



**ACCC**  
**NBN WHOLESALE SERVICE STANDARDS**  
**SECOND DISCUSSION PAPER**

**SUBMISSION BY**  
**VODAFONE HUTCHISON AUSTRALIA**

**FEBRUARY 2019**

## Introduction

VHA Hutchison Australia Pty Limited (**VHA**) welcomes the opportunity to provide further input on the ACCC's inquiry into NBN wholesale service standards.

We support the ACCC's objective to improve the consumer experience on the NBN and its focus on NBN Co.'s wholesale arrangements with Retail Service Providers (**RSPs**). NBN Co.'s commitments to service standards are a major factor affecting customer experiences on the NBN and that's why it is important that NBN Co. should have processes and commitments in place which allow RSPs to meet consumer expectations.

Unfortunately, the current Wholesale Broadband Agreement (**WBA**) between NBN Co. and RSPs largely replicates the 'best endeavours, no commitments' approach of the Plain Old Telephone Service era. It is inconsistent with the standards which RSPs are being held to as well as the expectations and needs of today's broadband consumers. Because the NBN has a range of broadband speed offers on its access network we believe that there needs to be a greater focus on minimum service standards for the consumer grade product portfolio. Fundamentally, NBN Co. currently does not commit to deliver a service with a minimum service level. For example, an NBN 100Mbps service can be provided to a RSP (and then to an end user) with a broadband speed of 25Mbps (or slower) and NBN Co. will still charge the RSP the 100Mbps service subscription price. Rebates for missed appointments and other initiatives along these lines do not address this reality.

While we welcome the changes to the threshold for the payment of connection and service fault rebates and the simplification of the processes for RSPs to claim and receive rebates set out in the recent enforceable undertaking from NBN Co., there needs to be a vital shift in focus in the WBA, beyond rebate arrangements. RSPs and consumers should not be billed for services that are not operational and they should receive a service that has a committed minimum performance level more precisely defined. This is an important principle that was not established under the CSG regime. Instead, a system of rebates was implemented, and we do not believe that replicating this approach is the best way forward.

As we noted in our recent response to the Consumer Safeguards Review, the rebates system requires RSPs to carry the burden of managing the failures at the wholesale level through a complex payments regime. This opaque regime is unnecessary, particularly when NBN Co. is such a ubiquitous wholesaler. Further, rebate systems are often focused on metrics that are of concern at a point in time (currently the appointment performance of the NBN connection technicians) and do not put in place sustainable arrangements that focus on the quality of the service provided.

With the upcoming WBA4 and completion of the NBN, now is the time for a fundamental revision of the WBA framed around clear definitions of what constitutes a successful NBN connection and what constitutes a successful NBN service. WBA4 will also need to be consistent with the package of measures

This document is classified as | **C1 - Public**

targeting RSPs which are currently being put into place by the Government and regulators, including the Consumer Safeguards Review and ACMA rules.

Importantly, industry, NBN Co., government and regulators must continue to work together to improve consumer experiences on the NBN. To this end, a co-regulatory approach is appropriate, with ACCC oversight of WBA4 negotiations between NBN Co. and RSPs. Regulatory intervention in the form of a Final Access Determination should only be required if the standards contained in WBA4 are ineffective.

## **What is a successful NBN connection?**

NBN Co. has an important role to play in confirming that a new service is operational, yet it does not currently do this on a proactive basis. NBN Co. commences charging RSPs for its wholesale service at the point in the activation process when they notify the RSP that the service has been connected. Because NBN Co.'s commitment is to physically connect a consumer's premises to the NBN, it has been our experience that NBN Co. does not always ensure the consumer's internet is working properly and is active.

As the ACCC has identified, if the RSP subsequently identifies that the service is not working, NBN Co. calls this a "new service never worked" fault and requires the RSP to lodge a trouble ticket for fault rectification. These cases are still reported as a successful connection, even though they are a failed connection.

Part 5 of the ACMA Service Migration Determination provides clarity as to the point in the process where NBN RSPs should commence charging from, and that is from when the service has been confirmed to be operational. Under the Determination, consumers cannot be charged for an NBN service provided by an RSP unless that NBN service is operational and capable of providing the applicable speed tier to the consumer. This can include an RSP promptly issuing a refund or credit to a consumer if they have been billed.

This obligation should also apply to NBN Co. so that it is not charging RSPs when there are network connection failures or faults. Just as consumers should not be billed for services that are not operational, RSPs should not be out of pocket when there are connection issues and service reliability issues which are the responsibility of NBN Co. Before it commences charging RSPs, NBN Co. should ensure a service is active. This would negate the need for a rebate as the consumer would not have had their billing period established.

A much better way of managing the activation process would involve NBN Co. placing the activation order into a new status that awaits the acknowledgement of data throughput from the end user before concluding that the activation order has been completed and the service is operational. In the case of FTTC and HFC connection orders, NBN Co. does currently check for data flows for a Layer 2 service. NBN Co. then issues an order completion advice to the RSP, which is a sensible approach for confirming that the service is active. This process should be replicated across all NBN technologies.

As outlined in our previous submission, NBN's 'transfer' fee is another fundamental issue that needs to be fixed urgently. It is a significant impediment to creating a level competitive playing field and will have lasting consequences if it establishes itself in the underlying economics of the NBN. We do not see the reason why NBN Co. should establish at the wholesale level a 'port out' fee construct (that does not usually operate in MNP or LNP) or charge what is clearly not a cost-based amount.

NBN Co. charges RSPs an NBN service transfer fee of \$22.50, which is not at all reflective of the costs involved with performing the actual transfer. Furthermore, NBN Co. charges RSPs the same amount for transfer reversals, which RSPs are required to pay even when transferring back customers due to unauthorised transfers.

### **What is 'ready to connect'?**

Locations should have all infrastructure in place before being released as 'ready to connect'. The status of the infrastructure at a location should also be validated by NBN Co. before being released as 'ready to connect'.

It has been our experience that NBN connection SLA breaches generally relate to either a small number of service classes where additional infrastructure is required, or where NBN Co. believes that the location possesses all required infrastructure, but in fact, does not. Instead, NBN Co. uses RSPs to co-ordinate its workforce to complete the infrastructure build, with RSPs bearing the cost of issue and appointment management when there are problems. RSPs receive no compensation from NBN Co. for performing these tasks, except in the event where an SLA breach occurs. In this context, the rebate is a crude financial instrument that has been designed to drive NBN Co.'s adherence to SLAs and the rebate amount is not representative of the costs incurred by RSPs in managing these cases.

### **What is a successful NBN service?**

The ACMA Service Continuity Standard includes requirements that all entities in the telecommunications supply chain collaborate to ensure that a consumer is provided with a working telecommunications service. The party that is responsible for a fault or connection issue should be held responsible, whether it is the wholesaler or the RSP.

In VHA's experience there needs to be more back-end support from NBN Co. to enable RSPs to provide consumers with the service they are paying for, whether it be the provision of reliable maximum service speed information, the speed performance of the service itself or promptly rectifying service faults.

### **Maximum service speed information**

As the ACCC notes in its discussion paper, the availability of speed information to RSPs is essential to support their sales and marketing activities and compliance with their requirements under the Australian

Consumer Law and ACMA rules. It is not unreasonable to expect that NBN Co., as the infrastructure owner and provider, acts as the authority on the maximum attainable speed an individual customer can expect to receive on their NBN connection.

Service speed was a key focus area across the industry in the second half of 2017. Most large RSPs undertook a series of tasks to 'right plan' their customers, and in some cases issue refunds, after it had been accepted that many of their customers were paying for NBN speeds that were unable to be achieved due to the constraints of the NBN technology being used to connect them.

It is worth noting however that despite the various undertakings across the industry on maximum attainable NBN speed, at no point did the same undertaking apply to NBN Co. Indeed, NBN Co. still operates a wholesale pricing construct that exposes RSPs to the same issue previously faced by consumers.

While NBN Co. provides RSPs with an estimated attainable line speed prior to an order being placed, it does not advise RSPs the maximum attainable line speed of an individual connection. What is provided is a weekly speed report for all copper-based end user connections (FTTN/B/C) based on the results of a single speed test conducted during the week. This result should not be interpreted as a reliable indicator of the maximum line speed associated with an end user's connection as it is a single, point in time test result that is subject to variability including weather.

VHA has observed significant variability within the results that NBN Co. provides about the speeds of end users' connections. As NBN Co. is unable to share reliable information on the maximum line speeds that its infrastructure delivers to our customers, VHA has been forced to invest in systems to validate NBN Co.'s data and inform our customers. We are concerned that this situation will lead to consumers receiving inconsistent information from RSPs about the maximum line speeds that are available at an individual location. The accuracy of the advice provided to consumers will now differ depending on whether an RSP relies on NBN Co.'s inconsistent data source or validates this data to provide more accurate information.

Further, if two separate RSPs rely on NBN Co.'s weekly speed report to inform consumers of their maximum attainable speed, then due to the inherent variability in the data provided to RSPs by NBN Co., it is very possible for a consumer to receive different maximum line speed results from each RSP. This will possibly result in the consumer perceiving that one RSP is able to deliver a better experience than the other.

## **Service speed performance**

Current WBA reliability safeguards are only concerned with the timeframes for provisioning a service and not necessarily the speed performance of the service. NBN Co.'s processes and rules are not currently aligned to ensure that customers don't pay for speeds that can't be delivered. VHA notes the ACCC's concern that NBN Co. may continue charging RSPs for speeds that can't be delivered. We submit that there

should be a clear and reasonable definition of throughput for each of NBN Co.'s speed tiers to ensure RSPs and consumers receive what they pay for.

For example, NBN Co. charges \$65 per month for its 100Mbps service but only acknowledges that there is a fault with an individual connection if the service speed is 25Mbps or less. If a customer with a 100Mbps service is not happy with the speeds they are receiving, the RSP will examine this and, if it is an NBN issue, the RSP will lodge a trouble ticket with NBN Co. NBN Co. however does not accept trouble tickets relating to slow speeds where the speed being experienced by the customer is more than 25Mbps, regardless of which service they have purchased. NBN Co. will continue to charge the RSP for the slow 100Mbps service, leaving the RSP with no option but to offer to move the customer to a lower speed tier plan.

A customer's service may be able to achieve the speed of their chosen plan at the time of activation, but in cases of line speed degradation due to a problem on NBN infrastructure, there is no means for this case to be raised for resolution under the current framework. NBN Co. should have a framework in place that enables trouble tickets to be lodged for services suffering from reduced speeds where the speed is still greater than 25Mbps but less than what the customer has paid for.

## **Service faults**

Under the ACCC's recently accepted enforceable undertaking, NBN Co. will pay RSPs a \$25 rebate for every fault rectification. While this is a step in the right direction, this rebate is fixed at \$25 and the extent to which the fault rectification timeframes are not met are not factored into the rebate calculation.

As a result, RSPs can be faced with continuing to pay NBN Co. a monthly wholesale charge for a non-operational service over an extended period, even though they are (quite rightly) not charging the customer during this period. The RSP meanwhile is also bearing the cost of providing the customer with a back-up connection, which in VHA's case is a connection to our 4G mobile network via a SIM in the modem.

We agree with the ACCC that NBN Co.'s process for beginning measurement of end user faults at trouble ticket acceptance by NBN Co., rather than trouble ticket acknowledgement, is not justified. As a basic principle, RSPs shouldn't be out of pocket when there are NBN network service reliability issues caused by NBN Co. When a trouble ticket is acknowledged, there should be a suspension of wholesale charging until the fault is rectified.