of Network Availability. It is not clear if these are the exceptions Telstra refers to or why it believes these exceptions would allow Network Availability to be overstated. In nbn’s view, the exceptions set out in this section are reasonable and would not have the effect of inflating Network Availability.</p> <p>The exclusions, based on nbn’s experience, are quite standard terms. [c-i-c].</p>
9.	Page 27	<p><i>"There are no other measures in place besides the connection fault rebates to deal with individual cases of poor performance regarding end-user connections and service faults."</i></p>	<p>Telstra submits that, apart from connection fault rebates, there are no other measures in place to deal with individual cases of poor performance in respect of end-user connections and service faults.</p> <p>This is incorrect, because the following measures are in place under the WBA to deal with individual cases of poor performance:</p> <ul style="list-style-type: none"> • If more than three End User Faults occur in any 60-day period in respect of the same end user, nbn commits to taking additional steps (section 5.2.7.3 of the WBA Operations Manual). This issue is also addressed in Annexure B.4 of nbn’s Submission. • For technically complex faults, nbn may provide technical bridge calls for Service Restoration Trouble Tickets to co-ordinate incident and problem resolution with an RSP’s technical staff (section 5.2.12 of the WBA Operations Manual). <p>As set out in section 5 of nbn’s Submission, apart from the measures set out above and the Connection Rebate, nbn is taking other initiatives to drive service performance including Program FoCX initiatives, public performance reporting, a focus on aged connection orders and a pause on HFC activations.</p>



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10.	Page 33	<p><i>"Retail contracts do not currently reflect NBN service standards because the majority of service levels set out in WBA3 are aspirational, non-binding targets only.</i></p> <p><i>[...]</i></p> <p><i>[T]he end-user fault rectification appointment service levels specified in the <u>WBA3 service levels schedule</u> are <u>aspirational and non-binding only</u>. There are no rebates associated with the non-binding targets. Telstra does not believe that flowing through nonbinding, aspirational service targets to end-user customers is helpful, and merely creates confusion and disappointment for end users when targets are not met." [emphasis added]</i></p>	<p>Telstra submits that the majority of nbn's service levels are aspirational and non-binding. This is incorrect and appears to suggest that a Service Level is only binding if it has a rebate associated with it.</p> <p>Under sections 1.4, 8.5 and 9.3 of the nbnTM Ethernet Service Levels Schedule, nbn has committed to providing a rebate if it fails to meet Service Levels for End User Connections, End User Fault rectification and Enhanced Fault rectification. In addition, all of nbn's Service Levels have Performance Objectives associated with them (e.g. in the case of End User Connections, the Performance Objective is that 90% or more of Standard Connections meet the Service Level timeframes). If nbn fails to meet a Performance Objective, nbn must take Corrective Action in accordance with section 16 of the nbnTM Ethernet Service Levels Schedule. If nbn fails to do this, an RSP can issue a default notice against nbn for breach of the WBA. This makes the Service Levels binding in nature.</p> <p>As discussed above, nbn also offers CSG Compensation where it has contributed to the CSG liability of an RSP.</p> <p>While the terms between RSPs and their retail customers are a matter for those parties, there is no reason why those terms can't include commitments by RSPs that reflect the commitments made by nbn.</p>

Optus Submission

1.	1.13, and similar statements throughout the submission	<i>"[C]hanges to reporting under WBA3 means NBN Co is providing less information about its service performance which makes it difficult for RSPs to efficiently and effectively identify and address problems".</i>	This is incorrect. nbn 's reporting obligations in respect of its service levels under WBA3 are the same as those under WBA2 (see section 15.3 of the nbn TM Ethernet Service Levels Schedule). The difference is that nbn is now providing that reporting through both a monthly document, together with a set of reporting tools that Customers can use to access data with much more functionality than what they were previously able to.
2.	1.16(c), and similar statements	<i>"Where SLAs are not met, NBN Co may be required to take</i>	This is incorrect. According to section 16.1(b) of the nbn TM Ethernet Service Levels Schedule, nbn must take Corrective Action "as soon as reasonably practicable" following identification of non-



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	throughout the submission	<i>Corrective Action but there are no[t] any timeframes associated with any Corrective Action".</i>	achievement of Performance Objective by nbn . In addition, nbn must provide a Corrective Action plan by or before the time that nbn provides a corresponding Performance Report to the relevant customer. Performance Reports must be provided to RSPs on a monthly and quarterly basis (with such report to be submitted "on or about 20 Business Days" after the end of each relevant month or quarter), under section 15.3(a) of the nbn TM Ethernet Service Levels Schedule. This creates a concrete timeframe within which nbn must prepare its Corrective Action plan.
3.	4.8 (Table 4)	Table 4 states that there is no service level ("n/a") for end-user fault rectification in urban areas where plant work or nbn attendance at premises is required and remote areas where plant work or nbn attendance at premises is required.	This is incorrect. The relevant service level for End User Fault rectification in urban areas requiring a truck roll is 5:00 pm on the next business day and, in remote areas where a truck roll is required, is 5:00 pm on the third Business Day (see section 8.1 of the nbn TM Ethernet Service Levels Schedule).
4.	4.17 and 4.18	Description of when nbn starts 'the clock' to measure compliance against service level timeframe, and observation that the steps that nbn and the RSP must take before the clock is started <i>"could potentially delay the start in measuring performance against the fault rectification service level timeframe."</i>	Optus' submission does not mention that, under section 7 of the nbn TM Ethernet Service Levels Schedule, nbn is subject to a <u>2-hour Service Level</u> to accept a Trouble Ticket in respect of a Service Fault (or to provide a More Information Required Notification). Trouble Ticket Acceptance is the relevant trigger for the commencement of Service Level timeframes in respect of End User Fault rectification. Any validation that nbn carries out in respect of a Trouble Ticket (as mentioned in Optus' submission) must take place during this 2-hour timeframe – if not, nbn would breach its Service Level in respect of Trouble Ticket management. Accordingly, nbn does not have the ability to "potentially delay" the commencement of Service Level timeframes in an unconstrained manner. See item 2 of our responses to Telstra's submission above for further information on this topic.
5.	4.19, and similar statements throughout the submission	<i>"[I]n relation to standard connections, the clock measuring NBN Co's service level performance for a standard connection could be stopped if the Order is placed in 'held' or 'pending' status. The order is considered 'held' where there is a delay in NBN Co processing the order</i>	This is incorrect. nbn cannot "stop the clock" in respect of a Service Level timeframe every time an order is placed in "Held" status. The clock can only be stopped when an order is placed in "Held" <u>due to a matter beyond nbn's control</u> or while nbn performs any Design Site Qualification, Remediation or Interference Mitigation in connection with a CIR Objective (see section 20.1(d) of the nbn TM Ethernet Service Levels Schedule). That is, the mere fact that "further action is needed" by nbn does not allow nbn to stop the Service Level timeframes in respect of Standard Connections. When the ticket has a "Held" status for a reason beyond nbn 's control (e.g. bad weather), nbn is not responsible for the delay in



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		<i>because further action is needed by NBN Co."</i>	<p>progressing the ticket towards closure and the 'clock will stop'. If, however, the ticket has this status for a reason within nbn's control, then nbn remains responsible for the delay, hence the nbn clock will continue to run during this time.</p> <p>nbn notes that, while the clock can also be stopped when an order is placed in "Pending" status, this status can only be used if nbn considers that it has insufficient information from the RSP to fulfil the order or the RSP has not taken all actions necessary to progress the order or comply with the WBA (see section 4.5.1.6 of the WBA Operations Manual). Accordingly, an order cannot be placed in "Pending" at nbn's discretion, as a way of "stopping the clock" in respect of Service Levels.</p>
6.	4.20	<i>"[A] held order, where NBN Co needs to undertake further action (which may involve NBN Co having to engage with a third party), has no timeframes on NBN Co to perform this action. Without a timeframe or some other consequence, there is little impetus for NBN Co to pursue further action in a timely fashion. The clock restarts once NBN Co has all necessary information or action has been done."</i>	<p>This is incorrect because, as mentioned above, nbn can only stop the clock on measuring service levels when an order is placed in "Held" <u>due to a matter beyond nbn's control</u> or while nbn performs any Design Site Qualification, Remediation or Interference Mitigation in connection with a CIR Objective (section 20.1(d) of the nbnTM Ethernet Service Levels Schedule).</p> <p>Therefore, where an order remains in "Held" due to other reasons (e.g. when this is due to a matter within nbn's control), the time that the order remains in "Held" will count towards the Service Level and any delay by nbn will risk nbn not achieving the relevant Service Level.</p> <p>It is appropriate for nbn to exclude, from calculation of its Service Level performance, time that an order is "Held" for reasons outside nbn's control to account for situations where, e.g., nbn is waiting for a body corporate or building manager to give access to common property, or a public body to approve works.</p>
7.	4.50-4.70	The paper implies that rebates, compensation and corrective action are the only ways nbn is committed under the WBA to meet its Service Levels and Performance Objectives.	<p>This statement does not present the full picture as there are other WBA commitments made by nbn to meet its Service Levels and deliver a good level of performance. These include:</p> <ul style="list-style-type: none"> • If more than three End User Faults occur in any 60-day period in respect of the same end user, nbn commits to taking additional steps (section 5.2.7.3 of the WBA Operations Manual). • For technically complex faults, nbn makes available technical bridge calls to co-ordinate incident and problem resolution with an RSP's technical staff (section 5.2.12 of the WBA Operations Manual). • For Network Faults, nbn offers post-incident reviews and reports (section 5.5.3 of the WBA Operations Manual). • nbn also commits to a governance process to identify and improve performance issues (Module 8 of the WBA Operations Manual). <p>This issue is also addressed in Annexure B.4 of nbn's Submission. As discussed in nbn's Submission and Professor Cave's independent report, nbn also has powerful non-contractual</p>



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			incentives to support RSPs in providing positive end-user experiences to the extent that it is within nbn 's control to do so.
8.	4.62	<i>"[I]t is clear in most cases there is no recourse where NBN Co fails to meet its performance objective."</i>	<p>This is incorrect. Rebates are available in respect of the key end-user events of End User Connections, Service Fault rectification and Enhanced Fault rectification. But, in addition, RSPs have other means of recourse against nbn for failure to meet Performance Objectives or Service Levels, including:</p> <ul style="list-style-type: none"> • Issuing a default notice against nbn for failing to carry out any Corrective Action in respect of failing to meet a performance objective (clause F6 of the WBA Head Terms and section 16.1 of the nbnTM Ethernet Service Levels Schedule). • If nbn fails to achieve a Priority Assistance Connection or Fault rectification Service Level, it must compensate the RSP for providing an interim service (sections 1.5 and 8.7 of the nbnTM Ethernet Service Levels Schedule). • If nbn fails to achieve Accelerated Connections or rectify End User Faults promptly and this results in the RSP being liable to pay damages to end-users for breaching a CSG performance standard, nbn must pay CSG Compensation to RSPs (section 17 of the nbnTM Ethernet Service Levels Schedule).
9.	4.66	<p>Optus sets out a list of conditions and limitations applicable to Connection Rebates and Service Fault Rebates, including:</p> <ul style="list-style-type: none"> • Connection Rebates are not available for Priority Assistance Connections and Accelerated Connections; and • Service Fault Rebates are not available for <i>"end user faults where these are considered 'External Faults' as defined by the WBA"</i>. 	<p>Optus states that the Connection Rebate does not apply in respect of Accelerated Connections or Priority Assistance Connections. While this is true, the statement incorrectly implies that <i>no</i> remedies are available if nbn fails to achieve such connection service levels. As set out above, this is not the case. In particular, nbn is liable to pay CSG Compensation for delayed Accelerated Connections and is liable to pay an Interim Service Amount for failing to meet Service Levels in respect of Priority Assistance Connections.</p> <p>Optus also states that the Service Fault Rebate is not available for External Faults. While this is true, an "External Fault" is defined in the WBA Dictionary as a fault other than a "Service Fault". Accordingly, an "External Fault" effectively refers to an actual or suspected fault with an end user's retail service which is found <u>not to be linked to an issue with nbn's service</u> – for example, an issue with the RSP's backhaul or the end user's home network. It would be unreasonable and unrealistic to expect nbn to offer rebates in respect of such faults which are not a result of nbn's service.</p>
10.	4.71	<i>"NBN Co's service level timeframes can be changed after the order has been placed if NBN Co reschedules appointments or reclassifies the service class of the premises. NBN Co could conceivably reschedule</i>	<p>This is incorrect and does not reflect the full picture of nbn's commitments. If nbn reschedules an appointment then it will miss the service level for the original appointment, <u>unless the reason for rescheduling the appointment was not within nbn's reasonable control</u> (section 20.1(d) of the nbnTM Ethernet Service Levels Schedule).</p> <p>Moreover, the statement implies that nbn can simply re-classify the service class of a Premises as a way of avoiding missing its appointment service levels. nbn does not have the ability to do</p>



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		<p><i>an appointment multiple times – effectively delaying connections – and it would be considered to have met the connection timeframe service level. <u>There is no consequence for rescheduling</u>, even though this is likely to be a poor experience for the end-user and potentially lead to complaints about delays.” [emphasis added]</i></p>	<p>this under the WBA. Because each service class is defined in the WBA Dictionary by reference to certain characteristics of a Premises, a Premises can only be reclassified if the Premises has <u>in fact</u> been incorrectly classified. nbn does not have the ability to arbitrarily reallocate a Premises to a different service class if that Premises does not actually have the characteristics of that service class as defined in the WBA Dictionary.</p>
11.	4.96(a)	<p><i>“The scope of service standards covers a range of NBN Co activations and assurance activities, however the non-binding nature of most of the commitments means there is little consequence for NBN Co for failure to perform. All performance objectives and operational targets should be binding.”</i></p>	<p>Optus suggests that not all of nbn’s Performance Objectives and Operational Targets are binding. As outlined above, the Performance Objectives are binding in nature and the failure to achieve them has consequences for nbn (i.e. an obligation to undertake Corrective Action, as described above).</p>
12.	5.48	<p><i>“The CSG framework is not suitable for providing incentives for NBN Co to improve customer experience or to meet performance standards.”</i></p>	<p>Optus’ statement does not represent the complete picture because, as a result of s 118A of the <i>Telecommunications (Consumer Protection and Service Standards) Act 1999 (Cth)</i>¹, nbn bears statutory responsibility for any contribution it makes to the breach of a performance standard by an RSP under the CSG regime. This provides a clear incentive for nbn to meet its service standards.</p> <p>Even if the CSG regime may not apply to all services or activities conducted by nbn (e.g. because RSPs have asked end-users to waive their CSG rights), the potential for nbn to be liable for CSG Compensation or damages under s 118A still provides an important incentive for nbn to meet its service standards.</p> <p>For example, nbn will not know in advance of connecting a service</p>

¹ This Act requires a wholesaler to compensate an RSP “a fair and reasonable amount” (as determined by a Court) if the wholesaler has contributed to CSG liability of the RSP.



No.	Submission Reference	Incorrect and/or inaccurate statement	Explanation
			<p>whether the RSP to whom the service is supplied will use it as an input to a service which attracts CSG performance standards, so it is in nbn's interest to assume that the performance standards will apply and so too will the compensation regime for failure to meet the performance standard.</p> <p>The effect of this is that services which are not subject to CSG performance standards (e.g. broadband-only services) will receive the benefits of the service standards offered by nbn which have been developed to support the CSG performance standards. Thus, the effect of the arrangements in the WBA is that nbn treats all services as if they fall under the CSG performance standards regime.</p>