



TELSTRA CORPORATION LIMITED

ACCC inquiries into NBN access pricing and wholesale service standards

Consultation paper

Public submission

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EXECUTIVE SUMMARY

Telstra welcomes the opportunity to respond to the ACCC's NBN access pricing and wholesale service standards Consultation Paper (**Consultation Paper**). The Consultation Paper sets out NBN Co's proposed terms and conditions of supply, which NBN Co intends to incorporate into the next iteration of the Wholesale Broadband Agreement (**WBA4**) if the ACCC determines this is an acceptable resolution and decides to finalise the two inquiries.

The WBA4 negotiations come at a critical time. NBN Co is transitioning from a focus on the rollout of the NBN while the digital economy in Australia is growing, highlighted by the rapid change in response to COVID-19 where consumers embraced technology like never before. During the height of the pandemic we saw a high acceleration in digitisation, from telehealth to online learning, remote working and e-commerce. As a nation we achieved in a few months, what might have taken us years to progress, and it is important that we now do not lose that momentum.

Effective participation in the digital economy requires access to affordable, fast and reliable telecommunications services. The NBN is not currently delivering this. Australia continues to perform poorly in international comparisons, with slower speeds and higher prices than benchmark countries. Consequently, there is a risk the productivity and social benefits the NBN was designed to deliver will not be fully realised, more critically that the progress made in growing Australia's digital economy will be lost.

Telstra's objective is to help more Australians thrive and get connected on higher performing broadband at an affordable price. This is good for Australians and good for industry, including NBN Co. This is more critical now than ever before. Our response to NBN Co's proposed terms and conditions as set out in the Consultation Paper, and its broader WBA4 proposals is made with this objective in mind. NBN Co has proposed changes to its WBA4 offer to RSPs in response to the ACCC's inquiries. The proposed changes are an improvement from those offered to RSPs as part of the commercial negotiation process. While we have some residual questions and concerns in relation to how NBN Co has incorporated those proposals into WBA4 drafting, there are also a number of other significant issues that sit outside the current scope of the ACCC's inquiries, that are critical to the Long Term Interests of End-users (**LTIE**), and which have yet to be resolved.

Telstra's decision regarding whether the WBA4 as a whole is reasonable is dependent on the final outcome of those issues, including the provision of full drafting to RSPs and our ongoing pricing concerns. The fact that these issues remain outstanding so close to the time at which RSPs need to make a decision about whether to accept NBN Co's proposals points to the imbalance in negotiating power that exists in this process. As such we are currently undecided as to whether we will sign up to WBA4.

In deciding whether or not to issue a Final Access Determination (**FAD**) the ACCC must consider whether doing so would promote the LTIE. Given the immense imbalance in bargaining power and ongoing uncertainty associated with the commercial negotiations, Telstra considers that issuing a FAD would be in the LTIE. Doing so would establish a regulatory baseline for ongoing negotiation in the event that RSPs are unsatisfied with WBA4 and for future negotiations in relation to WBA5 (which will start in less than two years' time). A FAD would also establish the beginnings of a regulatory framework, that has so far been absent despite NBN Co being a monopoly supplier, thus reducing regulatory risk and providing predictability in the long term.

Without a FAD, there is a material risk that NBN Co withdraws its intent to implement the proposed access arrangements for RSPs that are not satisfied with WBA4 in its entirety (and may seek an alternative form of supply), and/or as part of WBA5 negotiations. Indeed, even after WBA4 is signed, there remains a risk NBN Co could withdraw key offers in the event of a regulatory event. We note there is also an implicit threat of withdrawal of the access arrangements proposed by NBN Co (as set out in the Consultation Paper) should the ACCC instead consider that a FAD would be in the LTIE. This further illustrates the risk faced by RSPs who face ongoing uncertainty and unpredictability as a result of NBN Co's monopoly position.



NBN Co access pricing proposals

We welcome the proposals pertaining to the provision of greater price certainty to RSPs, as described in the ACCC's consultation. However, we do not share the ACCC's current view that NBN Co's pricing constitutes reasonable access terms.

More ambitious changes to NBN Co's pricing are required. NBN Co's pricing arrangements, including high prices, pricing uncertainty and gaps in the pricing structure, are leading to a range of market failures. While these pricing arrangements directly impact RSPs, ultimately it is end users who will bear the costs.

Telstra is particularly concerned with the following:

- While the proposed access arrangements appear to offer certainty, NBN Co instead has the ability to immediately withdraw price terms to the detriment of customers. **[c-i-c begins] [c-i-c ends]**
- The initial Bundles Roadmap applies for only part of the potential term of WBA4, so that NBN Co will have the ability to increase prices before WBA4 ends. Because the WBA4 would be an access agreement, RSPs would be powerless to prevent an nbn price hike and the ACCC would be locked out.
- The WBA4 proposals fail to make changes to NBN Co's CVC charging structure which has been subject to widespread RSP criticism. While Telstra is appreciative of nbn's 40% CVC COVID-19 offer, when this is withdrawn end customers and RSPs will have to face significant increases in the costs they face for connectivity, at the same time as connectivity is critical to the recovery of the COVID-19 economy. The CVC charge is a penalty on utilisation and take up on the NBN which is contrary to the long term interests of all Australians as we seek to emerge from the effects of COVID-19.
- Telstra remains of the view that the ACCC should focus on the 50/20 Mbps speed tier in seeking to ensure affordable entry level broadband for Australian consumers rather than using the 12/1 Mbps service as an anchor service. Wholesale pricing that incentivises the migration of end-users to a low speed 12/1 service risks a negative NBN consumer experience, under-utilisation of the NBN and lost socio-economic benefits.
- There also remains a pressing need for a bespoke voice-only wholesale service, priced at \$10 per month. These services remain a vital means of contact for some of the most vulnerable members of the community, particularly in the current environment. While Telstra continues to prioritise affordable access to voice-only services for our customers, the unsustainable margins we currently face on nbn voice-only services put the long-term interests of customers who value these services at serious risk.
- An affordable voice-only service also needs to be accompanied by permanent targeted low-income wholesale broadband offers. While Telstra appreciates NBN Co's recent temporary discounts, they do not provide the wholesale price certainty needed for RSPs to construct sustainable long term offers for low income and other vulnerable customers.

NBN Co service standards proposals

Notwithstanding our disappointment that the rebate levels proposed by NBN Co are below that deemed appropriate by the ACCC in its Draft FAD, the access arrangements as they relate to the service standards that were the focus of the ACCC inquiry are generally reasonable. They are, however, only a subset of the issues that drive customer experience and all of these issues need to be kept under review by RSPs and NBN Co in order to ensure that any emerging pain points are quickly addressed.

For example, outages (whether planned or not) impact upon the customer experience. As part of the WBA4 consultations, Telstra proposed that NBN Co improve the provisions relating to outage management, with the



aim of enabling RSPs to take steps to work with their customers to mitigate the impact of outages. However, no changes have been included in the WBA4 offer.

Our remaining concern with the proposed access arrangements is that they could be enhanced. For example, while supporting the addition of rebates for underperforming service speeds, Telstra maintains that NBN Co should have processes in place to address the future of the services in question. A similar position applies to fixed wireless congestion and the measurement of trouble tickets. On the latter, Telstra maintains our position that the measurement of trouble tickets should commence from time of acknowledgement rather than acceptance to align with the customer experience. While NBN Co has raised concerns about errors in trouble tickets, this could be resolved through operational changes.

Requirements to pass-through wholesale rebates to end-customers have raised concerns throughout the NBN Wholesale Service Standards Inquiry due to the administrative complexity and cost burden. Accordingly, Telstra welcomes the approach taken by NBN Co to recognise the benefits and customer experience initiatives provided by RSPs by including a 'fair value benefit' component. This recognition is also reflected in the NBN Co guidance for RSPs on fair value benefit. It is not yet clear, however, what the role of the ACMA will be with respect to the pass-through of wholesale rebates. In any event, Telstra would strongly object to any regulatory requirement which extends beyond that proposed in the WBA4 on the basis that doing so could undermine what RSPs are already invested in to reduce the impacts of nbn service and connectivity issues and limit the potential for the highly competitive retail market to produce more innovative approaches to improving consumer outcomes.



INTRODUCTION

Telstra welcomes the opportunity to respond to the ACCC inquiries into NBN access pricing and wholesale service standards Consultation Paper (**Consultation Paper**). The Consultation Paper sets out proposed changes to the terms and conditions on which NBN Co provides its wholesale services, which NBN Co intends to incorporate into the next iteration of the Wholesale Broadband Agreement (**WBA4**).

The remainder of this submission provides Telstra's views on the proposed access arrangements (respectively, those relating to pricing and those relating to service standards), in the context of the three key consultation questions asked by the ACCC. That is:

- Whether the contents of the proposed access arrangements will be beneficial to the long-term interests of end-users;
- Any deficiencies or unforeseen consequences that need to be addressed before the intended benefits of the proposed access arrangements can be realised; and
- Whether the proposed access arrangements are reasonable having regard to the regulatory assessment framework.

In addition to the views set out in this submission, Telstra also refers the ACCC to previous submissions to both inquiries and **[c-i-c begins] [c-i-c ends]**.



01 Consultation Questions

The ACCC invited submissions on three consultation questions. Telstra's response to those questions is provided below.

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

The Consultation Paper sets out the ACCC's view on what it understands by the phrase 'long term interests of end-users' (**LTIE**). Specifically, the ACCC considers the term LTIE refers to the end-users' economic interests, which include lower prices, increased quality of service and greater diversity and scope in product offerings. While the ACCC takes separate approaches to its assessment of the pricing and service standards proposals, it concludes that NBN Co's pricing and service standards proposals for WBA4 would constitute reasonable access terms. Further, the ACCC considers NBN Co's proposed access arrangements are "...a marked improvement over the current WBA terms and...will set the baseline for future commercial negotiations."

Telstra agrees that the access terms proposed by NBN Co for WBA4 represent a significant step forward from WBA3 and related terms proposed to date during the commercial negotiation process. However, this assessment only applies in the context of the current commercial negotiations. That is, the proposed access arrangements are a short-term solution to some (but not all) concerns that have been raised during the inquiries and commercial negotiation process. They will result in a WBA4 that includes some better outcomes than might otherwise have been the case. We also respect that the current proposals follow extensive discussion between NBN Co and the ACCC, taking into account stakeholder feedback over the course of the inquiry.

Telstra does not, however, consider the approach being taken will set the baseline for future commercial negotiations nor ultimately result in outcomes that are in the LTIE. The regulatory hierarchy is intended to support timely and efficient outcomes and to reduce uncertainty for the industry. Commercially agreed access terms are often the best way to deliver such outcomes. However, the presence of market failures can result in inefficient economic outcomes to the detriment of the economy, businesses and consumers.

One factor leading to market failure is the presence of monopolised markets, hence it is usually the case that monopoly infrastructure providers are regulated. While there are a range of regulations and requirements applying to NBN Co, overall, these do not ensure NBN Co faces adequate incentives to deliver efficient market outcomes. Indeed, the vast majority of NBN Co's services supplied under WBA3 and soon WBA4 are unregulated – there is no SAU, there is no Access Determination, there are no BROCs.

Therefore, the process for commercially negotiating access arrangements between NBN Co and RSPs continues to be subject to a clear imbalance of bargaining power, unlike any other regulated market in Australia. This is illustrated by the fact that NBN Co and RSP negotiations on WBA4 occurred over a long timeframe and resulted in a position that was clearly unsatisfactory for RSPs with terms that delivered far less than what was proposed by the ACCC (and what is included in the current proposed access arrangements). In parallel, and unbeknown to RSPs, the ACCC and NBN Co separately negotiated terms for WBA4, and those negotiated terms were then provided to RSPs without any real notice by NBN Co. This process makes clear that there is a clear market failure with respect to the commercial negotiations between RSPs and NBN Co under the current regulatory framework.

Further, there are a number of issues still outstanding and on which NBN Co has deferred making a decision. Those issues are outside the scope of both inquiries and, given the timeframes associated with WBA4, this has put Telstra in a difficult position, which is unacceptable given the significance of the agreement.

The commercial negotiations between NBN Co and RSPs for WBA3 were part of the reason for the commencement of the NBN wholesale service standards inquiry in late 2017. As the ACCC is aware, the



inability to negotiate key commercial positions with NBN Co led to Telstra **[c-i-c begins] [c-i-c ends]**. As noted above, we find ourselves in a similar position for WBA4. There is a high risk that certain issues will not be resolved before we need to make a decision on whether to sign WBA4. NBN Co is in a monopoly position where RSPs are dependent on the supply of its wholesale services if they wish to continue to compete in the retail market for the NBN. The critical nature of wholesale NBN inputs and the absence of an acceptable alternative supply option, means that Telstra (and other RSPs) are really left with little choice but to sign the WBA proposed by NBN Co.

Many of the proposals made by NBN Co are consistent with the position put forward by Telstra during the commercial negotiations for WBA4 and in our submissions throughout the Inquiry. While this is positive, it is not clear why NBN Co chose to engage with the ACCC rather than RSPs to achieve a similar commercial outcome. While it might be argued that the mere threat of regulatory intervention has been sufficient to achieve the current outcome, there is no guarantee that this will apply to future iterations of the WBA. Rather, Telstra considers it likely that – as in the past – future negotiations will be marked by the same problems caused by the imbalance in bargaining power between a monopoly wholesale provider and RSPs.

The Consultation Paper includes an interpretation of 'long-term' with reference to the guidance offered by the Australian Competition Tribunal. Specifically:

Long-term: the long-term will be the period over which the full effects of the...decision will be felt. This means some years, being sufficient for all players (being existing and potential competitors at the various functional stages of the...industry) to adjust to the outcome, make investment decisions and implement growth – as well as entry and/or exit – strategies.

The lack of a regulatory decision in this instance fails to provide any certainty to RSPs about future negotiations with NBN Co, with a consequential detrimental impact on future investment and growth decisions. The absence of a regulatory fallback means that RSPs will enter negotiations for WBA5 – in less than two years time – with no guarantee that wholesale supply will continue on at least the same terms. It is incorrect to assume NBN Co will carry over WBA4 into WBA5 negotiations or provide better terms for customers. First, without a regulatory framework, there is no incentive for NBN Co to do so. Second, **[c-i-c begins] [c-i-c ends]**

The ACCC must make a decision whether or not to make a FAD, and must consider whether doing so is in the LTIE. Not issuing a FAD means that any disputes about further terms of supply will be subject to lengthy processes that may ultimately fail to provide any solution, harming competition and incentives for efficient investment, to the detriment of end user and access seeker interests.

Without a FAD, there is also a material risk that NBN Co withdraws its intent to implement the proposed access arrangements for RSPs that are not satisfied with WBA4 in its entirety (and may seek an alternative form of supply), and/or as part of WBA5 negotiations. **[c-i-c begins] [c-i-c ends]**. We further note an implicit threat of withdrawal of the access arrangements proposed by NBN Co (as set out in the Consultation Paper) should the ACCC instead consider that a FAD would be in the LTIE. This further illustrates the risk faced by RSPs who face ongoing uncertainty and unpredictability as a result of NBN Co's monopoly position.

Telstra supports the primacy of commercially negotiated access agreements where there is no market failure and the LTIE is achieved. We do not consider this is the case with respect to NBN access pricing or service standards (currently) nor any future wholesale supply concerns that may arise. Rather, it would be in the long-term interests of end users for the ACCC to make a final decision and FAD that reflects the arrangements proposed in the Consultation Paper and establishes a regulatory baseline for future commercial negotiations. We thus support the ACCC in making a Final Decision and FAD.



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

Telstra's comments on the terms in the proposed access arrangements for NBN access pricing and wholesale service standards are provided in the following two sections of our submission. We also note that we are separately providing feedback to NBN Co on WBA4 drafting which reflects the comments provided here.

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

Telstra's position on whether the proposed access arrangements are reasonable is provided in the following two sections of our submission.



02 NBN Co's access pricing proposals

The section of Telstra's submission sets out in more detail our views on the reasonableness of the WBA4 pricing proposals, including on certain deficiencies we believe should be addressed in order for the consumer benefits intended by the ACCC to be realised.

A. Will the proposals decrease costs and improve quality for NBN broadband consumers?

By reducing the ELB "Additional Amount", the proposals will reduce the cost to access seekers of a 12/1 Mbps service using more than 0.15Mbps of CVC. Subject to a minor drafting point we hope to be able to resolve with NBN Co¹, the proposals should thus operate as intended by the ACCC to decrease the costs and improve the quality at which RSPs can supply 12/1 broadband services to end customers.

However, as we explain in detail in our original response to the ACCC's October 2019 Discussion Paper (**original response**)², we believe it is ultimately against customers' best interests for RSPs to be incentivised to sell them low speed broadband. This is because customers on 12/1 Mbps services have poor customer perceptions and experience of the NBN, and they are unable to enjoy the full socio-economic benefits unlocked by broadband services with higher download and upload speeds.

In 2017, both NBN Co and the ACCC expressed concerns with the poor consumer outcomes that were being generated as a result of RSP incentives at the time to promote NBN Co's cheapest 12/1 Mbps service, resulting in around 30% of customers having been sold these slow speed plans.

As set out in our original response, consumer research commissioned by GR&SI in 2019 found that customers on the 12/1 Mbps speed tier tended to have poorer perceptions about NBN speed, reliability and value for money compared to consumers on 50 Mbps or more – with about half of 12/1 Mbps customers dissatisfied with the value for money of their service, and 45 percent considering the speed for their service to be below expectations.

That research was conducted in a pre - COVID-19 world. Given how essential reliable upstream and downstream internet connectivity has become to facilitate remote working, online education and training, and delivery of telehealth and government services, similar research today would likely yield worse outcomes.

B. Will the proposals promote competition?

12/1 Mbps broadband competition

The ACCC considers the mELB pricing changes should lower the costs for RSPs specialising in supply of 12/1 services, helping them to compete using this source of differentiation in the market and also prompting a competitive response by a range of RSPs in offering 12/1 services. As we explain in section A of this submission above and in detail in our original response, we believe it is ultimately against customers' best interests for RSPs to be incentivised to sell them low speed broadband.

Fixed wireless competition

The ACCC considers the mELB pricing and certainty changes could mean that providers supplying services on fixed wireless and mobile networks will sharpen their retail offers in order to compete. However, effective mobile and fixed wireless competitive alternatives to the NBN are already in market and plans for intensified MNO competition to the NBN already announced, prior to any impact of the proposed new 12/1 NBN wholesale pricing being felt.

¹ [c-i-c begins] [c-i-c ends] We have raised this drafting issue with NBN Co, and we are hopeful it can be resolved.

² <https://www.accc.gov.au/regulated-infrastructure/communications/national-broadband-network-nbn/inquiry-into-nbn-access-pricing/discussion-paper>



For example, Optus 5G Home already offers a 50Mbps service with unlimited data for \$70/pm³, offering a viable alternative not only to NBN Co's slowest speed 12/1 service, but also its much more popular 25/5 and 50/20 speed tiers and has very recently launched new 5G plans targeting those desiring flexible home internet⁴. In this regard, Telstra endorses the recent observations of market analyst New Street Research that:

“Bizarrely, the ACCC isn't looking at the two contentious areas of NBN pricing: the CVC capacity rationing charge, and whether it is cross-subsiding Corporate pricing, but instead is considering regulation of NBN's entry level pricing. If there is an area of NBN service provision that is competitive and where price regulation isn't needed, it is entry-level NBN12 and NBN25 with all three MNOs contesting that market on a widespread basis, taking share off NBN Co and considering further investment targeting this segment.” (NSR ANZ Telescope 2020 No 16, 8 September 2020)

C. Will the proposals deliver an anchoring benefit (i.e. serve to reduce charges for higher speeds)?

In determining whether to make an Access Determination, the ACCC may, if the carrier supplies one or more eligible services, take into account the characteristics, costs, revenues and demand for those other eligible services. This provision is intended to ensure that the ACCC, in making an Access Determination, does not consider the declared service in isolation, but also considers other relevant services.

The ACCC considers the WBA4 pricing proposals will indirectly benefit the long-term interests of end-users of other products than 12/1 Mbps broadband, through the anchoring effect of the mELB on higher speed services (as well as directly through the pricing certainty provisions for all bundled TC-4 products).

As noted in our recent response to the ACCC's consultation on the extension of NBN Co's SIO RKR⁵ (**NBN RKR response**), we believe the ACCC should consider what additional information may be required to assess the efficacy of the proposed 12/1 anchor arrangement. For example, this could include data that can test whether the anchor has any impact on the average wholesale prices of other plans, or more specifically how the ACCC's intervention in relation to the 12/1 Mbps service has influenced the wholesale price of the 25 and 50 Mbps services – including data on the CVC overage quantity purchased by Access Seekers (at a minimum split by POI and traffic class).

For the reasons set out in our original response, we don't believe that a 12/1 Mbps anchor will be effective to constrain the cost of NBN Co's higher speed services. NBN faces commercial incentives to demarcate low and higher speed broadband. It is higher-speed consumers who drive overall data consumption (primarily, those on 50/20 Mbps) and thus who are the catalyst for how RSPs price, market and sell their products. To date, NBN Co has shown no willingness to reduce the \$45 charge for its most popular 50/20 Mbps bundle, nor made any definitive commitment to readjust the planned Roadmap CVC inclusions for its higher speed tiers to cater for the general increase in consumer data usage that has been spurred on by COVID-19 digital advances, once its temporary COVID offer expires.

In relation to the mELB, the ACCC has acknowledged that there is some uncertainty around the level of CVC requirements that will emerge following the easing of lock-down restrictions associated with COVID-19, and has observed that the proposed mELB pricing would allow a 42.5 percent increase in associated CVC provisioning as at May 2021 while maintaining a \$35 wholesale price point.

By contrast, NBN Co has been insistent that the 40 percent CVC uplift across all speed tiers it introduced in March 2020 is a strictly time-limited temporary offer (currently set to expire on 30 November 2020). According

³ <https://www.optus.com.au/broadband-nbn/5g-home-broadband>

⁴ <https://www.optus.com.au/about/media-centre/media-releases/2020/09/optus-newest-5g-internet-plans-are-all-about-high-speed-and-streamed-entertainment>

⁵ <https://www.accc.gov.au/regulated-infrastructure/communications/monitoring-reporting/nbn-services-in-operation-record-keeping-rules/extension-of-2020-nbn-sio-rkr-consultation>



to the ACCC's wholesale market indicators reports⁶, industry average peak CVC per user for the June 2020 quarter was 2.5Mbps. In the June quarter 2019 this was 1.75Mbps (43% annual increase), in June 2018 this was 1.66Mbps (5% annual increase) and in June 2017 this was 1.09Mbps (52% annual increase). That's a compound annual increase of 32% over the past 3 years. If there is no change to NBN Co's current pricing and inclusions, Telstra anticipates that the value and experience we can offer to our customers will be negatively impacted by June 2022 to the tune of **[c-i-c begins] [c-i-c ends]**

In the event that the WBA4 pricing proposals fail to constrain the growing costs RSPs face on higher speed tiers as a result of NBN Co's approach to pricing, the risk of retail price rises is real.⁷

D. Will the proposals deliver the intended benefits of increased price certainty?

Telstra is very supportive of the ACCC's focus in the pricing inquiry on improving price certainty for access seekers. We agree with the ACCC that uncertainty over pricing can have serious consequences for end-users, such as RSPs seeking to mitigate their risk of cost increases by withholding value from their retail offers and/or flowing through higher retail prices to their customer base.

We have long advocated for NBN Co's temporary discounts and offers to be replaced with permanent, predictable pricing that provides RSPs with certainty and the incentive to compete. We agree that targeted, short-term offers have their place, but longer term pricing constructs such as the TC-4 bundles (which are now the predominant method of access) should not be subject to the uncertainty that comes with being included in the Discounts, Credits and Rebates (DCR) List. As such, we welcome the improvements to TC-4 price certainty that NBN Co's proposed WBA4 terms will deliver. However, we are concerned that some of this certainty could be undermined by the contents and limitations of the proposed WBA4 drafting, as we explain below in detail in Appendix 1. In particular, we are concerned that:

- While the proposed access arrangements appear to offer certainty, NBN Co instead has the ability to immediately withdraw price terms to the detriment of customers. **[c-i-c begins] [c-i-c ends]**
- **[c-i-c begins] [c-i-c ends]** so that NBN Co will have the ability to increase prices before WBA4 ends. Because the WBA4 would be an access agreement, RSPs would be powerless to prevent an NBN access price hike and the ACCC would be unable to intervene.

At a minimum, we consider that an access agreement should provide price certainty over its entire duration, or if that is not possible, then the access agreement preserves the rights for the ACCC to intervene without RSPs being penalised. Unfortunately, NBN Co's current offer does not provide certainty over the entire potential duration of WBA4, locks the ACCC out of making future regulatory decisions, and penalises RSPs if the ACCC does try to intervene.

E. Will the proposal simplify access terms and make it less difficult for RSPs to predict likely costs from month to month?

Overage costs

We agree with the ACCC that the WBA4 proposals are likely to make it less difficult for RSPs supplying 12/1 Mbps services to predict monthly costs, by reducing their risk of incurring overage charges up to a \$35 price point. However, we have material concerns that the inadequate CVC inclusions in NBN Co's Roadmap for its higher speed tiers will continue to cause unsustainable and unpredictable costs in overage for RSPs on higher speed tiers.

⁶ <https://www.accc.gov.au/regulated-infrastructure/communications/national-broadband-network-nbn/nbn-wholesale-market-indicators-report>

⁷ See, for example, Aussie Broadband's recently announced price increases - <https://www.aussiebroadband.com.au/blog/price-increase-announcement/>



In the Consultation Paper, the ACCC notes that the proposed mELB pricing will, as at May 2021, allow a 42.5 percent increase in associated CVC provisioning (0.5 Mbps) while maintaining a \$35 wholesale price point. This is a material increase, and we agree with the ACCC that it should help reduce the risk of providers of 12/1 broadband plans facing unexpectedly high access charges.

What concerns us is that there is no such similar increase anticipated in NBN Co’s Roadmap for the CVC inclusions in its higher speed tiers. Notably, by contrast to the 0.5Mbps (42.5 percent) increase in CVC proposed for the 12/1 speed tier in May 2021, NBN Co’s Roadmap only offers:

- a 0.25Mbps (20 percent) increase for the 25/5 Mbps speed tier; and
- a 0.25Mbps increase (11 percent) increase for the 50/20 speed tier.

On Telstra’s most popular 50/20Mbps speed tier, average peak provisioned CVC usage in July 2020 was already at **[c-i-c begins] [c-i-c ends]**, NBN Co’s proposed 50/20 Roadmap CVC Bundle inclusions of 2.25Mbps until May 2021 and then 2.5Mbps until 30 April 2022.

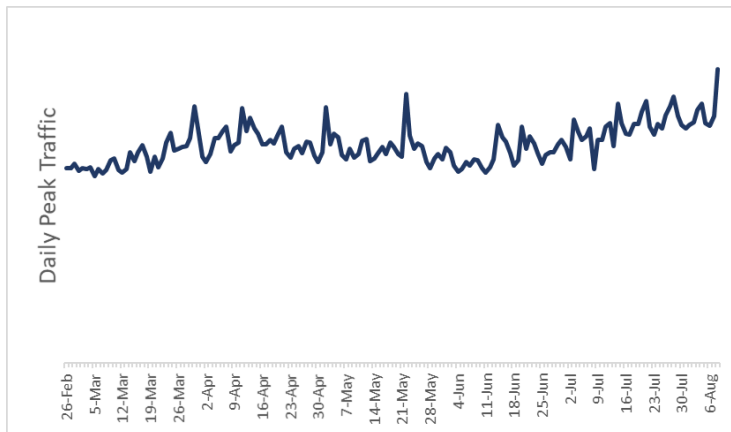
For all speed tiers, we also have concerns with NBN Co’s approach of charging RSPs for booked CVC capacity, rather than utilised capacity. This approach creates needless costs and risks for RSPs in managing CVC, which in turn negatively impacts the experience and value we can offer end-users.

Because of NBN Co’s CVC pricing structure, in order to try to deliver our customers the quality broadband experience they expect from Telstra at a reasonable price, Telstra is currently required to expend material resource managing its CVC arrangements.

[c-i-c begins] [c-i-c ends]

Customer demand is highly variable and can be impacted by weather, geographical location, sporting events, gaming downloads, new video streaming releases, alternative sources of entertainment etc.

Chart showing daily variance of peak NBN traffic (indicative only)



Large traffic events cause added risk to the customer experience, and cost and effort to manage. It is difficult to predict when large events are coming, and it is also difficult to accurately predict their impact (i.e. which ones will drive large amounts of traffic). If we think one is likely (e.g. a large gaming update) we will **[c-i-c begins] [c-i-c ends]** This is a labour-intensive manual process, with gaming updates occurring roughly every two weeks. If the gaming event doesn’t turn out to be as large as forecast, the effort and spend is wasted,



unnecessarily driving up costs to Telstra, and eventually to the end-customer. Worse, if we miss one – there can be a widespread negative flow on effect for customer experience for all customers on the impacted CVCs.

Even with the benefit of NBN Co's current temporary 40% free uplift CVC offer, and all of the effort we invest in delivery of a quality broadband experience for our customers, [c-i-c begins] [c-i-c ends] The charts below compare customer speeds by POI (green >80% plan speed, red <60%) for:

- (i) a normal evening; and
- (ii) an evening during which Call of Duty and Fortnite released updates.

Typical evening speeds experienced (4th Aug) [c-i-c begins] [c-i-c ends]

Speeds during evening of gaming event (5th Aug) [c-i-c begins] [c-i-c ends]

In order to make it truly less difficult for RSPs to predict and manage their wholesale broadband costs each month, there needs to be more fundamental reform to NBN Co's current CVC charging model.

Utilisation penalty

In the Consultation Paper, the ACCC expresses its understanding that the new NBN Co rules on CVC utilisation will rarely result in an additional charge being levied on RSPs in practice. While this may be true today, we believe that it will become more common in the future and we are concerned that these rules will add further complexity and cost to our CVC management cycle.

Under the new rules, a penalty in respect of all services supplied over a relevant CVC is payable, where an access seeker uses more than 95 per cent of its purchased CVC capacity in more than 30 hours in a 30 day period. Since performance is more related to the unused capacity on a CVC (rather than the used capacity) larger sized CVCs can have a much higher utilisation and still achieve the same performance. For example, 95% utilisation achieves only 50 Mbps of headroom on a 1000 Mbps CVC but leaves 500 Mbps of headroom on a 10000 Mbps CVC. The performance outcomes from these two cases is vastly different. [c-i-c begins] [c-i-c ends]

NBN margins do not afford RSPs the luxury of having excess capacity sitting idle simply to meet arbitrary utilisation rules. As traffic and CVC sizes grow, so also will grow the amount of time that these CVCs exceed 95% and the number of CVCs failing the utilisation rules. The headroom requirements are also dependent on factors such as the mix of plan speeds and the network weightings applied to the different speeds, both of which are RSP dependent, so it makes little sense to have a one-size-fits-all rule.

At the same time, as we explain above, it is impossible for RSPs to accurately forecast the required capacity for events like gaming updates that have a major impact on traffic over the network. Even if we could, there are no guarantees that NBN Co can transition the required network capacity in the required timeframes to deal with short term requirements like this, especially if all RSPs are attempting it. Consequently, we fear that once the new provisions come into play, ad hoc short-term requirements like this will exacerbate the number of hours each month contributing towards the overall average.

In the event NBN Co continues with a pricing structure involving separate charges for CVC then, instead of RSPs paying for booked capacity and then paying NBN Co a penalty if usage exceeds an agreed threshold, our preferred (much simpler and more efficient) approach would be for RSPs to simply pay NBN Co for their actual CVC usage. This would make it economically viable to provision additional headroom in readiness for gaming and other unforeseen events and it would be achieved with a much lower frequency of CVC changes. As compared to NBN Co's current approach under the WBA4 proposals (that requires frequent and often reactive CVC provisioning), this would deliver benefits to RSPs, NBN Co and end-users in the form of reduced CVC management costs and reduced risks to the customer experience from unexpected spikes in usage. For example, as evidenced by the customer experience seen during the COVID-19 offer where RSPs were able to provision additional capacity without incurring extra overage costs.



F. Will the proposal benefit all ADSL customers transitioning to the NBN that do not require a higher speed service?

The WBA4 pricing proposals are aimed to benefit those ADSL customers who are forced to migrate to the NBN in order to retain their fixed broadband services, even though they do not require the higher speed broadband available on the NBN. From May 2021, these changes will save RSPs providing 12/1 Mbps NBN broadband services up to \$4.10 per month per customer in avoided mELB Additional Charges, which they can use to improve their broadband offerings to these customers.

By contrast, the proposals will provide no equivalent benefit to voice-only customers, although these customers are also forced to migrate to the NBN in order to retain their fixed voice service, and also do not benefit from the higher speed broadband available on the NBN. In fact, it appears that the main purpose of NBN Co's "levelisation" proposal in relation to the mELB is to avoid the mELB being priced lower than its \$22.50 ELB "voice only" offer - as the only reason we can see that this would concern NBN Co would be if this created pressure on NBN Co to match the price reduction below \$22.50 for voice-only customers.

Telstra is very disappointed the ACCC has declined to respond to calls from Telstra, the Telecommunications Industry Ombudsman and ACCAN, amongst others, for the ACCC to take action to ensure that NBN Co's access prices also reflect the needs of voice only customers, who do not require any internet services from NBN Co.

When COVID-19 lockdowns were introduced, Telstra suspended charging for Local, National & Calls to Mobiles to help our fixed line customers stay in touch. Customers made more calls and talked for longer **[c-i-c begins] [c-i-c ends]**. In many cases, landlines were the only means of contact our NBN voice-only customers had with family, friends, and vital services such as virtual GP appointments.

We dispute NBN Co's assertions that "*Consumers continue to be able to make a smooth migration to the nbn network in relation to voice-only based on nbn's current ELB wholesale pricing*". On average, about **[c-i-c begins] [c-i-c ends]** of Telstra's legacy voice only customers do not migrate to the NBN. For the reasons set out in our original response, we believe there remains a pressing need for a bespoke NBN voice-only wholesale service, priced at \$10 per month.

In the table below, we provide a snapshot of Telstra's current voice-only consumer base as at 16 August 2020. As you can see, the percentage of these customers aged over 60 rises from **[c-i-c begins] [c-i-c ends]** across our entire voice-only base to **[c-i-c begins] [c-i-c ends]** for NBN voice-only, while the percentage of customers who are pensioners also increases by **[c-i-c begins] [c-i-c ends]**, and the percentage of customers who are priority assist customers increases by **[c-i-c begins] [c-i-c ends]**.

[c-i-c begins]

[c-i-c ends]

In many cases, the current monthly cost of an NBN fixed line voice-only service is a significant outlay for these customers, and this is not a cohort who can readily afford to lose the benefit of pensioner and other discounts that Telstra currently offers. Telstra continues to prioritise affordable access to voice-only services for our customers and to support a large range of concessional fixed voice services. Currently **[c-i-c begins] [c-i-c ends]**. However, the unsustainable **[c-i-c begins] [c-i-c ends]** margins we currently face on nbn voice-only services is putting our ability to continue to support our customers in this way at risk. **[c-i-c begins] [c-i-c ends]**

In our view, it is clear that NBN's ongoing \$22.50 access price for voice-only services is putting the long-term interests of customers who value these services at serious risk and we continue to urge the ACCC to take action to better protect the interests of these consumers.

G. Will the proposal promote digital inclusion and connectivity?

Whether or not the proposals will serve to promote digital inclusion and connectivity via the NBN is an important consideration, as highlighted by the work commissioned by NBN Co on the contribution the NBN



could make to the lives of Australians and the economy⁸. As use of broadband services becomes more important in accessing government, education and health services, seeking employment opportunities and maintaining social connections, there is a risk that some parts of the community will be left behind. For these benefits to eventuate, the NBN needs to be accessible to all, on a long-term basis.

The ACCC considers the WBA4 pricing proposals will encourage some consumers to take up NBN Co retail services that they could not otherwise continue to afford. We do not believe the proposals go far enough to ensure affordable fixed broadband access for low income and vulnerable customers.

During COVID-19, Telstra took actions to support our customers and the community including creating relief programs for consumer and small business customers and providing temporary unlimited home broadband data allowances. To assist those in vulnerable circumstances, we introduced discounts for eligible customers receiving the JobSeeker payment, unlimited home phone calls for eligible pensioners and, with the help of NBN Co, we have been able to offer a year-long \$40/month home broadband discount to eligible low-income families with school-aged children.

Telstra greatly appreciates NBN Co's recent temporary discounts to help RSPs connect customers to the NBN who might otherwise not be able to afford to do so. However, these temporary discounts do not give RSPs the wholesale price certainty they need to be able to construct long term offers to improve digital connectivity for these customers.

We consider that targeted permanent offers for eligible vulnerable customers such as those proposed by ACCAN would be in the best long-term interests of these consumers. We note in this respect recent testimony from ACCAN to the NBN Joint Parliamentary Standing Committee that⁹:

“ACCAN considers that the most effective way of achieving affordable broadband for all Australians is for NBN to offer a 50 megabits per second service for \$20 per month to be available to households receiving financial support from the government. This would be the wholesale price—\$20 per month. We believe that a concessional service at this wholesale level will enable retail service providers to make competitive offerings available to low-income consumers and allow consumers to shop around for the best offer for their needs. ACCAN has estimated that there are around two million households on the lowest incomes in our community that would stand to benefit significantly if this service was made available on a long-term basis”.

⁸ See nbn co 2018, Connecting Australia report, available at <https://www.nbnco.com.au/content/dam/nbnco2/2018/documents/media-centre/nbn-connecting-australia-economic-report-4.pdf>

⁹ Committee Hansard, Joint Standing Committee on the National Broadband Network, Friday 31 July 2020.



03 NBN Co's service standards proposals

This section of Telstra's submission addresses the proposed access arrangements for the subset of NBN wholesale service standards considered by the ACCC inquiry.

Connection and fault rebates

Telstra supports the structural changes that have been made to the rebates for connection and faults. The rebates proposed by NBN Co reflect the principles long advocated by Telstra, specifically that they should accrue on a daily basis, are paid to RSPs automatically and are extended to AVC TC-2 services. While the rebates are lower than that proposed by the ACCC in its Draft Decision and FAD, they are a substantial improvement on that proposed by NBN Co to date during the commercial negotiation process. Further, the addition of speed-related rebates (see below) and the change in network profile (away from primarily new connections/migration to a business as usual model) going forward, suggests the approach taken by NBN Co is overall reasonable.

We support the ACCC's view that, as a general principle, NBN Co should only confirm to the access seeker that a connection is complete, and begin charging for that service, after conducting appropriate testing to ensure installation activities are successful. While the new failed connection rebate does not entirely reflect this principle (as noted by the ACCC, there are no new installation processes that would result in fewer NSNW faults occurring), we agree it is likely to ensure that NBN Co does not charge for new services that are not actually functioning and is reasonable in this regard. That said, from the end user's perspective the connection has failed and the service level has not been met, so there is an argument that NBN Co should also pay the associated connection rebate in this scenario. We also acknowledge the NBN Co proposal to consult with RSPs on the potential introduction of automated testing and look forward to engaging in that consultation. We believe it would be helpful for NBN Co to commit to a clear timeline for that consultation as part of its WBA4 offer to RSPs.

Our position on the NBN Co requirement for RSPs to take reasonable steps to pass on a fair value benefit (monetary or otherwise) to the customer is set out below.

Missed appointments

Telstra has previously set out our position that NBN Co should face additional penalties where a subsequent appointment is missed – specifically, that the second missed appointment on an order or ticket should generate a higher rebate than the first missed appointment. We therefore support the NBN Co proposal to include a rebate for each subsequent appointment that is missed for the same order or Trouble Ticket. This reflects the additional inconvenience and frustration experienced by customers (and RSPs) who experience ongoing problems with their NBN service. It will also provide additional incentives for NBN Co to reduce the rate of subsequent missed appointments.

We do, however, note that the initial appointment rebate is lower than that previously proposed such that it is no longer aligned with the fee that applies if NBN Co attends an appointment and the customer is not present; that is currently set at \$75. Telstra's view is that these rates should be aligned – either through an increase in the initial missed appointment rebate (which would then require an increase in the subsequent missed appointment rebate) or a decrease in the fee charged by NBN Co. **[c-i-c begins] [c-i-c ends]**

We agree with the proposal to provide a rebate with a 50% reduction if NBN Co is able to attend the appointment on the same day, so long as the customer is still present and willing.

Measurement of trouble tickets

NBN Co proposes to continue to measure Trouble Tickets from the time they are Accepted, rather than moving (as set out by the ACCC in its Draft Decision and FAD) to the time the Trouble Ticket has been



Acknowledged by NBN Co. Telstra does not agree with this proposal. Rather we maintain our previous position that timely validation of trouble tickets should be undertaken as part of NBN Co's ordinary operational processes, and that commencing service level timeframes from trouble ticket acknowledgment more closely aligns with the end-user's experience of the fault.

NBN Co has justified the delay in measurement as reasonable as it enables NBN Co to assess whether the RSP has correctly submitted all the information required for it to begin rectifying a fault. However, this could be addressed by NBN Co making relevant fields mandatory when trouble tickets are being submitted. This would reduce the risk of incomplete or inaccurate trouble tickets delaying the resolution of end user faults.

Underperforming service speeds

Telstra supports the addition of a rebate where a service cannot achieve the ACCC speed expectation where the Assured Rate is not available or proves to be inaccurate.

In principle, Telstra considers NBN Co should be upgrading their network to meet customer expectations. Accordingly, we maintain our position that there needs to be a process in place that recognises customers who have been downgraded to meet NBN capabilities but still want a higher speed service. Specifically, there should be a mechanism for acknowledging and tracking where customers are not receiving the service speed they expect.

Telstra considers this would also be beneficial to NBN Co in providing them with information to support future business cases for upgrades – that is, they would know where customer demand for higher capacity and speeds exist, and therefore where the highest return on investment is likely.

PIR objective rebate

Telstra welcomes the introduction of a new rebate for those services that do not meet the peak information rate (PIR) Objective and view this as a useful step in incentivising NBN Co to ensure that as many customers as possible are able to realise the benefits the NBN was designed to deliver. The structure of the rebate also appears to provide an increased incentive for NBN Co to address those services placed in remediation for extended periods.

While it appears complex, the process proposed by NBN Co for applying the PIR objective rebate is reasonable. It is an improvement on that previously proposed by NBN Co, particularly in terms of the rebate commencing from the time of acknowledgement of the trouble ticket rather than the time at which the service is put into Remediation. We also welcome the increasing rate of the rebate over time as we consider this will incentivise NBN Co to remediate services in a more timely manner, noting that the WBA3 timeframes of up to 24 months to complete such remediation remain unchanged for at least the initial period of WBA4.

Availability of speed reports

Telstra supports the provision of additional information relating to the speed performance of a service. Our position has always been that NBN Co must provide accurate and timely information to RSPs about the performance of a service – from point of sale through to the customer's continuing use of the service. However, there is always room for improvement in the information provided by NBN Co and we look forward to continuing to work with NBN Co to ensure that the data continues to meet the needs of Telstra and its customers.

Fixed wireless underperforming speed rebate

Telstra supports the addition of a wireless speed performance rebate under which NBN Co will pay a \$20 rebate for each month for each fixed wireless AVC TC-4 product component that is supplied using a cell that is Persistently Congested.

However, Telstra does not consider the concept of Persistently Congested to be ideal. Specifically, the 6Mbps busy speed calculation would be considered too slow by end users and should be extended to at least



12Mbps as the trigger point or higher. Further, many customers are receiving poor maximum attainable speeds but rather than rectifying these issues, NBN Co often make the addresses unserviceable (due to line of sight issues or interference). These should be reported on and covered under this rebate (similar to FTTN/B/C performance) and NBN Co should provide a solution to track and notify which services fall into this category.

Telstra also does not agree to NBN Co having the right to change the definition of Persistently Congested on 30 Business Days' notice. While there may be circumstances in which we would welcome a shorter notice period (for example, if NBN Co was making changes that would improve the end user experience), this definition is the basis for payment of a commercial rebate, and the standard change rights that apply to the Ethernet Service Level Schedule should apply.

As set out in previous submissions, Telstra maintains our previous position that NBN Co should be obliged to provide a timeframe/plan to remediate congested cells.

Fixed wireless maximum attainable speed information

Telstra previously supported the requirement for NBN Co to provide RSPs with maximum attainable speed data for fixed wireless services on the basis that it would enable RSPs to provide better and more accurate information about these services to individual customers, as well as promote better selling practices.

We acknowledge the NBN Co view that it considers the maximum attainable speed measurement is inherently limited and the proposal to investigate the provision of more granular, regularly updated visibility of actual service performance to RSPs. However, there remains a need for a consistent and agreed definition of maximum attainable speed, or an alternative measure, for RSPs to use to ascertain fixed wireless service performance. NBN Co should make a commitment in the WBA rather than defer providing this information.

Fixed wireless reporting

The proposed access arrangements include a commitment by NBN Co to provide weekly reporting on both fixed wireless radio access network and backhaul transit links. Telstra supports this proposal. We also note the NBN Co proposal to incorporate a process into WBA4 to allow this reporting to be updated should more appropriate network performance metrics be developed. Telstra looks forward to future consultations on such metrics to ensure they are appropriate and meet RSP requirements and we encourage NBN Co to begin that consultation at the earliest opportunity.

Real-time order and incident management

In addition to existing 'near to real time' RSP reporting for connections and faults, NBN Co proposes to provide a new 'Supplementary Service Level Report' containing performance information at a more granular level. Telstra welcomes the provision of this additional information. We also support the provision of information (i.e. service level reports and weekly reports) via B2B APIs and NBN Co's Customer Centre.

It is not, however, clear whether the information provided by NBN Co will be provided sufficiently quickly to enable RSPs to communicate effectively with customers who are waiting on appointments or experiencing faults. As set out in previous submissions, Telstra supports a requirement on NBN Co to provide near-real-time updates in relation to time-sensitive activities and the provision of more detailed information regarding the status of services.

Service level measurement and exclusions

The NBN Co proposed access arrangements include a range of circumstances in which NBN Co may 'stop the clock' in its measurement of performance against service levels. Telstra supports the inclusion of such specific circumstances, consistent with our position as set out in previous submissions. However, Telstra does not agree with all the exclusions proposed, nor NBN Co's ability to change those exclusions **[c-i-c begins] [c-i-c ends]**. In particular, we do not consider it is appropriate that where NBN Co engages a third party to carry out certain services, the time taken by that third party should be excluded from service level,



performance objective or rebate calculations. NBN Co should remain responsible for meeting the same levels of service whether they carry out the work themselves or engage a third party.

In addition, Telstra considers that the standard change rights in the WBA4 should apply in the event that NBN Co wishes to amend the exclusions in future. **[c-i-c begins] [c-i-c ends]** particularly given the exclusions will impact on Telstra's ability to claim the associated rebates. There is a risk that the benefits gained by NBN Co offering the rebates outlined above, would be eroded should NBN Co have the ability to make such changes.

Reporting of service level metrics

Telstra acknowledges the provision of more detailed levels of reporting to date and supports the commitments made by NBN Co in its access arrangement proposals. As noted previously, this level of reporting is important to RSPs, who will be better informed regarding NBN Co's performance and will enable RSPs to identify systemic issues, e.g. in particular geographic areas or technologies. By ensuring RSPs are fully informed regarding NBN Co's performance, they are better placed to work with NBN Co to manage any issues that arise. To that end, Telstra will of course continue to work with NBN Co to determine what other reporting would be useful to RSPs and their customers.

Consumer Safeguards

Telstra supports the inclusion of a contractual commitment to conduct a 4-week consultation with a view to potentially changing the WBA if a Regulatory Event occurs and the RSP identifies that they cannot comply with an obligation. This reflects the currently commercially negotiated position, **[c-i-c begins] [c-i-c ends]**

Consistent with submissions previously made by Telstra, the changes made to the CSG process by NBN Co are reasonable and reflect the accepted and demonstrated template followed by Telstra Wholesale. There is, however, a gap in the proposed process in that NBN Co has not specified the basis of the apportionment of the CSG. That is, there are no rules or principles set out for the apportionment. Telstra has raised this with NBN Co during commercial negotiations.

Pass-through of wholesale rebates

While some rebates do not have any pass-through requirements, NBN Co has proposed to include a requirement on RSPs to pass on a 'fair value benefit' of the rebate to customers. **[c-i-c begins] [c-i-c ends]**

While Telstra's preference is for no pass-through requirement (with the exception of Missed Appointments), the inclusion of a 'fair value benefit' element recognises that some RSPs offer remedies that mitigate the impact of service faults, such as offering back-up services to ensure consumers remain connected. As submitted previously, a pass-through requirement has a number of drawbacks including complexity of administration and the imposition of costs that may outweigh the rebate being provided. Recognition of the initiatives RSPs themselves have introduced to minimise the impact of NBN service level failures on their customers, alongside flexibility for RSPs to provide their customers with different solutions, is therefore welcome.

[c-i-c begins] [c-i-c ends]

It is not yet clear what the role of the ACMA will be with respect to the pass-through of wholesale rebates. However, Telstra would strongly object to any regulatory requirement which extends beyond that proposed in the WBA4 on the basis that doing so could cripple the potential for the highly competitive retail market to produce innovative approaches to improving consumer outcomes.

Customer experience is broader than the service standards

As noted previously, Telstra broadly welcomes the proposals put forward in the Consultation Paper, which are reflected in the most recent WBA4 offer from NBN Co. However, customer experience is impacted by matters that are broader than those that formed the ACCC inquiry. For example, customers whose service is disrupted



by outages may have a relatively poor experience and they expect their RSP to resolve their problem, not NBN Co. This only serves to drive increased cost onto RSPs, yet the cause of the poor customer experience is not within their control.

With respect to outages, the customer experience will be influenced by the notice given (if any), the duration of the outage and the number of outages experienced. Telstra considers that this is an area where, by working together, RSPs and NBN Co can improve the customer experience, e.g. it is obvious that if NBN Co does not give sufficient notice of an outage to as RSP then they are unable to take steps to work with their impacted customers to mitigate the effects of the outage.

As part of the WBA4 process, NBN Co consulted with RSPs on potential changes to the management of outages. Telstra provided detailed feedback to those consultations (and we have had ongoing operational discussions with NBN Co regarding outage management), but to date no changes have been proposed for inclusion in the WBA4. As a starting point, Telstra considers that additional reporting would be helpful. That reporting could include the outage type, notice periods that NBN Co provided for outages, a list of customers with two or more outages in a month indicating the number of outages each customer has experienced, and the total combined hours services were down due to outages. Telstra does not consider it unreasonable for NBN Co to share with RSPs information on issues that have such a direct impact on the customer experience and we believe that increased transparency will enable NBN Co to target areas for improvement. However, delays in addressing our feedback illustrate the difficulties that RSPs face in getting NBN Co to resolve concerns in a timely manner.



04 Conclusion

As set out elsewhere in this submission, in deciding whether to make a FAD, the ACCC is required to consider whether doing so would be in the LTIE. This in turn requires an examination of the extent to which a FAD would promote competition and encourage efficient investment in and use of infrastructure by which services are supplied. The criteria also include consideration of the direct costs of providing access, and the legitimate business interests of the access provider and access seeker.

Telstra's position is that the legislative criteria would be best promoted by the ACCC:

- issuing a FAD that establishes a regulatory baseline for ongoing negotiations between NBN Co and RSPs;
- resolving uncertainty that exists in the current drafting of WBA4 such that stable commitments are made for the full term of the agreement, including whether extended; and
- amending the proposed access arrangements to address the concerns set out in this submission.

The critical timing of WBA4 means the establishment of a regulatory framework that ensures certainty and stability, while promoting competition in the provision of NBN services, is needed now more than ever before.



Appendix 1 – Certainty concerns regarding the WBA4 drafting

<p>NBN Co variation rights</p>	<p>TC4 Bundles Discount Roadmap¹⁰</p> <ul style="list-style-type: none"> NBN Co’s current Discounts, Credits and Rebates (DCR) List contains a reasonable and fairly standard change right, permitting NBN Co to “<i>withdraw, suspend or amend</i>” the DCR “<i>immediately in order to comply with any lawful order, instruction or request of a Regulator or Government Agency</i>”. Currently, for the TC-4 Bundles Discount, these change rights appear in clause 51.9(c) of the DCR. In NBN Co’s WBA4 drafting proposals, NBN Co’s ability to change the TC-4 Bundles Discount is constrained by the TC-4 Bundles Discount Roadmap (Roadmap), which puts a cap on the price and floor on the CVC inclusions for the term of the then-current Roadmap. [c-i-c begins] [c-i-c ends] <p>WBA4 Change Rights¹¹</p> <ul style="list-style-type: none"> The proposed expansion of NBN Co’s price change rights in WBA4 also creates undesirable uncertainty. Currently under WBA3, NBN Co is permitted to: <ul style="list-style-type: none"> Change the WBA3 Agreement where that change is necessary to comply with any applicable law or required by a Regulatory Event (Head Terms clause F4.8(a)(i)); Change a Price List or any other amount payable under the Agreement in the limited specified set of circumstances set out in Head Terms clause F4.8(a)(ii); and Change the DCR in accordance with the terms of clause 1 of the DCR. [c-i-c begins] [c-i-c ends] We are therefore concerned at the potential for these changes to undermine the certainty incorporation of the TC-4 Bundles Roadmap into WBA4 is intended to provide.
<p>Equivalent Replacement Proposition</p>	<ul style="list-style-type: none"> In WBA4 NBN Co propose giving 12 months’ notice to withdraw one or more bandwidth profiles from the TC-4 Bundles Discount, provided that NBN Co makes available a replacement proposition offering at least equivalent value to the withdrawn bundle product.¹² Our view is that the concept of “equivalent replacement proposition” is not sufficiently certain, and that end users will expect to be able to purchase a product for the same price with at least the same inclusions, rather than potentially something different still considered by NBN Co to offer ‘equivalent value’.
<p>Roadmap</p>	<ul style="list-style-type: none"> [c-i-c begins] [c-i-c ends] As part of the WBA4 pricing proposals, NBN Co has now agreed to publish a two-year TC-4 Bundles Discount Roadmap, and to ensure that this Roadmap is always updated prior to there being less than 12 months’ forward visibility. [c-i-c begins] [c-i-c ends] Further, NBN Co’s 2019 PDF Closure Paper stated that, “<i>In future, nbn will conduct a review of bundle discounts and CVC inclusions on a yearly basis. As part of this review, nbn will give RSPs the opportunity to provide usage forecasts as an input to the annual CVC inclusion review</i>”. Telstra recommends that this commitment be reflected in NBN Co’s WBA4 pricing proposals. Overall, we believe that the TC-4 Roadmap Publication proposals would be more effective in realising the intended benefit of improving price certainty for RSPs if there was a more clearly defined process to which NBN Co would agree to adhere in issuing and updating the Roadmap. This process should include additional clarity on the process NBN Co will adopt to allow RSPs to provide usage forecasts as an input to the annual CVC inclusion review.

¹⁰ [c-i-c begins] [c-i-c ends]

¹¹ [c-i-c begins] [c-i-c ends]

¹² [c-i-c begins] [c-i-c ends]



	<ul style="list-style-type: none"> The process should also require NBN Co to give RSPs transparency of the usage forecasts NBN Co has relied upon in setting its CVC inclusions for each Bundle – so that NBN Co and RSPs can consider the reasonableness of those forecasts in hindsight as part of the annual Roadmap update process. It would also allow the parties to discuss matters such as whether, for example, some form of true-up may be appropriate in the event that unforeseen usage growth, such as what has occurred as a result of COVID-19, results in NBN Co making an unanticipated windfall gain in overage charges.
Overage Amount	<ul style="list-style-type: none"> An important pricing proposal referred to in the Consultation Paper is for NBN Co to agree to fix the CVC overage charge at \$8/Mbps over the WBA4 term, thereby mitigating the risk that additional CVC would be charged at up to the maximum price of \$17.50/Mbps applicable under NBN Co’s SAU. [c-i-c begins] [c-i-c ends] In respect of Bundles other than the Entry Level Bundle, NBN Co can increase the Overage Amount, if that change has effect after any period covered by the then-current TC-4 Bundles Discount Roadmap, so long as it gives 6 months’ prior notice.¹³ [c-i-c begins] [c-i-c ends] Accordingly, it would remain open for NBN Co to revert to charging the \$17.50 SAU price for additional CVC for the remainder of WBA4, and assuming the WBA4 is an access agreement the ACCC would be prevented from intervening. This reintroduces very unhelpful costs uncertainty for RSPs during the latter half of WBA4. Practically, we are also concerned that the application of two different Overage Amounts by NBN Co would be unworkable.
mELB pricing	<p>[c-i-c begins] [c-i-c ends]</p> <p>The ACCC’s Consultation Paper envisages the mELB offer applying for the entire duration of WBA4. However, NBN Co has stated that [c-i-c begins] [c-i-c ends]. This has the potential to undermine cost certainty for RSPs, in the event additional time is required to agree WBA4 terms and the parties accordingly agree to extend WBA3.</p>
SAU CVC price review	<ul style="list-style-type: none"> In the Consultation Paper, the ACCC refers to clause 1C.4.3(d) of the SAU as providing an opportunity for NBN Co to provide longer-term certainty over its intentions regarding its pricing of CVC. This clause of the SAU states that NBN Co will annually review the Price of each CVC Offer (with a view to reducing the Price as aggregate demand increases), once clause 1C.4.3(a) ceases to apply in respect of all CSAs. In the Consultation Paper, the ACCC advises that this threshold has now been met. Currently, NBN Co has given RSPs no indication of when or how it intends to conduct its review of CVC prices in accordance with this clause of the SAU. In the absence of this, RSPs are no better off in terms of certainty regarding NBN Co’s longer-term pricing intentions It would be helpful, in this regard, if the ACCC could request NBN Co for some further transparency regarding the intended timing as to when NBN Co would commence and aim to complete this review.

¹³ **[c-i-c begins] [c-i-c ends]**