

26th August 2016

Australian Competition and Consumer Commission

Via email: nbn@acc.gov.au, scott.harding@acc.gov.au, Kimberley.hollis@acc.gov.au,

ACCAN thanks the ACCC for the opportunity to contribute to its consultation paper on the Variation to NBN Co Special Access Undertaking (SAU). ACCAN would like to make some observations and comments on the proposed changes and how they may ultimately affect the end user.

1 Changes to the SAU

1.1 Speed tiers

ACCAN has concerns about the downlink and uplink AVC speed range of 25-100 / 5-40 Mbps over the FTTN and FTTB technologies, and associated charge of \$38, identified in Attachment D and section 1C.4.¹ We do not believe that a range which allows for a variance of 75Mbps download and 35Mbps upload is appropriate or reasonable. We believe that such a variance will result in inaccurate selling of services to end users. Furthermore, we are concerned that end users may be offered up to 100/40Mbps plans when their services are only capable of receiving the lower end of the speed tier (25/5Mbps) due to limitations of the technology. The lowest end of this range overlaps with the 25-50 / 5-20 Mbps speed tier (which has an AVC charge of \$34.00). If any issues are raised by end users NBN and RSP can both claim that the lower speed experienced of the 'up to 100Mbps' plan is within the 'range' of the service and therefore there are no service performance issues that need rectification. In these circumstances the 'up to 50Mbps' plan (25-50 / 5-20 Mbps AVC) may be more accurate in terms of what is achievable and cost \$4 less a month. ACCAN does not believe that overlapping AVC speed level will result in the long term interest of end users and leaves too significant a variance in performance levels offered. If speeds greater than 25/5 Mbps is difficult to deliver then the AVCs should be restricted to the lower levels to prevent end users purchasing higher plans and ultimately experiencing performance issues.

1.2 Consistency in the treatment of the different technologies

The variation to the SAU, to account for the Multi Technology Mix, appears to have a number of inconsistencies between the different technologies, the reason for which is unclear to ACCAN. For example section 1C.4.2 outlines 'other charges' such as equipment modification, which costs:²

- 'Hourly labour rates plus cost of materials' in the Fibre, Wireless and Satellite technologies
- 'Hourly labour rate charged for a minimum of 3 hours' for the FTTB and FTTN technologies, and

¹ NBN Co 2016. First Variation to NBN Co Special Access Undertaking. Pg. 64 and 92.

² NBN Co 2016. First Variation to NBN Co Special Access Undertaking. Pg. 95 – 97. Other inconsistencies within this section include charges for late cancellation, missed appointments and equipment repair.

- ‘Hourly labour rate charged for a minimum of 3 hours, plus cost of materials’ for the HFC technology.

ACCAN is concerned that inconsistencies such as these will result in incentives for the RSPs to offer varying levels of services delivered to end users. If an end user reports a fault on a technology that the RSP may face higher charges on from NBN, they may be reluctant to lodge faults and delay repairs that are needed. The inconsistencies may also result in different charges being passed onto the end user for the ‘same errors’ depending on what technology they are connected to.

Furthermore, where the end of the NBN network [UNI] is not at or in the premises [FTTB] and the terminating equipment serves a number of end users, ACCAN is not clear if a number of RSPs will be liable for the charges, depending on the circumstance, and how this will work.³ If the fault affects a number of end users, and potentially a variety of RSP, the responsibility for paying these charges may fall to the RSP which first reports the fault. This may result in RSPs holding back on reporting issues to NBN as they will be responsible for footing the entire bill, instead waiting for another RSP to report it.

ACCAN would appreciate it if the resulting incentives for RSPs and effect on end users could be clarified under the different technology treatment to ensure that the proposed changes will not result in varying service levels for end users.

2 Co-existence and remediation

ACCAN is concerned about the transparency to end users in co-existence and remediation periods. Services to end users may be significantly affected and be lower than the level of performance they were offered and purchased. As these periods may extend much longer than the 18 month switch over period it would not be realistic for a consumer to think that the copper network which they were told was ‘switched off’ would affect their services over the NBN.

End users are not notified of this limitation of the service in the initial period and plans are not being tailored to match the reduced speed guaranteed by the network.⁴ While not having proof that performance level issues are directly related to co-existence and remediation work, there are many

³ For example if the UNI and MDF is damaged accidentally by an end user and needs technician to reconnect.

⁴ ACCAN checked the critical information summary and terms and conditions of plans offered over the NBN FTTN technology and found no mention of lower service levels during the co-existence period. RSPs were found to offer end users a range of speeds levels, up to 100Mbps, which may not be supported by NBN PIR range.

For example [Telstra](#) says: “Note for customers with an NBN (FTTB or FTTN) service:

- Actual speeds will not be known until connection to the NBN.
- The speeds you will experience will further depend on factors such as your distance from the node, the condition of the wiring leading to your home, the number and position of sockets in the home, your in-home wiring and modem position. If you are not happy with your speed, Telstra can work with you to improve this through Telstra Platinum (fees apply), where our tech experts can give you the support you need to get the best set-up and identify those factors that may be impacting speed and quality of service.”

reported service performance issues over FTTN/FTTB technologies.⁵ There are a number of reasons that may cause these issues, interference during the co-existence period or remediation work may be one influencing factor.

ACCAN is concerned that if during these periods end users are not adequately informed of this limitation, or sufficiently capable of understanding the effect that it is having on their service, that they will continue to pay for services that they are not receiving and have limited ability to seek redress. Therefore, in periods where the service performance is affected by these situations and not at the level advertised or expected, end users should automatically receive discounts for the lower service level or offered an ability to change or cancel their plans without cost. For this to occur, a similar relationship needs to exist between NBN and RSPs with transparency of when and where co-existence and remediation work is occurring.

2.1 Inclusion in module 2

ACCAN also understands the issues that require there to be a co-existence and remediation period as transitory in nature. We therefore do not see that it is appropriate for the co-existence and remediation clauses to be included in module 2, which covers the period between July 2023 and June 2040.⁶

3 Rollout information

3.1 Three year construction plan important for end users

ACCAN is concerned that by changing from “publish” to “make available to Access Seekers (subject to the agreement of the terms of access to that information between NBN Co and each Access Seeker)” will result in NBN no longer publishing this information on its website.⁷ The rollout information for the coming years is vital for end users. Many end users are still confused by what the NBN is and when it is arriving in their area. End users, when contacting and seeking advice from ACCAN, have expressed concern about renewing their telecommunications contracts as they are not sure if NBN may be rolling out in their area soon.⁸ In many of these cases, the address is not appearing on the address checker function on NBN website. They fear their area may have NBN in the next few months and that they will have to switch immediately. They often do not understand that they will have 18 months to switch over but understand that switching to the NBN will give them more options in terms of plans and providers and they do not want to limit their options. Being able to advise consumers of an approximate timeframe, even if it is far in advance, gives them reassurance that they can plan their services for the next few years without worrying. The three year construction map which is currently available publically on NBN’s website is the only source of this

⁵ Delimiter, 9/2/2016. ‘NBN gridlock: peak hour congestion takes down FTTN for some’. <https://delimiter.com.au/2016/02/09/nbn-gridlock-fttn-taken-down/> (accessed 26th August 2016).

⁶ ACCC Variation to NBN Co Special Access Undertaking consultation paper. Question 12, pg. 24.

⁷ NBN Co 2016. First Variation to NBN Co Special Access Undertaking. Pg. 186

⁸ For example, this was raised at the Charlestown Probus Club community presentation in 2016

information. NBN, themselves, points end users to this information on their social media accounts⁹ and uses it in presentations to community groups¹⁰, demonstrating the importance of having this information available to end users, not only to access seekers. Therefore, if this change results in the information not being available publically on the website, it is likely to impact end users in their choices on plans and providers based on an assumption that NBN be available in their area sooner or later than it will in fact be.

3.2 Need for transparency to end users of ready for service dates

The lack of transparency and information for households can have a significant impact. For example, a real estate agent previously contacted us to enquire about the status of NBN Ready For Service (RFS) for a premises.¹¹ NBN construction appeared to be complete however the dates that the services would be available varied dramatically by RSPs and even changed by the week. The area had limited ports in the exchange so tenants were unable to acquire ADSL services at this premises. The tenant who was in the premises left due to an inability to get an internet connection and the vagueness of when NBN services would be available. The landlord was struggling to get a new tenant for this same reason. After enquires from ACCAN it was found that the area was due to go live “in the coming weeks”.

As we are not privy to seeing the monthly RFS plans we are unable to determine if the proposed change will impact or reduce the information that RSPs have access to. However, ACCAN is concerned about the difficulty end users currently have of accessing this information and the inability to get consistent and accurate information from RSPs. Any reduction in this information is likely to result in even greater consequences for end users.

3.3 Fixed Wireless rollout information

Furthermore we are concerned that the construction information for fixed wireless technologies, as it is not the fixed footprint, will be removed from the 3 year construction plan. If consumers are only notified when services are available over Fixed Wireless they may be unable to take up services for a lengthy period, which may be their preference, due to agreeing to fixed contracts on current technology.

Yours faithfully



Rachel Thomas
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⁹ NBN twitter account replies often point to the construction rollout, typically saying “Check out our 3yr plan <http://nbn.tm/1LQlt2T>” when consumers are unable to ascertain the rollout in their area from the online address finder https://twitter.com/NBN_Australia/with_replies.

¹⁰ ACCAN has attended community briefings where data from the construction rollout was used to inform consumers and small businesses about when they should expect to receive services.

¹¹ Consumer contact June 2016