Supplementary Submission to the ACCC:

ACCC inquiries into NBN access pricing and wholesale service standards

23 October 2020

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1 Summary

1.1 **nbn** welcomes the opportunity to provide a further response 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 This supplementary submission addresses a number of matters raised in response to the ACCC's Consultation Paper by other industry participants and should be considered in conjunction with **nbn**'s response provided to the ACCC on 11 September 2020 (**September Submission**).

1.3 While **nbn** considers that a number of these matters are beyond the scope of the issues that are the subject of the ACCC's Consultation Paper, we hope that by addressing them in this submission we can assist the ACCC in finalising its consideration of the matters in the Public Inquiries.

1.4 Finalising these matters will provide the certainty that RSPs and **nbn** need to enter into the commercial terms of WBA4. These access terms will deliver improved customer experience outcomes for all Australians, provide RSPs with 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.

Issues addressed in this supplementary submission

1.5 A variety of views were expressed by RSPs and other industry participants in response to the ACCC's Consultation Paper. In considering these responses, **nbn** has elected to provide further detail on a number of them, to address some practical issues with how WBA4 would be implemented, or to respond to issues raised by RSPs that our WBA4 proposal does not address. These topics are:

(a) Pricing certainty

(b) CVC pricing

(c) Level of CVC inclusion in mELB

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2 Responses to issues raised by RSPs

Pricing certainty

Concerns were raised that **nbn**'s proposed Pricing Roadmap only provides certainty to 30 April 2022, rather than to the end of WBA4, particularly in respect of the CVC Overage Amount of $8 per Mbps.

2.1 **nbn** introduced the Pricing Roadmap as an outcome of its pricing consultation with RSPs in 2019. With three discrete updates[1], that Pricing Roadmap will become the Initial TC-4 Bundles Discount Roadmap under WBA4 and provide "guardrails" until April 2022, by specifying the minimum level of CVC inclusions and maximum recurring charges for the TC-4 Bundles Discount bandwidth profiles.

2.2 Rather than simply extending these guardrails at the time WBA4 commences, **nbn** intends to update the TC-4 Bundles Discount Roadmap (**Roadmap**) following a consultation process with RSPs, to ensure it is extended taking into account their feedback. **nbn** has previously provided details on our proposed approach to delivering pricing certainty in our September Submission (see sections 2.15 to 2.23), and here we provide a description of the approach that **nbn** will follow as a result of the commitments in our WBA4 proposal, including new commitments we will make as a result of feedback from RSPs. As described in our September Submission, the maximum mELB effective charge and minimum CVC inclusion are locked in for the term of WBA4.

2.3 The approach that **nbn** intends to take to in relation to the Roadmap is:

- Include a new contractual commitment in WBA4 requiring **nbn** to consult with RSPs and consider their feedback prior to publishing a new Roadmap.
- WBA4 requires **nbn** to publish a new Roadmap by no later than 30 April 2021, when the Initial TC-4 Bundles Discount Roadmap will have less than 12 months remaining and needs to be extended.
- Thus, **nbn** must consult with RSPs on the proposed new Roadmap prior to that time and give RSPs the opportunity to consider and respond to proposals made by **nbn** in relation to the Roadmap.
- Once this consultation process has concluded and prior to 30 April 2021, **nbn** is required under WBA4 to publish on its website a new Roadmap setting out maximum recurring charges and minimum CVC inclusions for the TC-4 Bundles Discount for at least a 24-month period from the date of publication.

2.4 **nbn** submits that this approach is preferable to simply locking in the levels of CVC inclusions and charges that were last consulted on in 2019, or alternatively **nbn** extending the current "guardrails" without consulting RSPs. The commitments in WBA4 ensure that by no later than April 2021, RSPs will have had the opportunity to provide feedback on **nbn**'s proposed TC-4 Bundles Discount CVC inclusions and charges, and will have certainty provided for at least a further 24 months from that time.

2.5 However, recognising the importance of certainty of CVC pricing for RSPs, prior to WBA4 commencing **nbn** will update the Roadmap such that the $8 per Mbps maximum charge for the Overage Amount for all bandwidth profiles covered by the TC-4 Bundles Discount, including the higher speed tiers, applies for the period from the commencement of WBA4 to 30 November 2022.

[1] The updates are the reduction in the effective charge for the ELB, the inclusion of the maximum Overage Amount of $8 and references to two bandwidth profiles currently in the TC-4 Bundles Discount (12/1 on FW and 1000/400).

CVC pricing

Many RSPs expressed the view that **nbn** should reform or remove the CVC pricing construct.

2.6 **nbn** understands that this is a significant issue for RSPs, and it has been the subject of ongoing discussion between **nbn** and RSPs.

2.7 Given the focus of the ACCC's current pricing inquiry is on ensuring the smooth migration of end users from legacy networks to the **nbn** network, and we have provided significant new commitments in relation to the bundle discount for our 12/1 Mbps entry level service, as well as now ensuring that the CVC Overage Amount for the TC-4 Bundles Discount will not increase over the term of WBA4, we do not propose to make further changes to CVC pricing at this time.

2.8 As discussed in our September Submission (see sections 1.16, 2.10 and 2.11 in that submission), **nbn** has introduced many improvements to CVC pricing over the past 12 months, particularly during May 2020, as well as providing the "CVC boost" credit of up to 40% additional CVC capacity to assist RSPs manage the challenges of COVID-19 over the period from May to November 2020.

2.9 However, as noted above (section 2.3), **nbn** will be conducting a pricing consultation with RSPs prior to updating the TC-4 Bundles Discount Roadmap by the end of April 2021. This will allow **nbn** and RSPs to further engage on this issue.

2.10 As noted by Telstra and the ACCC, **nbn**'s SAU requires **nbn** to review CVC pricing annually once the network rollout has sufficiently progressed, which is now the case. Given the large number of improvements **nbn** has made to CVC charges since November 2019, resulting in significant reductions in the effective unit price payable by RSPs, **nbn** will initially conduct an internal review of the CVC (TC-4) Price, as required by clause 1C.4.3(d) of the SAU, in late 2020.

2.11 We also propose to take the opportunity to seek RSP views on TC-4 CVC pricing to feed into our 2021 SAU TC-4 CVC Price review in conjunction with the already scheduled review of the TC-4 Bundles Discount Roadmap which needs to occur by the end of April 2021.This integrated review of CVC pricing and discounts in early 2021 will allow RSPs to provide views on all aspects of TC-4 CVC pricing.

Level of CVC inclusion in mELB

TPG argued that the proposed reduction of the mELB additional charge to $0 should be brought forward to the commencement of WBA4, and that **nbn** should also offer increased CVC inclusions in May 2021 (and every six months thereafter), rather than those currently proposed.

2.12 As described in our September Submission, the mELB pricing changes delivered in WBA4 represent an increase of 56% in the level of effective CVC inclusion for mELB (at a $35 wholesale charge) between May 2020 and May 2021. This is a significant increase for what is positioned as an entry level broadband service.

2.13 TPG's proposal would see the level of CVC inclusion for this entry level service increase by 56% over a seven-month period in 2020, then by a further 17% five months later. Over the period May 2020 to May 2021, this would see an annual growth rate in CVC inclusions (for this entry level service) of 82%.

2.14 As outlined in our WBA4 proposal (Attachment 2 to the ACCC's Consultation Paper), while **nbn** does not consider there is strong evidence for the 20% annual growth rate proposed by the ACCC for mELB CVC inclusions, this is the effective growth rate delivered in the WBA4 proposal over the term of WBA4. In relation to TPG's proposed approach, which results in an initial annual growth rate of 82% in the period to May 2021, with ongoing growth, **nbn** does not see any evidence for such data growth.

2.15 **nbn** reiterates comments made in our WBA4 proposal, that there is a small percentage of end users on 12/1 Mbps services who are very high data users, and who may drive a disproportionate amount of usage growth. These end users are likely to fully utilise the available 12/1 Mbps AVC bandwidth as a result of their high upstream and downstream usage, and have poor experience outcomes that are unrelated to the available CVC capacity.

Entry level product specification

A number of RSPs expressed the view that the 12/1 Mbps speed tier is not an appropriate anchor product, and that the ACCC should focus on 25/5 or 50/20 Mbps services as being the entry level product.

2.16 **nbn** notes that the focus of the ACCC's access pricing inquiry has been on whether our commercial offers "are capable of supporting the supply of a retail product that is the functional equivalent of an ADSL/ADSL2+ and line rental bundle, and the pricing will promote a smooth migration"[2]

2.17 With that ACCC focus in mind, **nbn** submits that the 12/1 Mbps TC-4 speed tier is the appropriate entry level product for consideration. While many end users may today be choosing higher speed tiers when they come onto the **nbn** network, this reflects the additional value they place on the capabilities offered by these higher speed tiers.

2.18 **nbn** has designed its products and pricing to meet the needs of a range of consumers – from those who only require basic connectivity and usage, to those who value high upstream and downstream speeds. Importantly, given that end users in **nbn**'s fixed line footprint are required to disconnect from legacy broadband services after **nbn**'s network is available, we consider it reasonable that they have available an **nbn** service option which has similar performance to legacy services, and does not require them to acquire a higher speed tier if it is not needed or valued by them.

Backdating of mELB offer

Telstra expressed the view that the proposed price reductions to mELB should apply from the 1st of December 2020, rather than the start date of WBA4, as they would not be backdated if RSPs continue to take supply of services under WBA3 if there is a delay in the WBA4 offer being made.

2.19 The current WBA4 drafting reflects **nbn**'s intention to have an executable version of WBA4 available to RSPs well in advance of 1 December 2020, so that RSPs are able to execute it by that date. This reflects that **nbn** is proposing the mELB effective price reductions (and the other measures in the WBA4 proposal to the ACCC such as daily rebates when connection and service fault service levels are not met) as part of a package of commitments that would come into effect when WBA4 is executed by RSPs. If execution of WBA4 is delayed by RSPs, the benefits of the WBA4 proposal would not be available until that time. Thus, if for example, RSPs execute WBA4 after 1 May 2021, WBA4 pricing

[2] *ACCC inquiry into NBN access pricing*, Discussion Paper, page 35.

changes such as the $0 Additional Charge for mELB will apply from the time they execute WBA4 – there is no requirement that RSPs would need to execute prior to that date to ensure they subsequently are eligible for the $0 charge.

2.20 This means that charges for services supplied prior to the date on which WBA4 is executed by the RSP and takes effect will be calculated in accordance with the WBA3. Charges for services supplied on or after WBA4 commences will be calculated in accordance with WBA4. This approach is consistent with prior WBA transitions.

2.21 There is no intention to delay WBA4 until May 2021 – indeed, **nbn** has every incentive to get WBA4 into market on time on 1 December 2020 to deliver the package of end-user improvements. If RSPs elect to execute WBA4 after that time, the benefits of WBA4 will be not be backdated. While **nbn** expects to provide RSPs with an executable version of WBA4 well in advance of 1 December 2020, should that be delayed, we would of course consider the appropriate approach in relation to mELB pricing at that time.

2.22 Given that the mELB effective price reductions are proposed as part of the overall package of WBA4 and have been developed as part of an integrated "trade-off" of value by **nbn**, we believe that only having these terms available when the complete WBA4 package is executed by RSPs is reasonable.

Quantum of service level rebates offered in WBA4

A number of RSPs expressed the view that they preferred the rebates proposed by the ACCC in their Draft FAD, and that these should be offered by **nbn**.

2.23 **nbn** understands the rationale behind the views expressed by RSPs. However, as explained in our September Submission, the measures proposed by **nbn** in response the ACCC's Wholesale Service Standards Inquiry are part of a wider package of measures that are intended to deliver improved service performance outcomes for RSPs and end users:

> ***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.*[3]

2.24 We also note that the service level rebates proposed in WBA4 represent a significant step change from WBA3. These changes are described in Attachment 1 to the ACCC's August Consultation Paper, but we think it appropriate to highlight the significant differences between the current rebates and those in WBA4. The table below is an extract from the ACCC's Attachment 1, highlighting the rebate levels, and including the expansion of application of the rebates from TC-4 to also include TC-2 AVCs:

[3] **nbn,** September Submission, section 1.8.

Issue	Status Quo	Proposed WBA4 Commercial Position
Connection Rebates	As part of the Service Levels Improvements variation agreement offered to RSPs in October 2018: • **nbn** commits to pay a once-off $25 rebate for Standard Connections (but not Accelerated Connections) when connection timeframes are not met. • Rebate paid automatically to RSPs, with no requirement to make a claim; • Requirement to lodge accurate connection forecast information to be eligible for rebate was removed; • RSPs required to take reasonable steps to ensure that customers receive (in monetary or other form) a fair value benefit of any rebate paid.	**nbn** proposes to pay a new daily rebate as follows: • For Standard and Accelerated Connections: $7.50 for each business day in excess of the applicable service level, capped at 30 business days; • For Priority Assistance customers: $10 per business day in excess of the applicable service level, capped at 30 business days; • RSPs required to take reasonable steps to ensure that customers receive (in monetary or other form) a fair value benefit of any rebate paid. The rebate will be payable in respect of connections for both AVC TC-4 and AVC TC-2 services. The requirement for RSPs to lodge forecast information to **nbn** will be removed. This also removes the connection rebate forecasting eligibility criteria to receive a connection rebate.
Service Fault Rebates	As part of the Service Levels Improvements variation agreement offered to RSPs in October 2018: • **nbn** commits to pay a once-off $25 rebate when fault timeframes are not met. • Rebate paid automatically to RSPs, with no requirement to make a claim; • RSPs required to take reasonable steps to ensure that customers receive (in monetary or other form) a fair value benefit of any rebate paid.	**nbn** proposes to pay a new daily rebate as follows: • For non-Priority Assistance customers: $15 per business day in excess of the applicable Service Level for **nbn**™ Ethernet missed End User Fault Service Levels capped at 60 business days; • For Priority Assistance customers: $20 for each business day in excess of the applicable Service Level capped at 60 business days; • RSPs required to take reasonable steps to ensure that customers receive (in monetary or other form) a fair value benefit of any rebate paid. The rebate will be payable in respect of connections for both AVC TC-4 and AVC TC-2 services.
Missed Appointments Rebate	As part of the Service Levels Improvements variation agreement offered to RSPs in October 2018: • **nbn** commits to pay a $25 rebate paid when **nbn** misses the agreed appointment timeframe for customer appointments for connections and fault restoration. • RSPs required to take reasonable steps to ensure that customers receive (in monetary or other form) a fair value benefit of any rebate paid.	**nbn** proposes to pay a new daily rebate as follows: • $50 when the initial appointment time is missed; • $75 for each subsequent appointment that is missed for the same order or Trouble Ticket If **nbn** is able to attend to the appointment on the same day and the customer is still present and willing to allow the attendance of the technician outside the appointment window, the rebate would be reduced by 50% RSPs will be required to take reasonable steps to pass on the full amount of the rebate to the impacted customer.
PIR Objective Rebate (FTTN/B/C)	• No rebate in relation to the PIR Objective.	• A new rebate will be introduced when a FTTN/B/C service is unable to achieve at least the PIR Objective speed for that service. • In the case of FTTN services in co-existence with legacy networks, the PIR Objective is 12Mbps. For FTTN services outside of co-existence, the PIR Objective is up to 25Mbps. In the case of FTTB and FTTC services, the PIR Objective is up to 25 Mbps. • Once an RSP has raised a trouble ticket in relation to the service, and **nbn** has determined the issue lies on **nbn**'s network, **nbn** will place the service into Remediation, and seek to increase the service speed to at least the PIR Objective Speed. • Until that Remediation is successfully completed, and from the time the RSP has raised the issue with **nbn**, the following rebates will be paid each month by **nbn**:

<table>
<tr><th>Issue</th><th>Status Quo</th><th>Proposed WBA4 Commercial Position</th></tr>
<tr><td></td><td></td><td>
<table>
<tr><th>Month</th><th>Rebate</th></tr>
<tr><td>0-3</td><td>$10 per month</td></tr>
<tr><td>4-6</td><td>$15 per month</td></tr>
<tr><td>>6</td><td>$20 per month</td></tr>
</table>

Accrual of the rebate will commence from the time of Acknowledgement of the Trouble Ticket that results in Remediation rather than the time at which the service is put into Remediation.
RSPs required to take reasonable steps to ensure that customers receive (in monetary or other form) a fair value benefit of any rebate paid.

</td></tr>
<tr><td>FTTN/B/C Under-performing Speed Rebate</td><td>No rebate in relation to underperforming speeds on the FTTN/B/C networks</td><td>RSPs will be provided with Historical Supported Speed (HSS) information at the time of placing an order, which will include an Assured Rate for the line.
If RSPs order a 25-50Mbps or 25-100Mbps bandwidth profile and the service is capable of achieving the Assured Rate, even if that Assured Rate is below the ACCC speed expectation (i.e. capable of achieving at least 50% of the maximum speed for that bandwidth profile), then no rebate will be paid.
If an Assured Rate is not available, or proves to be inaccurate (i.e. the service cannot achieve the Assured Rate), and the service cannot achieve the ACCC speed expectation, a once-off $20 will be automatically paid to the RSP, with no requirement to pass this through to the customer.</td></tr>
<tr><td>Fixed Wireless Under-performing Speed Rebate</td><td>No rebate in relation to underperforming speeds on the Fixed Wireless network</td><td>nbn will pay a $20 rebate for each month for each fixed wireless service supplied via a wireless network cell that is Persistently Congested during that month. This includes those cells:
connected via a transmission backhaul link with an average busy hour link packet loss of greater than 0.25% over that month; or
with an average busy hour downlink throughput of less than 6Mbps over that month.</td></tr>
<tr><td>Payment of rebates</td><td>Initially WBA3 required RSPs to make a claim in relation to Connection and Service Fault rebates when nbn did not meet the 90% Performance Objective. The Service Levels Improvements variation agreement offered by nbn in October 2018 removed the requirement to make a claim in relation to most commercial rebates.</td><td>TC-4 and TC-2 rebates will be paid automatically by nbn, with no requirement for RSPs to claim them. Current claim processes will continue to apply in relation to Enterprise Ethernet services.</td></tr>
</table>

The merits of the ACCC making a FAD

Telstra submits that it would promote the LTIE for the ACCC to make a FAD, as it would establish a "regulatory baseline" for ongoing negotiation in relation to WBA4 and potentially for subsequent versions of the WBA.

2.25 As previously submitted by **nbn**, we consider that the LTIE is best promoted by allowing the market to evolve efficiently, and that in the absence of any demonstrated market failure, commercially negotiated terms of access are likely to be inherently more effective in doing so. Regulatory intervention must be evidence-based and there is no evidence of a market failure, nor that any benefits of issuing a FAD would outweigh the costs. In fact, there is clear evidence that **nbn** and RSPs have engaged in constructive commercial negotiations in a manner which has resulted in many beneficial outcomes for RSPs.

2.26 In **nbn**'s view, commercially led negotiations of WBA4 have shown that:

- both **nbn** and RSPs have strong incentives to reach commercial agreement;
- operational and commercial matters specific to each party can and have been addressed;
- negotiations have allowed for trading of value across multiple domains.

2.27 **nbn** welcomes Telstra's statements in its submission that WBA represents a significant step forward and that many of the proposals made by **nbn** are consistent with the positions put forward by Telstra during commercial negotiations, together with its submission supporting the primacy of commercial negotiations. However, **nbn** does not agree with Telstra's statements that the ACCC should make a FAD to "establish a baseline for ongoing negotiations in the event that RSPs are unsatisfied with WBA4 and for future negotiations in relation to WBA5." WBA4 itself establishes the necessary baseline for future negotiations (whether of WBA5, "future iterations of the WBA" or otherwise) in accordance with the legislative hierarchy where access agreements sit at the top of the hierarchy. It is unnecessary to make a FAD to establish a baseline for future negotiations where that FAD has no effect to the extent of any inconsistency with the access agreements established by the signing of WBA4.

2.28 Further, attempting to establish a "regulatory baseline" in the absence of evidence-based and demonstrated market failure runs the risk of locking in arrangements which may not meet the future commercial needs of parties and will impair **nbn**'s ability to develop and offer improved terms of supply, as we will also need to continue to support the "regulated terms", whether or not they continue to promote the LTIE. It is certainly not possible to determine at this point whether a market failure has or will occur in respect of the negotiations of WBA5 (or future iterations of the WBA), the commencement of which is at least 2 years away. **nbn** submits that the *possibility* of a failure to reach agreement based on commercial negotiations of WBA5 in late 2022 (or possibly even later) does not provide sufficient grounds on which to make a FAD.

2.29 **nbn** also disagrees with Telstra's submission that there is a material risk that **nbn** intends to withdraw the implementation of the proposed access arrangements for RSPs who are unsatisfied with WBA4 (or as part of WBA5). **nbn** certainly has no intention to do so. In any case, **nbn** has regulatory obligations including **nbn**'s non-discrimination obligations, which in practice require **nbn** to continue to offer WBA4 terms to RSPs. This fact, together with the ACCC's ongoing access determination powers, would appear to address Telstra's concerns.

2.30 Telstra submits that the fact that **nbn** and RSP negotiations on WBA4 have occurred over a long timeframe is an illustration of the clear imbalance of bargaining power between the parties. **nbn** submits that the duration of the negotiations shows the exact opposite. If there was an imbalance of bargaining power, **nbn** would have no incentive or need to negotiate at all and certainly not over such a long period. Again, **nbn** submits that our willingness to negotiate commercial terms with RSPs over a significant period of time does not provide grounds on which to make a FAD.

2.31 Telstra also queries why **nbn** chose to engage with the ACCC "rather than RSPs". Notwithstanding **nbn**'s extensive engagement with RSPs, given that the ACCC launched two public inquiries directly related to the supply of **nbn** services on matters that were also being negotiated with RSPs, **nbn** has naturally engaged with the ACCC. This ACCC engagement did not occur *instead* of engagement with RSPs. **nbn** has been engaging with RSPs since May 2019 and continues to do so. It is difficult to argue on the one hand that negotiations with RSPs have occurred over a long period of time, but also contend that these same negotiations excluded RSPs in any way. As noted in our September Submission:

> *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*[4]

2.32 Finally, Telstra submits that the ACCC "must make a decision whether or not to make a FAD, and must consider whether [making a FAD] is in the LTIE". **nbn** only partially agrees with this characterisation of the ACCC's powers under Part XIC. **nbn** does not agree that the ACCC **must** make a decision whether to make a FAD. If the ACCC chooses not to make a FAD, this is a discretion vested in the ACCC. However, if the ACCC makes a FAD then **nbn** agrees that the promotion of the LTIE is one of the factors the ACCC must consider.

2.33 In **nbn**'s view, this LTIE assessment cannot be done in isolation from the ACCC's assessment of commercial terms which **nbn** is willing to offer. **nbn** has offered a wide range of improvements and concessions to RSPs in commercial negotiations, in addition to those matters the subject of the ACCC's public inquiries. As **nbn** has stated in the past, inevitably these negotiations have resulted in **nbn** agreeing to certain matters but not agreeing to every issue raised by RSPs.

2.34 The promotion of the LTIE is simply not determined by reference to whether **nbn** has accepted every position of every RSP, but by reference to the nature and the outcome of the commercial negotiations as a whole and whether it is necessary to intervene based on a market failure arising in those commercial negotiations. **nbn** does not accept that that there is any evidence of market failure for the reasons described above. It would be entirely inconsistent with the legislative scheme established by Part XIC for the ACCC to issue a FAD which confirms a commercially negotiated outcome which sits higher in the legislative hierarchy.

[4] **nbn**, September Submission, section 3.7(b)

Fixed wireless performance measures and rebates

While supportive of **nbn**'s proposed rebates in relation to "persistently congested" fixed wireless cells, issues were raised in relation to **nbn**'s ability to change how this is measured, and whether the application of the rebate should be expanded to include circumstances where a premises is found to be unserviceable for fixed wireless.

2.35 If **nbn** is able to develop a more appropriate measure of "persistently congested" that better reflects the actual impact of network performance on end users, without the proposed change right in relation to the definition of "persistently congested", **nbn** may be unable to introduce an improved measure of performance outcome.

2.36 It is already the case that when a location may be unserviceable for fixed wireless, **nbn** takes proactive steps before considering alternative technologies. For example, the installer will attempt to use alternative towers with better line of sight. Where the line of sight is blocked by external factors such as trees, **nbn** will explain the issue to the end-user, noting however that it is outside **nbn**'s remit to rectify such issues.

2.37 **nbn** therefore does not agree it is appropriate to extend the "persistently congested" rebate to unserviceable premises. **nbn** is already obligated to provide a service as the Statutory Infrastructure Provider (SIP). Fixed Wireless may not be the appropriate technology for a particular location due to interference, line of site, or other issues when a site qualification is performed, and another technology may need to be used to satisfy **nbn**'s SIP obligations. In these circumstances, **nbn** believes that a rebate in relation to a "persistently congested" cell would not be appropriate here, as the issue relates to a specific end user location, rather than the capacity available in either the backhaul or radio access network, which the rebate is intended to provide incentives for **nbn** to address.

PIR objective rebates and co-existence

Optus raised some concerns with **nbn**'s provision of line capability information when service areas are no longer subject to co-existence, and how **nbn** will provide updated information to RSPs.

2.38 RSPs already receive transparency from **nbn** in relation to the line capability for their services irrespective of the line's co-existence status. This includes the measured performance as well as the assured rate for services. The assured rate may be the PIR Objective, which will be updated depending on the co-existence status, or more likely higher, depending on the average line rate previously observed by **nbn** over a specified number of point-in-time measurements.

2.39 This information is already available to RSPs in **nbn**'s new Service Health Reporting framework, now daily in **nbn**'s Customer Centre or API interface. This information is also supplied in **nbn**'s Service Health Summary which is available to RSPs.

2.40 It is also important to note that in the event the co-existence period ends for a service during the time it is subject to a Network Activity, the calculation for the new PIR Objective Rebate will automatically consider the revised PIR Objective from the point that such a change takes effect. This means that if a Network Activity is open for a service, the rebate would automatically be payable for performance below the PIR Objective of 25/5 Mbps instead of 12/1 Mbps once co-existence is ended.

Missed appointments

Optus raised some practical issues with how **nbn** technicians may engage with end users to obtain consent to attend an appointment after the initial appointment window has been missed, and whether there could be instances where pressure is applied to provide consent to do so.

2.41 **nbn** has a "call on approach" system for its technicians, which means on the day of an appointment when the Service Delivery Partner (SDP) is on the way to the appointment, they call the end user. If the technician is running late (outside of the 4-hour appointment window) the technician will ask the end user if they can still attend the premises. If the end user agrees the technician will attend.

2.42 If the end user does not answer the call or does not agree with the technician attending the premises, the end user will be asked to reschedule the appointment with their RSP and this will be considered a missed appointment caused by **nbn**.

2.43 In addition to the above process, **nbn** also provides SDPs with guidance on the approach they need to use when contacting an end user due to a late arrival which further mitigates the risk of a technician placing undue pressure on an end user to agree to a late appointment.

2.44 Thus, **nbn** does not believe that Optus' issues about the possible pressure placed on end users by a technician is warranted, as technicians will be contacting end users remotely, with clear guidance as to how to do so.

New exclusions

Telstra suggested that a 20 business day timeframe for the ACCC to object to a new type of exclusion may be unreasonable, and that a longer timeframe should apply.

2.45 We consider that the list of exclusions provided in WBA4 is exhaustive at this point in time, and that is unlikely that there will be many cases where a new exclusion will be required. **nbn** had proposed 20 business days to provide us with certainty over timeframes to allow necessary system changes to be designed and implemented to support any future exclusions that were identified. **nbn** is also required to consult with RSPs prior to introducing any new exclusions. We anticipate that the ACCC would have visibility of that consultation prior to **nbn** making any decision to introduce a new exclusion, which would give them additional time to consider any potential issues with **nbn**'s proposed approach.

2.46 However, in considering the issue further, we accept it would be appropriate to allow the ACCC a longer period if necessary. To also address our concerns about the need for certainty on timeframes, we consider a reasonable approach would be to allow the ACCC to request up to an additional 20 business days if required. Recognising there may be circumstances where even this additional time may not be sufficient, there may also be a need for **nbn** to further extend this period, and we intend to modify the WBA4 drafting to reflect this before the final drafting is provided to RSPs.

Exclusion of third-party activities from performance calculations

Telstra argues that where **nbn** engages a third party to carry out certain services, the time taken by that third party should not be excluded from service level, performance objective or rebate calculations.

2.47 **nbn** submits that are a range of circumstances where it is reasonable to exclude the time taken by third parties to perform activities which are outside **nbn**'s control. In particular, when **nbn** is reliant on electricity and other utility companies to perform works or provide any other inputs to **nbn**, including as part of any design process conducted in conjunction with **nbn**, it is beyond **nbn**'s control to manage the time taken by them to do so.

2.48 However, in considering the issue raised by Telstra, we are willing to change the drafting proposed for WBA4 which allowed for the activities of *any* third party to be excluded from our performance calculations, and limit the scope of the exclusion to electricity and utility companies.

Access Component Reactivation charge

While some parties welcomed **nbn**'s alignment of service transfer and access component reactivation (ACR) charges at the same $5 price point, others opposed the introduction of the ACR charge.

2.49 While activities associated with ACR result in low costs to **nbn** in many instances, there remains a material number of instances in which **nbn** incurs significant costs as a result of truck rolls and provision of new equipment to reactivate a service that was previously active.

2.50 The existing ACR activity (under the SAU and WBA3) only relates to situations where no visit to an end user premises is required. The new $5 ACR activity would expand this to also cover reactivation situations where a site visit or truck roll is required, at the same flat charge.[5] To clarify, no changes have been made to the subsequent installation definitions or charges and subsequent installations will continued to be carried out and charged in accordance with the WBA.

2.51 Absent a flat charge across all such activities, **nbn** would need to implement an event-based charge which would be applied less often, but be at a higher, and variable, amount depending on the actions required to reactivate the service. This charge would not be known to the RSP or end-user at the time of requesting a re-activation, but would need to be imposed on the RSP (and presumably the end user) once the scope of works was identified.

2.52 **nbn** considers that a small charge being applied to all activities, rather than a large and variable charge for some, provides predictability and certainty to RSPs and end-users and represents a reasonable means of recovering these the costs incurred across all ACR events.

2.53 In addition, if the ACR charge is not aligned with the reduction in the Service Transfer charge (from $22.50 to $5), this will potentially incentivise RSPs to utilise the ACR process rather than the Service Transfer process to the detriment of the end user. For example, circumventing the Service Transfer process by using the ACR process has in the past resulted in end users unknowingly paying for two services for a period and creates the risk of a service being unavailable to the end user for a period of time rather than just being transferred between RSPs.

[5] The ACR activity and charge for the Satellite technology remains unchanged.

2.54 The ACR is not intended to be used as a 'suspend' feature by RSPs. The SAU and the WBA clearly define the ACR as a reactivation activity. However, in introducing the $5 ACR charge, **nbn** will waive the charge for 12 months in certain circumstances. The waiver will apply to ACRs that are completed within 14 days of a disconnection from the same LOCID by the same RSP. The 12-month partial waiver, in addition to the 6-month period provided by **nbn** when this charge was first notified and consulted on in April 2020, provides RSPs with the opportunity to pivot the way they currently use the ACR.[6]

2.55 In addition, **nbn** notes that the use of a service reactivation charge is not new in telecommunications and has been included in the WBA with the expectation that this change would in time carry a value.

Availability of operational service information

Some RSPs raised issues with the timeliness and form of service information provisions in WBA4 and whether it would allow RSPs to communicate effectively with their customers who are experiencing service issues.

2.56 Under WBA3, RSPs are provided an Excel file via **nbn**'s Customer Centre 10 business days after the end of the month. This means that RSPs may not see **nbn**'s detailed service level reporting until up to 6 weeks after an event has occurred (closure of a Trouble Ticket, completion of a Connect Order etc.).

2.57 Our intention is that from the WBA4 start date to 31 March 2021, under WBA4 RSPs would be provided with a *weekly* file improved with additional fields and stop the clock summary information to assist RSPs to better manage end user communications.

2.58 From 1 April 2021, this will move to 24-hour reporting which means what happened yesterday RSPs will see today. The file will be a 'month to date' view that is refreshed on a daily basis.

2.59 Along with the above, **nbn** intends to provide RSPs with Service Portal and B2B/APIs capability to query individual services or develop their own reporting via APIs using detailed line level data such as 'Met or Missed' status to determine if a rebate is payable, exclusions (where applicable), LOCID, access technology, speed tier etc.

Threshold for Trouble Ticket investigation

Optus raised a concern that the WBA4 drafting provided did not include sufficient detail as to the thresholds that would be used to define when a Trouble Ticket will be accepted by **nbn** for investigation, which is also relevant to the potential application of the PIR Objective Rebate.

2.60 In addition to the issues raised by Optus, **nbn** notes that at this time feedback was also received from RSPs that **nbn** should include these thresholds within the WBA itself rather than external documents and we have been working to respond to this feedback to move the thresholds into the WBA4 Operations Manual in the final drafting of WBA4 that will be provided to RSPs.

2.61 Understanding that RSPs required visibility of the thresholds as soon as feasible, and earlier than when the final WBA4 drafting was to be released, in September **nbn** proactively provided RSPs with an early view of the thresholds that would apply for FTTN, the initial technology to be included with WBA4.

[6] Pursuant to Clause 1C.5.4 of the SAU, on 21 April 2020 **nbn** proposed to withdraw the existing ACR Other Charge for FTTP and Fixed Wireless and introduce a new ACR Other Charge (for FTTP and Fixed Wireless) under the SAU.

2.62 In doing so, **nbn** has clarified that WBA4 provides additional commitments for **nbn**'s assurance of FTTN line rates above the current levels outlined in WBA3, including support for service degradation and services provisioned above the 12/1 Mbps Speed Tier that were at risk of not being able to achieve 25/5 Mbps post the co-existence period.

2.63 The final WBA4 drafting supplied to RSPs will confirm that **nbn** will undertake Network Activity in the instance that the extended WBA4 line rate commitments are not met, not only where performance is below the PIR Objective. The ability for RSPs to understand whether performance thresholds are being met is not limited to the Service Health Summary but will also be supported by existing Service Health Reporting as well as Dynamic SQ at the point of sale of the service.

2.64 The FTTN line rate thresholds developed by **nbn** were proven in practice using the FTTN Speed Assurance Trial which was open to all RSPs. **nbn** conducted an industry consultation seeking feedback from RSPs which when received, led **nbn** to expand the scope of the consultation to consider issues beyond line rates or "speed" as well as other symptoms such as stability and to consider other access technologies. This consultation led **nbn** to introduce the Performance Incident framework into WBA4.

2.65 **nbn** intends to introduce additional technologies to the Performance Incident framework so that they might benefit from the improved operational processes and new features such as the Monitoring Period, which through automation, ensures a service remains within acceptable thresholds for 7 days post restoration activities before **nbn** will resolve and close an incident.

2.66 **nbn** intends that the introduction of new access technologies will continue to be in consultation with RSPs, as **nbn** develops new tools, updated operational processes and systems. Trials will be used where necessary to ensure that new capabilities and thresholds are introduced and scaled in an effective way prior to enabling formal update to **nbn**'s WBA4 assurance commitments. Ideally, assurance thresholds will be consistent across access technologies to drive a simple construct for RSPs to work with, however this may not always be feasible due to technical differences in the underlying technology.

2.67 This new framework utilises the underlying tools and data **nbn** has developed to support the various access technologies. FTTN, due to it being the most mature and operating successfully at full scale, is able to benefit from a mature systems framework which **nbn** has leveraged to build tools including Dynamic SQ, Service Health Summary, Service Health Reporting and the Performance Incident Framework. **nbn** is also incrementally building this supporting capability for the other access technologies, and a roadmap has been shared with RSPs with indicative timings for introducing the Service Health Summary and the Performance Incident framework. HFC is the next targeted Performance Incident supported access technology and is targeted for introduction to support stability related Trouble Tickets in the first half of 2021.